

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

:

11-0620

Appellant

:

-vs-

:

On Appeal from the
Cuyahoga County Court
of Appeals, Eighth
Appellate District Court
of Appeals
CA: 94997

ANTHONY FEARS

:

Appellee

:

MEMORANDUM IN RESPONSE

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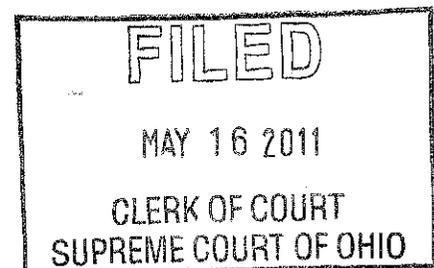


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EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION OR ISSUE OF GREAT PUBLIC INTEREST:

Appellee Anthony Fears asks this Court to deny the State's request for jurisdiction. This case does not present an issue of significance, constitutional or otherwise. In this Fourth Amendment case, the State admits that the traffic stop at issue was based solely on the police officers' misunderstanding of the Cleveland turn signal ordinance. The Eighth District's opinion simply applies *Terry v. Ohio* (1968), 392 U.S. 1, to these circumstances and concludes "that the officers' mistake of law regarding Fears' use of a turn signal without turning meant that the officers lacked reasonable, articulable, suspicion for the stop." *State v. Fears*, Cuyahoga App. No. 94997, 2010-Ohio-930, ¶ 13 ("Opinion Below").

Thus, the Opinion Below stands for the commonsense rule that police officers cannot use a clear misinterpretation of a traffic law as the sole basis for a (pretextual) traffic stop. The State, however, misconstrues the Eighth District's holding to suggest that this case involves a legal issue that is not in play—i.e., whether a reasonable, good faith mistake of law by police officers justifies an extension of the *United States v. Leon* good faith exception to the warrant requirement in the context of routine traffic stops. (Memo. In Support of Jurisdiction at 1.) In fact, the Eighth District did *not* conclude that the officers' misinterpretation of the turn signal ordinance was reasonable. (Opinion Below at ¶¶ 9-13.) Consequently, the effect of a police officer's reasonable mistake of law is not at issue in this case.

Moreover, the State waived its good faith exception argument under *Leon* and its progeny by not raising it in the trial court. And, even if this case did present the issue raised by the State, the State's proposition of law fails on the merits.

Accordingly, the State's arguments in support of jurisdiction are unfounded and this case is not worthy of this Court's attention.

STATEMENT OF CASE AND FACTS

On June 5, 2009 Mr. Fears was driving a car southbound on Dundee Drive in Cleveland. (Tr. 9.) He stopped at the intersection of Dundee Drive and Sellers Avenue at the same time as police officers in a zone car. (Tr. 9.) The officers recognized Mr. Fears, and followed him as he turned his car onto Sellers Avenue in Cleveland, Ohio. (Tr. 9, 36.) Approximately thirty to fifty feet after turning onto Sellers, Mr. Fears activated his left turn signal. (Tr. 21.) With his turn signal continuously activated, he drove approximately 250 feet on Sellers Avenue before turning left onto East 120th Street. (Tr. 30.) In the process, he passed East 118th Street without turning.¹ In other words, as the officers testified, he drove approximately 100 feet from the time he activated his left turn signal until he passed East 118th Street, and then approximately 150 feet from East 118th Street to the next street, East 120th, where he turned left.

Almost immediately after Mr. Fears turned onto East 120th Street, the officers pulled him over. As a result of the traffic stop, the officers searched Mr. Fears, found drugs in his shoe, and arrested him. (Tr. 11.)

The sole basis of the traffic stop was the officers' belief that Mr. Fears had violated § 431.14 of the City of Cleveland Codified Ordinances relating to proper use of a turn signal. (Tr. at 31:3-5.) Section 431.14 of the City of Cleveland Codified Ordinances provides as follows, in pertinent part:

431.14 Signals Before Changing Course, Turning or Stopping

¹ There is no East 119th Street -- there are just two city blocks between Dundee Drive and East 120th Street. (Tr. 15.)

No person shall turn a vehicle or move right or left upon a highway unless and until such person has exercised due care to ascertain that the movement can be made with reasonable safety, nor without giving an appropriate signal in the manner hereinafter provided.

When required, a signal of intention to turn or move right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

Clev. Cod. Ord. § 431.14 (emphasis added).² In other words, the ordinance required Mr. Fears to activate his left turn signal and to leave it on continuously for at least 100 feet before he turned left off of Sellers Avenue onto East 120th Street. This is exactly what Mr. Fears did.

