ATTORNEY FOR APPELLANT

Denise L. Turner
DTurner Legal, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Avis Deforest White,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 8, 2022

Court of Appeals Case No.
22A-CR-978

Appeal from the
Hendricks Superior Court

The Honorable
Stephenie LeMay-Luken, Judge

Trial Court Cause No.
32D05-2010-F4-35

Foley, Judge.

[1] In this interlocutory appeal, Avis Deforest White challenges the trial court's denial of his motion to suppress evidence stemming from a traffic stop. Police stopped White's car when an officer ran White's license plate and received a return from the Bureau of Motor Vehicles ("BMV") listing the car's registration

as "inactive." Because we observe that the General Assembly has not made "inactive" registration an infraction, we conclude that the traffic stop was not justified by reasonable suspicion and was, therefore, impermissible. Accordingly, we reverse the ruling of the trial court.

Issue

[2] White raises a single issue: whether the trial court erred in denying his motion to suppress.

Facts and Procedural History

[3] On October 10, 2020, Corporal Christopher Nelson was on patrol for the Brownsburg Police Department. Corporal Nelson observed a car shortly after midnight and submitted an inquiry to the BMV regarding the car's registration. The BMV record screen visible to Corporal Nelson showed that the registration's status was "inactive," but also showed that the expiration date for the license number was December 7, 2020. On the sole basis of the "inactive" registration status, Corporal Nelson initiated a traffic stop of the car, driven by White.

[4] As a result of the traffic stop,[1] the State charged White on October 10, 2020 as follows: Count I, possession of cocaine, a Level 4 felony; Count II, theft of a

[1] While the probable cause affidavit is part of the appendix, here we review the trial court's ruling on a motion to suppress. The probable cause affidavit was not submitted during the evidentiary hearing, nor was there testimony concerning the evidence uncovered as a result of the traffic stop. The probable cause

firearm, a Level 6 felony; Count III, obstruction of justice, a Level 6 felony; Count IV, driving while suspended, a Class A misdemeanor; Count V, possession of marijuana, a Class B misdemeanor; and Count VI, an infraction relating to the car's registration.[2]

[5] On November 16, 2021, White filed a motion to suppress all evidence resulting from the traffic stop. The trial court held a hearing on White's motion to suppress on March 10, 2022. Corporal Nelson was the only witness to testify at the hearing. While being questioned about the BMV record screen, the following colloquy ensued:

> Q. And it looks like on that image we can see, it says STS-inactive, is that what you referring [sic] to an inactive registration?
>
> A. That indicates, it means status, the status and the status was inactive, that's correct.
>
> * * * * *
>
> Q. What did you do when you saw this?

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affidavit is not part of the evidentiary record before us. Accordingly, we do not consider what occurred after the traffic stop was initiated.

[2] The precise infraction being alleged is unclear. The document that appears to serve as the charging instrument merely alleges that White acted "[c]ontrary to the form of the I.C. Code 9-18.1-2-3. Appellant's App. Vol II p. 26. That statute, however, requires both that a car be registered and that proof of that registration be displayed. It is not apparent from the face of the record which of those requirements the State is alleging White failed to meet.

A. I initiated a traffic stop on the vehicle.

Q. Okay and that's, that's your reason for the stop in this case, is that correct?

A. That is correct.

Tr. Vol. II p. 6.

[6] Under cross-examination, Corporal Nelson conceded that the registration for White's car was not expired. Corporal Nelson further testified that the car did not "currently have an active registration[,]" but that he did not know what the "inactive" designation actually meant. *Id*. at 10. When asked about his lack of understanding, Corporal Nelson testified as follows:

Q. Okay. But you testified previously in response to what would make a registration inactive, you responded that would be a question for the BMV, correct?

A. For their designation. Like I know what my understanding of it is. But as far as, there could be administrative events or other things that they have on why they place a registration inactive.

Q. Okay so is it fair to say that you based your understanding on an assumption?

A. We could, you could say that.

Q. Okay. And based on that assumption you assumed that a traffic infraction was being committed?

A. That's correct.

Id. at 10.

[7] At the conclusion of the hearing, the trial court denied White's motion to suppress. On April 5, 2022, White filed a petition to certify the trial court's order denying the motion to suppress for interlocutory appeal, and the trial court granted that petition the same day. We accepted jurisdiction on May 27, 2022, pursuant to Indiana Appellate Rule 14(B)(2).

