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DISTRICT III

February 21, 2023

To:

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Electronic Notice

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Clerk of Circuit Court
St Croix County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2021AP433-CR

State of Wisconsin v. William Dudley Cummins
(L. C. No. 2020CF193)

Before Stark, P.J., Hruz and Gill, 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).

The State appeals an order granting William Cummins' motion to suppress all evidence obtained during a stop of his vehicle. The State argues that the circuit court erred by concluding that law enforcement lacked reasonable suspicion for the stop. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. For the reasons outlined below, we conclude that law enforcement had reasonable

suspicion to stop Cummins' vehicle. Accordingly, we summarily reverse the order and remand the matter for further proceedings. *See* WIS. STAT. RULE 809.21 (2021-22).¹

The State charged Cummins with possession of methamphetamine and possession of drug paraphernalia, both counts as a repeater, following a traffic stop in St. Croix County. According to the complaint, Hudson Police Officer Peter Erickson stopped a vehicle with a Minnesota license plate after running a routine vehicle check and determining that the vehicle's owner—Cummins—was not a licensed driver. After Erickson approached the vehicle, the driver identified himself as Cummins, and Erickson detected the odor of marijuana. Cummins told Erickson that he had recently smoked marijuana and that there was a “blunt” on the front passenger side floor. During a search of Cummins' vehicle, Erickson discovered methamphetamine, glass pipes, a “Bong,” and a digital scale. Cummins was arrested and, based on the evidence found in the vehicle and Cummins' statements, he was charged with the underlying crimes.

Cummins moved to suppress his statements and the evidence obtained after the stop, claiming that Erickson lacked reasonable suspicion for the stop and that Cummins did, in fact, possess a valid driver's license. At a motion hearing, Erickson testified that after running a routine check of the Minnesota license plate, the computer aided dispatch (“CAD”) report stated that Cummins “was not a licensed driver.” Specifically, the bottom of page one of the report stated: “LICENSED NON-COMMERCIAL DRIVER: NO.” Erickson explained that he routinely runs a dozen to hundreds of driver's license checks daily as part of his duties. Erickson

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

added that he relies on CAD reports when running these routine checks and, in the past, he has never found inaccurate information. As a result, Erickson initially issued Cummins a citation for operating a motor vehicle without a valid license.

Erickson testified that when he returned to the police station to complete his paperwork, he “noticed something that [he] had not seen before” in the CAD report, which made him “second-guess” his decision to cite Cummins for operating without a license. Specifically, the first line on page two of the CAD report he had relied on to stop Cummins stated: “DRIVER LICENSE NON-COMMERCIAL STATUS: Valid.” Thus, the report indicated both that Cummins did not possess a non-commercial driver’s license and that his non-commercial license status was valid. Erickson testified that all of this information was available to him at the time he stopped Cummins, but not all of it was displayed on the screen in his squad car, and he would have needed to “scroll” to see the entire report. Erickson explained that he ultimately voided the citation because he “wasn’t confident after reviewing the information” that there had been a traffic violation.

The circuit court rhetorically questioned what the seemingly inconsistent information in the CAD report meant and why the CAD report “came back that way.” Neither party could provide an answer. The court ultimately granted the suppression motion, noting that it looked at the totality of the circumstances to conclude that “with that entry on Page Two, ... the mistake of fact in this case is not reasonable.” The State appealed the order as a matter of right pursuant to WIS. STAT. § 974.05(1)(d).

Whether a traffic stop is reasonable is a question of constitutional fact involving a two-step standard of review. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634.

First, we review the circuit court's findings of fact under the clearly erroneous standard. *Id.* Second, we review the application of those facts to constitutional principles de novo. *Id.*

The determination of reasonableness is a commonsense test, and “[t]he crucial question is whether the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime.” *Id.*, ¶13. “The reasonableness of a stop is determined based on the totality of the facts and circumstances.” *Id.* As relevant here, “an officer’s reasonable suspicion that a motorist is violating or has violated a traffic law is sufficient for the officer to initiate a stop of the offending vehicle.” *State v. Houghton*, 2015 WI 79, ¶79, 364 Wis. 2d 234, 868 N.W.2d 143. The officer’s suspicion must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop.” *State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569.

The State argues that Erickson had a reasonable articulable basis to stop Cummins because he had evidence that Cummins did not have a valid driver’s license. We agree. Erickson did not notice the second piece of information from the CAD report until later. Thus, as far as Erickson knew at the time he initiated the stop, Cummins “was not a licensed driver,” giving Erickson specific and articulable facts to support a reasonable belief that a traffic violation had been committed.

Cummins nevertheless contends that Erickson could not rely on the single line in the CAD report to support the stop, as a review of the entire report shows that Cummins’ license was valid. We are not persuaded. “[A] search or seizure may be permissible even though the justification for the action includes a reasonable factual mistake.” *Heien v. North Carolina*,

574 U.S. 54, 57 (2014). An officer’s mistake of fact is reasonable if it is supported by “specific and articulable facts” and constitutes a “rational inference[] from those facts.” *Popke*, 317 Wis. 2d 118, ¶23. Additionally, a stop may be reasonable even if the officer is presented with conflicting information: “[I]f any reasonable suspicion of past, present, or future criminal conduct can be drawn from the circumstances, notwithstanding the existence of other inferences that can be drawn, officers have the right to temporarily freeze the situation in order to investigate further.” *State v. Jackson*, 147 Wis. 2d 824, 835, 434 N.W.2d 386 (1989).

Here, Erickson’s ultimate mistake of fact makes no difference, as the CAD report presented conflicting information. Therefore, even assuming that Erickson should have continued scrolling to view the entire report, the conflicting information contained therein provided a reasonable articulable basis that would have justified the stop in order to clarify the information and confirm that Cummins’ license was valid. We therefore reverse the circuit court’s order and remand the matter for further proceedings consistent with this opinion.

Upon the foregoing,

IT IS ORDERED that the order is reversed and the cause is remanded for further proceedings. 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