

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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STATE OF WEST VIRGINIA,

Plaintiff Below, Respondent,

v.

Supreme Court No.: 23-120
Case No. CC-44-2021-f-60
Circuit Court of Roane County

SEAN ALLEN TAYLOR,

Defendant Below, Petitioner.

PETITIONER'S BRIEF

ANDREW D. MENDELSON
West Virginia State Bar #9138
Appellate Counsel
Appellate Advocacy Division
Public Defender Services
One Players Club Drive, Suite 301
Charleston, WV 25311
(304) 558-3905
andrew.d.mendelson@wv.gov

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ASSIGNMENT OF ERROR 1

STATEMENT OF THE CASE..... 1

SUMMARY OF ARGUMENT 4

STATEMENT REGARDING ORAL ARGUMENT AND DECISION 4

ARGUMENT 4

 An officer’s ignorance about a sixteen-month-old change to the law is not objectively
 reasonable, his stop of Petitioner was unreasonable and the Court should reverse. 4

CONCLUSION..... 7

TABLE OF AUTHORITIES

Cases

<i>Class v. U.S.</i> , 138 S. Ct. 798 (2018).....	4
<i>Frazier v. Stire</i> , No. 19-0411, 2020 WL 6624968 (W. Va. Nov. 12, 2020) (memorandum decision).....	3
<i>Heien v. North Carolina</i> , 574 U.S. 54 (2014).....	3, 5, 6
<i>State v. Deem</i> , 849 S.E.2d 918 (W.Va. 2020).....	5
<i>State v. Lilly</i> , 194 W.Va. 595, 461 S.E.2d 101 (1995).....	4
<i>State v. Stuart</i> , 192 W.Va.428, 452 S.E.2d 886 (1994).....	5
Constitutional Provisions	
U.S. Const. Amend. IV	5
W.Va. Const. Art. III, § 6	5

ASSIGNMENT OF ERROR

A police officer pulled over Petitioner for an expired motor vehicle inspection sticker. Due to the stop, he charged Petitioner with driving while revoked for DUI and other offenses. However, sixteen months prior, the governor had rescinded the motor vehicle inspection requirement due to COVID. Was the officer's mistake-occurring sixteen months after the law changed-objectively reasonable, or was the stop unlawful under the Fourth Amendment to the United States Constitution?

STATEMENT OF THE CASE

Governor Justice issued Executive Order No. 7-20 on March 19, 2020, during the State of Emergency from the COVID-19 pandemic. It stated, "the following statutory regulations are to be suspended... 14. Deadlines for annual vehicle inspections (W.Va. Code § 17C-16-1, *et seq.*).¹

On July 9, 2021, West Virginia State Trooper Josh Mack observed Petitioner hauling a minivan and displaying an expired 2018 motor vehicle inspection sticker.² Trooper Mack conducted a traffic stop after inquiry, Petitioner was arrested for Driving while Revoked for DUI, no proof of insurance and an expired motor vehicle inspection sticker.

The preliminary hearing was held on July 22, 2021, Trooper Mack testified that he pulled Petitioner over because he observed an expired 2018 motor vehicle inspection (MVI sticker).³ He knew of no other motor vehicle violations until initiating the stop and running Petitioner's driver information:

STATE: All right. And what was Mr. Taylor's operator's status?

TROOPER MACK: It's been revoked for DUI.

STATE: All right. And how did you know that?

TROOPER MACK: I requested through Roane County

¹ A.R. 0043.

² A.R. 0017

³ A.R. 0021

telecommunications and had an inquiry done on his driver's history, which revealed multiple convictions for driving while revoked, DUI. More specifically, he had multiple convictions on a revoked third offense.

In cross-examination, the officer stated he initiated the stop due to the inspection sticker, and was unaware that inspection stickers were no longer required due to the COVID emergency:

DEFENSE: Trooper, you stated that you pulled Mr. Taylor over because you observed a expired motor vehicle inspection?

TROOPER MACK: The sticker, yes ma'am.

DEFENSE: Okay. And that was on July 9th, 2021?

TROOPER MACK: I believe July 9th was the date.

DEFENSE: Okay. Trooper, are you aware of a current executive order signed by Governor Jim Justice putting a stay on requirements for motor vehicle inspections?

TROOPER MACK: Excuse me?

DEFENSE: Again, are you aware of an executive order signed by Governor Justice implementing a stay on the requirement to have updated motor vehicle inspections?

