

Supreme Court of Kentucky
2024-SC-0007-DG

JON BUECHELE

APPELLANT

V. ON REVIEW FROM COURT OF APPEALS
NO. 2023-CA-0113
NELSON CIRCUIT COURT NO. 22-CR-00021

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION OF THE COURT BY JUSTICE THOMPSON

AFFIRMING

Jon Buechele appeals from the Court of Appeals’ decision affirming the Nelson Circuit Court’s denial of his motion to suppress. Buechele argues he could not be physically seized for a civil violation, here jaywalking, when he failed to obey an officer’s command to stop. Therefore, he argues that the circuit court should have suppressed evidence of drugs he discarded after he was seized.

I. FACTUAL AND PROCEDURAL BACKGROUND

On the evening of December 9, 2021, Officer Josh Doerr of the Bardstown Police Department was patrolling local “hot spots” for criminal activity in his marked patrol car. When Officer Doerr approached an intersection near a known drug house a few minutes after 10 p.m., he observed

a man (Buechele) a few doors down from that house who was walking toward him in the middle of the street.

Officer Doerr decided to stop Buechele for violating the law against jaywalking which prohibited him from walking down the middle of a street. Officer Doerr rolled down his window and asked Buechele to approach. Buechele instead turned away and walked in the opposite direction, cutting toward the corner. Officer Doerr exited his patrol car, approached Buechele, and again told Buechele to stop. Buechele looked back over his shoulder at Officer Doerr, put his hands in his pockets, and picked up his pace.

Officer Doerr quickly caught up with Buechele and grabbed him from behind, putting his left hand on Buechele's left forearm and his right hand on Buechele's right forearm. Buechele's hands were still in his pockets. As Officer Doerr was walking Buechele back to the patrol car, he could feel Buechele's forearms tense and flex. When they reached the patrol car, Officer Doerr felt Buechele pull his hands out of his pockets and then felt his forearms release. Officer Doerr looked down and noticed drugs scattered underneath his patrol car. Officer Doerr arrested Buechele.

After Officer Doerr placed Buechele in his patrol car, Buechele asked if he could smoke a cigarette. Officer Doerr retrieved Buechele's pack of cigarettes and discovered additional drugs in the cigarette pack.

On March 2, 2022, Buechele was indicted for first-degree trafficking in heroin, first-degree trafficking in methamphetamine, tampering with physical evidence, two counts of possession of controlled substance, two counts of

prescription medication not in its original container, disregarding a traffic regulation by a pedestrian, and being a first-degree persistent felony offender (PFO-1).

On August 12, 2022, Buechele requested a suppression hearing regarding the stop. At the hearing held on October 12, 2022, Officer Doerr and Buechele's mother testified. Officer Doerr testified about the encounter he had with Buechele and Buechele's mother testified about the condition of the street, the lack of sidewalks, and that people commonly walked on the street in that area. After hearing argument, the circuit court took the matter under submission and provided the parties with an opportunity to file memoranda.

In Buechele's memorandum, he stated the facts were that he was walking in the street, this was possible jaywalking, the officer ordered him to "[s]top and walk up to the car[,]" he did not wish to speak to the officer and walked away, the officer got out of his car, physically restrained Buechele, and moved him to the back of the officer's cruiser to conduct a search. Buechele argued that Officer Doerr had no legal basis for physically detaining him as "walking away from the cruiser was not valid justification for the officer to physically detain the defendant[,]" he did not have to speak to the officer or engage with him, and jaywalking is not a criminal activity. Buechele argued there was no basis to believe he had any weapons on him, therefore he could not be searched, and any contraband discovered from the search should be excluded as fruit of the poisonous tree.

On November 21, 2022, the circuit court denied Buechele's motion to suppress. The court made the following findings of fact regarding Officer Doerr's observations and encounter with Buechele:

While sitting at the stop sign [of the intersection of Allison Avenue and Halstead] . . . [Doerr] . . . observed Buechele who was walking down the middle of Halstead Avenue in the direction of the officer. At this point, Doerr estimated that Buechele was twenty to thirty feet from him. Doerr then verbally ordered Buechele to approach the police cruiser. However, Doerr testified that Buechele made eye contact with him, sped up, and walked away from him. The officer then grabbed Buechele by his arms and walked him back to the cruiser. Shortly thereafter, Buechele dropped narcotics on the ground near the cruiser.

