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TRAFFIC STOPS AREN'T JUST ABOUT "TRAFFIC"

Two instances of using traffic laws to justify drug searches reach the Supreme Court

By Julius (Jay) Wachtel. Nicholas Heien and Naynor Vasquez were tooling along rural North Carolina when they drove by a parked sheriff's patrol car. Officer Darisse looked up. On the lookout for "criminal indicators," the eagle-eyed cop noticed that Vasquez, the driver, seemed "stiff and nervous." So he pulled out to follow. Officer Darisse then noticed that one of the vehicle's brake lights wasn't working.

Bingo!

In his report, Officer Darisse wrote that he stopped the car because of a malfunctioning brake light. He could hardly have claimed otherwise. To justify a stop an officer needs, at the very least, reasonable suspicion of law-breaking. Merely "driving while stiff" isn't enough.

As one might expect, the cop wasn't all that interested in light bulbs in the first place. But to rummage through a car requires either the occupants' consent or probable cause that contraband or other evidence of a crime may be present. After issuing a written warning about the malfunctioning brake light the officer asked if he could search for drugs and such. Vasquez didn't object and Heien, the vehicle's owner, grunted his assent.

A full forty minutes later the good officer had his prize: a baggie of crack cocaine. He promptly arrested the pair for transporting drugs. What officer Darisse didn't know then – but certainly knows now – was that the North Carolina vehicle code requires only a single functioning brake light.

That oopsie set off a fascinating legal drama. In *Heien v. North Carolina* (no. 13-604, cert. granted 4/21/14) Heien argues that his conviction – so far every court, including the North Carolina supreme court, has ruled against him – goes against common sense. After all, if citizens are expected to know the law, shouldn't the cops? (Vasquez pled guilty and isn't a party to the appeal.)

In the law, though, logic isn't necessarily dispositive. Heien's petition for certiorari points out that State and Federal appeals court have come down on both sides of the issue. Some have ruled that stops based on the mistaken belief that a certain traffic law exists violate the Fourth Amendment, thus poison the fruit of the tree. Others have allowed evidence gained through such stops, holding that an officer's "objectively reasonable" belief is enough.

As to the last point, North Carolina heartily agrees. It argues that mistakes of law and of fact should be evaluated by the same standard – their objective reasonableness. Officers supposedly need "leeway" to be effective, and holding them to a higher bar for mistakes of law would be impractical. It's also unnecessary, as there are few cases in which such errors could be excused.

At the heart of the dispute lies the “good faith exception” to the exclusionary rule. Heien argues that when a stop is predicated on a non-existing traffic law the exception does not apply – everything must be suppressed. North Carolina disagrees; in its view, an objectively reasonable mistake of law is not the kind of outrageous police conduct that the Fourth Amendment was intended to prevent.

Dennys Rodriguez and Scott Pollman were tooling along a Nebraska highway when police officer Struble observed their vehicle drift across the line demarcating the shoulder. Officer Struble initiated a traffic stop. He then asked Rodriguez, the driver, to accompany him to his police car, where a drug-sniffing dog awaited. Whether Rodriguez realized what was up we don’t know. He asked if he had to leave his vehicle, and when told “no” he stayed put. That and Pollman’s evasive demeanor aroused the cop’s suspicions.

After issuing a warning ticket the officer told the pair to stick around and radioed for backup. Help arrived in six or seven minutes. Officer Struble then walked the pooch around the car. It alerted, and a search turned up a “large bag” of meth.

Rodriguez and Pollman were convicted on Federal drug charges. On appeal, they claimed that once the officer issued the warning they should have been let go, and that their detention, if only for seven minutes, violated their Fourth Amendment rights. Their pleas were rejected by the Eight Circuit, which had itself allowed “de minimis” extensions for drug sniffing in prior cases.

In their appeal to the Supreme Court (*Rodriguez v. U.S.*, no. 13-9972, cert. granted 10/2/14) Rodriguez and Pollman cite a number of state and Federal court decisions which hold that once legitimate police business has been concluded, even the briefest detention is Constitutionally impermissible. “Liberty is compromised not because of the traffic violation that permitted the stop in the first instance but because of the officer’s own curiosity or hunch. When that is the case, the length of detention is irrelevant.”

With lower court decisions in their cases stacked against them, the petitioners seem to be at a serious disadvantage. Rodriguez and Pollman were legally stopped and only briefly detained. Had the officer delayed writing the warning until backup arrived, which under the circumstances (it was midnight) seems prudent, what would be left of their claim?

On the other hand, Heien’s argument has promise. His stop was inherently unlawful. One wonders about the message that making a “good faith” exception in such cases would convey. That an officer’s well-crafted “reason” can matter more than the law?

Your blogger isn’t normally fond of gambling, but he predicts that the Supremes will reverse *Heien* and affirm *Rodriguez/Pollman*. Stay tuned!