IN THE BELLEFONTAINE MUNICIPAL COURT
COUNTY OF LOGAN
STATE OF OHIO

State of Ohio	:	**Case No. 14TRD01322**
Plaintiff,	:	**Judge: Beck**
v.	:	**Motion to Suppress Evidence**
David C. Taggart,	:	
Defendant.	:	

DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE

I. Introduction and Factual Background

This matter arises before the Court with regard to a traffic stop. The State of Ohio and the Defendant have stipulated that the facts are as follows:

If juvenile, parents names:

While on patrol I stopped a pick-up truck operated by Taggart. The stop was made due to what I thought was illegal registration. The reg. was in fact correct and I had mis read the plate.

Taggart admitted he has never had a drivers license.

II. Law and Argument

A. The Fourth Amendment

Unreasonable searches and seizures are constitutionally prohibited.[1] For a search or seizure to be reasonable, it must be supported by a warrant or based upon an exception to the warrant requirement.[2] The Ohio Supreme Court has recognized seven exceptions to the warrant requirement: "(a) [a] search incident to a lawful arrest; (b) consent signifying waiver of constitutional rights; (c) the stop-and-frisk doctrine; (d) hot pursuit; (e) probable cause to search, and the presence of exigent circumstances; or (f) the plain-view doctrine,"[3]; or (g) an "administrative search."[4]

Given the facts as stipulated in the police report, this is not a situation where there was a search incident to a lawful arrest. There is nothing in the police report indicating that the Defendant consented to the stop by pulling over voluntarily thus waiving his Constitutional rights. The police report does not indicate that there were any facts showing that it was proper to "stop and frisk" the Defendant. There is no evidence from the stipulated police report that the police were in hot pursuit of the Defendant. There was no probable cause shown for the stop, nor was there any evidence in the police report of exigent circumstances. No evidence was gathered that was in plain view. Lastly, there was no administrative search of the Defendant.

1. Traffic Stop is a Seizure Protected by Fourth Amendment

The Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, rendering them per se unreasonable unless an exception applies.[5] A police stop of a

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[1] Ohio Const. Sec. 14, Art. I; U.S. Const. Amend. IV and XIV; Maryland v. Buie (1990), 494 U.S. 325, 331 [110 S.Ct. 1093, 108 L.Ed.2d 276]; State v. Robinette (1997), 80 Ohio St.3d 234, 238–239 [685 N.E.2d 762].

[2] Katz v. United States (1967), 389 U.S. 347, 357 [88 S.Ct. 507, 19 L.Ed.2d 576]. State v. Adams, 7th Dist. No. 08 MA 246, 2011-Ohio-5361, 2011 WL 4923522, ¶ 34.

[3] State v. Akron Airport Post No. 8975, 19 Ohio St.3d 49, 51, 482 N.E.2d 606 (1985), certiorari denied 474 U.S. 1058, 106 S.Ct. 800, 88 L.Ed.2d 777 (1986)

[4] Stone v. Stow, 64 Ohio St.3d 156, 164, 593 N.E.2d 294, fn. 4 (1992).

[5] Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 10 L.Ed.2d 576 (1967).

motor vehicle is a significant intrusion requiring justification as a "seizure" within the meaning of the Fourth Amendment.[6]

a. Reasonable Suspicion Required for Traffic Stop

The probable cause exception to the warrant requirement has a sub-exception in and of itself, based upon the lower level of intrusion of a traffic stop. Cases have held that the investigative stop exception to the Fourth Amendment warrant requirement permits a police officer to stop an individual provided the officer has the requisite reasonable suspicion based upon specific, articulable facts that a crime has occurred or is imminent.[7]

> In the absence of probable cause to believe that the driver of a vehicle has committed a traffic violation, a law enforcement officer may not stop the vehicle unless the officer observes facts giving rise to a reasonable suspicion of criminal activity, including a traffic violation. See, generally, Terry v. Ohio (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889; State v. Andrews (1991), 57 Ohio St.3d 86, 565 N.E.2d 1271; State v. Venham (1994), 96 Ohio App.3d 649, 654 N.E.2d 831.[8]

In evaluating the propriety of an investigative stop, a reviewing court must examine the totality of the circumstances that provided the foundation for the officer's suspicion to warrant an inquiry.[9]

b. Random Checks Permissible.

