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COURT OF APPEALS
DISTRICT 4

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Case No. 2015AP000338-CR
Circuit Court Case No. 2014CT000024

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

NATHAN LEWIS TEASDALE,
Defendant-Appellant.

ON APPEAL FROM THE CIRCUIT COURT FOR GRANT COUNTY,
THE HONORABLE CRAIG R. DAY, PRESIDING

BRIEF OF THE PLAINTIFF-RESPONDENT

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ISSUE

Whether it is unreasonable under the Fourth Amendment of the United States Constitution for an officer to stop a Chevrolet automobile because it is registered as a Chevrolet, but the automobile also looks like a Pontiac and the officer believes is a Pontiac?

STATEMENT ON ORAL ARGUMENT

The State is not requesting oral argument in this case. The arguments of the parties can be adequately addressed by the briefs.

STATEMENT ON PUBLICATION

The State does not request publication in this matter. The issue in this case involves no more than an application of a well-settled rule of law to a recurring fact situation.

STATEMENT OF THE CASE

On February 17, 2014, the State filed a criminal complaint charging Nathan L. Teasdale with operating a motor vehicle while revoked. On June 17, 2014, the Court conducted a hearing on Nathan Teasdale's Motion to Suppress. The Court denied the Motion to Suppress. On November 25, 2014, Nathan Teasdale pleaded guilty to

operating a motor vehicle while revoked and was found guilty. Nathan Teasdale now appeals.

STATEMENT OF THE FACTS

On February 14, 2014 at about 7:15 p.m. Grant County Deputy Sheriff Duane Jacobson was on duty. (R. 16, p. 1; App. 1). Deputy Jacobson observed what he believed to be a teal-colored Pontiac Sunfire drive by. (R. 16, p. 2; App. 2). Deputy Jacobson checked the registration on the vehicle and the registration came back to a red Chevrolet Cavalier. (R. 16, p. 2; App. 2). Deputy Jacobson stopped the vehicle and Nathan Teasdale was the driver. (R. 16, p. 2; App. 2).

A Chevrolet Cavalier and a Pontiac Sunfire are sister cars. (R. 16, p. 4; App. 4). Those vehicles are very similar and probably have the same chassis. (R. 16, p. 4; App. 4).

The nameplate for Cavalier could not be seen clearly. (R. 16, pp. 6-7; App. 6-7). The Chevrolet emblem on the back of the vehicle was missing. (R. 16, p. 7; App. 7).

Nathan Teasdale acknowledged early on during the traffic stop that he did not have a driver's license. (R. 7, R. 16, p. 10; App. 10). After Deputy Jacobson returned to his vehicle after the initial contact he learned that

the vehicle was actually a Chevrolet Cavalier. (R. 16, p. 7; App. 7). The defendant was subsequently charged with operating a motor vehicle while revoked. (R. 1).

ARGUMENT

Because Deputy Jacobson reasonably believed that the vehicle was a Pontiac and had a registration plate for a Chevrolet, his stop of the vehicle was not constitutionally unreasonable.

Standard of Review

In *State v. Brown*, 2014 WI 69, ¶ 17, 355 Wis. 2d 668, 677 (2014) the Court stated:

In this case we are asked to consider whether Brown's vehicle was lawfully stopped. "Whether there is probable cause or reasonable suspicion to stop a vehicle is a question of Constitutional fact." *State v. Popke*, 2009 WI 37, ¶ 10, 317 Wis. 2d 118, 765 N.W.2d 569. As such, it is a mixed question of fact and law, requiring a 2-step standard of review. *State v. Post*, 2007 WI 60 ¶ 8, 301 Wis. 2d 1, 733 N.W.2d 634. This Court reviews the circuit court's findings of fact under the clearly erroneous standard, and reviews independently the application of those facts to Constitutional principles. *Id.*

Argument

In *Brown*, 2014 WI 69, ¶ 20, 355 Wis. 2d at 679, the Court stated:

The burden is on the State to prove that a stop meets the constitutional reasonableness requirement. *Post*, 301 Wis. 2d 1, ¶ 12; *Harris*,

206 Wis. 2d at 263. A traffic stop can be based on probable cause or reasonable suspicion. *State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996)(citing *Whren*, 517 U.S. at 809-10; *Berkemer v. McCarty*, 468 U.S. 420,439 (1984)). "[P]robable cause exists when the officer has 'reasonable grounds to believe that the person is committing or has committed a crime.'" *Popke*, 317 Wis. 2d 118, ¶ 14 (quoting *Johnson v. State*, 75 Wis. 2d 344, 348, 249 N.W.2d 593 (1977)). There is reasonable suspicion justifying a stop if "the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime." *Post*, 301 Wis.2d 1, ¶ 13.

