

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SCA EFiled: Aug 09 2023
02:53PM EDT
Transaction ID 70598938

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 REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
REPLY ARGUMENT	1
CONCLUSION.....	6

TABLE OF AUTHORITIES

Cases

<i>Heien v. North Carolina</i> , 574 U.S. 54 (2014).....	1, 2, 3, 6
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REPLY ARGUMENT

The officer did not have reasonable suspicion justifying the traffic stop on Petitioner because the expired motor vehicle inspection sticker was not a crime at the time. This requirement had been suspended for sixteen months due to an unambiguous executive order. The officer's lack of knowledge of this suspension of the law was not objectively reasonable, making the stop invalid. Respondent argues the traffic stop was valid because the officer was not aware that the Governor's COVID Executive Order prevented enforcement of motor vehicle inspection laws, and this was an objectively reasonable mistake of law.¹ This argument utterly fails when the applicable law is applied to the facts of this case. The traffic stop was made without reasonable suspicion and was therefore unlawful because displaying an expired motor vehicle inspection sticker was not a criminal offense at the time of the stop. Therefore, this honorable Court should reverse the denial of the suppression motion below and issue a signed decision that upholds a West Virginia citizen's rights under the Fourth Amendment.

In the case of *Heien v. North Carolina*, the Supreme Court of the United States held that reasonable suspicion, as required for a traffic stop or an investigatory stop, can rest on a reasonable mistake of law.² This case also states that, "The Fourth Amendment tolerates only reasonable mistakes, and those mistakes—whether of fact or law—must be objectively reasonable. We do not examine the subjective understanding of the particular officer involved."³ The facts of the *Heien* case are the North Carolina officer initiated a stop because one of the defendant's brake lights was out.⁴ However, the North Carolina Court of Appeals later interpreted the law in

¹ Respondent's Brief 4.

² *Heien v. North Carolina*, 574 U.S. 54, 60 (2014).

³ *Id* at 67.

⁴ *Id* at 57.

question as only requiring one functioning brake light.⁵ The State appealed and the North Carolina Supreme Court reversed finding the stop lawful because of the ambiguity between the two competing subsections of the statute. 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.⁶ Importantly, the brake light provisions had never been construed by North Carolina’s courts.⁷ Therefore it was objectively reasonable for the officer to think that *Heien*’s faulty right brake light was a violation of North Carolina law, which is totally different than the facts of this case.

The language of the executive order could not be any clearer and any reasonable person reading it would know exactly what it meant. 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.*)”.⁸ However, Respondent’s brief states that, “Even if the COVID order suspended the inspection statute in question, Mack’s reasonable suspicion can be based upon an objectively reasonable mistake of law.”⁹

Yet, the lower court’s order stated in its conclusions of law, “The ambiguous language and lack of clarity in the Executive Order’s statutory citation leave numerous interpretations regarding which subsections were suspended. There, it was reasonable for the officer to believe

⁵ *Id.* at 57.

⁶ *Id.* at 67.

⁷ *Id.* at 68.

⁸ A.R. 0043.

⁹ Respondent’s Brief 9.

that Defendant's expired inspection sticker violated the law giving him probable cause to initiate a traffic stop."¹⁰ It did correctly find that, "Although a stop may be deemed lawful based on a mistake of law, "the government cannot impose criminal liability based on a mistaken understanding of law."¹¹ The court ordered count three of the indictment, Failure to display MVI, be dismissed.¹² Ambiguous language means language that could be understood in two or more possible ways. Clearly, the Governor's executive order could not be more unambiguous.

Therefore, the officer's lack of knowledge of the suspension of the MVI law was not a mistake of law and even if it was, it certainly was not objectively reasonable.

Petitioner and the State worked out a conditional plea agreement to resolve this matter without having to take it to a jury trial. By accepting it the lower court and both parties understood that *Heien* was dispositive to the outcome of this case. Justice Kagan's concurrence in *Heien* specifically states that an officer cannot be defended due to a lack of awareness in the law¹³, which is exactly the situation in this case.

Respondent inaccurately states in his brief that Petitioner " ... claims, without citation to the record, that Mack "departed from earlier testimony that he learned about Petitioner's driving history only after initiating the stop."¹⁴ Clearly, at the preliminary hearing, held on July 22, 2021, the officer testified that he pulled Petitioner over because he observed an expired 2018 motor vehicle inspection (MVI sticker).¹⁵ His sworn testimony under the State's questioning was that he knew of no other motor vehicle violations until initiating the stop and running Petitioner's driver information:

¹⁰ A.R. 0044.

¹¹ *See id.*

¹² A.R. 0045.

¹³ *Heien v. North Carolina*, 574 U.S. 54, 69 (2014).

¹⁴ Respondent's Brief 7.

¹⁵ A.R. 0021.

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 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.¹⁶

The State's question to the officer about how he knew that Petitioner's license was revoked for DUI and the officer's response that it was from an inquiry done on his driver's history, makes no mention of any prior knowledge of Petitioner's license status. Significantly, at this stage of the criminal case there was no issue about the legality of the traffic stop.

Again, during 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.¹⁷

¹⁶ A.R. 0017.

¹⁷ A.R. 0021-0022

At the end of the preliminary hearing, the magistrate found probable cause and said, “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.”¹⁸

Thereafter, on September 28, 2021, testifying before a grand jury, the officer did depart from his earlier testimony at the preliminary hearing.

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 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.¹⁹

Not surprisingly this prior knowledge of Petitioner’s license status only came up after the issue regarding the validity of the stop came to light. Surely this prior knowledge would have been part of the officer’s testimony at the preliminary hearing in response to the State’s questions. This factual dispute is certainly not sinister but typical and readily apparent from the chronological record in this case. Therefore, this honorable Court should conclude that when the officer made the traffic stop, his only reasonable articulable suspicion was the expired motor vehicle inspection sticker.

This traffic stop occurred when the MVI sticker requirement had already been suspended for sixteen months. What the officer believed at the time of the stop is subjective and therefore fails the objectively reasonable requirement under *Heien* that applies to an officer’s mistake of law that can salvage an otherwise unlawful traffic stop.

¹⁸ A.R. 0025

¹⁹ A.R. 0004

When the lower court relied upon *Heien v. North Carolina* and found that the officer's mistake of law was reasonable,²⁰ it was mistaken. For the reasoning found in *Heien* 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. Moreover, the Governor issued this suspension of the law prior to the stop, rather than the after-the-fact judicial re-interpretation in *Heien*.²¹

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 have caught the officer off guard. The Governor declared the COVID emergency and suspended vehicle inspections sixteen months prior to the stop.²² It is unreasonable for a law enforcement officer to be unfamiliar with the law he is to enforce and especially for that long. Since the officer had no reasonable articulable suspicion for stopping Petitioner, the evidence gathered from the stop should be suppressed. "[A]n officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce."²³

CONCLUSION

For the foregoing reasons and those contained in Petitioner's brief, Petitioner respectfully requests that this Court reverse the lower court's ruling denying the motion to suppress. An officer's subjective and unreasonable mistake of law will never be excused. However innocent his mistake and/or beliefs, it was objectively unreasonable. Therefore, the traffic stop was

²⁰ A.R. 0044

²¹ *Heien v. North Carolina*, 574 U.S. 54, 67(2014).

²² A.R. 0088.

²³ *Id.* at 67.

unlawful. To rule otherwise would give every West Virginia law enforcement officer a strong incentive to remain ignorant of the law that he or she is duty-bound to enforce, and any changes made thereto.

Respectfully submitted,
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