TROOPER MACK: Of any changes in the law, I'm not.

DEFENSE: Okay. Are you aware of any executive orders pursuant to COVID-19 that the governor has implemented in regard to these types of things?

TROOPER MACK: As in like the DMV holds that were lifted? Now you can schedule hearings—the DMVs---which DMVs don't do inspections; it's just an example. You're talking about how Covid affected traffic and ability?

DEFENSE: Right. Specifically—

TROOPER MACK: Yes, absolutely.⁴

The court found probable cause and stated," The fact that the traffic stop---that could be brought up in a suppression issue, if need be, in circuit court if that time ever arises."⁵

To the grand jury, Trooper Mack departed from earlier testimony that he learned about Petitioner's driving history only after initiating the stop.

STATE: How did you become involved in this investigation?

TROOPER MACK: I was conducting patrol on Harmony Road. I was traveling toward 119 and I observed a vehicle traveling in my direction. It was a Chevy pickup truck and it had an extremely expired MVI sticker. I then observed one of the Taylor brothers driving

⁴ A.R. 0021-0022

⁵ A.R. 0025

it, which I did know both had no legal license at the time, so I turned on that vehicle and conducted a traffic stop on it for that MVI.⁶

The grand jury indicted Petitioner on three counts, Driving while license revoked for DUI, Third offense, driving without insurance and failure to display MVI.⁷ Petitioner's defense counsel filed a motion to suppress, because at the time of the stop, the statutory requirement for motor vehicles inspections (and stickers) had been suspended. Trooper Mack's stop of Petitioner was illegal, and all evidence and information gained as a result of this illegal stop should be suppressed.⁸

Rather than rely upon the officer's historically-revised grand jury testimony, the State did not dispute the facts as presented by Petitioner in the motion to suppress. The State agreed the officer initiated the stop due to an expired inspection sticker at a time when said requirements were suspended.⁹ The State argued that the justification for the stop was clearly a "mistake of law" as discussed in *Heien v. North Carolina*¹⁰ and *Frazier v. Stire*¹¹ but was objectively reasonable. The law enforcement officer was unaware the governor had suspended the law upon which he based the stop.¹²

Petitioner's counsel replied that the law enforcement officer's lack of knowledge of the suspension of the MVI law was not a mistake of law and if it was, it certainly was not objectively reasonable.¹³ The circuit court denied the motion without a hearing.¹⁴

⁶ A.R. 0004

⁷ A.R. 0008-0009

⁸ A.R.0010-0011

⁹ A.R. 0013

¹⁰ *Heien v. North Carolina*, 574 U.S. 54 (2014)

¹¹ *Frazier v. Stire*, No. 19-0411, 2020 WL 6624968, at *1 (W. Va. Nov. 12, 2020) (memorandum decision).

¹² A.R. 0013

¹³ A.R. 0029-0040

¹⁴ A.R. 0041

Petitioner then entered a guilty plea conditional on his appeal of the traffic stop¹⁵

SUMMARY OF ARGUMENT

The Trooper stopped Petitioner because he believed that Petitioner's expired MVI sticker violated West Virginia law. He was wrong. His mistake-missing that the governor, who at the time addressed the public daily, had suspended motor vehicle inspections-was not reasonable, and could not justify Petitioner's stop.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner's counsel believes this case is an issue of first impression, involves a constitutional question regarding the validity of the lower court's ruling and certainly involves an issue of fundamental public importance. Petitioner's conditional plea gives this Court the opportunity to formally adopt *Heien's* rule regarding traffic stops.¹⁶ Therefore, Petitioner requests a Rule 20 argument and a signed opinion declaring that the Fourth Amendment to the United States Constitution and Section 6 of Article III of the West Virginia Constitution will not excuse a law enforcement officer's ignorance of the law in making a traffic stop.

ARGUMENT

An officer's ignorance about a sixteen-month-old change to the law is not objectively reasonable, his stop of Petitioner was unreasonable and the Court should reverse.