A police officer may stop an automobile for investigation where the officer has an articulable and reasonable suspicion that the motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law.[10]

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[6] Delaware v. Prouse, 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).
[7] Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).
[8] State v. McDonald, 2004 -Ohio- 5395.
[9] State v. Bobo, 37 Ohio St.3d 177, 178, 524 N.E.2d 489 (1988).
[10] State v. Chatton, 11 Ohio St.3d 59, 61, 463 N.E.2d 1237 (1984), cert. denied, 469 U.S. 856, 105 S.Ct. 182, 83 L.Ed.2d 116 (1984), citing Delaware v. Prouse, *supra*.

In the instant case, the police officer had no reason to run the Defendant's plates, he simply ran the plates entirely at random. While this random check is permissible under the law since running the plates (before stopping the suspect) is not a seizure, stopping the defendant is a seizure which must be analyzed under the protections of the Fourth Amendment.

2. "Good Faith" Exception Does Not Apply

In this case, the State of Ohio argues that the police officer had a good faith belief (based upon his misreading of the license plate) that reasonable suspicion or probable cause existed that the vehicle had false plates when he stopped the Defendant asked him questions about his driver's license. The "good faith" exception to the warrant requirement comes to us from the United States Supreme Court which in 1984 first recognized this exception.[11] Before that case, no "good faith" reliance upon a facially valid (but defective) warrant for a search or seizure had ever been recognized. But this good faith exception is limited to cases where the police have a defective warrant issued by a neutral magistrate in which they could place their good faith.

The United States District Court for the Southern District of Ohio examined a case wherein the police acted without a warrant and then argued "good faith." In United States v. Boffman, 747 F.Supp. 1251 (1990), Columbus Police responded to an anonymous tip of a man with a gun.[12] When the police arrived at the address in question, they saw three black males exit the structure through the front door, notice the police, and quickly turn around and go back inside.[13] One of the officers went around the back and found the three men quickly exiting the back door.[14] One was stopped but the two others went back into the house.[15] The other officers then entered the house, without a warrant, and from inside the living room, were able to see a

[11] United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984).
[12] Boffman at 1252.
[13] Boffman at 1252.
[14] Boffman at 1252.
[15] Boffman at 1252.

substance that looked like cocaine on the kitchen counter next to a scale.[16] The suspects refused consent to search the house and based upon their observations of the powdery white substance, the police obtained a search warrant from a municipal court judge to search the rest of the premises.[17]

The Court first held that: "In light of the fact that the search in this case was not incident to a valid arrest nor was there consent to the search, this Court is mindful that the warrant requirement of the Fourth Amendment is "subject only to a few specifically established and well-delineated exceptions."[18] "The government's argument cites to United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), as authority for the officers' entrance into the residence. Presumably, by citing Leon, the argument the government is making is that the officers acted in "good faith", therefore, the search was legitimate."[19]

But the Court held that the "good faith" exception only applies when the police are executing a search or seizure pursuant to a warrant:

> Clearly the rationale set forth by the Court is not applicable in the instant matter. Justice White's opinion [in Leon] goes to great extents to declare that the underlying purpose of the exclusionary rule, to deter police misconduct, is not applicable when it is the judiciary that is in error in issuing the warrant and not the officer in executing it. [footnote omitted] Leon is simply misplaced in the instant matter. **The holding in Leon does not modify the exclusionary rule in cases in which the police have acted without a warrant.** 2 Wright, Federal Practice and Procedure § 408 (2nd ed. 1982 & Supp.1990). Therefore, the government's argument that the officers' warrantless search could be legitimized based on Leon's "good-faith" exception is clearly misplaced and fails to save the evidence seized in this case from the exclusionary rule.[20]

In this case, the police also acted without a warrant. As such, the "good faith" exception, created by the United States Supreme Court in Leon, does not apply.

