IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

STATE OF OHIO	)	**CASE NO. 18CR000544**
	)	
Plaintiff	)	**JUDGE EUGENE A. LUCCI**
	)	
vs.	)	**ORDER GRANTING MOTION TO SUPPRESS EVIDENCE**
	)	
RICHARD J. LIDDY	)	
	)	
Defendant	)	

INTRODUCTION

{¶1} This matter came before the court on the motion to suppress evidence filed by the defendant on February 26, 2019. The court previously reconsidered its summary denial of the motion to suppress as being filed without leave of court and out-of-rule, and permitted the filing of the motion after conducting a hearing on that issue on February 13, 2019. The state filed its brief in opposition to the motion to suppress on February 28, 2019. The court conducted a hearing on April 3, 2019. The court heard from one witness, Ohio State Highway Patrol Trooper Scott Schweinfurth. The court admitted State's Exhibit 1 (the cruiser's dash camera recording) and Joint Exhibit 1 (the vendor specification sheet for an aftermarket light bar), without opposition.

{¶2} Defendant Richard J. Liddy was indicted August 21, 2018 on Aggravated Trafficking in Drugs (Methamphetamine), a felony of the second degree, Aggravated Possession of Drugs (Methamphetamine), a felony of the second degree, Having Weapons While Under Disability, a felony of the third degree, and Improperly Handling Firearms in a Motor Vehicle, a felony of the fourth degree, along with forfeiture specifications for contraband and instrumentalities attached to each count.

{¶3} In the motion to suppress and the state's response, the defendant alleges that the arresting officer made a mistake of law, while the prosecutor contends the officer made a mistake of fact.

ISSUE

{¶4} The issue presented is whether the traffic stop of the defendant was based upon reasonable articulable suspicion or probable cause that the defendant was engaged in criminal activity. In deciding this issue, it is important to determine whether an officer's

mistake is one of fact or of law, and if it is a mistake of law, whether that mistake was objectively reasonable.

FACTS

{¶5} On April 25, 2018, at about 5:35 p.m., OSHP Trooper Schweinfurth was on patrol, in full uniform and in a marked cruiser, traveling eastbound in the left-hand lane on State Route 2 at about Richmond Street, in the City of Painesville, Lake County, Ohio, when he noticed a vehicle traveling behind him with its headlights, fog lights, and an aftermarket light bar illuminated on the front of the vehicle. It was still daylight at the time, about a couple of hours before sunset, and road and weather conditions were not inclement or hazardous. The trooper also saw the vehicle slowly drift to the right and then gradually back to the left, but staying entirely within its lane for travel. The trooper noticed that the light bar was mounted low on the front grill of the vehicle and contained 12 individual smaller lights within the enclosure. He stated that the light was shining in his rearview mirror such that he had to adjust the mirror to deflect the glare. The trooper pulled into the median at the next turnaround to let the vehicle that was following him pass by him so he could stop it. Trooper Schweinfurth noticed, as the vehicle passed by, that the driver was not wearing his seat belt. The officer intended to stop the vehicle and warn the driver for the lights violation and cite him for the seat belt violation; the officer did not and would not have taken any action or stop the vehicle because of the slight drift right and left within the lane.

{¶6} The trooper considered the vehicle to be in violation of R.C. 4513.17 because it had two headlamps, plus two fog lamps, plus 12 aftermarket lamps, for a total of 16 lighted lights on the front of the vehicle.

{¶7} The trooper stopped the vehicle which was driven by Defendant Richard J. Liddy, and occupied by a male passenger. The officer approached from the passenger side, where the window was already rolled down. They discussed the light. Mr. Liddy apologized and turned it off. Mr. Liddy did not have identification. The officer could smell the odor of raw marijuana. The officer had the occupants step out of the vehicle while he searched it and found the contraband and firearm. The officer arrested the defendant for the drug and firearm violations and cited the defendant for the light violation, seat belt violation, and an OVI suspension violation.

