

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-000230-MR

HAROLD R. DEATLEY, JR.

APPELLANT

v. APPEAL FROM MASON CIRCUIT COURT  
HONORABLE ROBERT I. GALLENSTEIN, JUDGE  
INDICTMENT NO. 01-CR-00090

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: JOHNSON, TAYLOR AND VANMETER, JUDGES.

VANMETER, JUDGE: Harold R. Deatley, Jr., appeals from a judgment entered by the Mason Circuit Court on January 9, 2002, following his conditional plea of guilty to the charges of trafficking in marijuana more than eight ounces but less than five pounds<sup>1</sup>, driving while under the influence<sup>2</sup>, refusal to take

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<sup>1</sup> Kentucky Revised Statutes (KRS) 218A.1421(3).

<sup>2</sup> KRS 189A.010.

an alcohol/substance test<sup>3</sup> and trafficking in a controlled substance within one thousand (1,000) yards of a school<sup>4</sup>. On appeal, Deatley argues that the trial court erred in denying his motion to suppress evidence. Finding no error, we affirm.

On July 5, 2001, Agent Timothy Fegan of the Buffalo Trace Narcotics Task Force and Detective Andy Muse of the Maysville Police Department observed Deatley drive his Chevrolet pickup truck across the Maysville/Aberdeen Bridge at approximately 2:30 p.m. Agent Fegan and Detective Muse watched Deatley turn right towards Manchester, Ohio after crossing the bridge. The officers were interested in Deatley's trip to Manchester, Ohio, because they had received information from the FBI that Deatley routinely traveled to Manchester, Ohio to retrieve marijuana to sell in Kentucky. While Agent Fegan and Detective Muse did not possess specific information concerning Deatley's July 5, 2001 trip to Manchester, Ohio, the officers watched the bridge area for several hours and awaited Deatley's return. However, they ultimately departed the area after Deatley failed to return.

Later that afternoon, Agent Fegan observed Deatley drive by the Maysville Police Station. After spotting Deatley, Agent Fagen decided to follow him in an unmarked vehicle. While

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<sup>3</sup> KRS 189A.105.

<sup>4</sup> KRS 218A.1411.

following Deatley, Agent Fagen saw Deatley disregard a red traffic signal at the intersection of Forest Avenue and Lexington Street. At this point, Agent Fegan unsuccessfully attempted to contact a marked police unit to conduct a traffic stop on Deatley's vehicle. Despite not receiving additional police assistance, Agent Fegan continued to follow Deatley and observed him drive to the left of the center area on Forest Avenue<sup>5</sup> on four occasions. After witnessing these traffic violations, Agent Fegan located a siren in the unmarked vehicle and immediately activated it. Deatley subsequently stopped his vehicle.

After making the traffic stop, Agent Fegan approached Deatley's vehicle and requested Deatley's operator's license and proof of insurance. Deatley was only able to produce his operator's license. Meanwhile, Agent Fegan discovered that Deatley's speech was slurred, but was unable to detect the smell of alcohol on Deatley. Agent Fegan, however, did detect a scent that he recognized as "green marijuana"<sup>6</sup> emanating from Deatley's vehicle. From these observations, Agent Fegan ordered Deatley to exit his truck, at which time Agent Fagen observed that Deatley appeared to be unsteady on his feet. At this point,

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<sup>5</sup> While the record is not entirely clear, the record implies that Forest Avenue did not possess a yellow line indicating the center of the road.

<sup>6</sup> According to Agent Fegan's testimony during the suppression hearing, "green marijuana" is marijuana that has not been burned in any capacity.

Detective Muse arrived at the scene and administered four field sobriety tests on Deatley. Deatley failed three of the four field sobriety tests, prompting Detective Muse to ask Deatley to submit to a blood test. Deatley refused to submit to the blood test. Detective Muse subsequently arrested Deatley for driving under the influence of an intoxicant and placed him in the back of a deputy sheriff's cruiser.

Following Deatley's arrest, Agent Fegan and Detective Muse searched Deatley's truck. The officers found a large garbage bag sitting behind the driver's seat on the back floorboard. Agent Fagen noted in his written report that this bag was located within arms reach of the driver's seat. The officers looked inside the garbage bag and discovered 2,236.5 grams of marijuana packaged in shrink-wrapped, vacuum-sealed packages. Based on this evidence, the Mason County Grand Jury indicted Deatley on July 20, 2001 for trafficking in marijuana, driving under the influence and refusal to take an alcohol/substance test. The Grand Jury also indicted Deatley for trafficking in a controlled substance within 1,000 yards of a school<sup>7</sup>.

On August 7, 2001, Deatley filed a motion to suppress evidence obtained against him as a result of the July 5, 2001

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<sup>7</sup> This charge was based upon evidence that was unrelated to Deatley's July 5, 2001 arrest.

traffic stop. Upon the conclusion of a suppression hearing, the trial court denied Deatley's motion. Subsequently, Deatley entered a conditional guilty plea pursuant to Kentucky Rules of Criminal Procedure (RCr) 8.09 to all of the pending charges. On January 4, 2002, the trial court rendered a final judgment sentencing Deatley to a total of four years imprisonment. This appeal followed.

