COURT OF APPEALS
DECISION
DATED AND FILED

July 26, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP960-CR **Cir. Ct. No. 2014CM72**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL L. JOY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marinette County: DAVID G. MIRON, Judge. *Affirmed.*

¶1 STARK, P.J.[1] Michael Joy appeals a judgment of conviction for fourth-offense operating while intoxicated and operating a firearm while

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

intoxicated.[2] Joy argues the arresting officer did not have reasonable suspicion to stop him for a vehicle registration violation due to multiple factual mistakes. As a result, he contends the circuit court erred by denying his suppression motion. We disagree and affirm the judgment.

BACKGROUND

¶2 On April 15, 2014, Joy was arrested and ultimately charged with fourth-offense operating a motor vehicle while intoxicated; fourth-offense operating with a prohibited alcohol concentration; possession of a firearm while intoxicated; and carrying a concealed weapon. He was also cited for having open intoxicants in his vehicle, failure to wear a seatbelt, and an implied consent violation. Joy moved to suppress evidence based upon a claimed unconstitutional stop of his vehicle.

¶3 At the suppression hearing,[3] Marinette County Sheriff's Department deputy Zachary Albrecht testified that at approximately 9:45 p.m., he was working on paperwork in his squad car when he observed a truck drive past him traveling twenty-five to thirty miles per hour in a fifty-five mile-per-hour speed zone. Albrecht was able to read the letters and numbers on the truck's front license plate and entered them into his squad car's computer system to complete a registration check. He received a response, indicating "no vehicle associated with the plate."

[2] WISCONSIN STAT. § 941.20(1)(b) provides, "Whoever does any of the following is guilty of a Class A misdemeanor: ... Operates or goes armed with a firearm while he or she is under the influence of an intoxicant." Although Joy pled no contest to going armed with a firearm while intoxicated, on the judgment of conviction, Joy's conviction for the § 941.20(1)(b) violation appears with the description "Operate Firearm While Intoxicated."

[3] The Honorable Marc A. Hammer presided over the suppression hearing.

Albrecht testified he thought he "probably ran the plate wrong or something," so he did not stop the vehicle.

¶4 A short time later, Albrecht encountered the same truck. He carefully checked the license plate and again ran the plate information through his squad car's computer system. He received the same response, "no vehicle associated with the plate."

¶5 Albrecht testified that response could mean "a lot of things," including that it was an old or an unregistered license plate that was put on the wrong vehicle, or that the registration was expired. He acknowledged all license plates "usually come back to something." For example, he explained, if the license plate was expired, the registration would come back as expired, and if the plate was registered to another vehicle, it would show that vehicle's information. Albrecht also testified that he had received that response when he had entered incorrect license plate information in the past. Nonetheless, he stated he was concerned when the license plate was not associated with a vehicle. According to Albrecht, he previously stopped vehicles when he received that response, and in those cases "it actually has been mistakes made through [the Department of Transportation] in Madison, computer issues where [the owners] had to go to the DMV and get things fixed with their VINS and their registration because it happens, clerical errors sometimes."

¶6 Albrecht ultimately stopped Joy to investigate "an invalid registration." He testified that the license plates must match, or be registered to, the vehicle that they are displayed on, and they must not be expired. Since the computer response indicated that no vehicle was associated with the license plate,

Albrecht explained he thought there may be some violation regarding the registration of the vehicle.[4]

¶7 Albrecht testified that as he approached the truck, he looked at the back license plate and then noticed that he might have entered the wrong information into his squad car's computer system. Albrecht had entered FX-9605 both times. Joy's license plate number was actually FK-9605. Albrecht testified he nonetheless approached Joy, identified himself, and explained to Joy that he stopped the vehicle because the registration was "messed up or something is wrong with [the] plates." In so doing, Albrecht observed an open can of beer in the cup holder and an uncased shotgun "sitting across the seat."

