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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent, **Court of Appeals No. 2015AP00338CR**

v. **Circuit Court Case No. 2014CT00024**

NATHAN LEWIS TEASDALE,

Defendant-Appellant.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

APPEALED FROM: **Circuit Court,**
Grant County, Wisconsin

The Honorable Craig R. Day, Presiding

Submitted by:

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STATEMENT OF ISSUES PRESENTED

I. Whether the trial court correctly concluded that the traffic stop was based on the arresting officer's reasonable mistake of fact, *i.e.*, that the officer reasonably believed the vehicle the Defendant was operating was a Pontiac Sunfire, rather than a Chevrolet Cavalier, and thus, whether the officer had probable cause or reasonable suspicion to make the traffic stop.

II. Whether the trial court should have properly concluded that the traffic stop was based on a mistake of law, not a reasonable mistake of fact. If so, whether under *Heien v. North Carolina*, 574 U.S. ____, 135 S.Ct. 530 (2014), (decided on December 15, 2014) the arresting officer's mistake of law was reasonable.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument would only be appropriate if deemed necessary to more fully express the issues presented.

Publication is not requested per Wis. Stat. § 809.23(1)(b)4.

STATEMENT OF THE CASE

On February 17, 2014, the Grant County District Attorney's Office filed a Criminal Complaint charging Nathan Teasdale with Operating a Motor Vehicle While Revoked, contrary to Wis. Stat. § 343.44(1)(b), following the Defendant's arrest on February 14, 2014. (R. 1 at 1; App. 101). On May 27, 2014, the Defendant filed a Motion to Suppress, challenging the legality of the traffic stop that led to the Defendant's arrest. (R. 6 at 2; App. 106). The court held a hearing on

Teasdale's Motion on June 17, 2014 and denied the Motion. (R. 16; App. 126 at 18:7). On November 25, 2014, Teasdale pled guilty to the charged offense, the court accepted the plea, convicted Teasdale, and sentenced him to 6 months in jail. (R. 9; App. 107). Teasdale appeals the denial of his Motion to Suppress and his subsequent conviction.

STATEMENT OF THE FACTS

On Friday, February 14, 2014, at approximately 7:17 p.m., Deputy Duane Jacobson of the Grant County Sheriff's Office pulled Nathan Teasdale over, suspecting that the license plates on the vehicle driven by Teasdale belonged to another vehicle. (R. 1 at 3; App 103). The Defendant was driving a teal Chevrolet Cavalier and the license plate registration information available to Deputy Jacobson indicated the license plate belonged on a red Chevrolet Cavalier. (R. 1 at 3; App. 103; R. 16; App. 110 at 2:10-12). Deputy Jacobson testified that he believed the vehicle the Defendant was driving was a Pontiac Sunfire, rather than a Chevrolet Cavalier. (R. 1 at 3; App. 103; R. 16; App. 110 at 2:6-8). Deputy Jacobson acknowledged in his testimony that he observed no traffic violations that might have otherwise justified the traffic stop. (R. 16; App. 112 at 4:17-19). During Deputy Jacobson's initial contact with Teasdale, before the Deputy returned to his squad

car, Teasdale informed Jacobson that he did not have a valid driver's license. (See R. 16; App. 120 at 12:6-7).

Deputy Jacobson acknowledged that the vehicle Teasdale was driving was actually a Chevrolet Cavalier, which matched the registration information. (R. 16; App. 111 at 3:1-3; 3:7-8). Deputy Jacobson also acknowledged that Chevrolet Cavaliers and Pontiac Sunfires are similar looking vehicles (R. 16; App. 110 at 2:20-22). Apart from being similar looking models, Deputy Jacobson did not testify to any specific observations that led him to believe that the vehicle was a Pontiac Sunfire, prior to conducting the traffic stop. (See gen. R. 16; App. 108-127).

ARGUMENT

I. THERE WERE INSUFFICIENT FACTS FOR THE TRIAL COURT TO CONCLUDE THAT THE ARRESTING OFFICER MADE A REASONABLE MISTAKE OF FACT TO ESTABLISH THE REASONABLE SUSPICION OR PROBABLE CAUSE FOR THE TRAFFIC STOP.

