

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

**THE STATE OF OKLAHOMA,**

**Appellant,**

**-vs.-**

**JASON MICHAEL THOMAS,**

**Appellee.**

**NOT FOR PUBLICATION**

**No. S-2014-1003**

**FILED**  
**IN COURT OF CRIMINAL APPEALS**  
**STATE OF OKLAHOMA**

**JUL 13 2015**

**ACCELERATED DOCKET OPINION**

**MICHAEL S. RICHIE**  
**CLERK**

**LUMPKIN, JUDGE:**

Appellee, Jason Michael Thomas, was charged by Information in the District Court of Pontotoc County, Case No. CF-2013-586, with Possession of Controlled Dangerous Substance (Marijuana), a Second Offense. At preliminary hearing, the Magistrate, the Honorable C. Steven Kessinger, Special Judge, sustained a motion by Appellee to suppress drug evidence removed from a vehicle that was being driven by Appellee. A traffic stop of Appellee conducted by Officer Link Logan, a police officer for the City of Ada, Oklahoma, had led to the seizure of this evidence. Officer Logan made that traffic stop when he observed Appellee driving 31 mph in what the officer identified as a "construction zone" and which, at the beginning of that zone, there was erected an orange construction-zone sign marking the zone's speed limit at 25 mph.<sup>1</sup>

In urging his motion to suppress, Appellee contended that the 25 mph speed limit sign had been unlawfully posted and that the actual speed limit

---

<sup>1</sup> According to the officer, when he walked up to the driver's window of the vehicle to tell Appellee why he had been pulled over, he smelled marijuana coming from inside the car. The officer asked Appellee about the odor and about whether marijuana was inside the car. When Appellee denied the presence of marijuana, the officer asked Appellee if he could search the vehicle. When Appellee said he could, the officer did so and promptly located a clear plastic bag containing marijuana inside a tennis shoe next to the car's console.

was 35 miles per hour. Consequently, Appellee argued there was no traffic violation and that the officer could not legally stop Appellee for speeding. In support of his argument, Appellee pointed to testimony from a construction manager with the Oklahoma Department of Transportation (ODOT) who testified the 25 mph speed limit sign was erected by a contractor without the authority of ODOT, and that 47 O.S.2011, § 11-806, required ODOT to establish the maximum speed limit for construction zones.

The Magistrate sustained Appellee's motion to suppress by relying on the holding in *United States v. Nicholson*, 721 F.3d 1236 (10th Cir. 2013). In *Nicholson*, the Tenth Circuit found evidence seized in a traffic stop should be suppressed because the officer who made that stop did so based on the driver performing a traffic maneuver that the officer believed was illegal, but which was later determined not to be a moving violation under state traffic laws. Despite the fact that when the officer in *Nicholson* made his traffic stop, the law was not clear as to whether the turning maneuver at issue was or was not a traffic violation, the Tenth Circuit declared, "Although an officer's mistake of fact can still justify a probable cause or reasonable suspicion determination for a traffic stop, an officer's mistake of law cannot." *Id.* at 1238.

In Appellee's matter, the Magistrate found that the traffic stop/seizure of Appellee was based on a mistake of law in Officer Logan believing that the speed limit was 25 mph rather than 35 mph. As the Tenth Circuit had done in *Nicholson*, the Magistrate concluded that a mistake of law, no matter how reasonable, could not provide Officer Logan with probable cause. The Magistrate therefore sustained Appellee's motion to suppress and ordered the State's case dismissed.

The State appealed the Magistrate's decision under the authority of 22 O.S.2011, § 1089.1. On November 19, 2014, the Honorable Greg Dixon, Associate District Judge, heard that appeal. Judge Dixon, as had the Magistrate, also found Officer Logan had operated under a mistake of law in stopping Appellee's vehicle. Judge Dixon therefore upheld the Magistrate's orders under the reasoning from the *Nicholson* case.