The circuit court concluded that Officer Doerr lawfully stopped Buechele because it was unrefuted that Officer Doerr observed Buechele walking in the middle of Halstead Avenue while it was dark outside. This presented a danger to him and any motorist, violated Kentucky Revised Statutes (KRS) 189.570(12) and (13), and, accordingly, this action provided a reasonable and articulable suspicion of criminal activity.

Following the denial of his motion to suppress, on November 22, 2022, pursuant to a plea agreement, Buechele accepted a conditional plea which reserved the right to appeal the denial of his motion to suppress. Buechele pled guilty to amended charges as follows: (1) first-degree possession of a controlled substance, heroin (amended down from trafficking in heroin); (2) first-degree possession of a controlled substance, methamphetamine (amended down from trafficking in methamphetamine); and (3) tampering with physical evidence. The Commonwealth dismissed with prejudice the two counts of possession of a controlled substance, the two counts of prescription medication not in its

original container, disregarding traffic regulation by a pedestrian, and the PFO-1 enhancement, and recommended concurrent sentences of three years. The circuit court sentenced Buechele to three years of incarceration on each of the amended counts, to be served concurrently.

The Court of Appeals affirmed the denial of the motion to suppress, concluding it was reasonable for the officer to detain Buechele for an observed violation to issue him a citation. *Buechele v. Commonwealth*, No.2023-CA-0113-MR, 2023 WL 8286953, at *3-*4 (Ky. App. Dec. 1, 2023) (unpublished). The Court of Appeals distinguished *Commonwealth v. Wilson*, 625 S.W.3d 252 (Ky. App. 2021), as turning upon when the officer had the authority to arrest rather than upon whether the officer had the authority to conduct an investigative or *Terry* stop which involved the violation of a city ordinance rather than a state statute. The court reasoned that an observed seatbelt violation justifies a *Terry* stop, even though the penalty is limited to a \$25 fine and an individual may not be arrested and jailed for that violation.

The Court of Appeals explained that Buechele's situation was not unique, but rather governed by general principles involving stops. Just as with any other observed violation of the law, a jaywalker who had violated a state statute, KRS 189.570(12)-(14), could be detained just long enough for the officer to complete the issuance of a citation. Therefore, when Officer Doerr observed Buechele commit such a violation, he was justified in detaining him, but before Officer Doerr even had time to write a citation, Buechele provided grounds to justify further detention and eventual arrest for felony crimes when

he jettisoned the drugs in his possession. Accordingly, the discovery of the narcotics by Officer Doerr was not the result of an unreasonable search and seizure.

Buechele sought discretionary review, which we granted.

II. ANALYSIS

It Does Not Violate the Fourth Amendment of the United States Constitution When Police Physically Seize a Person for an Observed Violation for the Purpose of Writing a Citation if the Person Fails to Cooperate with Verbal Commands.

There is no substantive factual dispute as to what occurred regarding the stop. The dispute before us is whether such stop violated the Fourth Amendment. Accordingly, we review the circuit court's application of the law to the facts regarding this motion to suppress *de novo*. *Commonwealth v. Jennings*, 490 S.W.3d 339, 346 (Ky. 2016).

Buechele states that the Fourth Amendment requires reasonableness, and there could be no basis for Officer Doerr to believe he had reasonable suspicion that criminal activity was occurring (to justify physically seizing him) because “[w]alking in the middle of the street is unequivocally not criminal activity.” He argues that jaywalking is not even a “civil traffic violation,” because he was a pedestrian, and the act is just a “civil violation.” He further argues that his violation should be treated differently than civil traffic violations because there is a lesser degree of privacy in an automobile and, accordingly, our Court cannot be guided by what the police may do when there is a traffic violation involving a motorist inside an automobile.

Regardless of how jaywalking is categorized, it is a violation subject to a fine. KRS 189.570 provides in relevant part:

(12) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(13) Where a sidewalk is not available, any pedestrian walking along and upon a highway shall walk only on a shoulder, as far as practicable from the edge of the roadway.

(14) Where neither a sidewalk nor a shoulder is available, any pedestrian walking on or along a highway shall walk as near as practicable to an outside edge of the roadway, and, if on a two-way roadway shall walk only on the left side of the roadway.

KRS 189.990(1) provides the penalty for a violation of KRS 189.570: “Any person who violates any of the provisions of . . . KRS 189.570 . . . shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.”

