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STATE OF WISCONSIN
DISTRICT III

11-20-2014

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

CASE NO. 2014AP2119-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

KIM M. LERDAHL,

Defendant-Respondent.

APPEAL FROM AN ORDER GRANTING SUPPRESSION OF EVIDENCE IN
EAU CLAIRE COUNTY CIRCUIT COURT
THE HONORABLE PAUL J. LENZ, PRESIDING

BRIEF OF PLAINTIFF-APPELLANT

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ISSUE PRESENTED FOR REVIEW

DID OFFICER ROTH HAVE REASONABLE SUSPICION OR PROBABLE
CAUSE TO JUSTIFY A TRAFFIC STOP OF THE VEHICLE DRIVEN BY KIM
LERDAHL?

THE COURT DECIDED: No

STATEMENT OF ORAL ARGUMENT AND PUBLICATION

Oral argument should not be necessary for the prosecution of this appeal. It is expected that the parties' legal briefs will fully present and address the issue presented for appeal. Additionally, the court's decision need not be published since it is anticipated that it will be controlled by existing case law.

STATEMENT OF FACTS

On July 21, 2014, a hearing was held on the defendant's Motion to Suppress Fruits of an Illegal Arrest/Stop (11) which was filed on March 12, 2014 (5). At that hearing, Lerdahl's attorney indicated that she was only challenging the basis for the traffic stop (11:15). Officer Amber Roth testified that while working as an Eau Claire Police Officer on October 10, 2013, she was sitting in her squad car at Birch Street and Starr Avenue observing traffic at approximately 2:00 a.m. (11:8-9). She watched a vehicle pass in front of her location with all three occupants turning and staring at her as the vehicle went by (11:9). Officer Roth thought this was suspicious behavior (11:21-22) so she pulled out onto Birch Street and traveled behind the vehicle, at which point she saw all three occupants turn around and look at her again before the vehicle turned into the Gordy's parking lot on Birch Street (11:9). Before the vehicle pulled into the parking lot, Officer Roth also observed what she believed to be a non-functioning high-mount brake lamp on the pickup truck (11:10). Officer Roth activated her emergency lights as soon as the truck began turning right into the Gordy's parking lot (11:10). The squad video was played for the court (11:10). Officer Roth identified the driver of the truck as Kim Lerdahl (11:12). Vehicle registration records showed that Lerdahl was driving a 1992 Chevrolet K1500 pickup truck (11:13). What appeared to Officer Roth to be a non-functioning high-mount stop lamp was actually a cargo lamp which is not activated by the application of brakes (11:24-

25). Chevrolet K1500 pickup trucks were not factory equipped with high-mount stop lamps until model year 1994 (11:28).

The court found that Officer Roth's mistake in thinking that the 1992 Chevrolet K1500 pickup truck driven by Kim Lerdahl was equipped with a non-functioning high-mount stop lamp was not reasonable (11:28) and granted the defendant's motion to suppress (11:29) and (12).

ARGUMENT

THE COURT ERRED WHEN IT RULED THAT OFFICER ROTH DID NOT HAVE REASONABLE SUSPICION OR PROBABLE CAUSE FOR THE TRAFFIC STOP OF THE VEHICLE DRIVEN BY KIM LERDAHL AND GRANTED THE MOTION TO SUPPRESS EVIDENCE.

Standard of Review

When reviewing a motion to suppress, the appellate court will uphold the trial court's findings of fact unless they are clearly erroneous. *State v. Fields*, 239 Wis.2d 38, 619 N.W.2d 279 (Ct. App. 2000). The application of constitutional standards to the facts is a question of law which is decided without deference to the trial court. *State v. Rutzinski*, 2001 WI 22, ¶12, 241 Wis.2d 729, 623 N.W.2d 516. The court reviews *de novo* whether the facts lead to reasonable suspicion. *State v. Young*, 2006 WI 98, ¶17, 294 Wis. 2d 1, 717 N.W. 2d 729. Similarly, the court examines the totality of the circumstances to determine whether probable cause exists. *State v. Lange*, 2009 WI 49, ¶20, 317 Wis.2d 383, 766 N.W.2d 551.

