IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,	)	
	)	**NOT FOR PUBLICATION**
Appellant,	)	
vs.	)	**No. S-2015-972**
	)	
MARCO CALLEJAS,	)	
	)	**FILED**
	)	IN COURT OF CRIMINAL APPEALS
Appellee.	)	STATE OF OKLAHOMA

SUMMARY OPINION

MAY 20 2016

MICHAEL S. RICHIE
CLERK

SMITH, PRESIDING JUDGE:

Marco Callejas was charged with Count I, Unlawful Possession of a Controlled Drug with Intent to Distribute in violation of 63 O.S.Supp.2012, § 2-401(A)(1); and Count II, Possession of Firearm After Juvenile Adjudication in violation of 21 O.S.Supp.2014, § 1283(D), in the District Court of Tulsa County, Case No. CF-15-1236. At preliminary hearing the magistrate found the stop was valid, sustained Callejas' demurrer to Count I, and bound him over on Count II. The State amended Count I to Misdemeanor Possession of Controlled Drug (Marijuana) in violation of 63 O.S.Supp.2012, § 2-402. Before trial, Callejas moved to quash the Information on Count II for insufficient evidence and to suppress all the evidence for lack of probable cause. The Honorable James Caputo granted the motion to suppress the evidence and dismissed both counts; the court found that its ruling on the motion to suppress, and dismissal of both counts, rendered the motion to quash moot.

The State timely appeals that order under 22 O.S.2011, § 1053. The State argues that its appeal is under § 1053(5), the provision allowing for an appeal from

a pretrial order, decision or judgment suppressing or excluding evidence where appellate review would be in the best interests of justice. 22 O.S.2011, § 1053(5). We have characterized this as an interlocutory appeal, applying where evidence is suppressed and the State asserts that it cannot proceed without the evidence. *State v. Sayerwinnie*, 2007 OK CR 11, ¶¶ 4-6, 157 P.3d 137, 138-39. The State here has not filed an interlocutory appeal. After granting the motion to suppress, the trial court dismissed both counts. There is currently no criminal prosecution pending against Callejas in this case. In determining the appropriate avenue for appeal we will look at the actual posture of the case, not at the parties' characterizations of it. Because the trial court both granted the motion to suppress and dismissed all charges against Callejas, we find this appeal is properly reviewed under 22 O.S.2011, § 1053(1), as an order upon judgment for the defendant on quashing or setting aside an indictment or information.

The State raises two propositions of error in support of its appeal:

I. The district court abused its discretion in determining that no reasonable suspicion existed for the traffic stop because the district court ignored fundamental canons of statutory construction when interpreting the ordinance.
II. Since the officer's interpretation of the plain language of the ordinance is objectively reasonable, *Heien v. North Carolina* applies and the district court abused its discretion.

After thorough consideration of the entire record before us, including the original record, transcripts, exhibits and briefs, we find that the law and evidence do not require relief.

We find in Proposition I that the trial court did not abuse its discretion in granting Callejas' motion to suppress and dismissing the charges. We review a trial

court's decision on a motion to suppress for abuse of discretion; we defer to the trial court's findings of fact unless they are clearly erroneous, and review legal conclusions *de novo*. *State v. Alba*, 2015 OK CR 2, ¶ 4, 341 P.3d 91, 92. An abuse of discretion is any unreasonable or arbitrary action made without proper consideration of the relevant facts and law, also described as a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. The State also asks this court to interpret the plain language of the Tulsa municipal traffic ordinance at issue. We review questions of statutory interpretation *de novo*. *Leftwich v. State*, 2015 OK CR 5, ¶ 14, 350 P.3d 149, 155. For a traffic stop, an officer needs an articulable and reasonable suspicion that the car, or its driver, is violating the law. *McGaughey v. State*, 2001 OK CR 33, ¶ 25, 37 P.3d 130, 136. If the stop is objectively reasonable, then the officer's subjective motivation for the stop is irrelevant. *Id.*

Tulsa Municipal Traffic Ordinance Title 37 § 640(B) provides: "A vehicle shall be driven entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety. The driver shall signal his intent to change lanes prior to doing so." Officer Turnbough concluded, and the State contends, that this ordinance requires a driver to hesitate before crossing from one lane into another – that is, it prohibits a driver from signaling and continuously crossing two lanes of traffic without pausing in one lane before moving to the next, regardless of whether any other traffic is affected by the motion. The trial court found that this interpretation was not supported by the plain language of § 640(B). A *de novo* review compels the same result in this Court.

In interpreting a statute (or municipal ordinance) we begin with the language's plain meaning. *State v. Steidley*, 2015 OK CR 6, ¶ 12, 349 P.3d 554, 557-58; *Leftwich*, 2015 OK CR 5, ¶ 15, 350 P.3d at 155. We try to ascertain and give effect to the intent of the promulgating body, looking to each part of the statute, to the circumstances to be remedied, and to the natural or absurd consequences of any particular interpretation. *Steidley* at ¶ 12, 349 P.2d at 557-58. Nothing in § 640(B) says, suggests or implies that a driver must pause at each lane change and drive in one lane for any period of time before moving to the next lane – as long as the driver is signaling his intention and the movement is done with safety.