Discussion and Decision

[8] White contends that the trial court erred in concluding that Corporal Nelson had the requisite reasonable suspicion to effect a traffic stop. "Trial courts enjoy broad discretion in decisions to admit or exclude evidence." *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019) (citing *Robinson v. State*, 5 N.E.3d 362, 365 (Ind. 2014)). "When a trial court denies a motion to suppress evidence, we necessarily review that decision 'deferentially, construing conflicting evidence in the light most favorable to the ruling.'" *Id*. "However, we 'consider any substantial and uncontested evidence favorable to the defendant.'" *Id*. "We review the trial court's factual findings for clear error, declining invitations to reweigh evidence or judge witness credibility." *Id*. (citing *State v. Keck*, 4 N.E.3d 1180, 1185 (Ind. 2014)). "If the trial court's decision denying 'a defendant's motion to suppress concerns the constitutionality of a search or seizure,' then it presents a legal question that we review de novo." *Id*. at 1258 (quoting *Robinson*, 5 N.E.3d at 365). "In evaluating the validity of a stop such

as this, we must consider 'the totality of the circumstances—the whole picture.'" *United States v. Sokolow*, 490 U.S. 1, 8 (1989) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

[9] > Traffic stops, for even minor violations, fall within the protections of the federal . . . constitution[ ]. When a law enforcement officer stops a vehicle for a suspected traffic infraction like speeding, that officer seizes the vehicle's occupants under the Fourth Amendment to the United States Constitution . . .; and that traffic stop must pass constitutional muster.

Marshall, 117 N.E.3d at 1258 (citing *Heien v. North Carolina*, 574 U.S. 54 (2014); *Meredith v. State*, 906 N.E.2d 867, 869 (Ind. 2009)).[3]

[10] Ordinarily, the Fourth Amendment requires a warrant issued upon probable cause in order to effectuate a seizure. *Id*. at 1258-59. One exception to the warrant requirement, however, is the "brief investigatory stop" which does not require a warrant, and which need only be based upon "reasonable suspicion." *Id*. at 1259; *see also Terry v. Ohio*, 392 U.S. 1 (1968). Traffic stops fall under this exception to the warrant requirement. *Whren v. United States*, 517 U.S. 806, 809-10 (1996).

[3] We note that traffic stops fall within the protections offered by Article 1, Section 11 of our State Constitution as well. *See, e.g., State v. Quirk,* 842 N.E.2d 334, 339-40 (Ind. 2006). White, however, fails to advance an argument under our State Constitution. It is well settled that the failure to "provide a separate analysis under the state constitution" results in a waiver of the State Constitutional claim. *Richardson v. State*, 800 N.E.2d 639, 647 (Ind. Ct. App. 2003). Accordingly, we address the issue no further.

[11] Police officers may "stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot.'" *Robinson*, 5 N.E.3d at 367 (quoting *Sokolow*, 490 U.S. at 7). Though reasonable suspicion is not easily defined, it is not an illusory standard. *State v. Renzulli*, 958 N.E.2d 1143, 1146 (Ind. 2011). The reasonable suspicion standard requires that a stop "'must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.'" *Robinson*, 5 N.E.3d at 367 (quoting *Armfield v. State*, 918 N.E.2d 316, 319 (Ind. 2009)). "[T]he reasonableness of official suspicion 'must' be measured by what officers knew before, not after, conducting an investigatory stop." *Segar v. State*, 937 N.E.2d 917, 922 (Ind. Ct. App. 2010) (quoting *Florida v. J.L.*, 529 U.S. 266, 271 (2000)). Crucially, our determination of the legality of a traffic stop, and, thus, the existence of reasonable suspicion, is objective, and must ignore "the subjective understanding of the particular officer involved." *State v. Davis*, 143 N.E.3d 343, 349 (Ind. Ct. App. 2020) (citing *Heien*, 574 U.S. at 66). The dispositive question is whether a reasonable officer, aware of the facts available to Corporal Nelson, would have concluded that White was in violation of the law. *See Ornelas v. United States*, 517 U.S. 690, 696 (1996).

[12] A person operating a motor vehicle must both register the vehicle and maintain proof of registration. *See* Ind. Code § 9-18.1-2-3.[4] "A certificate of registration or proof of registration issued under IC 9-18 (before its expiration on December 31, 2016) remains valid until it *expires or is revoked, suspended, or canceled*." I.C. § 9-18.1-2-1(b) (emphasis added). The Indiana Code makes clear that each of these words carries a different meaning. A registration may be "suspended," for example, if a motorist "fail[s] to maintain in good working order . . . any air pollution control system or mechanism that is used to control air pollution of a vehicle . . . ." I.C. § 13-17-5-3. A motorist operating a vehicle with an "expired" registration, on the other hand, "commits a Class C infraction." I.C. § 9-18.1-11-2(c). The registration in the instant case was not expired. Corporal Nelson could plainly see this fact from the BMV readout which reflected an expiration date of December 7, 2020, then approximately two months away. *See* Ex. 1; *see also* Tr. Vol. II p. 8. The record suggests that Corporal Nelson conflated the status of "inactive" with that of "expired," and concluded that White was committing a traffic violation.

