IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, Appellant, vs. JAMES LEONARD MARTINEZ, Appellee.	)))))))))	NOT FOR PUBLICATION No. S-2015-446

SUMMARY OPINION

SMITH, PRESIDING JUDGE:

James Leonard Martinez was charged in the District Court of Comanche County, Case No. CF-2014-412, with Count I, Unlawful Possession of Controlled Drug with Intent to distribute in violation of 63 O.S.2011, § 2-401(B)(2); Count II, Unlawful Possession of Drug Paraphernalia in violation of 63 O.S.2011, § 2-405; and Count III, Operating Without Mud Flaps in violation of 47 O.S.2011, § 12-405. On May 4, 2015, the Honorable Gerald F. Neuwirth sustained Appellee's Motion to Suppress Evidence and Motion to Quash, Demur, Suppress Evidence and Dismiss.[1] The State appeals the ruling. We exercise jurisdiction under 22 O.S.2011, § 1053(1), (4).

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

> I. Did the trial court act contrary to and without authority of law when he granted Martinez' Motion to Quash, Demur, Suppress and Dismiss based on his opinion that there was no violation of 47 O.S. § 12-405.3 thus any subsequent seizure and stop was a violation of Martinez' Fourth Amendment right?

[1] Inexplicably, although the case was dismissed, and no stay was entered, Martinez was still on $10,000 bond in this case. This mistake lends urgency to resolution of the appeal.

II. Did the trial court act contrary to and without authority of law by determining that there was not a violation of 47 O.S. § 12-405.3, and not whether the officer had a reasonable suspicion of a violation of 47 O.S. § 12-405.3, as set forth in *McCaughey v. State*?

After thorough consideration of the propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm the District Court's ruling.

Review of a ruling on a motion to suppress is a mixed question of law and fact; we accept the district court's factual determinations supported by evidence and review the determination of reasonableness under the Fourth Amendment *de novo*. *State v. Zungali*, 2015 OK CR 8, ¶ 4, 348 P.3d 704, 705. Both the State's propositions depend on interpretation of a single statute, 47 O.S.2011, § 12-405.3:

> All vehicles or combination of vehicles operating on the highways, except animal-drawn vehicles, not equipped with fenders over the rearmost wheels shall have attached thereto a rubber or fabric apron directly behind the rearmost wheels, and hanging perpendicular from the body of the vehicle. The apron shall be of such a size as to prevent the bulk of the water or any other substance picked up from the roadway from being thrown from the rear wheels of the vehicle or combination of vehicles at tangents exceeding twenty-two and one half (22 1/2) degrees measured from the road surface. The provisions of this subsection shall not apply to a farm tractor moving over the state highway system at a speed less than twenty (20) miles per hour.

When interpreting a statute, we begin with its plain language. We construe words in their ordinary sense, unless "a contrary intention plainly appears." *State v. Tran*, 2007 OK CR 39, ¶ 10, 172 P.3d 199, 200-01. Using strict construction, we will not "enlarge a statute beyond the fair meaning of its language" in order to justify a prosecution. *Leftwich v. State*, 2015 OK CR 5, ¶ 15, 350 P.3d 149, 155. The record shows that Officer Porter routinely stopped vehicles that had fenders, but no

mud flaps, if he could see any portion of tire showing beyond the fenders. As the trial court found here, the plain language of the statute says that mud flaps are required on vehicles *not equipped with fenders*. The trial court stated, "[I]t says all vehicles or combination of vehicles operating on the highway not equipped with fenders, period. It doesn't say not equipped with fenders that don't cover the wheels totally. . . . [This officer has] committed this mistake or whatever you want to call it, over and over again." The facts and the law both support the trial court's decision. The State admits Martinez' car had fenders. For that reason, the statute did not apply to it. Porter should not have stopped the car for having no mud flaps, because it had fenders.

The State also argues that, if the law did not apply to Martinez, this Court should still find that the stop was good, because Porter had a reasonable but mistaken belief that a traffic law had been violated when he stopped Martinez. *McGaughey v. State*, 2001 OK CR 33, ¶ 23, 37 P.3d 130, 136. The State misunderstands *McGaughey*. There, an officer pulled over a truck because he thought the taillights were not working; before finishing the traffic stop the officer realized he was mistaken and the taillights were working. The officer in *McGaughey* made a mistake of fact; the stop was objectively justified because the officer understood the traffic law at issue and initially, though wrongly, believed McGaughey had violated that law. *Id.* at ¶ 26, 37 P.3d at 137. By contrast, Porter did not understand the traffic law at issue, and unreasonably applied it to Martinez.

The State relies on a Tenth Circuit case discussing a Utah mud flap statute. *United States v. Tibbetts*, 396 F.3d 1132 (10th Cir. 2005). There, an officer noticed a

vehicle's tires appeared to be wider than the factory mudguards. The Tenth Circuit concluded that the officer might have made a mistake of fact, which would support a conclusion that he had reasonable suspicion for the stop; the case was remanded for this factual determination. *Id.* at 1138-39. The State's reliance is misplaced, because the underlying language in Utah's statute differs significantly from the Oklahoma mud flap statute at issue here. Like Oklahoma's statute, the Utah law exempts vehicles with fenders; however, Utah's specific statutory language arguably includes altered or modified vehicles whose wheels extend beyond the fenders so far that they may throw dirt or debris on other vehicles. U.C.A. 2005 § 41-6a-1633. Oklahoma's law does not include this language. Contrary to the State's argument, this analogy fails on the difference in the underlying law.

Porter made a mistake of law, not of fact. Oklahoma's mud flap statute did not apply to Martinez' car. "[F]ailure to understand the law by the very person charged with enforcing it is *not* objectively reasonable." *Tibbetts*, 396 F.3d at 1138. The State argues that Porter's mistake of law was reasonable, and thus should provide reasonable suspicion for the stop, relying on *Heien v. North Carolina*, 135 S.Ct. 530, 535, 190 L.Ed.2d 475 (2014). There, an officer thought two working brakes lights were necessary, but state law required only one working brake light. The Court held that a mistake of law and a mistake of fact should both be reviewed using the reasonableness standard, because "the result is the same: the facts are outside the scope of the law." *Id.* at 536. *Id.* at 536. The Court found that the mistake of law was reasonable, partly in light of the somewhat archaic statutory language discussing "stop lamps", "rear lamps" and "other rear lamps" on vehicles;

because the statute looked as if it required two working brake lights, the officer's mistake was reasonable. *Id.* at 540. Again, the analogy fails on the specifics of statutory language. Oklahoma's statute, above, is clear and unambiguous – if a vehicle has fenders, the mud flap requirement does not apply. 47 O.S.2011, § 12-405.3. Porter's mistake of law was not objectively reasonable, and cannot justify a reasonable suspicion for the stop.

The trial court did not abuse its discretion in its factual findings, which were uncontested. Furthermore, the law and evidence support the trial court's conclusion that § 12-405.3 did not apply to Martinez, the stop was not justified, the evidence should be suppressed, and the case dismissed. The trial court's decision sustaining Martinez' Motion to Suppress Evidence and Motion to Quash, Demur, Suppress Evidence and Dismiss is affirmed.

DECISION

The ruling of the District Court of Comanche County is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY
THE HONORABLE GERALD F. NEUWIRTH, DISTRICT JUDGE

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NO RESPONSE

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