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July 29, 2015

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

2014AP312-CR State of Wisconsin v. Jordan L. Campbell (L.C. # 2012CF263)

Before Brown, C.J., Reilly and Gundrum, JJ.

Jordan L. Campbell appeals from a judgment of conviction for one count of possession with intent to deliver heroin which was entered upon his guilty plea following the trial court's denial of his suppression motion. Campbell argues that the trial court erred in denying his motion because the predicate traffic stop was impermissibly based on a mistake of law. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate

for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[1] In light of the Wisconsin Supreme Court's recent decision in ***State v. Houghton***, 2015 WI 79, __ Wis. 2d __, __ N.W.2d __, we conclude that the traffic stop was constitutional because the officer's mistake of law was objectively reasonable. We affirm.

Officer Zachary Schleis stopped Campbell's car based on his observation that one of the car's passenger-side tail lamps failed to illuminate. The officer believed that Campbell was operating his car in violation of WIS. STAT. § 347.13(1), which requires tail lamps to be in "good working order."[2] Arguing that his passenger-side tail lamp was in "good working order" because its other bulbs functioned, Campbell moved to suppress all evidence seized as a result of the traffic stop on the ground that reasonable suspicion cannot derive from a mistake of law. *See* ***State v. Longcore***, 226 Wis. 2d 1, 9, 594 N.W.2d 412 (Ct. App. 1999), *overruled by* ***Houghton***, 2015 WI 79. The trial court determined that Campbell drove in violation of § 347.13(1), and therefore, the officer's decision to perform a traffic stop was not impermissibly predicated on a mistake of law.

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[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] WISCONSIN STAT. § 347.13(1) provides:

> No person shall operate a motor vehicle … upon a highway during hours of darkness unless such motor vehicle … is equipped with at least one tail lamp mounted on the rear which, when lighted during hours of darkness, emits a red light plainly visible from a distance of 500 feet to the rear. No tail lamp shall have any type of decorative covering that restricts the amount of light emitted when the tail lamp is in use. No vehicle originally equipped at the time of manufacture and sale with 2 tail lamps shall be operated upon a highway during hours of darkness unless both such lamps are in good working order.

Prior to appellate briefing in this case, the Wisconsin Supreme Court released ***State v. Brown***, 2014 WI 69, 355 Wis. 2d 668, 850 N.W.2d 66, *overruled by* ***Houghton***, 2015 WI 79, which held that the language in WIS. STAT. § 347.13(1) mandating that tail lamps be "in good working order" did not require "every single light bulb in a tail lamp to be lit." ***Brown***, 355 Wis. 2d 668, ¶¶27, 36, 42. The ***Brown*** court stated: "The plain language of the statute requires that a tail lamp emit a red light visible from 500 feet behind the vehicle during hours of darkness." ***Id.***, ¶42. The ***Brown*** court determined that the subject car's single unlit bulb did not violate § 347.13(1), and that the seizure was impermissibly predicated on a mistake of law. ***Brown***, 355 Wis. 2d 668, ¶¶38, 40-41.

Subsequently, in ***Heien v. North Carolina***, 574 U.S. __, 135 S. Ct. 530, 536, 539 (2014), the United States Supreme Court held that a seizure based on an officer's objectively reasonable mistake of law does not violate the Fourth Amendment to the United States Constitution. On July 14, 2015, the Wisconsin Supreme Court released ***Houghton***[3] in which it "adopt[ed] the Supreme Court's holding in ***Heien*** that an officer's objectively reasonable mistake of law may form the basis for a finding of reasonable suspicion." ***Houghton***, 2015 WI 79. Acknowledging that Wisconsin courts had previously held that a seizure could not be predicated on a mistake of law, the ***Houghton*** court stated that "the Supreme Court's recent decision in ***Heien*** is at odds with these holdings." ***Houghton***, 2015 WI 79, ¶32. Reasoning that the United States Supreme Court "has the final say on the meaning of the Fourth Amendment[,]" and that "we have

[3] The Wisconsin Supreme Court accepted review of this court's decision in ***State v. Houghton***, No. 2013AP1581-CR, unpublished slip op. (WI App May 7, 2014), in order to address Wisconsin's mistake-of-law jurisprudence in light of ***Heien v. North Carolina***, 574 U.S. __, 135 S. Ct. 530 (2014). We therefore placed our decision in the instant case on hold pending the disposition of ***Houghton***.

traditionally understood the Wisconsin Constitution's provision on search and seizure to be coextensive with the Fourth Amendment[,]" the ***Houghton*** court stated:

> Accordingly, we hold that an objectively reasonable mistake of law by a police officer can form the basis for reasonable suspicion to conduct a traffic stop. All Wisconsin cases holding otherwise are hereby overruled to the extent they conflict with this holding.

Id., ¶¶48, 49, 52.

We conclude that the traffic stop in this case was supported by reasonable suspicion because Officer Schleis's mistaken belief that Campbell's tail lamp violated WIS. STAT. § 347.13(1) was objectively reasonable.[4] The stop in this case occurred prior to the release of ***Brown***, in the absence of Wisconsin precedent interpreting the tail lamp statute. *See* ***Heien***, 135 S. Ct. 530, 540 (considering relevant for purposes of determining the reasonableness of the officer's belief that the provision "had never been previously construed by North Carolina's appellate courts."). At the suppression hearing, Schleis testified that he observed the defective bulb "from a distance" and both Schleis and the assisting officer testified that they believed the tail lamp was defective. The trial court agreed with the officers and ruled that the burnt-out second light, though "kind of superfluous," violated § 347.13(1). Thus, two officers and the fact-finder construed the statute to encompass Campbell's tail lamp. In addition, the trial court referenced and the State's appellate brief cites to ***State v. Olson***, No. 2010AP149-CR, unpublished slip op. ¶12 (WI App Aug. 5, 2010), which, though not binding authority, was released prior to the traffic stop in this case and interpreted § 347.13(1) to mean that a "tail lamp

[4] Based on the record and the concession in the State's brief, we assume for purposes of this appeal that under ***State v. Brown***, 2014 WI 69, 355 Wis. 2d 668, 850 N.W.2d 66, Campbell's tail lamp did not violate WIS. STAT. § 347.13(1).

with a burnt out bulb" was not "in good working order." We agree with the State that ***Olson*** demonstrates that "other jurists have reasonably interpreted § 347.13(1) as Officer Schleis did."[5]

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

[5] Similarly, the State's appellate brief points out that in ***Brown***, at least three justices (across two dissents) agreed that a reasonable officer could have suspected that an unlit bulb in a tail lamp was not "in good working order." *See* ***Brown***, 355 Wis. 2d 668, ¶73 (Prosser, J. dissenting) ("[I]t is hard to imagine that a tail lamp … that has defective lights can be described as being 'in proper working condition' and the condition to which the lamp should be kept 'at all times.'"); ***id.***, ¶109 (Roggensack, J. dissenting) (explaining that a reasonable officer could suspect an unlit portion of the tail lamp impaired the function of the tail lamp in violation of the statute). This further supports our conclusion that Officer Schleis's mistake of law was not an esoteric or irrational construction of WIS. STAT. § 347.13(1), but was objectively reasonable.