[13] In fact, a reading of Title 9 of the Indiana Code, which governs motor vehicles, reveals that the word "inactive" does not appear once. This suggests that "inactive" is a registration status contemplated by the BMV, not by the legislature. Indeed, Corporal Nelson's testimony seems to suggest that he is aware that the word "inactive" is used by the BMV internally for an

[4] This statute is the basis for Count VI.

administrative purpose, and that its meaning in that context may well differ from Corporal Nelson's understanding of the term.

[14] The State points us to *Dowdy v.* State, 83 N.E.3d 755, 758 (Ind. Ct. App. 2017). In *Dowdy*, we ruled that an officer had reasonable suspicion to conduct a traffic stop where the BMV readout mistakenly conveyed that a registration was expired. It is true that *Dowdy* concerned an officer's mistake of law that was nevertheless reasonable. We find *Dowdy*, however, to be inapposite to the case at bar. Corporal Nelson's error here was not a mistake of law—which is to say a misunderstanding as to the scope of conduct covered by the statute—but a mistake as to *whether any law proscribing White's conduct even exists*.

[15] We have previously recognized that "'reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition.'" *Williams v. State*, 28 N.E.3d 293, 294 (Ind. Ct. App. 2015) (quoting *Heien*, 574 U.S. at 57). *Williams* represented a turning point in our jurisprudence on this matter. Previously, we held that an officer's good-faith but inaccurate belief about what constitutes an infraction was insufficient to establish reasonable suspicion. *See, e.g.*, *Ransom v. State*, 741 N.E.2d 419, 422 (Ind. Ct. App. 2000), *abrogated by Heien*, 574 U.S. at 57. *Williams*, however, is materially distinguishable from the instant case. The officer in *Williams* was mistaken about whether a broken tail-light emitting both red and white light was prohibited by law: a mistake about the scope of a prohibition. But a mistake about the scope of a prohibition necessarily presupposes the existence of a prohibition. *See, Heien,* 574 U.S. at 70 (Kagan, J. concurring). Here we are not engaged with the question of

whether a statute is ambiguous, such that Corporal Nelson's misunderstanding of the statute could be reasonable. There simply is no statute prohibiting an "inactive" registration.

[16] We find further support for our conclusion in *Darringer v. State*, 46 N.E.3d 464 (Ind. Ct. App. 2015). In *Darringer* an officer initiated a traffic stop of a vehicle with a temporary registration on the grounds that the registration was mounted in the rear window as opposed to on the rear bumper. We examined the legislative history of the statutes governing the display of motor vehicle license plates and surmised that "[f]or almost one year prior to the stop in this case, the statute as amended allowed for an interim license plate to be displayed on the left side of the rear window of Darringer's vehicle." *Darringer*, 46 N.E. 3d at 472. The fact that Darringer's conduct had been legal for almost a year, we concluded, meant that the stop was not based on a reasonable mistake of law.

[17] The basis upon which the officer's belief is based must be *objective* if there is to be a finding of reasonable suspicion. Objectively speaking, driving with an "inactive" registration is not, so far as we can tell, an infraction. Corporal Nelson did not do what a reasonable officer in his situation would do. Rather, he could see that the registration was not expired, and stopped White anyway. We see no explanation in the record for why Corporal Nelson believed that an "inactive" registration was illegal.

[18] Indeed, the *Dowdy* case suggests that a reasonable officer *should* be aware of the difference between "inactive" and "expired." Here is the testimony from a police officer who testified at the trial court level in *Dowdy*:

> [T]here's a status that—it says status and then it will say *active, inactive, suspended, or expired*. I just look for that spot because I'm just—you know, I'm not trying to read every little detail about—I don't care when the plate was issued. I don't necessarily care when it was expired. I just look to see that it's expired according to the BMV because that's where I get my returns from.

83 N.E.3d at 758 (emphasis added). The officer in *Dowdy* was apparently aware that the BMV utilizes distinct categories—inactive and expired—and that only the latter constitutes an infraction under the law.