¶8 The circuit court denied Joy's suppression motion. The court found: Albrecht thought there was a traffic violation; Albrecht could not identify a specific violation but thought the vehicle was not registered at all or that the vehicle had an old, out-of-date, or non-used registration; Albrecht was acting in good faith; Albrecht made a reasonable mistake of fact; and "there was a quantum of evidence which would have led a reasonable police officer to believe that a traffic violation had occurred."

¶9 Joy later pled no contest to one count of fourth-offense operating a motor vehicle while intoxicated and one count of going armed with a firearm

[4] Albrecht did not cite a specific statutory violation. The State, in its brief, directs our attention to WIS. STAT. § 341.04(1), which, in part, provides that it is unlawful to operate a motor vehicle on a highway unless the vehicle is registered, and WIS. STAT. § 341.61(2), which prohibits individuals from displaying a registration plate, insert tag, decal, or other evidence of registration upon a vehicle that is not issued for such vehicle.

while under the influence of an intoxicant. Joy now appeals the denial of his suppression motion. *See* WIS. STAT. § 971.31(10).

DISCUSSION

¶10 Before the circuit court, Joy asserted that Albrecht erred by incorrectly inputting the front license plate number for Joy's vehicle on two separate occasions, and that those compounded errors did not constitute an objectively reasonable mistake of fact providing a basis for Albrecht's stop of Joy's vehicle. He further contended Albrecht erroneously applied the facts to the law resulting in a lack of probable cause to stop his vehicle. Joy now concedes a reasonable suspicion standard, and not a probable cause standard, is applicable to our analysis of this stop. *See* ***State v. Houghton***, 2015 WI 79, ¶30, 364 Wis. 2d 234, 868 N.W.2d 143 ("[R]easonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops."). Reasonableness is measured objectively based on the totality of the facts and circumstances. *See* ***State v. Post***, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634; ***State v. Waldner***, 206 Wis. 2d 51, 56, 58, 556 N.W.2d 681 (1996). "[T]he officer 'must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant' the intrusion of the stop." ***Post***, 301 Wis. 2d 1, ¶10 (quoting ***Terry v. Ohio***, 392 U.S. 1, 21 (1968)).

¶11 Whether a traffic stop is reasonable is a question of constitutional fact to which we apply a two-step standard of review. ***Id.***, ¶8. "We review the circuit court's findings of historical fact under the clearly erroneous standard, and we review independently the application of those facts to constitutional principles." ***Id.***

¶12 Searches and seizures based on mistakes of fact may be reasonable. *See* ***Illinois v. Rodriguez***, 497 U.S. 177, 183-86 (1990); *see also* ***Heien v. North Carolina***, 135 S. Ct. 530, 534, 536 (2014). "The limit is that 'the mistakes must be those of reasonable men.'" ***Heien***, 135 S. Ct. at 536 (quoting ***Brinegar v. United States***, 338 U.S. 160, 176 (1949)); *see also* ***id.*** at 539 ("The Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable."); ***Rodriguez***, 497 U.S. at 185-86 ("It is apparent that in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government … is not that they always be correct, but that they always be reasonable.").

¶13 On appeal, Joy again contends his Fourth Amendment right to be free from unreasonable searches and seizures was violated by Albrecht's stop of his vehicle. Joy concedes that suppression of evidence is not warranted when officers make a good-faith, reasonable mistake of fact in carrying out their duties. However, he makes much of Albrecht's repeated failure to enter the correct license plate number into the squad car's computer system. According to Joy, Albrecht "knew" he had made a mistake when he entered the license plate information because Albrecht could clearly see the license plate; the response indicated that no vehicle was associated with the plate; Albrecht had entered incorrect license plate information before and received the same response; and there was no testimony that the license plate appeared counterfeit or altered. Joy also argues that it is undisputed Albrecht clearly saw Joy's license plate the second time, yet "[k]nowing he likely got the number wrong the first time[,]" Albrecht input the same information again and received the same response. Joy claims, "At that point there could be no question that [Albrecht] knew that he had repeatedly

mistakenly entered the license plate information." He insists that repeated mistakes of the same kind turn a good-faith mistake into a bad-faith mistake and into a mistake that is not objectively reasonable.[5]

¶14 Joy's argument is inadequately developed and conclusory. He fails to explain how repeated mistakes of the same fact, absent more, turn a good-faith mistake into a bad-faith mistake. He does not provide a definition for bad faith or cite any evidence of such, other than the results of the two erroneous registration checks.