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[16] Boffman at 1252.
[17] Boffman at 1253.
[18] Boffman at 1253 citing Katz, *supra*.
[19] Boffman at 1253.
[20] Boffman at 1254 [emphasis added]..

Though the State of Ohio may argue that the facts in Boffman, *supra*, are distinguishable because they involved a residence wherein the expectation of privacy is greater, this argument must fail for two reasons, first, the Boffman decision makes no reference to the reach of its holding extending only to homes.

But second, the United States District Court for the Eastern District of Michigan addressed the same issue and came to the same conclusion in a case involving a traffic stop. In the case of United States v. Wall, 807 F.Supp. 1271 (1992), the police acted upon an anonymous tip that the defendant was bringing firearms and narcotics to work.[21] They surrounded the car as the defendant opened the trunk, but all that they found when they looked into the trunk was an unloaded rifle legally stored in a case.[22] But when the police searched the rest of the car, they found a handgun illegally stored in a dufflebag, and when the police asked about the handgun, the defendant admitted that it was his.[23] Upon a motion to suppress, the Court held that "The holding in Leon does not modify the exclusionary rule in cases in which the police have acted without a warrant."[24]

It should be noted as well that both the Boffman and Wall cases involved deadly serious fact patterns of firearms and drugs, yet the evidence in both cases was suppressed. The instant case involves allegedly putting the wrong plate on a car.

Most damningly of all however, for the State of Ohio's "good faith" argument is the ruling from Ohio's Ninth District Court of Appeal in State v. Simon (1997), 119 Ohio App.3d 484. In Simon, the Akron police investigated a tip that the defendant had drugs underneath a dartboard under the nightstand in his bedroom. The defendant lived in a multi-unit apartment

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[21] Wall at 1273.
[22] Wall at 1273.
[23] Wall at 1274.
[24] Wall at 1277.

complex. The officers, after looking in a door window, opened a door that they thought led into the building's common area, but it turned out that this led up some stairs and directly into the defendant's living room:

> As [the police officers] proceeded up the stairs, they were met on a landing by defendant. One of the officers asked defendant his name and, after he responded, whether Cuyahoga Falls had a warrant out for his arrest. Defendant admitted that there might be a warrant for his arrest concerning a traffic matter. In response to one officer's request that they find another place to talk, defendant led the officers into the living room of his apartment. When they reached the top of the stairs, the officers discovered that there was no second door. They had already entered defendant's apartment through the door at the bottom of the stairway.[25]

When the police and the defendant arrived in the living room, the police saw marijuana in plain view and arrested the defendant. The defendant moved to suppress the evidence and the state of Ohio argued that "the officers' warrantless entry into defendant's apartment was justified by their good faith, though mistaken, belief that the actual entrance to defendant's apartment was at the top of the stairway.[26] When the trial court suppressed the evidence, the State of Ohio appealed.

The Ninth District Court of Appeals ruled that:

> The state has argued that the trial court incorrectly suppressed the evidence seized from defendant's apartment because the police officers had made a reasonable mistake of fact about the location of the apartment entrance. This court is not persuaded by the state's argument because (1) this situation fails to fall within a recognized exception to the warrant requirement, and (2) the officers' mistaken belief was not reasonable. Simon at 487.

With regard to the first holding, the Court reasoned that:

> At the heart of the "good faith" exception is the fact that the mistake that invalidated the warrant was solely on the part of the judge who issued the warrant. The police officers, on the other hand, merely executed a warrant that they thought was valid. The rationale for not excluding evidence seized in such a situation focuses on the inability of the exclusionary rule to fulfill its purpose of deterring police negligence and misconduct. State v. Ackison (1993), 66 Ohio

[25] Simon at 486.
[26] Simon at 486-487.

> St.3d 1209, 1212, 607 N.E.2d 1071, 1072–1073. Because it was the judge, not the police officers, who made the mistake that invalidated the warrant, exclusion of the evidence would do nothing to deter future police misconduct. Massachusetts v. Sheppard (1984), 468 U.S. 981, 990, 104 S.Ct. 3424, 3428–3429, 82 L.Ed.2d 737, 745.[27]

In the instant case, there is no warrant. Thus the good faith exception to the exclusionary rule does not apply.