The Fourth Amendment to the United States Constitution reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported

¹⁵ A.R. 0085-0087

¹⁶ *State v. Lilly*, 194 W.Va. 595, 606-07, 461 S.E.2d 101, 112-13 (1995) (Cleckley, J., *concurring*)(stating the benefits of conditional pleas); see also *Class v. U.S.*, 138 S. Ct. 798, 803 (2018).

by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.”¹⁷

It is reasonable within the meaning of the Fourth Amendment to stop a vehicle if police observe a motor vehicle violation.¹⁸ Even if the officer is mistaken and no crime has occurred, a stop only violates the Fourth Amendment if the officer’s mistake of law is unreasonable.¹⁹

When reviewing a circuit court’s decision whether to suppress evidence under the Fourth Amendment, this Court reviews its factual determinations under the clearly erroneous standard and mistakes of law *de novo*.²⁰

The parties below did not materially dispute the facts. The only issue for this Court to decide is whether the police officer’s mistake of law was reasonable, and this could justify the stop. Petitioner sought a conditional plea, and appeals to this Court, because the officer’s mistake was unreasonable.

The court below relied upon *Heien v. North Carolina* in finding that the officer’s mistake of law was reasonable.²¹ It was mistaken. In *Heien*, the Supreme Court of the United States held that a traffic stop was lawful if the officer’s mistaken belief the vehicle had violated the law was nonetheless reasonable.²² There, the North Carolina officer initiated a stop because one of the defendant’s brake lights were out.²³ However, the North Carolina Court of Appeals later interpreted the law in question as only requiring one functioning brake light.²⁴ The State appealed and the North Carolina Supreme Court

¹⁷ U.S. Const. Amend. IV; accord. W.Va. Const. Art. III, § 6.

¹⁸ Syl. Pt. 1, *State v. Stuart*, 192 W.Va.428, 452 S.E.2d 886 (1994).

¹⁹ *Heien v. North Carolina*, 574 U.S. 54, 67 (2014).

²⁰ *State v. Deem*, 849 S.E.2d 918, 923 (W.Va. 2020).

²¹ A.R. 0044

²² *Heien v. North Carolina*, 574 U.S. 54, 67 (2014).

²³ *Id* at 57

²⁴ *Id* at 57

reversed finding the stop lawful because it was not patently obvious from the two competing statutes that one dead brake light was not a basis for a lawful stop. The North Carolina officer's mistaken understanding of the vehicle code was reasonable, and the stop was valid.²⁵ The United States Supreme Court granted certiorari and held that the officer's mistake of law was reasonable based on the competing statutes. The court made clear, however, that this is an objective test. Unless it is objectively reasonable, an officer's subjective mistake- no matter how innocently made- does not excuse an unlawful stop.²⁶ This reasoning condemns, rather than excuses, the officer's mistake in this case. The governor's executive order was clear. The following statutory regulations were suspended for the duration of the State of Emergency...Number 14. Deadlines for annual vehicle inspections. The governor issued this suspension of the law prior to the stop, rather than the after-the-fact judicial re-interpretation in *Heien*.²⁷

Therefore, there was no existent ambiguity upon which the officer could have reasonably reached the wrong legal conclusion. Furthermore, this was not even a recent change that could of caught the officer off guard. The governor declared the COVID emergency and suspended vehicle inspections sixteen months prior to the stop.²⁸ It is unreasonable for a law enforcement officer to be unfamiliar with the law he is to enforce for that long. He had no lawful basis for stopping Petitioner, and the evidence he gleaned from the stop must be suppressed. "[A]n officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce."²⁹

²⁵ *Heien v. North Carolina*, 574 U.S. 54, 60 (2014).

²⁶ *Id.* at 67.

²⁷ *Heien v. North Carolina*, 574 U.S. 54, 67(2014).

²⁸ A.R. 0088

²⁹ *Id.* at 67.

CONCLUSION

Therefore, this Court should reverse the lower court's ruling denying the motion to suppress. In the early days of the COVID pandemic, most West Virginians tuned in daily for the governor's updates. They provided the most up-to-date news, unified, and reassured the citizens in a time of unprecedented uncertainty. But even if the governor had not-literally-told all West Virginians he was suspending vehicle inspection requirements, the law was nonetheless clear. The officer ought to have known he could not, during the state of emergency, stop vehicles for inspection sticker violations. However innocent his mistake, it was unreasonable. This stop was illegal and the lower court should have thrown out its fruits.

Respectfully submitted,
Sean Taylor,
By Counsel

/s/ Andrew Mendelson
Andrew Mendelson Esq.,
W.Va. Bar No. 9138
Appellate Counsel
Public Defender Services
Appellate Advocacy Division
One Players Club Drive, Suite 301
Charleston, WV 25311
(304) 558-3905
Fax: 304-558-1098
Andrew.d.mendelson@wv.gov

Counsel for Petitioner