[Cite as *State v. Babcock*, 2013-Ohio-2366.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Appellee

v.

Ricky T. Babcock

Appellant

Court of Appeals No. WD-12-025

Trial Court No. 11-TRC-07684

DECISION AND JUDGMENT

Decided: June 7, 2013

* * * * *

Matthew L. Reger, Bowling Green Prosecuting Attorney, for appellee.

Alan J. Lehenbauer, for appellant.

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YARBROUGH, J.

I. Introduction

{¶1} Appellant, Ricky Babcock, appeals the judgment of the Bowling Green Municipal Court, denying his motion to suppress evidence obtained as a result of a traffic stop. For the following reasons, we reverse.

II. Facts and Procedural Background

{¶2} The relevant facts are undisputed. They were thoroughly summarized by the trial court as follows:

> [Ohio State Highway Patrol Trooper Evan] Slates was on duty on November 27, 2011 at approximately 2:50 a.m. in a marked police vehicle and in uniform. Slates observed the defendant's vehicle travelling south on S.R. 25 approach the intersection of S.R. 582. State Route 25 at that intersection consists of two southbound lanes and northbound lanes with a third left turn lane. The north and southbound lanes are separated by a grass median until about 50' from the center of the intersection. All of the south and north bound lanes of S.R. 25 are controlled by traffic control lights as are the east and west bound lanes of S.R. 582. As Slates observed, the defendant's vehicle entered the left turn lane that would lead him through the intersection at S.R. 582 eastbound onto 582. The light was red and the defendant stopped his vehicle before the stop bar. Tpr. Slates pulled in behind the defendant and approximately 4-5 seconds later, the defendant made a U-turn from the left turn lane as the light remained red. The defendant proceeded northbound on S.R. 25. Tpr. Slates then pursued the defendant, eventually stopping him. * * *

> The area where the u-turn was executed is paved with solid yellow lines originating from either side of the grassy median that separates the southbound and northbound lanes. The grassy median ends approximately 50 feet from the intersection. The two solid yellow lines from the grass median taper into a triangular point before the intersection. The parties agreed that in executing his turn, the defendant did not cross the stop-line traveling into the center of the intersection.

{¶3} Ultimately, Babcock was charged with a red light violation pursuant to R.C. 4511.13(C), operating a vehicle under the influence of alcohol pursuant to R.C. 4511.19(A)(1)(a), and prohibited breath alcohol concentration pursuant to R.C. 4511.19(A)(1)(d). On January 30, 2012, Babcock filed a "motion to dismiss/suppress," arguing that the charges against him should be dismissed because Slates had no basis to conduct the traffic stop. A suppression hearing was held on April 18, 2012.

{¶4} A week later, the court issued its decision denying Babcock's motion to dismiss/suppress. Babcock subsequently pled no contest to operating a vehicle under the influence of alcohol. After finding him guilty, the trial court ordered Babcock to serve three days in jail and pay a $600 fine.

{¶5} Babcock appeals the judgment of the Bowling Green Municipal Court, assigning the following error for our review:

THE TRIAL COURT ERRED IN OVERRULING THE MOTION TO SUPPRESS BECAUSE THE OFFICER DID NOT HAVE LAWFUL CAUSE TO INITIATE A TRAFFIC STOP.

III. Analysis

{¶6} In his sole assignment of error, Babcock argues that the trial court's denial of his motion to suppress was erroneous because the underlying traffic stop was conducted without reasonable suspicion of criminal activity.

{¶7} An appellate review of a ruling on a motion to suppress evidence presents mixed questions of law and fact. *United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir.1992); *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998). During a suppression hearing, the trial court assumes the role of the trier of fact and is, therefore, in the best position to resolve questions of fact and evaluate witness credibility. *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992); *State v. Hopfer*, 112 Ohio App.3d 521, 548, 679 N.E.2d 321 (2d Dist.1996). As a result, an appellate court must accept a trial court's factual findings if they are supported by competent and credible evidence. *State v. Guysinger*, 86 Ohio App.3d 592, 594, 621 N.E.2d 726 (4th Dist.1993). The reviewing court must then review the trial court's application of the law de novo. *State v. Russell*, 127 Ohio App.3d 414, 416, 713 N.E.2d 56 (9th Dist.1998).

{¶8} An investigatory traffic stop may be legitimately effectuated only when there is a reasonable and articulable suspicion of criminal activity. *State v. Swanson*, 6th Dist.

No. WD-05-065, 2006-Ohio-4798, ¶ 15; *See also State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 8 ("If an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all the circumstances, then the stop is constitutionally valid"). Reasonable suspicion is a "less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000).

