STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 2010AP001837 CR
Circuit Court Case No. 2009CT105

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

GEORGE C. GREENWOOD,
Defendant-Appellant.

APPEAL FROM THE CONVICTION AND ORDER DENYING SUPPRESSION OF EVIDENCE ENTERED IN IOWA COUNTY CIRCUIT COURT, HON. WILLIAM D. DYKE PRESIDING

REPLY BRIEF OF DEFENDANT-APPELLANT

GERALD C. OPGENORTH
State Bar No. 1009747
5805 Hewitt Lane
Spring Green, WI 53588
Telephone: 608-935-0532

Attorney for
Defendant-Appellant

TABLE OF CONTENTS

TABLE OF AUTHORIES

Cases

ARGUMENT

The issue is whether the officer's actions represent a mistake of fact or a mistake of law. The state's analysis looks at the officer's actions as potentially a mistake of fact. The defendant deems the officer's actions as a mistake of law.

The officer was indeed mistaken about two things. First, he thought the motorcycle did not have a registration plate. Second, he did not think the registration lamp was illuminated. The first mistake is a mistake of law since the officer believed only white registration plates were legal. The second is a mistake of fact to which the state urges this court to ignore.

The state cites to several cases in support of its argument. In *State v. St. Germaine*, 2007 WI App 214, 305 Wis. 2d 511, 740 N.W.2d 148 the issue was whether there was valid consent to enter a rented room without a warrant. In *Johnson v. State*, 75 Wis. 2d 344, 249 N.W.2d 593 (1977), the issue was about the warrantless arrest of a murder suspect hours after law enforcement had probable cause. *Illinois v. Rodriguez*, 497 U.S. 177, 110 S. Ct. 793, (1990) was about warrantless entry based upon consent of third party whom police, at time of entry, reasonably believe to possess common authority over premises, but who in fact does not do so. In *United States v. Rosario* 962 F.2d 733, (7th Cir. 1992), the issue was whether a motel room occupant who consented to police search had apparent authority to do so, and consent was freely and voluntarily given. In *State v. Gums*, 69 Wis. 2d 513, 230 N.W.2d 813 (1975), the issue was whether evidence should be suppressed that was seized in defendant's residence as a result of plain view observance during a search pursuant to a warrant. None of these cases deal with mistake of law as it applies to traffic stops.

Whether an officer has reasonable suspicion or probable cause to stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶ 10, 317 Wis. 2d

118, 765 N.W.2d 569. A traffic stop is a seizure within the meaning of the Fourth Amendment. *Id.*, ¶ 11. Both the United States Constitution and the Wisconsin Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; WIS. Const. art. 1, §11. "A traffic stop is generally reasonable if the officers have probable cause to believe that a traffic violation has occurred, or have grounds to reasonably suspect a violation has been or will be committed." *Popke*, 317 Wis.2d 118, ¶ 11 (citations omitted). When an officer bases a traffic stop on a specific offense, "it must indeed be an offense; a lawful stop cannot be predicated upon a mistake of law." If a police officer erroneously applies the law to the facts and no law has been broken, officer does not have probable cause for traffic stop *State v. Longcore*, 226 Wis. 2d 1, 9, 594 N.W.2d 412 (Ct. App. 1999), aff'd, 2000 WI 23, 223 Wis. 2d 278, 607 N.W.2d 620.

In determining whether probable cause exists, the court applies an objective standard and is not bound by the officer's subjective assessment of motivation. *State v. Kutz,* 2003 WI App 205, ¶ 12, 267 Wis. 2d 531, 671 N.W.2d 660. Probable cause for arrest exists when the totality of the circumstances within the arresting officer's knowledge would lead a reasonable police officer to believe that the defendant probably committed a crime. While the information an officer relies on to establish probable cause to arrest must be sufficient to lead a reasonable officer to believe that the defendant's involvement in a crime is more than a possibility, it need not reach the level of proof beyond a reasonable doubt or even that guilt is more likely than not. In determining whether probable cause to arrest exists, the court is to consider the information available to the officer from the standpoint of one versed in law enforcement, taking the officer's training and experience into account. *Id.*

In the instant case, the officer claimed he did not see a "telltale white" registration plate and

concluded the defendant was breaking the law. The officer was wrong about the law. He was wrong about registration plates having to be white. Thus, he was mistaken about the law regarding hobbyist license plates that the defendant legally displayed on his motorcycle.

CONCLUSION

WHEREFORE, Defendant-Appellant George C. Greenwood respectfully requests the court of appeals reverse the order of the circuit court denying the motion to suppress and vacate the conviction.

Dated: October _____, 2010

GERALD C. OPGENORTH
State Bar No. 1009747
5805 Hewitt Lane
Spring Green, WI 53588
Telephone: 608-935-0532

Attorney for
Defendant-Appellant

BRIEF CERTIFICATION

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c), Stats., for a brief produced using the following font:

Proportional serif font: Minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 757 words.

I further certify that the electronic copy is identical to the printed version.

Dated: October ____, 2010

GERALD C. OPGENORTH
State Bar No. 1009747
5805 Hewitt Lane
Spring Green, WI 53588
Telephone: 608-935-0532

Attorney for
Defendant-Appellant

CERTIFICATE OF MAILING

STATE OF WISCONSIN)
IOWA COUNTY)

I Gerald C. Opgenorth, a licensed Wisconsin attorney, hereby certify that copies Defendant-Appellant's Reply Brief in Appeal No. 2010AP1837 were placed in the U.S. Mail, with proper postage affixed this ____ day of October, 2010, addressed to the following as indicated below:

Clerk of the Wisconsin Court of Appeals
PO BOX 1688
Madison WI 53701-1688

DA Larry Nelson
Iowa County Courthouse
222 N. Iowa St.
Dodgeville, WI 53533

Dated: October ____, 2010

GERALD C. OPGENORTH
State Bar No. 1009747
5805 Hewitt Lane
Spring Green, WI 53588
Telephone: 608-935-0532

Attorney for
Defendant-Appellant