{¶8} Trooper Schweinfurth was trained in the state highway patrol academy, which emphasized traffic and vehicle equipment laws, and enforcement, as a primary focus for the state highway patrol. The officer was not equipped with any light meter, and the officer conducted no measurement of candle power or distance (distance was not measureable during daylight), but the officer believed that the light configuration was a violation of state law in terms of candle power and that the strike distance of the light beam was illegal.

{¶9} The trooper testified that he believed a normal headlight to be about 55 candle power and that this light bar was two to three times more powerful than a headlight. The parties stipulated that the aftermarket light bar was 180 candle power.

{¶10} The case came before the Painesville Municipal Court, where a preliminary hearing was waived, and all of the charges, both felonies and traffic, were bound over to the grand jury. The grand jury did not include any traffic offenses in the indictment.

LAW

Searches and seizures

{¶11} Warrantless searches and seizures are per se unreasonable unless they fall into one of a few recognized exceptions. *State v. Gonsior,* 117 Ohio App.3d 481, 486, 690 N.E.2d 1293 (2nd Dist.1996). The state has the burden of proving that an exception exists by a preponderance of the evidence. *State v. Botkin,* 2nd Dist. No. 15843, 1997 WL 165681 (Mar. 21, 1997).

{¶12} "A 'search' occurs when a subjective expectation of privacy that society is prepared to consider reasonable is infringed." The reasonableness of the expectation of privacy depends on "a location's connection to concepts of intimacy, personal autonomy, and privacy." *State v. Finnell,* 115 Ohio App.3d 583, 588, 685 N.E.2d 1267 (1st Dist.1996). "A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interest in that property." *United States v. Jacobsen,* 466 U.S. 109, 113, 104 S.Ct. 1652 (1983). A person is seized when, in view of all of the circumstances surrounding the incident, a reasonable person would believe that the person was not free to leave. *U.S. v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980); *State v. Cheadle*, 11th Dist. Portage No. 2007-P-0083, 2008-Ohio-2393, 2008WL2079468, ¶31.

Terry stop

{¶13} One recognized exception to the warrant requirement is the investigatory detention, commonly referred to as a *Terry* stop, which permits an officer to stop and briefly detain an individual when the officer has a reasonable suspicion that the person is involved in criminal behavior. *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868 (1968); *State v. Miller,* 117 Ohio App.3d 750, 756, 691 N.E.2d 703 (11th Dist.1997). Reasonable suspicion is something more than a hunch, but less than the level of suspicion required for probable cause. *State v. Shepherd,* 122 Ohio App.3d 358, 364, 701 N.E.2d 778 (2nd Dist.1997). The officer must be able to point to specific, articulable facts and the rational inferences from those facts that reasonably warrant the intrusion. *Miller* at 757. This demand for specificity is so important that the United States Supreme Court in *Terry v. Ohio* (1968) called it the "central teaching of this Court's Fourth Amendment Jurisprudence." *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868 (1968), fn. 18. The court must consider the totality of the circumstances "viewed through the eyes of a reasonable and prudent police officer who must react to events as they unfold." *State v. Ratcliff,* 95 Ohio App.3d 199, 204, 642 N.E.2d 31 (5th Dist.1994). Deference must be given to the officer's training and experience. *Miller* at 757. An investigative detention must last no longer than necessary to effectuate the purpose of the stop and the scope of the detention must be narrowly tailored to its underlying justification. *Florida v. Royer,* 460 U.S. 491, 500, 103 S.Ct. 1319 (1983). Further, the investigation must be conducted by the least intrusive means possible to verify or dispel the officer's suspicion in a short period of time. *State v. Raine*, 8th Dist. Cuyahoga No. 90681, 2008-Ohio-5993, 2008WL4949851, ¶18; *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). "If the detention exceeds the bounds of an investigatory stop, it may be tantamount to an arrest." *Raine* at ¶18. A police stop exceeding the time needed to handle the matter for which a stop is made violates the Fourth Amendment's proscription of unreasonable seizures. *Rodriguez v. United States*, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015).

