STATE OF WISCONSIN

IN SUPREME COURT

No. 2011AP2907-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

ANTONIO D. BROWN,

Defendant-Appellant.

ON PETITION FOR REVIEW FROM A DECISION OF THE WISCONSIN COURT OF APPEALS REVERSING A JUDGMENT OF CONVICTION AND AN ORDER DENYING A MOTION FOR POSTCONVICTION RELIEF, ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HONORABLE REBECCA F. DALLET, PRESIDING

SUPPLEMENTAL BRIEF OF PLAINTIFF-RESPONDENT-PETITIONER

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SUPPLEMENTAL BRIEF OF PLAINTIFF-RESPONDENT-PETITIONER

The State of Wisconsin, Plaintiff-Respondent-Petitioner, pursuant to this court's order of February 26, 2014, files this supplemental brief addressing the following issues:

1) Whether the officer had reasonable suspicion to stop Brown's vehicle because the officer believed that Wis. Stat. § 347.13(1) was violated when not all the tail light bulbs on Brown's vehicle were working; and

2) Whether, assuming an officer makes a good-faith mistake of law on which the officer makes a traffic stop, does that mistake of law nevertheless require reviewing courts to conclude that the stop was not lawful.

ARGUMENT

I. THE FACTS APPARENT TO THE OFFICERS IN THIS CASE SUPPORT A FINDING OF BOTH PROBABLE CAUSE AND REASONABLE SUSPICION THAT BROWN WAS VIOLATING WIS. STAT. § 347.13(1).

Answering this court's first question, while the State continues to maintain that the officers had probable cause to stop Brown's car, and urges this court to decide the case on this basis, the same facts supporting a finding of probable cause also provided the officers with reasonable suspicion to believe Brown was violating Wis. Stat. § 347.13(1).

Initially, the court of appeals was wrong that the stop of Brown's car could not be based on reasonable suspicion. In *State v. Longcore*, 226 Wis. 2d 1, 594 N.W.2d 412 (Ct. App. 1999), *aff'd by an equally divided court*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620, the court of

appeals held that when an officer makes a traffic stop based on the observation of a violation committed in the officer's presence, the officer must have probable cause to make the stop. *Longcore*, 226 Wis. 2d at 8-9. In its opinion in this case, the court of appeals relied on this language and held that the issue was whether the officers who stopped Brown had probable cause to believe the law had been broken, not reasonable suspicion. *State v. Brown*, 2013 WI App 17, ¶ 15, 346 Wis. 2d 98, 827 N.W.2d 903. This was because the officers stopped Brown for an observed traffic violation, not to conduct further investigation. *Id.*

With due respect to the court of appeals' decisions in *Longcore* and *Brown*, this is an incorrect statement of Fourth Amendment principles. It is well established that traffic stops may be based on either probable cause to believe a traffic violation has occurred or reasonable suspicion to believe a violation has been, is being, or will be committed. *State v. Popke*, 2009 WI 37, ¶ 11, 317 Wis. 2d 118, 765 N.W.2d 569 (citations omitted).

Further, whether these standards have been met is an objective inquiry. *Whren v. United States*, 517 U.S. 806, 813 (1996). The officer's subjective intentions or actual motivations for the stop are irrelevant. *See id.*; *see also State v. Repenshek*, 2004 WI App 229, ¶ 10, 277 Wis. 2d 780, 691 N.W.2d 369. This is true whether the issue is probable cause or reasonable suspicion. *See State v. Kyles*, 2004 WI 15, ¶ 30 n.22, 269 Wis. 2d 1, 675 N.W.2d 449. ""[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not

invalidate the action taken as long as the circumstances, viewed objectively, justify that action."'" *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004) (quoted sources omitted).

To hold that an officer who stops a vehicle based on the observation of an equipment violation needs probable cause because the officer was not acting on a suspicion warranting further investigation is inconsistent with these principles. That the officer did not make the stop to investigate further does not matter because the officer's subjective intent is irrelevant. Instead, the Fourth Amendment inquiry is whether the officer's actions were objectively reasonable under the circumstances. Put another way, a stop is valid as long as the facts reasonably apparent to the officer would support a finding of probable cause or reasonable suspicion. *Id*. (facts known to officer relevant to probable cause inquiry); *State v. Washington*, 2005 WI App 123, ¶ 16, 284 Wis. 2d 456, 700 N.W.2d 305 (same with respect to existence of reasonable suspicion).