Further, with regard to the Simon Court's second holding, even if this Court were inclined to blaze a new jurisprudential trail and find that the "good faith" exception applied without regard to whether or not there was a search warrant, the actions of the police officer must still be reasonable. In Simon, the court found:

> The facts available to the officers who were dispatched to defendant's apartment were not sufficient to warrant a reasonable belief that the entrance to defendant's apartment was at the top of the enclosed stairway. The officers based their belief on what they could see through the window of the door: that there was a stairway leading up to the second floor, which they knew had only one apartment. The officers did not see a door at the top of the stairs or a mailbox or anything else that might support their suspicion that the actual entrance to defendant's apartment was upstairs. There was also no evidence presented by the state that the officers based their belief on any other information, such as prior experience with this residence or other second-floor apartments in the area.[28]

The Court in Simon further reasoned that some simple double checking by the police officers would have avoided the mistake:

> The officers had only a hunch that there might be a second door at the top of the stairs. They made no further attempt to ascertain whether the door they opened was in fact the apartment entrance. They did not knock on the door or otherwise announce their presence. They merely tested the door handle and, because it was not locked, walked in. The officers' warrantless entry into defendant's apartment based on the limited facts available to them was unreasonable and, therefore, unlawful.[29]

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[27] Simon at 487.
[28] Simon at 489.
[29] Simon at 489.

Similarly, the officer in the instant case, after misreading the license plate, learned from the dispatcher that the license plate did not match the vehicle. Just like in Simon, the officer did not take the time or make the effort to double check the license plate number. It was so much easier for him to simply assume that the Defendant had illegally put a false plate on the vehicle. There is no evidence in the record stipulated to by the State of Ohio that there were exigent circumstances leaving the officer without time to double check his results when the misread plate came back to another vehicle.

Further, and most importantly, the Simon Court reasoned that the identity of the party making the mistake is crucial:

> The officers here were not proceeding within a recognized exception to the warrant requirement. **It is significant that the mistake here was not made by a third person, but by the officers themselves.** They had no misinformation from the radio dispatch that the apartment entrance was at the top of the stairs, nor did anyone instruct them or permit them to enter the stairway. Based on an extremely limited investigation of the situation, the officers mistakenly concluded that the door they entered was not the entrance to defendant's apartment. An exception to the warrant requirement is not justified here because exclusion of this evidence would sanction negligence of police officers. Suppression of the evidence at issue, therefore, promotes the deterrent purpose of the exclusionary rule.[30]

In the instant case, the officer admits that he made the mistake by misreading the plate. Failing to suppress the evidence in the instant case rewards the negligence of the police rather than to deter such actions. In fact, it is not difficult to imagine the abuse which would follow the ruling the State of Ohio seeks. Any officer could pull any citizen over at any time simply by calling in a plate number off by one digit or letter and claiming simple mistake. Police following a vehicle leaving a bar parking lot at 2:00 a.m. and seeing no traffic violations for the first few miles need not keep following the vehicle until spotting a minor traffic violation. Rather, they need only call in the plate wrong and claim simple mistake.

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[30] Simon at 488-489 [emphasis added].

Would it then fall upon the Defendant to establish the specific intent of the police officer with regard to the mistake? How might such a defendant go about that once the police officer unsurprisingly testifies that he had no bad faith intent? What is left of the Fourth Amendment's protections at that point?

3. Objective Rather than Subjective Standard.

It is important to note that in using the term "reasonable suspicion" the United States Supreme Court set up an objective test to apply with regard to the police officer's suspicion. Here the State argues that it is reasonable to stop the Defendant based upon the officer's mistake in reading the plate numbers. In essence, the State argues that the officer made the mistake in good faith and therefore the stop is reasonable.

But good faith or bad faith is not a part of an analysis under an objective standard like reasonable suspicion. Ohio's Third District Court of Appeals has defined "reasonable suspicion as follows:

> "Reasonable suspicion" is defined as the ability of the officer "to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." Id. at 20-21. State v. Thompson, 2005 - Ohio- 2053, at Paragraph Nine.