Traffic stop

{¶14} The reasonableness of a traffic stop involves a two-part inquiry: first, whether the initial seizure was justified and, second, whether subsequent police conduct "was reasonably related in scope to the circumstances that justified" the initial interference. See *Terry v. Ohio,* 392 U.S. 1, 19-20, 88 S.Ct. 1868 (1968); *United States v. Sharpe*, 470

U.S. 675, 682, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985). The mission of a traffic stop includes "determining whether to issue a traffic ticket" and the ordinary inquiries incident to the stop. *Rodriguez v. United States*, 135 S.Ct. 1609, 1615, 191 L.Ed.2d 492 (2015). As long as the initial stop was lawful, requesting identification is a permissible part of the dual mission of every traffic stop. *Id.* The ordinary inquiries portion of the traffic stop's mission includes "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.*

Number of Lights Permitted

{¶15} Revised Code Section 4513.17, entitled "Number of lights permitted; limitations on red and flashing lights," states, in pertinent part:

> (A) Whenever a motor vehicle equipped with headlights also is equipped with any auxiliary lights or spotlight or any other light on the front thereof projecting a beam of an intensity greater than three hundred candle power, not more than a total of five of any such lights on the front of a vehicle shall be lighted at any one time when the vehicle is upon a highway.
>
> (B) Any lighted light or illuminating device upon a motor vehicle, other than headlights, spotlights, signal lights, or auxiliary driving lights, that projects a beam of light of an intensity greater than three hundred candle power, shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle. (Emphasis added).

Seat Belt Required

{¶16} Revised Code Section 4513.263, entitled "Seat belt requirements; exceptions; fines," states, in pertinent part:

> (B) No person shall do any of the following: (1) Operate an automobile on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device . . ..
>
> (D) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (B) of this section has

been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

Officer's Mistake of Law

{¶17} In *State v. Greer*, 114 Ohio App.3d 299, 303, 683 N.E.2d 82, 85 (2nd Dist.1996), the court grappled with an officer's mistake of law:

> The case before us involves a police officer's mistake of law, rather than a mistake of fact. Courts must be cautious in overlooking police officers' mistakes of law, for the reasons set forth in *People v. Teresinski* (1980), 26 Cal.3d 457, at 462–464, 162 Cal.Rptr. 44, at 47, 605 P.2d 874, at 876–877:
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> "If we were to find Officer Rocha's mistake of law [that the observed conduct violated a loitering ordinance] reasonable under these circumstances, we would provide a strong incentive to police officers to remain ignorant of the language of the laws that they enforce and of the teachings of judicial decisions whose principal function frequently is to construe such laws and to chart the proper limits of police conduct."
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> Even that court hinted that the result might be different under exceptional circumstances:
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> "We need not decide, however, whether under exceptional circumstances an officer's reasonable mistake of law might validate police conduct because in this case the officer's mistake cannot be found reasonable." *Id.*
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> Similarly, in *People v. Molenda* (1979), 71 Ill.App.3d 908, 28 Ill.Dec. 393, 394, 390 N.E.2d 560, 561, an Illinois court, in holding that an officer's mistake of law invalidated a stop, opined:
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> "We might be of a different view if the statute was ambiguous, or required judicial construction to determine its scope or meaning."

{¶18} The court went on to state:

The exclusionary rule for evidence obtained as a result of unlawful searches and seizures is of purely federal construction. Ohio has no independent exclusionary rule for evidence obtained as a result of an unlawful search and seizure. *State v. Mapp* (1960), 170 Ohio St. 427, 11 O.O.2d 169, 166 N.E.2d 387, reversed on other grounds *sub nom. Mapp v. Ohio* (1961), 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081. As a creation of federal jurisprudence, the exclusionary rule is subject to some exceptions. Among these is the good-faith exception set forth in *United States v. Leon* (1984), 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677. In that case, the court referred to the competing interests of presenting probative, reliable evidence in criminal cases versus avoiding unreasonable searches and seizures. The court made the following observation:

"An objectionable collateral consequence of this interference with the criminal justice system's truth-finding function is that some guilty defendants may go free or receive reduced sentences as a result of favorable plea bargains. *Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor,* the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system. Indiscriminate application of the exclusionary rule, therefore, may well 'generat[e] disrespect for the law and administration of justice.' " (Emphasis added; citations omitted.) *Id.* at 907–908, 104 S.Ct. at 3412, 82 L.Ed.2d at 688–689. . . .

