IN THE COURT OF APPEALS OF IOWA

No. 3-469 / 12-1334
Filed July 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JESSE LEGORE,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Timothy T. Jarman, District Associate Judge.

Jesse Legore appeals from his conviction for operating while intoxicated, second offense. **REVERSED AND REMANDED.**

Zachary S. Hindman of Bikakis, Mayne, Arneson, Hindman & Hisey, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Patrick Jennings, County Attorney, and Athena Ladeas, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

Jesse Legore appeals from his conviction for operating while intoxicated, second offense. He argues the district court erred in denying his motion to suppress, because the officer's cause to initiate the stop was based on a mistake of law. We reverse and remand finding the district court improperly denied the motion to suppress because the officer's mistake was one of law.

I. Facts and Proceedings.

On May 29, 2011, Legore was driving eastbound on a street. A police officer was driving westbound on the same street. The officer observed a sign posting the speed limit in the west-bound lane at twenty-five miles per hour. No speed was posted in the eastbound lane. The officer ran a speed check on Legore's vehicle and found it was moving at a rate of thirty-four miles per hour. The officer stopped Legore for exceeding the speed limit. The officer smelled alcohol on Legore and arrested him, ultimately finding his blood alcohol content was .09. Legore was charged with operating while intoxicated, second offense.

Legore filed a motion to suppress, arguing the stop of his vehicle by the officer was based on the officer's mistake of law (that the speed limit was twenty-five miles per hour), and therefore the stop was illegal. The court denied the motion, concluding "if the speed limit applicable to the defendant's vehicle in this case was not twenty-five miles per hour as thought by the officer making the traffic stop, the mistake is one of fact, not of law." Legore filed a motion to reconsider, based on evidence that the applicable speed for the eastbound lane was forty-five miles per hour as the area was a "suburban district" as defined by Iowa Code section 321.1(79) (2011). The State resisted, and the district court

found "it is very likely that the applicable speed limit for eastbound traffic such as the defendant's vehicle was forty-five miles per hour even though westbound traffic on the same section of the street is limited to twenty-five miles per hour because of a sign." However, the court confirmed its earlier decision, finding the officer's mistake was one of fact, and that it was reasonable.

Legore submitted a written waiver of jury trial and stipulated to trial on the minutes. He was convicted of operating while intoxicated, second offense. He appeals from these proceedings.

II. Analysis.

Legore argues the district court improperly denied his motion to suppress. We review this argument de novo. *State v*. *Louwrens*, 792 N.W.2d 649, 651 (Iowa 2010).

> Our precedent is clear that a mistake of fact may justify a traffic stop. . . . However, we have elected not to extend this permissiveness to mistakes of law, holding a mistake of law is not sufficient to justify a stop. "[E]vidence derived from a stop based on a law enforcement officer's mistake of law must be suppressed."

State v. *Tyler*, 830 N.W.2d 288, 294 (Iowa 2013) (quoting *Louwrens*, 792 N.W.2d at 650). Legore argues the district court improperly found the mistake was one of fact, not law; the State agrees the officer's mistake was one of law. *See id.* at 295 (finding in its analysis of whether a mistake of law occurred that "none of the reasons advanced by the State support a finding that Tyler's plates violated Iowa law").

In *Louwrens*, our supreme court noted the determination of whether a mistake is one of fact or law can occasionally be difficult:

> In fact, the State argues that this case could easily be characterized as a mistake of fact rather than a mistake of law. "[I]t could be argued the officers made a mistake of fact about whether there were signs prohibiting U-turns on Central Avenue." While we do not doubt there may be cases in which the distinction between mistake of fact and mistake of law will be difficult to distinguish, we are confident in the majority of cases the type of mistake can be easily identified with the officer's frank testimony as to what he or she thought the law was and what facts led him or her to believe the law was being violated.

792 N.W.2d at 654. The officer in this case testified he "was not aware whether there was [a speed limit sign posted in Legore's lane] or not." Instead, he testified he thought the same speed limit applied to both lanes.

In *Louwrens*, police officers stopped a vehicle for making a U-turn pursuant to a local ordinance prohibiting U-turns on a particular road. *Id.* at 650. The officers arrested Louwrens after suspecting she was intoxicated. *Id.* However, there was no sign posted prohibiting the U-turn. *Id.* The local ordinance was contrary to a state law, which required a sign to be posted when a U-turn is prohibited. *Id.* The officers testified that they knew there was no sign, but that they thought a U-turn was prohibited nevertheless. *Id.* The parties stipulated that no signs were posted in the area, and the State conceded that enforcement of the ordinance was doubtful given the lack of posted signs. The district court suppressed the evidence obtained from the traffic stop, concluding the "officers' mistake of law could not provide probable cause for the traffic stop." *Id.* at 651. Our supreme court agreed, concluding probable cause for a stop cannot be based on mistake of law, although it can be based on an objectively reasonable mistake of fact. *Id.* at 650.

The court reaffirmed this decision in *Tyler*, where an officer stopped a vehicle based on the belief that Iowa Code section 321.37(3) prohibited tinted license plate covers, when in fact no such prohibition existed. 830 N.W.2d at 294. The court noted this mistake was one of law "and as such, would not allow the State to meet its burden of proof in establishing probable cause to stop [the defendant's] vehicle." *Id.*

Similarly, the parties agree on appeal that the officer made a mistake of law in stopping Legore for speeding, because the city ordinance dictated the applicable speed for his lane was forty-five miles per hour. We agree with both parties that the district court erred in ruling that the mistake was factual. The officer was mistaken as to the applicable law governing vehicle speed for the east-bound lane. *See id.*; *Louwrens*, 649 N.W.2d at 652.[1] "Consequently, we conclude that a mistake of law occurred. Unless the State can demonstrate alternate justification for the stop, any evidence derived from the stop must be suppressed." *Tyler*, 830 N.W.2d at 294. The State offers no such alternate justification on appeal. We therefore reverse the district court and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

[1] The State argues we should revisit *Louwrens* and apply the test used by the Eighth Circuit when evaluating mistakes of law, which does not distinguish between mistakes of law and fact for purposes of the Fourth Amendment. 792 N.W.2d at 652. The *Louwrens* law/fact distinction was once again upheld by our court recently in *Tyler*. 830 N.W.2d at 294. We are bound by our precedent.