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Summary of State v. Cantsee, 130 Nev. Adv. Op. 24

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Recommended Citation

Daly, Sean, "Summary of State v. Cantsee, 130 Nev. Adv. Op. 24" (2014). *Nevada Supreme Court Summaries*. 5.

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CONSTITUTIONAL LAW: UNREASONABLE SEARCHES AND MISTAKES OF LAW

Summary

The Court determined (1) whether a police officer’s citation to an incorrect statute is a mistake of law that invalidates an investigatory traffic stop under the Fourth Amendment, and (2) whether a failure to identify and argue a statute in an opposition to a motion to suppress constitutes a waiver of that argument in the motion’s hearing.

Disposition

A police officer’s citation to an incorrect statute is not a mistake of law that invalidates an investigatory traffic stop under the Fourth Amendment if there is another statute that does prohibit the suspected conduct. Also, a failure to include an argument in an opposition to a motion does not preclude a party from raising the argument for the first time before a district court in a hearing held prior to trial.

Factual and Procedural History

Deputy Wendy Jason pulled over Respondent Jarvis Cantsee for driving with a cracked windshield. Upon pulling him over, Deputy Jason saw that Cantsee appeared to be intoxicated. A subsequent blood test revealed that Cantsee’s blood alcohol levels were above the legal limit. Cantsee was arrested for, *inter alia*, felony DUI, even though Deputy Jason admitted that the sole reason for stopping Cantsee was the cracked windshield.

Cantsee filed a motion to suppress, claiming that Deputy Jason’s reason for pulling him over was a mistake of law that invalidated the traffic stop under the Fourth Amendment, since Deputy Jason stated that driving with a cracked windshield violated NRS 484D.435, when the statute in fact does not prohibit such conduct.² The State failed to argue that the traffic stop was justified under another statute in its opposition to the motion, and raised the argument for the first time at the motion’s hearing.

The district court granted the motion to suppress, finding that (1) the traffic stop was not objectively reasonable because the cited statute did not prohibit driving with a cracked windshield, and (2) the State had waived its argument that another statute justified the stop because it failed to raise this point in its opposition. The State appealed.

¹ By Sean Daly.

² NRS 484D.435(1) prohibits driving a vehicle “with any sign, poster or other nontransparent material upon the front windshield.” NEV. REV. STAT. § 484D.435(1) (2013).

Discussion

The traffic stop was valid under the Fourth Amendment

The Fourth Amendment prohibits unreasonable searches and seizures.³ Whether an investigatory traffic stop constitutes an unreasonable search is a mixed question of law and fact, thus a district court's findings of historical fact are reviewed for clear error, and the legal consequences of those findings are reviewed de novo.⁴

For a traffic stop to comport with the Fourth Amendment, the State must show that the investigating officer had reasonable suspicion that the defendant was engaged in criminal activity. If the traffic stop is based on a mistake of law—that is, the officer believed the suspected conduct was illegal even though the law does not actually prohibit it—there is no justification for the stop, regardless of the reasonableness of the mistake. However, the court identified an important distinction between a mistake of law and a mistake “as to *which law* applies,” stating that the incorrect application of a statute is not a mistake of law when the law does prohibit the suspected conduct. The Court followed the Ninth Circuit's reasoning in *United States v. Wallace*,⁵ where an officer pulled over the defendant for having tinted windows because the officer believed that California law prohibited all front window tints, when the law in fact only prohibited window tints past a certain degree. The Ninth Circuit stated that this error was not a mistake of law that would invalidate the stop under the Fourth Amendment, so long as the officer had objective, probable cause to believe that the windows were in violation of the law. The Court also cited several jurisdictions that have reached similar conclusions in a footnote.

The State did not waive its right to argue that NRS 484B.163(3) justified the investigatory traffic stop

Whether the State waived its argument is a question of law, and the Court reviews a district court's legal conclusions de novo.⁶ The Court found that there is no “rule, statute, or other authority” that states that a failure to include an argument in a timely filed opposition is grounds for finding a waiver of that argument. The Court was also unaware of any authority that forbids the State from directing the district court to a controlling statute when it would “surprise the defendant.” Cantsee also made no showing of how the addition of the correct statute would prejudice him. Furthermore, even if Cantsee was unfairly surprised, the appropriate remedy would be a continuance, and the district court neither postponed the hearing nor requested a supplemental briefing.

The district court did not decide whether Deputy Jason had reasonable suspicion to stop Cantsee

The Court then addressed an issue raised by Justice Cherry in his dissent, as to whether Deputy Jason had reasonable suspicion to stop Cantsee under the appropriate statute.⁷ The Court

³ U.S. CONST. amend. IV.

⁴ See *Somee v. State*, 124 Nev. 434, 441, 187 P.3d 152, 157–58 (2008).

⁵ 213 F.3d 1216, 1220–21 (9th Cir. 2000).

⁶ See *Nev. Gold & Casinos, Inc. v. Am. Heritage, Inc.*, 121 Nev. 84, 89, 110 P.3d 481, 484 (2005).

⁷ The appropriate statute with regard to the cracked windshield was NRS 484B.163(3), which states that “a vehicle must not be operated upon any highway unless the driver's vision through any required glass equipment is normal.” NEV. REV. STAT. § 484B.163(3) (2013).

stated that because the district court limited the scope of the evidentiary hearing on the motion to suppress to the issue of whether a safety hazard justified the stop, remand was necessary to determine whether the stop could be independently justified under NRS 484B.163. The Court stated that neither attorney elicited testimony from Deputy Jason about the circumstances surrounding Cantsee's stop or any facts regarding her initial contact with Cantsee. Furthermore, the district court specifically stated in its order that after the suppression hearing, "the historical facts known to the deputy at the time of the traffic stop were unclear." The Court concluded by stating that multiple courts have upheld stops premised on officers observing a windshield crack.

Conclusion

The district court erred in concluding that Deputy Jason's citation to the incorrect statute was a mistake of law that invalidated the traffic stop under the Fourth Amendment. The district court also erred in concluding that the State had waived its argument by failing to raise it in its opposition to the motion. Therefore, the district court's order was reversed, and the case was remanded to determine whether the traffic stop was justified under NRS 484B.163.