

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellant

-vs-

ANTHONY FEARS

Appellee

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

MEMORANDUM IN OPPOSITION TO RECONSIDERATION

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MEMORANDUM

Appellee Anthony Fears respectfully requests that this Court deny the State's motion for reconsideration. As this Court determined on July 6, 2011, this case does not present an issue of significance, constitutional or otherwise. The radical extension of the good faith exception to the exclusionary rule that the State proposes is not supported by law, and this case is not an appropriate vehicle to address such an expansion.

A. *Davis v. United States* is Inapposite

The State argues that the United States Supreme Court's decision in *Davis v. United States* (2011), 131 S.Ct. 2419, supports its proposition of law. To the contrary, *Davis* merely clarifies existing precedent and, if anything, supports this Court's decision to decline jurisdiction.

Davis simply holds that "searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule." *Id.* at 2423-24. The issue in *Davis* was whether the exclusionary rule applies to an automobile search that occurred prior to the Supreme Court's decision in *Arizona v. Gant* (2009), 129 S.Ct. 1443, and was valid at the time of the search under the rule in *New York v. Belton* (1981), 453 U.S. 454, the case the Supreme Court overruled in *Gant*. *Id.* at 2428. The Supreme Court clarified that the exclusionary rule did not apply because the officers who conducted the search did so based on binding judicial authority, i.e., the *Belton* rule. *Id.* The Court reasoned that the exclusionary rule should not apply when invoking it will not deter misconduct by law enforcement. *Id.*

Indeed, *Davis* is simply a logical extension of *Illinois v. Krull* (1987), 480 U.S. 340. In *Krull*, the Supreme Court carved out an exception to the exclusionary rule for

changes in the law at the statutory level. *Krull*, 480 U.S. at 349-50. *Davis* merely extends *Krull* to changes in the law as a result of new case law. In sum, the deterrence rationale does not support applying the exclusionary rule when the officer who conducts the search knows and properly applies the binding legal authority in effect at the time of the search. *Davis*, 131 S.Ct. at 2429.

In addition, the Supreme Court in *Davis* expressly noted that “[r]esponsible law enforcement officers will take care to learn ‘what is required of them’ under Fourth Amendment precedent and will conform their conduct to these rules.” *Id.* (quoting *Hudson v. Michigan* (2006), 547 U.S. 586, 599). This language is directly applicable here: the officers in this case did not “take care to learn” the routine traffic laws related to turn signals that they enforce every day. It is undisputed that they misunderstood the turn signal law they used as the sole basis to stop Mr. Fears. The exclusionary rule applies because it can deter mistakes of law by officers on the street who are responsible for understanding and respecting the Fourth Amendment rights of the citizens with whom they interact. Accordingly, *Davis* ultimately supports this Court’s decision to decline jurisdiction because the exclusionary rule serves its deterrence purpose under the circumstances of this case.

B. This Case Is Not an Appropriate Vehicle for Addressing the Issue Raised by the State

The State’s proposition of law reads as follows:

When police act in good faith based 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.

Even if this Court wishes to address the issue of whether the exclusionary rule applies to an officer's *objectively reasonable* mistake of law, this is not the case to do so. First, the first premise of the State's of law -- that the officers' mistaken interpretation of the law was "objectively reasonable" -- is false. Second, this case is not analogous to *State v. Gould*, Case No. 2010-1315, as demonstrated by the State's arguments in *Gould*. Third, the State waived its argument that the good faith exception to the exclusionary rule applies by failing to raise it at the trial court level.

1. The Officers' Mistake of Law Was Unreasonable

As Mr. Fears explained in his motion in opposition to jurisdiction, the officers' mistaken interpretation of the turn signal ordinance at issue was unreasonable. As the Eighth District noted in the opinion below, the plain meaning of the ordinance is "apparent." *State v. Fears*, Cuyahoga App. No. 94997, 2010-Ohio-930 n.1. For the reasons explained in Mr. Fears' motion in opposition to jurisdiction, the officers' misinterpretation of the clear, unambiguous law defies commonsense and is inconsistent with practical reality and applicable legal authority. Accordingly, the State's proposition of law cannot be resolved in this case because the officers' mistaken interpretation was not objectively reasonable.

2. *State v. Gould* Is Distinguishable

The State notes that this Court has accepted *State v. Gould*, Case No. 2010-1315. However, *Gould* is a mistake of fact case regarding whether the defendant abandoned property; it is not a mistake of law case. See Merit Brief of Plaintiff-Appellant State of Ohio in *Gould*, Case No. 2010-1315, filed Mar. 7, 2011 at n. 1 (noting that abandonment

of property is a factual issue). In fact, in its Merit Brief in *Gould*, the State argues that the exclusionary rule is an appropriate vehicle to deter mistakes of law:

Courts have occasionally observed that mistakes of law “can be deterred more readily than mistakes of fact” because knowledge of the law is within the control of the officer. Further, penalizing officers for legal mistakes provides an incentive “for police to make certain that they properly understand the law that they are entrusted to enforce and obey.” *United States v. Cha* (C.A. 9, 2010), 597 F.3d 995. In contrast, Fourth Amendment law frequently forgives an officer's mistaken belief in a fact, particularly when that belief is based on a third party's representations.

Id. at 19. Thus, the State's own arguments in *Gould* establish that it is distinguishable on the central issue in this case. In addition, this Court was aware of *Gould* when it declined jurisdiction. Accordingly, the fact that this Court has chosen to hear *Gould* does not justify reconsideration of the decision not to hear this case.

3. The State Waived the Good Faith Exception Argument

Finally, as Mr. Fears explained in his motion in opposition to jurisdiction, the State waived its good faith exception argument by failing to raise it in the trial court. *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.”). *See also Agee v. Russell* (2001), 92 Ohio St.3d 540, 544.

CONCLUSION

For all of the foregoing reasons, Appellee Anthony Fears respectfully asks this Court to deny the State's motion for reconsideration.

Respectfully Submitted,


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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Opposition to Reconsideration was served upon WILLIAM D. MASON, ESQ., Cuyahoga County Prosecutor, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 14TH day of July, 2011.



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