The State's argument focuses on the provision that the driver must first ascertain that the movement can be made with safety. In deciding what action is required of either a driver or an officer under this provision, we read the ordinance in its entirety. Arguably, of course, an officer might consider whether the driver was looking at the mirrors or looking over his shoulder before changing lanes. As the State argues, such observations would be difficult if not impossible to make. In fact, here the officer could not see what Callejas did before signaling his intention to change lanes. In fact, the ordinance itself provides the visual determinant: did the driver signal? In addition, an officer can easily observe any traffic which could be or actually was affected by the driver's lane change.[1] That is, there are two immediate physical observations an officer can make to determine a violation of the ordinance, both of which are included within its language: whether the driver signaled and the

[1] The State inexplicably suggests that the ordinance does not depend on whether any other traffic was present. It is impossible to understand the requirement that a lane change can be made "with safety" without referring to other traffic on the road. The State fails to show to what, in the absence of other traffic, that phrase "with safety" might be intended to refer.

lane change was unsafe. Any other interpretation adds too much to the actual language of the statute. Clearly, by including these easily-determined requirements, the city did not intend that to enforce § 640(B) an officer must be able to either visually observe a driver's actions, or read his mind, when deciding whether the lane change was proper.[2]

The Tulsa traffic ordinance at issue here, Title 37, § 640(B), is neither ambiguous nor unclear. The plain language does not support an additional requirement that motorists stop or hesitate before changing from one lane to another. Callejas properly used his turn signal to indicate his intended motion. No other traffic either was or had the potential to be adversely affected by his lane change. Turnbough had no articulable or reasonable suspicion that Callejas violated § 640(B). The trial court did not abuse its discretion in granting Callejas' motion to suppress; as the prosecutor admitted there was no other evidence against Callejas, the trial court further did not abuse its discretion in dismissing the charges. This proposition is denied.

We find in Proposition II that *Heien v. North Carolina*, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014), does not apply. If an officer makes an objectively reasonable

[2] Interpreting a remarkably similar statute, the Court of Appeals of Texas, 14th District, came to the same conclusion. *Aviles v. State*, 23 S.W.3d 74, (Ct. App. Tex., Houston 2000). Texas law provides that a person driving on a road divided into lanes must ascertain that a move can be made with safety before changing lanes. *Aviles*, 23 S.W.3d at 77; V.T.C.A., Transportation Code § 545.060(a) (Vernon 1999). The State argued that Aviles violated this provision by changing lanes, while signaling, moving across two lanes of traffic in a single maneuver. The court rejected the claim that this was inherently dangerous behavior, finding that there must be evidence the driver's movement was unsafe. *Aviles*, 23 S.W.3d at 77-78. In determining that the statute was not violated, the court considered whether Avilas' driving was erratic, traffic was congested and there was not room to safely execute the multiple lane change, or other circumstances at the time meant the lane change could not be made safely. *Id* at 79. All these factors are external observations that an officer can readily make. None of them require either that an officer read a driver's mind, or be able to see exactly what the driver is doing inside the vehicle, in order to determine whether the driver has ascertained his movement can be made with safety.

mistake of law, based on his interpretation of a statute, that mistake of law can justify a stop. *Heien*, 135 S.Ct. at 539-40. The mistake must be objectively reasonable. Justice Kagan, concurring, would hold that the law in question must always be ambiguous or unclear. *Id* at 541 (Kagan, J., concurring). The majority does not hold a statute must be ambiguous or unclear before an officer's mistake of law may justify a stop, but noted that the North Carolina statute at issue there was susceptible of more than one interpretation and had not been previously interpreted by the North Carolina Supreme Court. *Id.* at 540. We found in Proposition I that the language of § 640(B) is neither ambiguous nor unclear. For this reason, the fact that the ordinance had not yet been interpreted in a published opinion by a reviewing Oklahoma court does not carry the importance the State claims. That lack of judicial interpretation was a factor in the majority's decision in *Heien* precisely because the statute there could reasonably have been understood as the officer interpreted it, even though the North Carolina courts later interpreted it differently. For that reason, the Court could not say the officer's interpretation of the unclear statute was unreasonable. *Heien*, 135 S.Ct. at 540. Surely the State is not arguing that officers cannot be sure how to enforce routine traffic ordinances in the absence of written, published judicial guidance. Here, the language of § 640(B) is clear, and can be enforced without first consulting a court interpretation.[3]

[3] We do not find that a statute must be ambiguous under *Heien* to justify an officer's mistake of law, but we note that other courts have recently interpreted *Heien* to apply to objectively reasonable mistakes regarding an ambiguous law. For instance, in *United States v. Stanbridge*, the Seventh Circuit interpreted an Illinois statute regarding turns and lane changes, and providing that a driver must use a turn signal and refrain from moving unless the move can be made with reasonable safety. *U.S. v. Stanbridge*, 813 F.3d 1032, 1037 (7th Cir. Feb. 23, 2016). The Court found, "The statute isn't ambiguous, and Heien does not support the proposition that a police officer acts in an objectively reasonable manner by misinterpreting an *unambiguous* statute." *Id.* (emphasis in original).