On appeal, Deatley argues that the trial court erred in denying his motion to suppress the evidence because Agent Fegan did not have probable cause to stop his truck, nor did Agent Fegan or Detective Muse have probable cause for his arrest. Thus, Deatley believes that the July 5, 2001 search and seizure was conducted in violation of the protections afforded to him by the Fourth Amendment of the United States Constitution, as well as Sections 1 and 10 of the Kentucky Constitution. We disagree.

Our standard of review for motions to suppress evidence is set forth in *Stewart v. Commonwealth*, Ky. App., 44 S.W.3d 376 (2000). "First, the factual findings of the court are conclusive if they are supported by substantial evidence. The second prong involves a *de novo* review to determine whether the court's decision is correct as a matter of law." *Id.* at 380. (Footnotes omitted.)

In *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89 (1996), the Court held that the temporary 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. Recently, the Kentucky Supreme Court embraced the *Whren* holding by noting that "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." *Wilson v. Commonwealth, Ky.*, 37 S.W.3d 745, 749 (2001).

Here, the record is clear that even though Deatley was the target of an ongoing investigation for drug offenses, Agent Fegan had probable cause to stop Deatley's vehicle on July 5, 2001 because he witnessed Deatley disregard a red traffic signal at the intersection of Lexington Street and Forest Avenue in Maysville, Kentucky. KRS 189.338 prohibits drivers from disregarding traffic control devices at intersections. Moreover, while following Deatley on Forest Avenue, Agent Fegan observed Deatley's vehicle cross to the left of the center area on four occasions as he rounded several curves. KRS 189.300 requires a driver to operate his vehicle upon the right side of

the highway whenever possible, unless the left side of the road is clear and presents a clear vision of the road for at least 150 feet ahead. Agent Fegan had probable cause to initiate the traffic stop, as Deatley violated Kentucky traffic laws by running a stoplight and driving on the left side of the road while navigating curves.

Once stopped, Agent Fegan and Detective Muse had probable cause to arrest Deatley for the offense of driving under the influence of an intoxicant. Detective Muse performed four field sobriety tests on Deatley. Deatley failed three of those tests. Further, Agent Fegan observed Deatley's erratic driving and noticed that his speech was slurred. Based upon these specific facts, it is apparent that the officers possessed a reasonable and articulable suspicion that Deatley was driving while intoxicated and therefore, Deatley was subject to being stopped and ultimately arrested. *See Creech v. Commonwealth*, Ky. App., 812 S.W.2d 162 (1991).

Since the initial traffic stop and arrest were proper, the issue becomes whether the search of Deatley's truck was a proper search made incident to arrest. A search "incident to arrest" is an exception to the general rule requiring that searches and seizures be accompanied by a warrant. The exception stands for the proposition that:

When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. . . . [and] to search for and seize any evidence on the arrestee's person to prevent its concealment or destruction.

*Chimel v. California*, 395 U.S. 752, 762-63, 89 S.Ct. 2034, 2040, 23 L.Ed.2d 685 (1969). The exception applies only to those areas "within [the] immediate control" of the arrestee. *Id.* at 763. The incident to arrest exception has been extended to a warrantless search of an automobile. Specifically, in *New York v. Belton*, 453 U.S. 454, 460, 101 S.Ct. 2860, 2864, 69 L.Ed.2d 768 (1981), the court stated:

When a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile. It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach.<sup>8</sup>

See also *Commonwealth v. Ramsey*, Ky., 744 S.W.2d 418 (1987).

In the instant case, Deatley's stop and arrest were clearly based on probable cause and thus, his arrest was lawful. Also, the marijuana discovered during the search of the truck

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<sup>8</sup> In *Belton*, the court stated: "[c]ontainers' here denotes any object capable of holding another object. It thus includes closed or open glove compartments, consoles, or other receptacles . . . as well as luggage, boxes, bags, clothing, and the like." 453 U.S. at 461 n.4, 101 S.Ct. at 2864. Here, the marijuana was found in a garbage bag.

was found in bag located within arms reach of the driver's seat. Accordingly, we believe that the marijuana seized from Deatley's vehicle was within a container subject to his immediate control.<sup>9</sup> Therefore, the trial court's denial of Deatley's motion to suppress was correct and the findings were based on substantial evidence.

For the aforementioned reasons, the judgment of the Mason Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dennis Stutsman  
Assistant Public Advocate  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General of Kentucky

Louis F. Mathias, Jr.  
Assistant Attorney General  
Frankfort, Kentucky

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<sup>9</sup> While it may appear that Agent Fagen stopped Deatley to further a drug investigation, *Whren*, 517 U.S. at 810, 116 S.Ct. at 1772, and *Wilson*, 37 S.W.3d at 749, clearly provide that Agent Fegan's subjective motivations do not invalidate this traffic stop.