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DISTRICT III

February 12, 2019

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You are hereby notified that the Court has entered the following opinion and order:

2018AP1207-CR State of Wisconsin v. Russell T. Cross (L. C. No. 2017CF535)

Before Stark, P.J., Hruz and Seidl, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Russell T. Cross appeals a judgment of conviction and an order denying his motion for postconviction relief. He contends the circuit court should have permitted him to withdraw his guilty plea because his trial attorney was ineffective by failing to move to suppress evidence obtained during a traffic stop. Based upon our review of the briefs and record, we conclude at

conference that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).[1]

The relevant facts are undisputed. A police officer stopped a pickup truck Cross was driving because its high-mounted stop lamp was not working. During the stop, officers found cocaine under the driver's seat of the truck and in Cross's sock. Cross subsequently pled no contest to one count of possession with intent to deliver more than one gram but not more than five grams of cocaine, as a second and subsequent offense.

Following sentencing, Cross filed a postconviction motion seeking to withdraw his no contest plea. He argued his trial attorney was ineffective by failing to move to suppress all evidence obtained as a result of the traffic stop. He contended the stop was unlawful because the relevant statute—WIS. STAT. § 347.14—merely required his vehicle's two lower brake lights to be in working order but did not require its high-mounted stop lamp to be working. He asserted there was "no indication that the two working stop lights on each side of the rear of [his] pickup" were not in working order. The circuit court denied Cross's postconviction motion following a nonevidentiary hearing, and this appeal follows.

To withdraw his or her plea after sentencing, a defendant must establish by clear and convincing evidence that plea withdrawal is necessary to correct a manifest injustice. ***State v. LeMere***, 2016 WI 41, ¶22, 368 Wis. 2d 624, 879 N.W.2d 580. Ineffective assistance of counsel is one type of manifest injustice. ***Id.***, ¶23. To prevail on an ineffective assistance claim, a defendant must prove both that his or her attorney's performance was deficient and that the

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

deficient performance prejudiced the defense. ***State v. Allen***, 2004 WI 106, ¶26, 274 Wis. 2d 568, 682 N.W.2d 433. Here, Cross cannot establish either deficient performance or prejudice as a result of his trial attorney's failure to move to suppress evidence obtained from the traffic stop because any such motion would have been properly denied. *See* ***State v. Ziebart***, 2003 WI App 258, ¶14, 268 Wis. 2d 468, 673 N.W.2d 369.

A law enforcement officer may conduct a traffic stop when he or she has reasonable suspicion to believe that a crime or traffic violation has been or will be committed. ***State v. Popke***, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569. Traffic violations include violations of statutes and ordinances. *See* ***State v. Bailey***, 2009 WI App 140, ¶17, 321 Wis. 2d 350, 773 N.W.2d 488. In this case, the officer had reasonable suspicion to stop Cross's vehicle for violating TOWN OF GRAND CHUTE, WIS., CODE § 515-1B (2011) (hereinafter, § 515-1B). Section 515-1B incorporates WIS. ADMIN. CODE § TRANS 305.15(5)(a) (May 2014),[2] which states, in relevant part, that "[t]he high-mounted stop lamp of every motor vehicle originally manufactured with a high-mounted stop lamp shall be maintained in proper working condition." It is undisputed that Cross's vehicle was originally manufactured with a high-mounted stop lamp, and that the high-mounted stop lamp was not in working condition at the time of the traffic stop.

Cross does not dispute that his vehicle's nonworking high-mounted stop lamp violated WIS. ADMIN. CODE § TRANS 305.15(5)(a), as incorporated in § 515-1B. Instead, he relies on WIS. STAT. § 347.14(1), which provides, in relevant part, that a motor vehicle must be equipped with at least one stop lamp mounted on the rear, and that no vehicle "originally equipped at the

[2] All references to WIS. ADMIN. CODE § TRANS 305.15(5)(a) are to the May 2014 version.

time of manufacture and sale with 2 stop lamps shall be operated upon a highway unless both such lamps are in good working order." Cross argues his vehicle complied with § 347.14(1) because its two lower brake lights were in working condition at the time of the stop. He further contends that § 347.14(1) supersedes § TRANS 305.15(5)(a) because the statute was "enacted" in 2009—after § TRANS 305.15(5)(a) was promulgated—but it did not incorporate the regulation's language regarding high-mounted stop lamps.