A. Standard of Review

Whether there is probable cause or reasonable suspicion to justify a traffic stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶ 10, 317 Wis. 2d 118, 765 N.W.2d 569. The Court of Appeals applies a two-step standard of review to questions of

constitutional fact. *State v. Williams*, 2001 WI 21, ¶ 18, 241 Wis. 2d 631, 623 N.W.2d 106. First, the Court of Appeals reviews the trial court's findings of historical facts under a clearly erroneous standard. *Popke* at ¶ 10. Then, the Court of Appeals reviews, *de novo*, the application of those facts to constitutional principles. *Id.*

B. **Legal Authority**

A traffic stop is a seizure within the meaning of the Fourth Amendment to the United States Constitution, which provides protections against unreasonable searches and seizures. *State v. Malone*, 2004 WI 108, ¶24, 274 Wis. 2d 540, 683 N.W.2d 1. To satisfy the Fourth Amendment to the United States Constitution and Article I, section 11 of the Wisconsin Constitution, a traffic stop must be justified at its inception and must be reasonably related in scope to the circumstances that justified the stop. *Id.*

Traffic stops are analogous to classic *Terry*-stops, which must be supported by more than inchoate suspicions or hunches. In justifying the intrusion of a traffic stop, the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). "An inchoate and unparticularized suspicion or hunch will not suffice" to justify an investigatory stop. *See*

e.g., State v. Fields, 2000 WI App 218, ¶ 10, 239 Wis. 2d 38, 619 N.W.2d 279; *Brinegar v. United States*, 338 U.S. 160, 174-76 (1949). "'[G]ood faith on the part of the arresting officers is not enough… .' If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate." *Beck v. Ohio*, 379 U.S. 89, 96-97 (1964) (citation omitted). "[T]he government doesn't point to a single case where the good faith exception applied to a lack of reasonable suspicion and we don't think it does." *United States v. Bohman*, 683 F.3d 861, 866-67 (7th Cir. 2012).

Wis. Stat. § 349.02(2)(c) states, "[A] law enforcement officer may not stop a vehicle solely because the vehicle's color differs from the color stated in the application for registration of that vehicle."

The trial court, in this case, noted that:

> A traffic stop made based on a mistake of law is an unreasonable detention, and suppression is the remedy. That's *State v. Long*core. A stop made upon a mistake of fact, a reasonable mistake of fact, is not an unlawful stop and does not lead to suppression.

(R. 16; App. 124 at 16:13-17). The trial court's recitation of the law on suppression, as it relates to mistakes of law and mistakes of fact, was correct at the time of the trial court's comments. *See* sec. II. B., *infra*. A lawful traffic stop cannot be based on an officer's mistake of law and the facts supporting a traffic stop must actually constitute an offense.

State v. Longcore, 226 Wis. 2d 1, 594 N.W.2d 412, 416 (*affirmed*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 630).

In denying Teasdale's Motion, the trial court summarily found a reasonable mistake of fact in the officer's belief that the vehicle Teasdale was driving was a Pontiac Sunfire, rather than a Chevrolet Cavalier. The trial court then went on to determine that it "doesn't probably matter" if the detention was unlawful because an officer has the right to check a detained motorist's driver's license under Wis. Stat. § 343.18. The trial court cited *State v. Ellenbecker* and *State v. Williams* in support of its conclusion that it wouldn't matter whether the traffic stop to which the Defendant was subjected was illegal. In this conclusion, the trial court erred.

Ellenbecker involved a State Patrol inspector who encountered a disabled vehicle on the roadside. 159 Wis. 2d 91, 93, 464 N.W.2d 427 (Ct. App. 1990). Upon a routine check of the driver's license status, the inspector found that the driver's license was revoked and incident to his arrest for that offense, a search revealed contraband for which the driver was also criminally charged. *Id.* at 94. While the driver did not need assistance, the court found that because a "motorist-assist" is a lawful police-citizen encounter, under the officer's community caretaker function, the officer's request for the driver's license was

reasonable and the information revealed from the license check justified further detention and investigation. *Id.* at 95. "[T]he public interest in permitting an officer to request a driver's license and run a status check during a *lawful* police-driver contact outweighs the minimal intrusion on the driver." *Id.* at 93. (emphasis added). In short, the police-citizen encounter in *Ellenbecker* was justified at its inception.