In this case, as the State has argued, the officers who stopped Brown's car had probable cause to believe its tail lamp was in violation of Wis. Stat. § 347.13(1)'s good working order requirement because only two of its three bulbs were functioning, and all of a lamp's bulbs must be working for the lamp to be in good working order (State's brief-in-chief at 17-24).

The State also argued that even if the officers were wrong that the burned-out bulb on Brown's car was part of the tail lamp, they still had probable cause to stop his car because, given the age of the car and their lack of familiarity with

it, it was reasonable to think the bulb was part of the tail lamp (State's brief-in-chief at 24-27). Even if this later turned out not to be true, the State argued, a good-faith mistake of fact does not invalidate probable cause (State's brief-in-chief at 24-27). *See Illinois v. Rodriguez*, 497 U.S. 177, 185-86 (1990). This argument was made in anticipation that Brown might claim as he did in the circuit court, or this court might find, that the burned-out bulb was not part of the tail lamp (39:35). While the court of appeals acknowledged that Brown had made this argument in the circuit court, its decision ultimately assumes that the bulb was part of the tail lamp. *Brown*, 346 Wis. 2d 98, ¶¶ 19-21. Brown did not argue the bulb was not part of the tail lamp in his brief in this court. Nonetheless, if this court concludes the bulb was not part of the tail lamp, it should still conclude the stop was proper.

In its brief-in-chief, the State also asserted that the officers had "at least reasonable suspicion" and "the officers reasonably suspected Brown's car was in violation of [Wis. Stat. § 347.13(1)] and could properly stop it" (State's brief-in-chief at 24, 27). While this court should find that the officers had probable cause to perform the stop, it can also conclude that the specific and articulable facts apparent to the officers established reasonable suspicion to believe that Brown's tail lamp did not comply with the statute's good working order requirement. *See State v. Young*, 2006 WI 98, ¶ 21, 294 Wis. 2d 1, 717 N.W.2d 729.

Again, if all bulbs in a tail lamp must be working to satisfy § 347.13(1), then the officers, upon seeing what appeared to be a burned-out

bulb in Brown's tail lamp, could stop the car to investigate whether the bulb was, in fact, part of the lamp. Their belief that the bulb was part of the tail lamp would be reasonable, given the age of the car and their unfamiliarity with it, and this would permit them to temporarily detain Brown to inquire further and resolve the ambiguity. *Id.*; *State. Waldner*, 206 Wis. 2d 51, 61, 556 N.W.2d 681 (1996). That the officers might reasonably also believe the bulb was not part of the tail lamp would not invalidate the stop because they were not required to rule out innocent behavior before making it. *Young*, 294 Wis. 2d 1, ¶ 21. The officers had reasonable suspicion to stop Brown's car.

II. A TRAFFIC STOP MAY NOT BE BASED ON APPARENT FACTS THAT DO NOT ESTABLISH PROBABLE CAUSE TO BELIEVE A LAW HAS BEEN VIOLATED OR REASONABLE SUSPICION TO BELIEVE A LAW IS BEING, HAS BEEN, OR WILL BE VIOLATED.

The State's arguments that the officers had probable cause and reasonable suspicion to stop Brown's car all depend on the correctness of its interpretation of "good working order" in Wis. Stat. § 347.13(1) requiring that all component bulbs of a tail lamp be functional.

This court's second question to the parties asks if a court is required to conclude a traffic stop is not lawful if the stopping officer bases the stop on a good-faith mistake of law. Thus, this court is asking whether the stop of Brown's car might be

valid even if the State's interpretation of "good working order" is wrong, as long as the stopping officer's incorrect interpretation of Wis. Stat. § 347.13(1) was made in good faith.

The State does not defend the stop of Brown's car on this basis because to do so would directly conflict with the above-stated principle that an officer's subjective reasons for a vehicle stop are irrelevant to the Fourth Amendment analysis. An officer's good-faith mistake of law, or for that matter a bad-faith mistake of law, has no effect on the validity of a traffic stop. What the officer believes the law to be does not matter. Instead, as noted, the inquiry is whether the facts apparent to the officer objectively establish probable cause that a crime has been committed, or reasonable suspicion that the law has been, is being, or will be violated.