The Court should note the use of the words "articulable facts." Here, the officer had no articulable facts. What he had was an articulable mistake. The definition provided by Ohio's Third District Court of Appeals then goes on to have this Court consider "rational inferences taken from those facts." But how can inferences be rational if they are based not upon facts, but upon mistakes the police officer made when reading the plate number to the dispatcher?

Under a subjective standard, we make mistakes and that may be considered. But under an objective standard, mistakes are not reasonable. A mistake is a mistake. We all make them.

But we all have to pay the price for our mistakes, not foist the consequences of the mistake onto someone else like the Defendant.

4. State of Ohio v. Cooke

A similar situation was analyzed by Ohio's Eleventh District Court of Appeals in the case of State of Ohio v. Cooke, 1999 WL 778378 (Ohio App. 11 Dist.), 1999 Ohio App. LEXIS 4467.

In that case, the pertinent facts were as follows:

> [The Officer] testified that on March 15, 1998, while he was on duty, he was traveling behind appellant's vehicle, but he "couldn't see the issue, expiration, or the first three numbers" of the temporary tag which was displayed in the rear window of the automobile. At this point, Covill activated his overhead emergency lights to stop appellant. According to Covill, he noticed that appellant "was leaning over the seat and put something under the seat." When he approached the vehicle, he requested appellant's driver's license and proof of insurance. Appellant voluntarily indicated that he did not have a driver's license and that the court papers he was given were not in his possession at the time. Covill explained that he intended on issuing appellant a verbal warning for improper display as he felt the temporary tag was not properly exhibited in appellant's rear window. However, after he asked for appellant's social security number and ran a computer check, he realized appellant was driving while under suspension. Covill placed appellant under arrest and proceeded to conduct an inventory search of the automobile. State of Ohio v. Cooke, 1999 WL 778378 (Ohio App. 11 Dist.), 1999 Ohio App. LEXIS 4467

Though the trial court overruled the Defendant's Motion to Suppress Evidence, Ohio's Eleventh District Court of Appeals overruled the trial court. Cooke at Lexis 11. The Court reasoned that:

> In the instant matter, we conclude that appellant did not commit the offense for which he was approached and questioned, specifically, improper display. Covill indicated that he was unable to clearly read the information on appellant's temporary placard when he was traveling behind, so he pulled him over. As he approached the vehicle, the details of the tag became clearer. Covill indicated that he believed that although nothing was covering the tag, it was not properly secured to the rear window. In addition, the back window was fogged up, therefore, making the information on the tag difficult to read at a distance. Since Covill's testimony revealed that he was able to decipher the information on the placard prior to interrogating appellant, his assertion that the tag was improperly displayed is inconsistent with his testimony that he was able to read the items on the placard as he approached the vehicle. Again, on one hand he claims that the

> tag was not exhibited properly. Yet, on the other hand, he admits that as he approached appellant's automobile, the information on the temporary placard became visible and easier to read. Thus, we conclude that appellant's tag was properly [*11] displayed because Covill was able to discern the details from it as he approached the car. Accordingly, Covill no longer had a reason to doubt that appellant's automobile was not properly registered or that he was driving under suspension. As such, Covill was not permitted to farther detain appellant since he did not violate R.C. 4503.21. Cooke at Lexis 10-11.

The same is true in the instant case. The Defendant's tags were properly displayed upon the correct vehicle. Just as the police officer in Cooke mistook the tags for being improperly displayed, here the officer, because of his own error in reading off the plate, mistakenly believed that the tags were to another vehicle. Just as Ohio's Eleventh District Court of Appeals ruled that it was reversible error for the trial court not to suppress the evidence in that case, it is reversible error for the trial court not to suppress the evidence in this case.

III. Conclusion

Since there was no reasonable suspicion for the officer to make atraffic stop of the Defendant, the evidence flowing from that traffic stop must be suppressed.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon Joseph Bader, Esq., of the Municipal Prosecutor's Office at 226 West Columbus, Avenue, Bellefontaine, Ohio 43311 by fax delivery this 1st day of July, 2014.

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