{¶9} Here, Slates testified at the suppression hearing that he stopped Babcock for running the red light, a violation of R.C. 4511.13(C). However, the trial court determined that Babcock did not violate the red light law. Nevertheless, it refused to apply the exclusionary rule to the evidence seized as a result of the stop because "Tpr. Slates reasonably believed (but mistakenly) that the defendant had violated the law by his U-Turn, [when in fact he] had not." In essence, the trial court adopted the holding in *State v. Greer*, 114 Ohio App.3d 299, 683 N.E.2d 82 (2d Dist.1996), which allows, in exceptional cases, the denial of a defendant's motion to suppress where an officer, in good faith, reasonably believes that the conduct of the defendant giving rise to the traffic stop was illegal when in fact it was not. *See also State v. Reedy*, 5th Dist. No. 12-CA-1, 2012-Ohio-4899, ¶ 24 ("The evidence from the traffic stop need not be suppressed because the officer's mistake of law was reasonable").

{¶10} In *Greer*, the defendant's motion to suppress was granted by the trial court on the basis that the traffic stop was not justified because Greer's conduct (a U-turn) was not prohibited by law. The appellate court, in applying the good faith exception to the exclusionary rule, reversed the trial court and stated the following:

> In our view, the proper balance of the competing interests [of presenting probative, reliable evidence in criminal cases versus avoiding unreasonable searches and seizures] permits the use of evidence in a small range of cases in which the evidence has been obtained as the result of an investigative stop that is based upon a police officer's mistaken, but reasonable, belief that the conduct that the officer has observed is in violation of the law. This exception to the exclusionary rule must be narrowly tailored in order to avoid giving police officers the incentive to construe statutes and ordinances broadly for the purpose of finding a violation upon which to predicate an investigative stop. The police officer must be held to a higher standard of knowledge of the law than would be appropriate for an ordinary citizen, since it is the police officer's special function to apply and to enforce laws. The police officer's mistake of law must be objectively reasonable. *Id.* at 304-05.

{¶11} In addition to *Greer*, the state cites *City of Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, to support its position that the

exclusionary rule need not be applied in cases where the police officer mistakenly believes that the defendant's conduct is a violation of law when, in fact, it is not. In *Godwin*, the defendant was convicted of driving under the influence after he pled no contest to the charge following the trial court's denial of his motion to suppress. Godwin was initially stopped by a Bowling Green Police Department officer who observed him exit a municipal parking lot in violation of posted signs. *Id.* at ¶ 3. The officer ultimately cited Godwin for failure to observe a traffic-control device in violation of a Bowling Green city ordinance, as well as driving under the influence. *Id.*

{¶12} Godwin filed a motion to suppress, challenging the constitutionality of the stop based on the fact that the sign was not authorized by Bowling Green City Council as required by law. *Id.* at ¶ 6. The trial court denied the motion, reasoning that the lack of city council authorization for the signs did not invalidate the traffic stop since the officer cannot reasonably be expected to know that the sign lacked authorization. *Id.*

{¶13} On appeal, we reversed the conviction in light of our prior decision in *State v. Berry*, 6th Dist. No. WD-02-043, 2003-Ohio-1620. In that case, the sign at issue was not authorized by the Ohio Manual of Uniform Traffic Control Devices for Streets and Highways ("OMUTCD"). *Id.* at ¶ 3. Thus, we held that the traffic stop was unreasonable because "the officer could not have had reasonable, articulable suspicion that [the driver] was violating the law because the sign was a nullity—it does not exist under Ohio law." *Id.* at ¶ 12.

{¶14} In *Godwin*, the sign at issue conformed to the requirements of the OMUTCD. However, it lacked proper authorization from the city council. Because the sign lacked proper authorization, we concluded that the officer did not observe a traffic violation and, therefore, did not have reasonable suspicion to stop the defendant.

{¶15} The Ohio Supreme Court reversed our decision, holding that "the police officer had probable cause to believe that [Godwin] violated the city's ordinances, and his stop of [Godwin] was not unreasonable under the Fourth Amendment." *Godwin* at ¶ 18. In so holding, the court noted that "probable cause does not require the officer to correctly predict that a conviction will result." *Id.* at ¶15. Rather, a finding of probable cause sufficient to conduct a traffic stop merely requires an objectively reasonable belief that the driver's conduct constitutes a traffic violation. *Id.* at ¶ 16.

{¶16} The state points to *Godwin* for the proposition that the exclusionary rule may be avoided when an officer stops a driver based on a mistaken belief that the driver violated a traffic law. However, the mistake made by the officer in *Godwin* was a mistake of fact, not a mistake of law. Indeed, the officer mistakenly believed that the sign was authorized by law when, in actuality, the city council had not issued the requisite authorization. Such a mistake is a mistake of fact. The result would have been different if the officer would have stopped Godwin because he believed the sign prohibited Godwin's conduct when it actually permitted such conduct. In that case, the officer's mistake would have been a mistake of law.