The court of appeals' decision in *Repenshek* illustrates this principle. There, an officer testified at a suppression hearing that he arrested Repenshek for "'causing great bodily harm by reckless driving.'" *Repenshek*, 277 Wis. 2d 780, ¶ 8. Repenshek correctly noted that was not an actual crime and argued the officer thus lacked probable cause to arrest him. *Id*. ¶ 9. The court of appeals disagreed, stating that the legality of an arrest does not depend on whether the arresting officer is able to articulate the correct legal basis for the arrest. *Id*. ¶ 10. Even when the officer acts under a mistaken understanding of the crime the officer arrests the person for, reviewing courts objectively determine whether there was probable cause to believe a crime had been committed. *Id*. ¶¶ 11-12. Because the facts established that the officer had probable cause to arrest Repenshek for reckless

driving, the court of appeals concluded the arrest was valid. *Id.* ¶ 12.

While *Repenshek* addresses an officer's mistaken belief about the existence of a law, rather than an officer's error about what an existing law actually prohibits, there is really no difference between the two scenarios for Fourth Amendment purposes.

For example, suppose an officer discovers a gun in a defendant's possession in a search incident to arrest for battery after the officer saw the defendant repeatedly punch another person in the face. The defendant, a felon, is charged with possession of a firearm by a felon and moves to suppress the gun claiming there was no probable cause to arrest him. At the suppression hearing, the officer testifies that he arrested the defendant because he believed the defendant had committed battery, which the officer describes as hitting another individual with enough force to cause an injury.

The officer's description of battery, which actually requires that the defendant cause bodily harm to another with the intent to do so and without the other person's consent, is wrong. *See* Wis. Stat. § 940.19(1). It does not follow, however, that the officer lacked probable cause to arrest the defendant for battery. The officer saw the defendant repeatedly punch the victim, and even if he did not know the actual elements of battery at the time of arrest, the facts he observed still objectively established probable cause that the crime had been committed.

Thus, an officer's mistake of law is irrelevant to whether probable cause or reasonable suspicion exists for a traffic stop. It does not matter that an officer stops someone because the officer believes that the person is violating a law that does not actually exist, or that the officer is wrong about what a particular law actually prohibits. The issue is whether the facts apparent to the officer objectively establish probable cause or reasonable suspicion to support the stop.

Further, the existence of probable cause or reasonable suspicion in the context of a traffic stop depends on the correct interpretation of the statute prohibiting the conduct. Allowing an officer to conduct a vehicle stop based on his or her mistaken interpretation of the law would be inconsistent with the objective inquiry the Fourth Amendment demands. This is true even if a statute is arguably ambiguous or, like many traffic laws, has not been conclusively interpreted by a court. Thus, the State concedes, that if its interpretation of Wis. Stat. § 347.13(1) is wrong, the officers could not have stopped Brown for a violation of this statute.[1]

While the State does not challenge the proposition that the existence of probable cause or

[1] As noted, an officer's incorrect interpretation of the law does not invalidate a traffic stop as long as the facts objectively support a finding of probable cause or reasonable suspicion that any crime or traffic violation had been committed. But, if the only possible way the facts would support a stop under either standard requires a misinterpretation of the law, then the stop is invalid.

reasonable suspicion for a traffic stop depends ultimately on the correct interpretation of the law, it notes that *Longcore* suggests that the officer's subjective beliefs about the law are relevant. *Longcore* stated "[t]he issue is, then, whether an officer has probable cause that a law has been broken when *his* interpretation of the law is incorrect." *Longcore*, 226 Wis. 2d at 9 (emphasis added).[2] This court should clarify that a stopping officer's subjective beliefs about what the law says are irrelevant to the stop, and instead, what matters is whether the facts reasonably apparent to the officer give rise to probable cause or reasonable suspicion that a violation of the law, correctly interpretated, has occurred.

CONCLUSION

Upon the foregoing, and for the reasons stated in its earlier briefs, the State respectfully

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[2] The State acknowledges that it made the same error at oral argument. In the quoted portions of argument in Justice Bradley's dissent to the order requesting supplemental briefing where undersigned counsel said the State was not challenging *Longcore*, counsel said that the stopping officer could not be "wrong about the law" and "the officer had to be correct in his interpretation of the law." *See State v. Brown*, No. 2011AP2907-CR, Feb. 26 2014 order at 5-6 (Bradley, J., dissenting).

requests that this court reverse the court of appeals' decision.

Dated this 19th day of March, 2014.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 2,368 words.

Dated this 19th day of March, 2014.

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Assistant Attorney General

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 19th day of March, 2014.

_____
AARON R. O'NEIL
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