

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2002-CA-002569-MR

DEWAYNE BRETT HUTCHINSON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE REBECCA M. OVERSTREET, JUDGE  
INDICTMENT NO. 02-CR-00832

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: EMBERTON, Chief Judge; McANULTY, Judge; and HUDDLESTON, Senior Judge.<sup>1</sup>

HUDDLESTON, Senior Judge: Dewayne Hutchinson appeals from a judgment entered following his conditional guilty plea to the charges of first-degree fleeing or evading police, first-degree possession of a controlled substance, receiving stolen property valued at over \$300.00, possession of marijuana, possession of

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<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

drug paraphernalia, DUI, and operating a motor vehicle on a suspended license. His combined sentence for all seven counts is three years' incarceration and a fine of \$250.00. Hutchinson's sole argument on appeal is that the police lacked a sufficient justification to initiate the traffic stop from which all of the charges later stemmed.

On the night of June 1, 2002, Roy Wilson<sup>2</sup> of the Lexington Police Department noticed Hutchinson driving on Richmond Road in Lexington in what Wilson described as "a reckless manner." Wilson testified that Hutchinson was rapidly changing lanes in an aggressive and unsafe manner and was getting too close to other vehicles. When Wilson activated his lights to initiate a traffic stop, Hutchinson fled. He was subsequently apprehended when his vehicle became stuck in a drainage ditch.

Hutchinson argues that Wilson did not have sufficient articulable suspicion to stop his vehicle.<sup>3</sup> In support of this argument, Hutchinson points to Wilson's testimony on cross-examination that Hutchinson did not run a stoplight, did not hit another car, did not speed and did not hurt anyone.

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<sup>2</sup> The parties have alternatively listed Wilson as a Sergeant or Officer, making his exact rank unclear.

<sup>3</sup> See Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

The statutory provision pursuant to which Wilson attempted to stop Hutchinson is Kentucky Revised Statutes (KRS) 89.290, which provides that:

- (1) The operator of any vehicle upon a highway shall operate the vehicle in a careful manner, with regard for the safety and convenience of pedestrians and other vehicles on the highway.
- (2) No person shall willfully operate any vehicle on any highway in such a manner as to injure the highway.

This statute covers what is commonly referred to as "reckless driving."

As stated above, Wilson testified that Hutchinson was rapidly and aggressively changing lanes and driving closely to other vehicles. While Hutchinson argues with the characterization of his driving as reckless, that is a decision to be made by the ultimate trier of fact. In order to legally stop Hutchens' vehicle, Wilson needed only an articulable and reasonable suspicion of criminal activity.<sup>4</sup>

Clearly, Wilson had an articulable and reasonable suspicion that by aggressively weaving among other vehicles and

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<sup>4</sup> Commonwealth v. Creech, Ky.App., 812 S.W.2d 162, 163 (1991).

traveling in close proximity to those vehicles, Hutchinson was operating his vehicle in a careless manner without regard for the safety and convenience of pedestrians and other vehicles, in violation of KRS 189.290. While Hutchinson takes issue with the characterization of his driving as reckless, such a determination must be made at trial. In ruling on his motion to suppress, the circuit court was only called upon to decide whether Wilson had a sufficient basis to issue a citation for a violation of KRS 189.290, which he did.

Because, the circuit court was correct in denying Hutchinson's motion to suppress, the judgment entered following his conditional guilty plea is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Rampulla  
FAYETTE COUNTY LEGAL AID, INC.  
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BRIEF FOR APPELLEE:

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