Applicable Law

In order for an officer to lawfully conduct an investigative stop, she must have a reasonable suspicion that the driver of a motor vehicle has committed an offense. Rutzinski at ¶14. “The question of what constitutes reasonableness is a common sense test. State v. Anderson, 155 Wis. 2d 77, 83, 454 N.W. 2d 763, 766 (1990). What would a reasonable police officer reasonably suspect in light of his or her training and experience? Id. at 83-84, 454 N.W. 2d 766. This common sense approach strikes a balance between individual privacy and the societal interest in allowing the police a reasonable scope of action in discharging their responsibility.” State v. Waldner, 206 Wis. 2d 51, 56, 556 N.W. 2d 681, 684, (1996). “The law of investigative stops allows police officers to stop a person when they have less than probable cause. Moreover, police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop. Anderson, 155 Wis. 2d at 84, 454 N.W. 2d at 766.” Waldner, 206 Wis. 2d at 59, 556 N.W. 2d at 685. Reasonable suspicion depends on whether an officer’s suspicion is supported by “specific, articulable facts and reasonable inferences from those facts” indicating the individual committed or is committing an offense. Waldner , 206 Wis. 2d at 56, 556 N.W. 2d at 684. “In determining whether there is probable cause, the court applies an objective standard, considering the information available to the officer and the officer’s training and experience.” State v. Lange, 2009 WI 49, ¶20, 317 Wis.2d 383, 766 N.W.2d 551.

When an officer relates the facts to a specific offense, it must indeed be an offense; a lawful stop cannot be predicated upon a mistake of law. State v. Longcore, 226 Wis.2d 1, 594 N.W. 2d 412 (Ct. App. 1999). However, courts will decline to exclude evidence when the officer's factual mistake is reasonable and made in good faith. United States v. Cashman, 216 F.3d 582, 587 (7th Cir. 2000) (where the officer reasonably believed a crack in the windshield was long enough to violate the statute, but it was not in fact, the officer had probable cause to stop for the traffic violation). Subsequent to Longcore, Wisconsin courts have upheld stops where an officer's belief regarding the facts was reasonable and there was no mistake of law. See State v. Reiersen, 334 Wis. 2d 146, 2011 WL1587124 (Ct. App. 2011) (cited for its persuasive value, where officer misreads Reiersen's license plate number). See also County of Sheboygan v. Bubolz, 334 Wis. 2d 147, 2011 WL 1271944 (Ct. App. 2011) (cited for its persuasive value, where the officer mistakenly believed a construction traffic sign was official).

Discussion

The evidence presented at the motion hearing revealed that what appeared to Officer Roth to be a non-functioning high-mount stop lamp was actually a cargo lamp intended to illuminate the box of the truck, a light which would not illuminate automatically with the application of brakes, but upon the turn of a switch. Because of the appearance and location of this lamp, Officer Roth

mistook it for a high-mount stop lamp that was not working at the time brakes were applied by the driver of the vehicle.

Because this was a mistake of fact rather than a mistake of law, suppression of the evidence based on the traffic stop would be inappropriate. Officer Roth's belief that the lamp was a non-functioning high-mount stop lamp was reasonable, although mistaken. This would compare favorably to the situation in which an officer conducts a traffic stop of a vehicle after seeing that the vehicle is registered to a person whose operating privileges are revoked, and then finds after the stop that the person driving the vehicle is not the registered owner. The traffic stop was reasonable, even though the officer turned out to be wrong as to the identity of the driver. *See State v. Williams*, 2002 WI App 306, 258 Wis. 2d 395, 655 N.W.2d 462.

In addition, Officer Roth observed all three occupants of the pickup truck turn and stare at her as the vehicle passed by her location, and turn around and look at her again before turning into the Gordy's parking lot, which raised her suspicion that the occupants were deliberately trying to avoid her (11:9-10, 21-22). These facts combined with the time of day being 2:00 a.m. (11:9) would lead a reasonable officer to believe a violation of law had occurred or was occurring. This was not addressed by the court in its ruling.

The court concluded that Officer Roth's mistake about the factory installed equipment on the pickup truck would only be reasonable if she had training in

identifying the difference between a 1992 and a 1994 model of the Chevrolet 1500 pickup truck. The court's conclusion would require that Officer Roth know the pickup truck to be a 1994 model instead of a 1992 model. That conclusion eliminates the possibility of a reasonable mistake.

CONCLUSION

In this case, Officer Roth had both reasonable suspicion and probable cause for the traffic stop of the vehicle driven by Kim Lerdahl. For all the reasons cited, the court's Order Granting Suppression of Evidence should be reversed.

Dated this 17th day of November, 2014.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 7 pages and 1,956 words.

Dated this 17th day of November, 2014.

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CERTIFICATION OF APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names or persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 17th day of November, 2014.

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