The State relies on language in *Heien* suggesting that sometimes, an officer may "suddenly confront" a situation in which it is unclear if a statute applies, even though application of the law in that circumstance may later become clear. *Heien*, 135 S.Ct. at 539. That simply does not fit the facts here. Turnbough's mistake was not as to whether the ordinance applied *at all* – Callejas was changing lanes, and § 640(B) clearly applied to his action. That was immediately apparent; it did not need time to become clear. Turnbough's mistake was as to what constituted a violation under § 640(B) – whether Callejas violated the plain language of the ordinance. This, also, was immediately apparent. The language of the ordinance here was not susceptible of more than one meaning, and it was not the meaning Turnbough gave it. *Heien* does not apply. The trial court did not abuse its discretion in so finding, in granting Callejas' motion to suppress, and in dismissing the charges. This proposition is denied.

DECISION

The decision of the District Court of Tulsa County granting the Motion to Suppress and dismissing the charges is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

Discussing the fact that the officer misunderstood the law, the Court said, "[The officer] simply was wrong about what the provision required, yet 'an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce.'" *Id.* at 1038 (quoting *Heien* 135 S.Ct. at 539-40). The Fifth Circuit also found that *Heien* does not apply where a statute is unambiguous. *United States v. Alvarado-Zarza*, 782 F.3d 246, 250 (5th Cir. 2015). The Court of Appeals of Indiana reached a similar conclusion about the scope of *Heien* in *Darringer v. State*, 46 N.E.3d 464 (Ct. App. Ind. 2015). An officer stopped a car that had temporary paper plates displayed in its rear window rather than on its bumper. Although the officer was unaware of it, the statute at issue explicitly allowed temporary plates to be displayed in a rear window. I.C. § 9-32-6-11(f)(2) (2013). The officer, relying on his mistake of law, had not looked for a temporary plate in the window. The court found that the mistake of law was objectively unreasonable, distinguishing *Heien* because the Indiana statute was clear and there was no evidence it had been violated. *Darringer*, 46 N.E.3d at 474.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE JAMES M. CAPUTO, DISTRICT JUDGE

ATTORNEYS AT TRIAL

JASON EDGE
EDGE LAW FIRM, P.C.
201 WEST 5TH STREET, STE. 550
TULSA, OK 74103
COUNSEL FOR DEFENDANT

KEVIN KELLER
ASSISTANT DISTRICT ATTORNEY
TULSA COUNTY
DISTRICT ATTORNEY'S OFFICE
500 S. DENVER, STE. 900
TULSA, OK 74103
COUNSEL FOR THE STATE

ATTORNEYS ON APPEAL

KEVIN KELLER
ASSISTANT DISTRICT ATTORNEY
DISTRICT ATTORNEY'S OFFICE
DISTRICT 14
TULSA COUNTY COURTHOUSE
500 SOUTH DENVER AVE., STE. 900
TULSA, OK 74103
COUNSEL FOR APPELLANT/STATE

JASON EDGE
EDGE LAW FIRM, P.C.
201 WEST 5TH STREET, STE. 550
TULSA, OK 74103
COUNSEL FOR APPELLEE

OPINION BY: SMITH, P.J.
LUMPKIN, V.P.J.: CONCUR IN RESULTS
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR
HUDSON, J.: CONCUR

LUMPKIN, VICE PRESIDING JUDGE: CONCURRING IN RESULT

I concur in the results reached by the Court but must disagree with statements relating to the law that are not correctly stated in Proposition Two.

The United States Supreme Court in *Heien v. North Carolina*, — U.S. —, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014), held that an officer's reasonable mistake of law can nonetheless give rise to the reasonable suspicion necessary to uphold a search or seizure under the Fourth Amendment. *Id.*, 135 S.Ct. at 534; *State v. Nelson*, 2015 OK CR 10, ¶ 18, 356 P.3d 1113, 1119. The Court does not examine the officer's subjective understanding of the particular statute, instead, "[t]he Fourth Amendment tolerates only reasonable mistakes, and those mistakes—whether of fact or of law—must be objectively reasonable." *Id.*, 135 S. Ct. at 539. I cannot join in adding requirements to that "reasonable interpretation" based upon one Justice's separate writing.

While Officer Turnbough's interpretation of the ordinance, *i.e.*, requiring some hesitation before going across to another lane of traffic, is probably the safer and a more prudent manner of crossing multiple lanes of traffic, that interpretation is not even contained in the official driver's manual prepared by the Oklahoma Department of Public Safety. Therefore, I cannot find a legal basis for that to be an objectively reasonable interpretation.