¶15 In any event, Joy also ignores the circuit court's finding that Albrecht acted in good faith. We must uphold the circuit court's findings of fact unless those findings are clearly erroneous. *See* ***Post***, 301 Wis. 2d 1, ¶8. Other than claiming Albrecht should not have made the same mistake twice, Joy fails to develop an argument that the court's finding that Albrecht acted in good faith was clearly erroneous. The record supports the court's finding, in that K and X are so similar as to be reasonably mistaken. The record does not reflect that Albrecht

[5] Joy does not raise any issue regarding Albrecht's decision to continue the stop after Albrecht noticed Joy's license plate number may have been different than the one he entered.

Both parties cite ***State v. Reierson***, No. 2010AP596-CR, unpublished slip op. (WI App Apr. 28, 2011). *See* WIS. STAT. RULE 809.23(3)(b) (unpublished, authored decisions issued on or after July 1, 2009 may be cited for persuasive value). Joy argues the State's reliance on ***Reierson*** is misplaced because the facts are readily distinguishable. We, however, find ***Reierson*** persuasive. In ***Reierson***, the officer checked the registration on a license plate and learned the plate was expired. ***Reierson***, 2010AP596-CR, unpublished slip op. ¶2. After stopping the vehicle, the officer realized he had misread the last numeral on the license plate. ***Id.***, ¶¶2-3. At a subsequent motion hearing, the circuit court found the officer made a good-faith mistake in stopping the vehicle based on the expired registration and denied the defendant's motion to suppress. ***Id.***, ¶4. On appeal, we observed, "[A]s a general rule, courts decline to apply the exclusionary rule where an officer makes a reasonable, good-faith factual mistake." ***Id.***, ¶9. We further concluded the circuit court properly denied the motion to suppress because the stop was predicated on the officer's reasonable, good-faith mistake of fact. ***Id.***, ¶11.

"knew" he incorrectly entered the license plate information; rather, Albrecht thought it was possible he entered the wrong information the first time based on his past experience.

¶16 Joy argues the only reasonable assumption Albrecht could make based upon the response Albrecht received on checking the license plate number twice was that he incorrectly entered the license plate information on both occasions. However, as properly noted by the circuit court, there were other reasonable alternatives to consider. An officer could reasonably suspect, as Albrecht did here, that Joy's vehicle displayed an improper registration—an old or an unregistered plate, or even a fabricated plate. Those possibilities became even more likely when Albrecht obtained a clear view of the license plate and thought he verified the plate information a second time. The circuit court's finding that Albrecht acted in good faith, despite repeated mistaken entries, is supported by the record. Given the totality of the circumstances, and despite two good-faith reasonable factual mistakes, Albrecht had a lawful basis to stop Joy's vehicle as he reasonably suspected the vehicle was not properly registered.[6]

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

[6] In his brief-in-chief, Joy also argued the judgment should be reversed based on Albrecht's mistake of law. However, Joy withdrew this argument in a footnote to his reply brief, conceding "the ***Longcore*** mistake of law analysis does not apply." *See* ***State v. Longcore***, 226 Wis. 2d 1, 594 N.W.2d 412 (Ct. App. 1999), *aff'd by an equally divided court*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620, *and overruled by* ***State v. Houghton***, 2015 WI 79, 364 Wis. 2d 234, 868 N.W.2d 143.