{¶17} Here, Slates believed that Babcock violated the red light law when he performed his U-turn without waiting for the light to change. Unlike the mistake in *Godwin*, Slates misunderstood the conduct prohibited by the red light law and, as a result, decided to stop Babcock. Because the mistake Slates made in this case was one of law, *Godwin* is inapplicable.

{¶18} At least two appellate districts in Ohio have refused to allow a mistake of law exception to the application of the exclusionary rule in situations in which a defendant is stopped for a traffic violation when, in fact, the defendant's conduct was lawful. *See City of Willoughby v. Vilk*, 11th Dist. No. 96-L-141, 1997 WL 663402 (Sep. 30, 1997); *State v. Fears*, 8th Dist. No. 94997, 2011-Ohio-930. In *Fears*, the defendant was convicted for drug possession and possession of criminal tools following the trial court's denial of his motion to suppress. The drugs were discovered as a result of a traffic stop founded upon Fears' failure to turn while his turn signal was activated.

{¶19} As is the case here, the state conceded that Fears' failure to turn did not constitute a violation of law. However, the state argued that "the police did not learn of their mistake until after the arrest had been made so they were acting with a good faith belief that they had witnessed a traffic infraction." *Id*. at ¶ 9. In opposition, Fears argued that mistakes of law do not trigger the good faith exception to the exclusionary rule. *Id*.

{¶20} The Eighth District Court of Appeals ultimately agreed with Fears that "the officers' mistake of law regarding Fears' use of a turn signal without turning meant that

the officers lacked a reasonable, articulable suspicion for the stop. It follows that the court erred by denying Fears' motion to suppress evidence." *Id.* at ¶ 13. In its analysis, the Eighth District quoted the following language from the Seventh Circuit:

> We agree with the majority of circuits to have considered the issue that a police officer's mistake of law cannot support probable cause to conduct a stop. Probable cause only exists when an officer has a "reasonable" belief that a law has been broken. [*United States v. Muriel*, 418 F.3d 720, 724 (7th Cir.2005)]. Law enforcement officials have a certain degree of leeway to conduct searches and seizures, but "the flip side of that leeway is that the legal justification must be objectively grounded." [*United States v. Miller*, 146 F.3d 274, 279]. An officer cannot have a reasonable belief that a violation of the law occurred when the acts to which an officer points as supporting probable cause are not prohibited by law.
> *United States v. McDonald*, 453 F.3d 958, 961 (7th Cir.2006).

{¶21} Although the Eighth District noted that the decision in *McDonald* referred to "probable cause," it recognized that the quoted language was equally applicable to the reasonable suspicion standard. *Fears* at ¶ 12, fn. 2. Because the state conceded that the officer's traffic stop was founded upon a mistake of law, the court held that the traffic stop was not supported by reasonable suspicion.

{¶22} Having examined the relevant authority concerning the admissibility of evidence obtained as a result of a traffic stop founded upon a mistake of law, we find the reasoning in *Fears* to be persuasive. Further, we note that this case is distinguishable from the Ohio Supreme Court's decision in *Godwin* insofar as that decision involved a police officer's mistake of *fact*. Here, the state urges us to apply *Godwin's* reasoning to encompass mistakes of law as well. However, we decline to do so because to permit traffic stops founded upon an officer's mistake of law "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." *United States v. Lopez-Soto*, 205 F.3d 1101, 1106 (9th Cir.2000); *see also United States v. Lopez-Valdez*, 178 F.3d 282, 289 (5th Cir.1999) ("[I]f officers are allowed to stop vehicles based on their subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred, the potential for abuse of traffic stops as pretext for effecting stops seems boundless and the costs to privacy rights excessive"). Instead, we hold that the exclusionary rule operates to bar the admission of evidence obtained as a result of a traffic stop based on conduct that a police officer mistakenly believes is a violation of the law.

{¶23} Therefore, we conclude that the trial court erred in denying Babcock's motion to suppress. Accordingly, Babcock's sole assignment of error is well-taken.

IV. Conclusion

{¶24} Based on the foregoing, the judgment of the Bowling Green Municipal Court is reversed and this matter is remanded to the trial court for further proceedings consistent with this decision. Costs are hereby assessed to the state in accordance with App.R. 24.

{¶25} We recognize that that our decision in this case is in conflict with the decision of the Fifth District Court of Appeals in *State v. Reedy*, 5th Dist. No. 12-CA-1, 2012-Ohio-4899. Therefore, pursuant to Ohio Constitution, Article IV, Section 3(B)(4), we sua sponte certify a conflict to the Ohio Supreme Court for review and final determination of the following question: Does the exclusionary rule apply to bar the admission of evidence obtained as a result of a traffic stop based on conduct that a police officer mistakenly believes is a violation of the law?

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _______________________________
JUDGE

Arlene Singer, P.J.

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Stephen A. Yarbrough, J. JUDGE
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.