In *State v. Krier*, 165 Wis. 2d 673, 678, 478 N.w.2d 63 (Ct. App. 1991)the Court stated, "We hold that when a person's activity can constitute either a civil forfeiture or a crime, a police officer may validly perform an investigative stop pursuant to sec. 968.24, Stats."

In *State v. Anker*, 2014 WI App 107 ¶ 24,357 Wis. 2d 565, 579 (Ct. App. 2014), the Court stated, " Wisconsin's codification of *Terry*, Wis. Stat. § 968.24, permits a law enforcement officer to stop a person for a reasonable period of time based on reasonable suspicion "[a]fter having identified himself or herself as a law enforcement officer.""

Sec. 341.61(2) Wis. Stats. provides that a person may be required to forfeit not more than \$500.00 if that person

displays upon a vehicle a registration plate not issued for such vehicle.

In *U.S. v. Delfin-Colina*, 464 F.3d 392, 398 (3rd Cir. 2006), the Court stated:

In other words, an officer need not be factually accurate in her belief that a traffic law had been violated but, instead, need only produce facts establishing that she reasonably believed that a violation had taken place. Consequently, a reasonable mistake of fact "does not violate the Fourth Amendment." *Chanthasouxat*, 342 F.3d at 1276; see also *Illinois v. Rodriguez*, 497 U.S. 177, 185, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990)(noting that factual determinations made by government agents need not "always be correct," but they always have to be "reasonable"); *United States v. Tibbetts*, 396 F.3d 1132, 1138, (10th Cir. 2005)

Under this framework, though mistakes of fact are rarely fatal to an officer's reasonable, articulable belief that an individual was violating a traffic ordinance at the time of a stop, many of our sister circuits have held that mistakes of law - even reasonable ones - can render a traffic stop "unreasonable" under the Fourth Amendment. (see attached - App. P. 19-27)

Under the combined readings of *Brown*, *Krier*, and *Anker*, Deputy Jacobson could stop Teasdale if Deputy Jacobson had a reasonable suspicion that Teasdale was violating a civil traffic regulation. Deputy Jacobson did not need to be certain of the violation. Based on *Delfin-Colina*, Deputy Jacobson did not need to be entirely correct. Deputy Jacobson's suspicion of a violation of a

traffic regulation only needed to be reasonable. The State argues that it was. A Pontiac Sunfire and a Chevrolet Cavalier are sister cars and probably share the same chassis. (R. 16, p. 4; App. 4). The Cavalier nameplate could not be clearly seen and the Chevrolet emblem was missing. (R. 16, pp. 6-7; App. 6-7). Deputy Jacobson thought the vehicle driven by Teasdale was a Pontiac with a plate registered to a Chevrolet. Deputy Jacobson had a legitimate and reasonable basis for stopping Teasdale. Deputy Jacobson did not find out that the vehicle was properly registered until after he made the traffic stop. By then, it was only a matter of time before the defendant was charged with operating after revocation.

CONCLUSION

The Fourth Amendment prohibits searches and seizures that are unreasonable. Because Deputy Jacobson reasonably believed that the vehicle driven by Nathan Teasdale in this case was a Pontiac with a registration plate registered to a Chevrolet, Deputy Jacobson's stop of the vehicle was constitutionally reasonable. The State respectfully requests the Court to affirm the trial court's decision to deny the motion to suppress.

Dated this 30th day of April, 2015.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

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

Dated this 30th day of April, 2015.

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APPENDIX INDEX

Transcript of Motion Hearing. App. 1-18

U.S. v. Delfin-Colinas. App. 19-27

APPENDIX CERTIFICATION

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 the content requirements of Wis. Stat. S (Rule) 809.19(2)(a); that is, the record documents contained in the respondent's appendix fall into one of the categories specified in sub. (2)(a).

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 of 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 30th day of April, 2015.

Signed:

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**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 30th day of April, 2015.

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