We reject Cross's argument for two reasons. First, although WIS. STAT. § 347.14(1) was amended in 2009 to make it applicable to additional categories of vehicles, *see* 2009 Wis. Act 157, § 8, the statute has actually been in place since 1957, *see* 1957 Wis. Laws, ch. 260. The only difference between the 1957 law and the current statute is that the 1957 version applied to motor vehicles and mobile homes, whereas the current version applies to motor vehicles, lightweight utility vehicles, mobile homes, trailers, and semitrailers. *Compare* § 347.14(1) (2017-18) *with* § 347.14(1) (1957-58). The mere fact that § 347.14(1) was amended in 2009 to make it applicable to additional categories of vehicles does not provide a basis to conclude the legislature intended the amended statute to supersede WIS. ADMIN. CODE § TRANS 305.15(5)(a).

Second, WIS. ADMIN. CODE § TRANS 305.15(5)(a) does not conflict with WIS. STAT. § 347.14(1). Both the statute and the regulation apply to a vehicle—like Cross's pickup truck—that has both a high-mounted stop lamp and two lower stop lamps. The statute requires the lower stop lamps to be in good working order. The regulation, in turn, provides that a high-mounted stop lamp, if originally present on the vehicle, must be kept in working condition. Nothing in the statute states—or even implies—that as long as a vehicle's lower stop lamps work, its high-mounted stop lamp need not be in working condition. The statute simply does not address

high-mounted stop lamps. As such, § TRANS 305.15(5)(a) does not contradict the statute; it merely adds another requirement beyond the statutory requirement regarding lower stop lamps.

In his reply brief, Cross argues that the Wisconsin Department of Transportation (DOT) does not have authority to supersede legislative enactments "as to the upkeep of safety equipment upon vehicles." As we have already concluded, however, WIS. ADMIN. CODE § TRANS 305.15(5)(a) does not conflict with WIS. STAT. § 347.14(1). It simply adds a requirement pertaining to a type of safety equipment—i.e., high-mounted stop lamps—that the statute does not address. Cross cites no authority supporting the proposition that the DOT lacks authority to promulgate regulations that add to, but do not conflict with, statutory requirements.

Cross also argues that WIS. STAT. § 347.14(1) supersedes § 515-1B because the ordinance "was most recently amended in 1997 and 2011," and the current version of the statute "was in effect at the time the ordinance was last adopted." However, Cross does not explain why these facts matter for purposes of our analysis. It is undisputed that § 515-1B, as amended in 2011, incorporates WIS. ADMIN. CODE § TRANS 305.15(5)(a). We have already concluded that § 347.14(1) does not supersede that regulation.

The stop of Cross's vehicle was therefore permissible because the officer had reasonable suspicion to believe the vehicle was in violation of WIS. ADMIN. CODE § TRANS 305.15(5)(a), as incorporated in § 515-1B. Accordingly, Cross's trial attorney was not ineffective by failing to move to suppress the evidence obtained from the stop because any such motion would have been

properly denied. As a result, Cross has failed to establish the existence of a manifest injustice that would permit him to withdraw his no contest plea.[3]

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

[3] Because we conclude reasonable suspicion existed to stop Cross's vehicle for violating § 515-1B, we need not address the State's alternative argument that the stop was permissible because the officer made a reasonable mistake of law. *See* ***State v. Houghton***, 2015 WI 79, ¶52, 364 Wis. 2d 234, 868 N.W.2d 143 (holding that "an objectively reasonable mistake of law by a police officer can form the basis for reasonable suspicion to conduct a traffic stop").