Williams involved officers who received a report of a domestic abuse incident perpetrated by a black male, in his twenties, who drove a dark blue Chevrolet Euro model vehicle with a red pinstripe and tinted windows. 2002 WI App 306, ¶ 2, 258 Wis. 2d 395, 655 N.W.2d 462. A few days later, within a few blocks of the scene of the reported domestic abuse incident, an officer observed a young black male driving a blue Chevrolet Euro model vehicle, with a red pinstripe. *Id.* at ¶ 3. Because of the specific similarities between the vehicle and driver of the reported incident and the proximity of that similar vehicle to the scene of the reported incident, the court found adequate reasonable suspicion for the traffic stop the officer conducted. *Id.* at ¶ 14. It did not matter that the detaining officer quickly discovered that the driver was not the suspect in the previously reported incident. The stop in *Williams* was justified at its inception because there were specific and

articulable facts that made it reasonable for the detaining officer to believe the vehicle and driver were the same as those involved in the previously reported incident.

C. **Application**

The trial court erred when it found that Deputy Jacobson *reasonably* believed that the vehicle driven by the Defendant was a Pontiac Sunfire, rather than a Chevrolet Cavalier, because Deputy Jacobson did not offer any specific and articulable facts which would warrant that belief or which could colorably render his belief reasonable. The closest Deputy Jacobson came to offering anything at all, much less anything specific, regarding his belief that the vehicle the Defendant was driving was a different make and model from that shown on the registration information available to the officer was to agree Teasdale's counsel, who suggested that the two vehicles look similar. Deputy Jacobson's belief that the vehicle driven by the Defendant was a Pontiac Sunfire, rather than a Chevrolet Cavalier, is conclusory nature and lacks any *objective* indicia to support his *subjective* belief. Deputy Jacobson never reported or testified to any specific and articulable facts that would lead to the conclusion that he *reasonably* believed the vehicle operated by the Defendant was a Pontiac Sunfire, rather than a Chevrolet Cavalier.

The trial court's comments regarding an officer's right to request identification and for the driver's license from the driver of a vehicle subjected to a traffic stop is based on a faulty premise. That premise is that the traffic stop and seizure was justified and legal at its inception. The immediate action is distinguishable because unlike in *Ellenbecker* and *Williams*, in the immediate action, the traffic stop was not justified and was not legal at its inception.

As in the immediate action, *Williams* involved a traffic stop on a vehicle that appeared similar to one police were investigating for a prior report of criminal activity; however, *Williams* involved more. *Williams* involved a driver who matched the description of a suspect who police had reason to believe would be driving a particular vehicle and a demonstrably similar vehicle was observed in the immediate vicinity of the previous reported criminal activity. In the immediate action, Deputy Jacobson only, in conclusory fashion, indicated that he thought the vehicle was a make and model different from that shown on the vehicle's registration records.

The encounter between the officer and the driver in *Ellenbecker* involved the officer engaging in his community caretaker function, which was perfectly reasonable, and the seizure only resulted when the officer asked for the driver's license and thereby became aware of

additional information that warranted further investigation. The seizure in the immediate action was a law-enforcement investigation from its inception.

Nathan Teasdale respectfully submits that in the absence any specific and articulable facts to support Deputy Jacobson's belief that the make and model of the vehicle Teasdale was driving differed from that shown on the vehicle's registration, the traffic stop was unlawful. In the absence of such facts, the color of the vehicle (teal) not matching the color indicated on the vehicle's registration (red) cannot support the stop, as that runs afoul of Wis. Stat. § 349.02(2)(c).