The State expressly admits that Mr. Fears did not commit a traffic violation of any kind; the officers did not know the relevant turn signal law and incorrectly believed that it was illegal to proceed through an intersection with a turn signal activated. (Tr. at 15.) The State also admits that the only basis for stopping Mr. Fears was the officers' mistaken belief that he violated the turn signal ordinance. (Tr. at 31.)

On June 17, 2009, the Cuyahoga County Grand Jury filed a two-count indictment against Mr. Fears. The indictment charged drug possession in violation of R.C. §2925.11, and possession of criminal tools in violation of 2923.24. On September 9, 2009, through counsel, Mr. Fears filed a suppression motion, arguing that all the evidence seized from his person and vehicle must be suppressed because it was obtained as a result of an unconstitutional seizure, specifically, an unlawful traffic stop. The trial court held a

² The state analog, R.C. § 4511.39, includes language identical to the bolded paragraph above. The officers testified that they only use the city ordinance, § 431.14, when citing motorists for alleged turn signal violations. (Tr. at 19.) Because the key provision of § 431.14 is verbatim of the analogous Ohio Revised Code provision, Mr. Fears will simply refer to both the ordinance and revised code section as "the ordinance."

suppression hearing on January 21, 2010 and denied Mr. Fears motion the next day. (Tr. at 57-58). Mr. Fears then pled no contest to both counts in the indictment and the trial court found him guilty. (Tr. 76-77).

Mr. Fears filed a timely appeal to the Eighth District Court of Appeals, who reversed the trial court's order denying his motion to suppress. See Opinion Below, *State v. Fears*, Cuyahoga App. No. 94997, 2011-Ohio-930. The State has appealed that decision to this Court, asserting a single proposition of law. Appellee's response to the State's request for jurisdiction follows.

LAW AND ARGUMENT

Proposition of Law I (as formulated by Appellant-State of Ohio): "When police act in good faith on an objectively reasonable, yet mistaken interpretation of a criminal statute, when conducting a traffic stop, evidence obtained from a subsequent search should not be suppressed."

The State's proposition of law is fundamentally flawed. First, it is based on the erroneous contention that the police officers' mistake of law regarding the turn signal ordinance was objectively reasonable. Neither the Eighth District's Opinion Below nor the plain meaning of the ordinance support this contention. Second, although the State's proposition appears to focus on the good faith exception to the exclusionary rule, the State waived that argument by failing to raise it in the trial court. Third, the proposition of law fails on the merits.

A. Summary of the Opinion Below

The Eighth District held that a traffic stop must be based on reasonable, articulable, suspicion and properly applied this Court's well-established Fourth Amendment precedent regarding that standard to the facts at bar. (Opinion Below at ¶¶ 4-8.) First, the Eighth District noted that the State "concedes that Fears's conduct did not

constitute a violation of Cleveland Codified Ordinance 431.14.” Further, in a footnote quoting the ordinance, the Eight District stated: “It is apparent that the ordinance only penalizes a driver who turns without giving an appropriate turn signal, not a driver who signals but does not make a turn.” (Opinion Below at n.1.) Thus, the Eight District concluded “that the officers’ mistake of law regarding Fears’s use of a turn signal without turning meant that the officers lacked a reasonable, articulable suspicion for the stop.” (Opinion Below at ¶ 13.) In addition, the Eighth District held that the good faith of the officers was “immaterial.” (Id.)

B. The Officers’ Mistake of Law Was *Not* Reasonable

All of the State’s arguments in support of jurisdiction depend on the notion that the officers *reasonably* believed that Mr. Fears violated the turn signal ordinance. Specifically, the State argues that “in mistake cases the question is simply whether the mistake, whether of law or fact, was an objectively reasonable one.” (Memo. in Support of Jurisdiction at 6.) However, first, the Eighth District did not find that the officers’ mistake was reasonable, and, second, there is no factual basis for such a finding. See *United States v. Gross* (6th Cir. 2008), 550 F.3d 578, 584 n.2 (“Because we conclude that [the officer] did not have an objectively reasonable belief that the defendants violated Tennessee law, we need not determine whether it is ever possible for an officer’s mistake of law to be objectively reasonable.”).

1. The Eighth District Did Not Find that the Officers’ Mistake of Law Was Reasonable

In its memorandum in support of jurisdiction, the State contends that “the Eighth District held that . . . the officers . . . actions were based on an objectively reasonable interpretation of the law.” (Memo. in Support of Jurisdiction at 1.) This is not what the

Eighth District held. The Opinion Below does not include a finding that the officers' mistake of law was reasonable. To the contrary, the Eighth District specifically stated that the meaning of the turn signal ordinance is "apparent," and that the ordinance does not penalize "a driver who signals but does not make a turn." (Opinion Below at 6-7 n.1.) Accordingly, the first premise in the State's argument – i.e., that the Eighth District held that the officers' mistake of law was reasonable – is demonstrably false based on review of the Opinion Below.