In our view, the proper balance of the competing interests referred to in *Leon, supra,* permits the use of evidence in a small range of cases in which the evidence has been obtained as the result of an investigative stop that is based upon a police officer's mistaken, but reasonable, belief that the conduct that the officer has observed is in violation of the law. This exception to the exclusionary rule must be narrowly tailored in order to avoid giving police officers the incentive to construe statutes and ordinances broadly for the purpose of finding a violation upon which to predicate an investigative stop. The police officer must be held to *305 a higher standard

of knowledge of the law than would be appropriate for an ordinary citizen, since it is the police officer's special function to apply and to enforce laws. The police officer's mistake of law must be objectively reasonable.

State v. Greer, 114 Ohio App.3d 299, 304–05, 683 N.E.2d 82, 86 (2nd Dist.1996).

{¶19} In *City of Willoughby v. Vilk*, 11th Dist. Lake No. 96-L-141, 1997 WL 663402, the Eleventh District also tackled the issue of an officer's mistake of law.

Viewing the facts of this case against the objective *Terry* standard, the officer's stated reason for stopping appellant's vehicle was not sufficient to support a valid investigative stop. He did not have a reasonable basis for concluding that a violation had occurred, or was occurring, since the display of a county sticker underneath a temporary placard is not prohibited. Even if Stewart's suspicion was correct, *i.e.,* that a second plate was underneath the temporary tag, there was nothing to indicate that any traffic violation was in progress simply based on the appellant's haphazard, overlapping display. Further, because Stewart could not actually see the numbers on the underlying plate, there were no specific articulable facts to form a reasonable basis for the suspicion that the underlying metal plate might have been stolen. This was merely a hunch, and, as such, did not constitute a sufficient basis to initiate an investigative stop.

We hold that once the police officer confirmed the registration of the temporary tag to appellant, and without any other facts besides the presence of "Lake" below the temporary tag, any further investigation on Stewart's part was unwarranted. Even though the positioning of the plates was admittedly unusual, the overlapping placement did not rise to the crest of a violation that necessitated further inquiry. Therefore, the investigative stop was not based on a reasonable suspicion, and was invalid. Consequently, Stewart's continued detention of appellant was also improper. *State v. Vanderhoff* (1995), 106 Ohio App.3d 21, 665 N.E.2d 235. Accordingly, the trial court erroneously overruled appellant's motion to suppress all evidence and statements.

{¶20} In *State v. Fears*, 8th Dist. Cuyahoga No. 94997, 2011-Ohio-930, at ¶ 13:

> The state concedes that the arresting officers made a mistake of law by concluding that Fears violated Cleveland Codified Ordinances 431.14. Whether they did so in good faith is immaterial. We therefore conclude that the officers' mistake of law regarding Fears's use of a turn signal without turning meant that the officers lacked a reasonable, articulable suspicion for the stop. It follows that the court erred by denying Fears's motion to suppress evidence.

{¶21} In *Heien v. North Carolina*, 135 S.Ct. 530, 540, 190 L.Ed.2d 475 (2014), the U.S. Supreme Court weighed in on an officer's mistake of law.

> Finally, Heien and *amici* point to the well-known maxim, "Ignorance of the law is no excuse," and contend that it is fundamentally unfair to let police officers get away with mistakes of law when the citizenry is accorded no such leeway. Though this argument has a certain rhetorical appeal, it misconceives the implication of the maxim. The true symmetry is this: Just as an individual generally cannot escape criminal liability based on a mistaken understanding of the law, so too the government cannot impose criminal liability based on a mistaken understanding of the law. If the law required two working brake lights, Heien could not escape a ticket by claiming he reasonably thought he needed only one; if the law required only one, Sergeant Darisse could not issue a valid ticket by claiming he reasonably thought drivers needed two. But just because mistakes of law cannot justify either the imposition or the avoidance of criminal liability, it does not follow that they cannot justify an investigatory stop. And Heien is not appealing a brake-light ticket; he is appealing a cocaine-trafficking conviction as to which there is no asserted mistake of fact or law.