II. HEIEN'S NEW RULE, WHICH PERMITS REASONABLE MISTAKES OF LAW TO FORM THE BASIS FOR A SEIZURE, DOES NOT SUPPORT THE TRAFFIC STOP, IN THE IMMEDIATE ACTION, BECAUSE THE DEPUTY'S MISTAKE OF LAW WAS NOT REASONABLE

A. Standard of Review

"[A] new rule of substantive criminal law is presumptively applied retroactively to all cases, whether on direct appeal or on collateral review." *State v. Lagundoye*, 2004 WI 4, ¶ 12, 268 Wis. 2d 77, 674 N.W.2d 526 (citations omitted). "[W]isconsin follows the federal rule announced in *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987), that new rules of criminal procedure are to be applied

retroactively to all cases pending on direct review or non-finalized cases still in the direct appeal pipeline." *Id.* (citations omitted).

B. **Legal Authority**

It does not appear to matter whether the holding in *Heien* is properly considered a substantive or procedural rule of criminal law, as *Heien*'s holding seemingly applies in either case. On December 15, 2014, the Supreme Court of the United States issued a decision holding that *reasonable* mistakes of law can justify a traffic stop and seizure under the Fourth Amendment. *Heien v. North Carolina*, 574 U.S. ____, 135 S.Ct. 530 (2014). *Heien* involved a motorist who was detained under a state law related to the proper operation of a vehicle's brake lights. The Court found that the brake light statute was ambiguous and although the motorist did not actually violate the law, the detaining officer's interpretation of the statute was reasonable. The Court held that an officer's mistaken understanding of the scope of a legal prohibition can support the reasonable suspicion necessary to conduct a traffic stop for a traffic violation, so long as the officer's mistake is reasonable. The Court noted that existing precedent provides that reasonable mistakes of fact may provide the reasonable suspicion to support a seizure and went on to posit that "reasonable men make mistakes of law, too, and such mistakes are no less

compatible with the concept of reasonable suspicion." The Court went on to explain, "The Fourth Amendment tolerates only reasonable mistakes, and those mistakes—whether of fact or of law—must be objectively reasonable. We do not examine the subjective understanding of the particular officer involved." Finally, the Court directed that "[a]n officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce," indicating that an officer's ignorance of a law cannot be reasonable.

C. **Application**

If this Court finds that Deputy Jacobson lacked specific, articulable, and objective facts on which to base his conclusion that the vehicle driven by Teasdale was a different make and model from that shown on the vehicle's registration, the traffic-stop and seizure of Teasdale can only be supported by the difference in color between the vehicle and the information contained in the vehicle's registration. That would however, be insufficient as in violation of Wis. Stat. § 349.02(2)(c). Deputy Jacobson indicated there were no traffic violations that might have independently justified the seizure.

Heien indicates that an officer's lack of knowledge regarding the existence of a law cannot be a reasonable mistake of law. Teasdale submits that the Court of Appeals can reasonably conclude, from the

record, that the arresting officer in the immediate action, was completely unaware of the existence of Wis. Stat. § 349.02(2)(c), which prohibits a traffic stop made solely on the basis that the vehicle's color does not match the information contained in the records of the vehicle's registration. A mistake of law cannot be deemed reasonable, under *Heien*, where the mistake is one of ignorance, rather than a reasonable misinterpretation of the law's confines.

CONCLUSION

Nathan Teasdale respectfully submits that there is an insufficient factual basis to support the trial court's finding that Deputy Jacobson made a reasonable mistake of fact in his *subjective* belief that the vehicle driven by Teasdale was a Pontiac Sunfire versus a Chevrolet Cavalier and that the vehicle was therefore improperly registered. The lack of any other valid basis to support the seizure of Teasdale renders the seizure a violation of the Fourth Amendment to the United States Constitution and to Article 1, section 11 of the Wisconsin Constitution.

The Defendant, Nathan Teasdale, therefore requests this Court REVERSE the Circuit Court's Order.

Dated this _____day of April, 2015.

Respectfully submitted,

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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 2,804 words.

I further certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of §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 ____ day of April, 2015.

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