2. *The Officers' Mistake of Law Was Objectively Unreasonable based on the Plain Language of the Ordinance and Ohio Law*

Similarly, the plain meaning of the turn signal ordinance is clear and unambiguous. Thus, this Court need not look beyond the ordinance to determine that the officers' mistake was objectively *unreasonable*. Consequently, the State's arguments are baseless. The ordinance states that "*when required, a signal of intention to turn or move right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.*" Clev. Cod. Ord. § 431.14 (emphasis added). Although the State offers a tortured interpretation of the ordinance, the plain meaning is perfectly clear: (1) it does not limit how long a turn signal can be continuously activated, and (2) it does not require Mr. Fears to turn at the first intersection he encountered after activating his turn signal.

Commonsense, practical reality, legislative history, and Ohio case law confirm that the officers' mistake of law was unreasonable.

First, the officers' reading of the statute would frequently make it impossible to comply with the requirement that the turn signal be continuously activated for *at least* 100 feet. For example, where two intersections, driveways, or an intersection and a

driveway are less than 100 feet apart, a driver intending to turn at the second intersection or driveway would automatically violate the ordinance if it required drivers to turn at the first opportunity after signaling.

Second, in 1975, the Ohio General Assembly amended the pertinent language of R.C. § 4511.39 in an effort to clarify how far in advance of turning drivers must activate their turn signal. It did not add an outer limit on the distance. See R.C. § 4511.39.

Third, Ohio courts have not read such a limitation into the statute since then. Indeed, this Court has rejected the proposition that it is illegal for a motorist to “fail to turn when his turn signal was activated.” In *Timmins*, this Court held that it is legal for a driver traveling on a through street to activate the vehicle’s turn signal and then proceed directly through an intersection without turning. *Timmins v. Russomano* (1968), 14 Ohio St. 2d 124 at Syllabus ¶ 2.

Accordingly, this Court should decline jurisdiction simply because the State’s contention that the officers’ mistake of law was reasonable has no basis in law or fact. See *Gross*, 550 F.3d at 584 n.2.

C. The Good Faith Exception under *Leon* Does Not Apply to this Case

Even assuming for the sake of argument that the officers’ mistake of law was reasonable, this Court should not accept jurisdiction over this case. The State’s proposition of law seeks to establish an exception to the exclusionary rule, and the memorandum in support clarifies that the State’s goal in this appeal is to expand the reach of the *Leon* good faith exception to mistakes of law by police officers. The State, however, waived this argument when it failed to raise it in the trial court. In addition, even if waiver does not apply, the proposition of law fails on the merits.

1. The State Waived the Good Faith Exception Argument

The State waived the argument that the exclusionary rule should not apply to police officers' reasonable, good faith mistakes of law by failing to raise it in the trial court in response to Mr. Fears' motion to suppress. See *State v. Allen*, Franklin App. No. 08AP-264, 2008-Ohio-6916 ¶ 33 (citing *State v. Reniff*, Cuyahoga App. No. 78481, 2001-Ohio-4353 ¶ 14 for the proposition that “[a]n issue is sufficiently preserved for appellate review if raised during briefing on a motion to suppress.”); *State v. Seals* (1999), Lake App. No. 98-L-206, 1999 WL 1314662 at *5. In the Opinion Below, the Eighth District acknowledged this waiver issue, but did not address it. (Opinion Below at ¶ 9.) As a procedural matter, even if the State's good faith exception argument were legitimate (which it is not), the State has waived it. See *Agee v. Russell* (2001), 92 Ohio St.3d 540, 544.

2. The Good Faith Exception Does Not Apply to this Case

If the State did not waive the good faith exception argument, it fails on the merits. The State argues that “good faith on the part of the police will excuse evidence seized upon searches made without a warrant.” (Memo. in Support of Jurisdiction at 5, citing *United States v. Leon* (1984), 468 U.S. 897 and *Herring v. United States* (2009), 555 U.S. 135.) Neither *Leon* nor *Herring* extends to mistakes of law made by officers on the street in their interactions with motorists and the public.