Law enforcement officers who have probable cause to believe a traffic law violation has occurred may properly stop motorists and temporarily detain them without violating the Fourth Amendment, regardless of the officer’s subjective motivation for doing so. *Whren v. United States*, 517 U.S. 806, 810-19 (1996); *Wilson v. Commonwealth*, 37 S.W.3d 745, 749 (Ky. 2001).¹ There is

¹ *Whren* specifically resolved whether a civil traffic violation (there the violation of the D.C. traffic code) warranted a stop. 517 U.S. at 810. *Wilson* cited *United States v. Akram*, 165 F.3d 452, 455 (6th Cir.1999), which relied on *Whren*, for the proposition that “[i]t 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.” *Wilson*, 37 S.W.3d at 749. Our cases have subsequently cited *Wilson* and/or *Whren* for this holding. These cases have apparently led to Buechele’s notion that Kentucky state traffic law violations are civil violations. However, it does not follow that violations of traffic laws within KRS Chapter 189 (which covers traffic regulations, vehicle equipment and storage and is

no reasonable basis for distinguishing a temporary detention of a motorist to issue a citation for the violation of a traffic law, from the temporary detention of a pedestrian to issue a citation for a violation of a traffic law.

Buechele is essentially arguing that the use of any physical force by the officer was unreasonable, given that he had committed only a minor civil pedestrian violation which did not allow the officer to take any physical action when Buechele chose to walk away, and such a constitutional violation requires that evidence subsequently seized be suppressed as fruit of the poisonous tree. We disagree.

The United States Supreme Court’s “Fourth Amendment jurisprudence has long recognized that the right to make an . . . investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Graham v. Connor*, 490 U.S. 386, 396 (1989). Whether the force used to seize a person during the course of a stop is excessive is evaluated under the Fourth Amendment’s “objective reasonableness” standard. *Id.* at 388.

Officer Doerr was not merely making an investigatory stop based on reasonable suspicion. Instead, after he saw Buechele walk down the middle of

located within Title XVI. Motor Vehicles) are necessarily civil violations and not criminal violations. KRS 29A.270(1) provides that “[d]efendants shall have the right to a jury trial *in all criminal prosecutions, including prosecutions for violations of traffic laws*, in the Circuit and District Courts.” (Emphasis added). *See also* KRS 431.078 (providing for expungements of “a violation, or a traffic infraction not otherwise classified as a misdemeanor or violation”). We observe both motorists and pedestrians can violate traffic laws, and that jaywalking is a violation of a traffic law. However, whether jaywalking is a civil or criminal violation does not impact our reasoning.

the street, Officer Doerr had probable cause to believe Buechele was violating the statute prohibiting jaywalking. Given this, Officer Doerr properly instructed Buechele to stop and to come to him. In response to Buechele's decision to disobey, refuse to stop, and walk away, it was objectively reasonable for Officer Doerr to employ minimal force² by taking Buechele by the arms and leading him to the officer's patrol car where he could then issue Buechele a citation.

We fully reject Buechele's characterization that Officer Doerr was taking Buechele to his vehicle so that Officer Doerr could search him. There is no evidence that Officer Doerr had such a plan, and even if he did, such a plan was never carried out and a safety pat-down could have been justified under *Terry*. Officer Doerr had not yet completed the purpose for which he had stopped Buechele, when Buechele chose to discard what appeared to be contraband outside of the cruiser. Buechele's action then provided Officer Doerr with probable cause to arrest Buechele for the felonies of drug possession and tampering with evidence.

III. CONCLUSION

We affirm the Court of Appeals' decision that Buechele's seizure under these circumstances did not violate the Fourth Amendment. Accordingly, the

² See Ryan P. Hatch, *Coming Together to Resolve Police Misconduct: The Emergence of Mediation as a New Solution*, 21 Ohio St. J. on Disp. Resol. 447, 478–79 (2006) (citation footnotes omitted) (explaining the continuum of force and that “using physical contact, or ‘soft-hands techniques,’ which includes directional contact or escorting an individual” comes after “verbal communication,” such as “giving a direct order,” is ineffective).

Nelson Circuit Court properly denied Buechele's motion to suppress, and we affirm his convictions and sentences.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Aaron Reed Baker
Kathleen Kallaher Schmidt
Assistant Public Advocates

COUNSEL FOR APPELLEE:

Russell M. Coleman
Attorney General of Kentucky

Courtney J. Hightower
Assistant Attorney General