III

Here we have little difficulty concluding that the officer's error of law was reasonable. Although the North Carolina statute at issue refers to "*a* stop lamp," suggesting the need for only a single working brake light, it also provides that "[t]he stop lamp may be incorporated into a unit with one or more *other* rear lamps." N.C. Gen.Stat. Ann. § 20–129(g) (emphasis

added). The use of "other" suggests to the everyday reader of English that a "stop lamp" is a type of "rear lamp." And another subsection of the same provision requires that vehicles "have all originally equipped rear lamps or the equivalent in good working order," § 20–129(d), arguably indicating that if a vehicle has multiple "stop lamp[s]," all must be functional.

The North Carolina Court of Appeals concluded that the "rear lamps" discussed in subsection (d) do not include brake lights, but, given the "other," it would at least have been reasonable to think they did. Both the majority and the dissent in the North Carolina Supreme Court so concluded, and we agree. See 366 N.C., at 282–283, 737 S.E.2d, at 358–359; *id.,* at 283, 737 S.E.2d, at 359 (Hudson, J., dissenting) (calling the Court of Appeals' decision "surprising"). This "stop lamp" provision, moreover, had never been previously construed by North Carolina's appellate courts. See *id.,* at 283, 737 S.E.2d, at 359 (majority opinion). It was thus objectively reasonable for an officer in Sergeant Darisse's position to think that Heien's faulty right brake light was a violation of North Carolina law. And because the mistake of law was reasonable, there was reasonable suspicion justifying the stop.

FINDINGS AND CONCLUSIONS

{¶22} Trooper Schweinfurth was not trained specifically in the investigation and enforcement of the statute pertaining to the number of lighted lights, R.C. 4513.17(A) or (B). The trooper was not issued, and does not have available to him, any light measuring equipment or means of measuring beam strike distance during daylight hours. The citation originally written by the trooper for the number of lighted lights or the projected beam could never be proven beyond a reasonable doubt, according to the officer's own testimony, based on the officer's observations or any evidence that the officer could muster at the time.

{¶23} Most lights nowadays are rated in terms of lumens, but the statute refers to the antiquated term, "candle power." The parties stipulated that the court can apply a conversion factor from lumens to candle power. "Lumens" is a measure of how much light a lamp produces in all directions. "Candle power" is the intensity of light at the center of a spotlight beam when measured in one direction. Thus, strictly speaking, one cannot

directly convert lumens to candle power. However, if a lamp or flashlight is rated by a manufacturer in terms of candle power, it actually means "mean spherical candle power." Lumens can be converted to mean spherical candle power so that a lamp rated in lumens can be compared with a lamp rated in mean spherical candle power. The conversion factor of 12.57 is actually four times pi. Accordingly, one would divide the lumens rating by 12.57. For example, if a lamp is rated at 12.57 lumens, it has an output of one candle power. If the lamp is rated to 25.14 lumens, it has an output of two candle power.

{¶24} R.C. 4513.17(A) restricts only the number of lights on the front of a vehicle that project a beam of more than 300 candle power; it says nothing in restriction of any number of lights of intensity of 300 candle power or less. Trooper Schweinfurth admitted that a vehicle can legally have, for instance, 50 lights lighted on the front of a vehicle provided that not more than five of them project a beam greater than 300 candle power. Therefore, the only lights on the front of a vehicle that can be counted toward the limit of five lights are the lights that project a beam greater than 300 candle power (3,771 lumens).

{¶25} The trooper testified that a normal headlamp projects a beam of about 55 candle power (700 lumens), and the parties stipulated that the aftermarket light bar had a combined candle power of 180 (2,262 lumens), which means each of the 12 individual lamps projected a beam of only 15 candle power (188 lumens).