In *Leon*, the United States Supreme Court held that the exclusionary rule does not bar the admission of evidence obtained by police officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate, but ultimately found to be invalid. 468 U.S. 897. In *Herring*, police officers arrested the defendant because

information in the neighboring county's police database indicated that there was an outstanding arrest warrant. 555 U.S. at 698. The database had not been updated to reflect that the warrant had been recalled. Thus, in *Herring*, the Supreme Court extended the *Leon* exception to negligent mistakes by law enforcement attenuated from the officer executing the search or seizure at issue. *Id.* at 704.

Therefore, both *Herring* and *Leon* limit the good faith exception to the exclusionary rule to circumstances in which an officer relies on someone else's mistake, and the mistake is attenuated from the Fourth Amendment violation. The Supreme Court has not held that the good faith exception applies to a mistake of law made by an officer on the street that leads directly to an unconstitutional search or seizure executed by the same officer.

There are sound policy reasons for so limiting the good faith exception. In *Leon*, the Supreme Court explained that the exclusionary rule is "designed to safeguard Fourth Amendment rights generally through its deterrent effect." *Leon*, 468 U.S. at 906. *Leon* and *Herring* recognize a narrow exception to the exclusionary rule because the officers' good faith under the circumstances presented did not implicate the deterrence policy underlying the rule.

In contrast, in this case, an exception would be detrimental. Allowing the police to rely on their own ignorance of the law would encourage actual or feigned ignorance of the law by the very people responsible for enforcing it. See *United States v. McDonald* (7th Cir. 2006), 453 F.3d 958, 962; see also *United States v. Lopez-Soto* (9th Cir. 2000), 205 F.3d 1101, 1006 ("To create an exception here would defeat the purpose of the exclusionary rule, for it would remove the incentive for police to make certain that they

properly understand the law that they are entrusted to enforce and obey.”) With this policy in mind, the exception the State advances has never been endorsed by this Court. This is clearly an area of Fourth Amendment law where an exception to the exclusionary rule would be inappropriate and detrimental.

Finally, much of the case law the State relies upon in its motion in support of jurisdiction does not address the State’s proposition of law. In its proposition of law and motion in support of jurisdiction, the State appears to (1) concede that that traffic stop violated the Fourth Amendment but (2) argue that the exclusionary rule should not apply as the remedy for the constitutional violation. Nonetheless, the State cites *United States v. Martin* (8th Cir. 2005), 411 F.3d 998 and *United States v. Washbabaugh* (S.D. Ohio 2008), 2008 WL 203012, *2. Neither of these cases addresses the *Leon* exception to the exclusionary rule. Thus, because the State’s proposition of law appears limited to expanding an exception to the exclusionary rule, these cases are irrelevant.³

³ Admittedly, it is somewhat difficult to determine from the State’s memorandum whether it is also arguing that the traffic stop did not violate the Fourth Amendment. If this Court were to find that the State’s proposition of law includes the notion that the traffic stop was valid, the cases cited by the State represent the minority view—the majority of factually analogous cases hold that a reasonable mistake of law cannot justify a traffic stop. See *United States v. McDonald* (7th Cir. 2006), 453 F.3d 958, 961 (explaining that “several other circuits have determined that even a reasonable mistake of law cannot support probable cause or reasonable suspicion,” citing *United States v. Miller* (5th Cir. 1998), 146 F.3d 274, 279; *United States v. Lopez-Soto* (9th Cir. 2000), 205 F.3d 1101, 1106 (stating that a traffic stop that is not “objectively grounded in the governing law” cannot be justified); *United States v. Tibbetts* (10th Cir. 2005), 396 F.3d 1132, 1138 (“failure to understand the law by the very person charged with enforcing it is not objectively reasonable); *United States v. Chanthasouvat* (11th Cir. 2003), 342 F.3d 1271, 1279 (holding that “a mistake of law cannot provide reasonable suspicion or probable cause to justify a traffic stop”)); see also *United States v. Gross* (6th Cir. 2008), 550 F.3d 578, 584 n.2 (declining to resolve the issue but citing, e.g., *McDonald*, 453 F.3d at 961-62, in recognition of the majority view and reasoning on this issue). Accordingly, a mistake of law cannot act as the basis of reasonable suspicion to justify a traffic stop, even when the mistake of law is reasonable. *Id.* Therefore, even assuming that the

CONCLUSION

For all of the foregoing reasons, Appellee Anthony Fears respectfully asks this Court to decline jurisdiction over this matter as it does not present a substantial constitutional question or issue of great public interest for review.

Respectfully Submitted,


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officers' mistake was reasonable (which it was not), and that the State's proposition of law addresses anything other than the good faith exception to the exclusionary rule, this Court should not accept jurisdiction.

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Response was served upon WILLIAM D. MASON, ESQ., Cuyahoga County Prosecutor, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 16th day of May, 2011.


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