The State then appealed to this Court. Its appeal was regularly assigned to this Court's Accelerated Docket under Section XI of the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015), and oral argument was held on Jun 25, 2015. The Court duly considered Appellant's propositions of error raised on appeal:

Proposition 1

The trial court erred when the court determined Officer Logan made a mistake of law instead of a mistake of fact and the seizure was constitutional.

Proposition 2

The lower court erred when ignoring the cited ordinances.

Proposition 3

If the court finds Officer Logan made a mistake of law, the mistake was reasonable and constitutional.

After hearing oral argument, and after a thorough consideration of Appellant's propositions of error and the entire record before us on appeal, by a vote of five (5) to zero (0), the Court reverses the rulings below and remands for further proceedings consistent with this Opinion.

In state appeals brought under the procedures established at 22 O.S. 2011, §§ 1089.1 - 1089.7, and Section VI of this Court's *Rules*, this Court reviews the factual findings of the magistrate and reviewing judge for an abuse

of discretion<sup>2</sup> and reviews their legal interpretation of statutes de novo.<sup>3</sup> A trial court's decision on a motion to suppress evidence for an illegal search or seizure has similar standards of review:

When reviewing a trial court's ruling on a motion to suppress evidence based on a complaint of an illegal search and seizure, this Court defers to the trial court's findings of fact unless they are not supported by competent evidence and are therefore clearly erroneous. We review the trial court's legal conclusions based on those facts *de novo*.

*State v. Alba*, 2015 OK CR 2, ¶ 4, 341 P.3d 91, 92 (citation omitted).<sup>4</sup> Following these standards, we find this appeal is properly resolved under Appellant's Proposition 3, where Appellant relies on *Heien v. North Carolina*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 530, 190 L.Ed 2d 475 (2014), a matter that was decided by

---

<sup>2</sup> See *State v. Swicegood*, 1990 OK CR 48, ¶ 7, 795 P.2d 527, 529 (where the State failed to meet its burden to show the alleged crime was committed and the magistrate had sustained the defendant's demurrer, "[a]bsent an abuse of the discretion in reaching that decision, the magistrate's ruling will remain undisturbed"); accord *State v. Salathiel*, 2013 OK CR 16, ¶ 7, 313 P.3d 263, 266.

<sup>3</sup> See *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 493, 111 S.Ct. 888, 897, 112 L.Ed. 2d 1005 (1991) ("Although the abuse-of-discretion standard is appropriate for judicial review of an administrative adjudication of the facts of an individual application for [special agricultural worker residency] status, such a standard does not apply to constitutional or statutory claims, which are reviewed *de novo* by the courts."); *In re J.L.M.*, 2005 OK 15, ¶ 4, 109 P.3d 336, 338 (where the issue on appeal is one of statutory construction, "the standard of review is *de novo*," and appellate court had "plenary, independent and non-deferential authority to determine whether the trial court erred in its legal ruling").

<sup>4</sup> Accord *State v. Zungali, et al.*, 2015 OK CR 8, ¶ 4, \_\_\_ P.3d \_\_\_ (Okl.Cr. May 1, 2015) ("Review of a district court's ruling on a motion to suppress evidence is a mixed question of law and fact; we consider the evidence in the light most favorable to the district court's ruling, accept those of the district court's factual determinations supported by evidence and review the ultimate determination of reasonableness under the Fourth Amendment *de novo*."); cf. *Nicholson*, 721 F.3d at 1238 ("When reviewing a denial of a motion to suppress, we review *de novo* the district court's conclusion that the officer's actions were reasonable. Considering the evidence in the light most favorable to the prevailing party, we defer to the district court's findings on questions of fact, reviewing only for clear error. We review questions of law *de novo*.") (citations omitted).

the U.S. Supreme Court in the month after the District Court had reviewed the Magistrate's order.