[19] The State argues that:

> Defendant characterizes Officer Nelson's actions as amounting to a mistake of law about the car's registration status, but the more accurate view is that whether the registration had inactive or not [sic] is an arguable mistake of fact. Officer Nelson did not decide as a matter of his own legal interpretation that the registration was inactive; rather, he relied upon the BMV's factual assertion that the status was "inactive"

Appellee's Br. pp. 11-12. This is incorrect. Whether the registration was "inactive"—in fact—does not bear on the question of reasonable suspicion. We may accept as true the fact that the registration was "inactive." The question before us is whether a reasonable officer would have recognized that an "inactive" registration is not an infraction. That is to say, "inactive" is a

registration not salient to the decisions made by the legislature, or the conduct it has chosen to outlaw, but rather to the nomenclature adopted internally by the BMV.

[20] We cannot conclude that—as an objective matter—a reasonable officer would seek to enforce laws that do not exist. "The [Supreme] Court determined that 'reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition.'" *Davis*, 143 N.E.3d at 349 (quoting *Heien*, 574 U.S. 60). The Supreme Court has *not* determined that reasonable suspicion can rest on whether a legal prohibition exists at all. Accordingly, we reverse the trial court's denial of White's motion to suppress.

[21] Reversed.

Mathias, J., concurs.

Robb, J., dissents with opinion.

Avis Deforest White,
Appellant,

v.

State of Indiana,
Appellee,

December 8, 2022
Court of Appeals Case No. 22A-CR-978
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Robb, Judge, dissenting.

[22] I respectfully dissent.

[23] The majority concludes that Corporal Nelson did not have an objectively reasonable belief that White was committing an infraction because his error was not a "misunderstanding as to the scope of conduct covered by the statute . . . but a mistake as to whether any law proscribing White's conduct even exists." Slip op. at ¶ 14 (emphasis omitted). But I believe that is, itself, a mistake of law in this case.

[24] The majority notes that prior to United States Supreme Court's decision in *Heien*, the law in Indiana was that although a law enforcement officer's good

faith belief that under the facts a person has committed a violation will justify a traffic stop, a mistaken belief as to what constitutes a violation under the law did not amount to good faith. *Meredith v. State*, 906 N.E.2d 867, 870 (ind. 2009). Following the decision in *Heien* that the Fourth Amendment allows for reasonable mistakes of fact *and* law, 574 U.S. at 60-61, Indiana too adopted that position, *see Williams*, 28 N.E.3d at 294.[5]

[25] Thus, "[a]n officer's decision to stop a vehicle is valid so long as his on-the-spot evaluation reasonably suggests that lawbreaking occurred." *Miller v. State*, 188 N.E.3d 871, 875 (Ind. 2022) (quoting *Meredith v. State*, 906 N.E.2d 867, 870 (Ind. 2009)). An objectively reasonable mistake of law or fact does not make a stop unlawful. *Id*. (citing *Heien*, 574 U.S. at 66).

[26] Corporal Nelson's "on-the-spot" evaluation was that the "inactive" designation on White's registration meant that the plate was "not currently active on that vehicle[,]" Tr., Vol. 2 at 10, and he believed that was a designation worth investigating. Although Indiana Code section 9-18.1-11-2(c) makes it a Class C infraction to operate a vehicle with an *expired* registration, *see* slip op. at ¶ 12, section 9-18.1-2-11 – in the chapter under which White was charged – states that "[a] person that fails to register a vehicle that is required to be registered

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[5] *Williams* cited only to the majority opinion in *Heien,* despite some states relying on or at least acknowledging the position of Justice Kagan in her concurring opinion that an officer's mistake of law is objectively reasonable only if the statute is genuinely ambiguous and requires "hard interpretive work[.]" *See State v. Sutherland*, 176 A.3d 775, 782-83 (N.J. 2018) (collecting cases) (citing *Heien*, 574 U.S. at 70) (Kagan, J., concurring).

under this chapter commits a Class C infraction" and makes no reference to whether or not a registration is "expired." Under these circumstances, I do not believe Corporal Nelson necessarily conflated the terms "inactive" and "expired" or necessarily relied on Indiana Code section 9-18.1-11-2(c) as a basis for the stop. Considering the totality of the circumstances, I would hold it was objectively reasonable for Corporal Nelson to believe that any return other than "active" indicated that something could be amiss with White's registration and therefore he had reasonable suspicion to stop White's vehicle.

[27] I would affirm the trial court's denial of White's motion to suppress.