{¶26} For the light array on the defendant's vehicle to be in violation of the law, each of the headlamps, each of the fog lamps, and each (or at least two) of the individual lights contained within the aftermarket light bar had to project a beam of intensity greater than 300 candle power. None of these even approached that level of intensity. And the officer would have no way of knowing it if any one or more of them did. The officer knew that the headlamps and fog lamps did not project a beam greater than, or anywhere near, 300 candle power, so that those lights did not count towards the five light maximum. Therefore, the vehicle could only be in violation of R.C. 4513.17(A) if the individual lamps in the light bar exceeded 300 candle power. If each of the individual lamps within the light bar were considered to project a beam of intensity greater than 300 candle power, that would be a total of 3,600 candle power, which would make that light bar project a beam 65 times the intensity of a headlamp.

{¶27} The trooper testified that the aftermarket light bar, in toto, projected a beam of intensity of only about two to three times that of a head lamp. This is consistent with the

evidence: a headlamp is 55 candle power and the light bar is 180 candle power. What is not objectively reasonable is that the light bar projected a beam 65 times more intense than a headlamp. And, even if it did, that is only one lighted light, and the defendant would be permitted four more lights of similar intensity, or at least of an intensity greater than 300 candle power.

{¶28} The trooper cannot point to specific, articulable facts and the rational inferences from those facts that reasonably warrant the intrusion of the stop of the defendant. Any investigative detention related to R.C.4513.17(A) and (B) would be futile, as the officer possessed no expertise or equipment by which to measure the light intensity or the beam projection during the daylight hours. There simply is nothing by or with which to investigate anything pertaining to the lights, its intensity, and its projected beam. Assuming arguendo, that the aftermarket light bar projected a beam of intensity greater than 300 candle power, it is only one light – the vehicle could have four more of such intensity. However, the beam of light projected was only 180 candle power and was, therefore, not limited to a distance of 75 feet within which it must strike the roadway. The law does not permit a stop of a vehicle to give a warning regarding something that is not a violation of law.

{¶29} The trooper testified that seat belt violations are, and have been since the inception of that legal requirement, secondary violations, meaning that a stop of a vehicle must be premised on some other violation of law, and only then, if the evidence supports it, may a citation be issued for a person in the front seat not wearing a seat belt. Accordingly, the seat belt violation could not have formed a basis for the traffic stop.

{¶30} The last issue is whether the officer's mistake of law was an objectively reasonable one. The facts in the case before this court are distinguishable from those in *Heien v. North Carolina*. In *Heien*, there was a judicial disagreement on whether a stop lamp was included in the phrase "other rear lamps," that all must be in good working order; that terminology had not been previously construed by the court, and the case at hand in the state court system resulted in a dissenting opinion on its meaning.

{¶31} In the case before this court, the law may use antiquated terms, but the law is clear and unambiguous and needs no judicial construction to determine its scope or meaning: the only lights that count towards a violation are the ones projecting a beam of an intensity greater than 300 candle power, and the defendant's car had none, let alone more than five. It would not be reasonable to call it a question or mistake of fact to consider each of

the 12 smaller lights within the light bar as separate, countable lights, because to do so, the officer would have to believe that each of the smaller lights within the light bar exceeded 300 candle power, which would make the light bar 65 times the intensity of a headlamp; the officer testified the light bar was only two to three times more intense. Further, a light beam of not greater than 300 candle power may strike or not strike the road at 75 feet or any distance. Simply stated, there was no violation of law possible under these circumstances – and the trooper did not know it.

{¶32} The court finds that the officer's mistake of law was not objectively reasonable.

{¶33} Therefore, the stop of the defendant was not authorized by the Fourth and Fourteenth Amendments to the U.S. Constitution and Sections 10 and 14, Article I, of the Ohio Constitution, and the fruits of the stop must be suppressed.

ORDER

{¶34} The motion to suppress is granted. The police shall retain any contraband, including the drugs, any paraphernalia and instrumentalities, including the firearm, ammunition, and magazine, as the defendant is under disability.

{¶35} IT IS SO ORDERED.

JUDGE EUGENE A. LUCCI

Copies: Paul E. Kaplan, Esq., for the state
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