In *Heien*, the Supreme Court rejected the mistake-of-law vs. mistake-of-fact dichotomy. It held that for Fourth Amendment purposes, the overarching question is simply one of whether the officer's mistake was "*objectively reasonable*"—regardless of whether that mistake is one of fact or one of law. *Heien*, 135 S.Ct. at 539. The Supreme Court summarized the issue and its resolution as follows:

But what if the police officer's reasonable mistake is not one of fact but of law? In this case, an officer stopped a vehicle because one of its two brake lights was out, but a court later determined that a single working brake light was all the law required. The question presented is whether such a mistake of law can nonetheless give rise to the reasonable suspicion necessary to uphold the seizure under the Fourth Amendment. We hold that it can. Because the officer's mistake about the brake-light law was reasonable, the stop in this case was lawful under the Fourth Amendment.

*Heien*, 135 S.Ct. at 534.

In further explaining its holding, the Court wrote:

But reasonable men make mistakes of law, too, and such mistakes are no less compatible with the concept of reasonable suspicion. Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: the facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law.

*Heien*, 135 S.Ct. at 536.

When we apply these principles to Appellee's matter, it is evident that

both the Magistrate and the reviewing judge erred when holding that Officer Logan's mistake of law concerning the legal speed limit precluded per se any possible finding that a lawful seizure could occur under the Fourth Amendment. Under *Heien*, disposition did not turn on whether Officer Logan had made a mistake of fact or a mistake of law. Instead, the proper inquiry was whether Officer Logan acted reasonably as a law enforcement officer in (1) relying on a 25 mph speed limit sign posted at the beginning of a road construction project for mistakenly believing the speed limit was 25 mph and (2) choosing to seize Appellee on observing him exceeding 25 mph. As there was no evidence that Officer Logan acted unreasonably in his mistaken belief that Appellee was exceeding the speed limit, the orders sustaining the motion to suppress on Fourth Amendment grounds and dismissing the State's case should be reversed and the matter remanded to the Magistrate for further proceedings consistent with this Opinion.

#### **DECISION**

The Magistrate's order of November 6, 2014, dismissing the State's Information and sustaining the motion to suppress of Appellee, Jason Michael Thomas, in Pontotoc County District Court, Case No. CF-2013-586, and the reviewing judge's decision of November 19, 2104, upholding the Magistrate's orders, are hereby **REVERSED AND REMANDED WITH INSTRUCTIONS** that the Magistrate overrule the motion to suppress and reinstate the State's case in a manner consistent with this Opinion. Pursuant to Rule 3.15 of this Court's *Rules*, **MANDATE IS ORDERED ISSUED** on the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PONTOTOC COUNTY  
THE HONORABLE C. STEVEN KESSINGER, SPECIAL JUDGE, AS MAGISTRATE  
THE HONORABLE GREG DIXON, ASSOCIATE DISTRICT JUDGE, ON REVIEW

**APPEARANCES AT TRIAL**

JOHN W. HUBBARD  
ASSISTANT DISTRICT ATTORNEY  
105 WEST 13TH STREET  
ADA, OKLAHOMA 74820  
ATTORNEY FOR STATE OF OKLAHOMA

WILLIAM W. SPEED  
P.O. BOX 2739  
ADA, OKLAHOMA 74281  
ATTORNEY FOR DEFENDANT

**OPINION BY: LUMPKIN, V.P.J.**

**Smith, P.J.: Concur**

**Johnson, J.: Concur**

**Lewis, J.: Concur**

**Hudson, J.: Concur**

RC

**APPEARANCES ON APPEAL**

JOHN W. HUBBARD  
ASSISTANT DISTRICT ATTORNEY  
105 WEST 13TH STREET  
ADA, OKLAHOMA 74820  
ATTORNEY FOR APPELLANT

WILLIAM W. SPEED  
P.O. BOX 2739  
ADA, OKLAHOMA 74281  
ATTORNEY FOR APPELLEE