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Stop for tail lamp/brake lamps

So how many tail lamps/brake lights are required?

We all know that every car is supposed have at least three, right? The two normal ones on each side of the car as well as the 3rd eye-level tail lamp/brake light required on cars sold in the United States since 1986. So, if one or more of them are burned out or inoperable, is that reasonable suspicion to stop a car?

You would think. Just looking at our city codes on the issue, § 12.04.143 says vehicles used on roadways must at all times be equipped with such lamps and other equipment in proper condition and adjustment. Section 12.04.144 says that tail lamps must be lit from sunset to sunrise. Section 12.04.147 says vehicles must have at least two tail lamps mounted on the rear, on the same level, and as widely spaced laterally as practicable, but cars manufactured or assembled prior to July 1, 1959 need only have one tail lamp. So, the rule is if you are driving anything newer than 1959 at night, you have to have three tail lamps/stop lights and they all have to work. Simple, right?

Not so much. In Martin v. Kansas Dept. of Revenue, 285 Kan. 625, 176 P.3d 938 (2008) a Prairie Village officer stopped Martin's car because only 2 out of 3 of his rear brake lamps were operating. Martin was intoxicated, failed a breath test and his license was suspended based on the failure. He appealed, claiming the stop was unconstitutional. Judge Moriarty agreed and reversed the suspension. The Court of Appeals reversed that decision, finding the propriety of a traffic stop is irrelevant in a driver's license suspension hearing. Martin v. Kansas Dept. of Revenue, 36 Kan.App.2d 561, 567, 142 P.3d 735 (2006). Martin then appealed to the Kansas Supreme Court.

The Kansas Supreme Court, with little analysis, agreed with Martin's argument that the officer misunderstood and misapplied the ordinance, and said only two functioning rear brake lamps were sufficient under the law. Martin, 285 Kan. at 637. It then turned to the question of whether an officer's mistake of law alone may invalidate a traffic stop, and held that it can. "We . . . hold that an officer's mistake of law alone can render a traffic stop violative of the Fourth Amendment and § 15 of the Bill of Rights." Martin, 285 Kan. at 639. However, the Supreme Court affirmed the Court of Appeals' decision holding that the exclusionary rule does not apply in drivers license administrative hearings. The court stated, "Any additional deterrent

effect on law enforcement violation of the Fourth Amendment and § 15 to be gleaned from extension of the rule beyond the criminal DUI setting would be minimal, and it cannot outweigh the remedial imperative of preventing alcohol and/or drug impaired drivers from injury or killing themselves or others."

Six years later, the United States Supreme Court came to the opposite conclusion about the effect of an officers mistake of law. In Heien v. North Carolina, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___ (No. 13-604, filed 12/15/14), the Court held an officer's mistake of law can give rise to reasonable suspicion to stop a car. Heien was driving a car which undisputedly had only one of its two rear brake lights working. The North Carolina statute at issue refers to "a stop lamp," suggesting the need for only a single working brake light, but it also provides that "[t]he stop lamp may be incorporated into a unit with one or more other rear lamps," and another subsection of the same provision requires that vehicles "have all originally equipped rear lamps or the equivalent in good working order," arguably indicating that if a vehicle has multiple "stop lamp[s]," all must be functional. A deputy stopped Heien's car, ultimately finding cocaine in it. Along with charging Heien with cocaine trafficking, the deputy cited Heien for a non-working brake light, and the state trial court agreed that the stop was valid based on this observed traffic violation. Heien then pled guilty conditionally, reserving his right to appeal the denial of his suppression motion. The Supreme Court upheld the stop. "To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.' Brinegar v. United States, 338 U. S. 160, 176 (1949) ." In Michigan v. DeFillippo, the Court had ruled that mistaken reliance on an ordinance later held unconstitutional "does not undermine the validity of the arrest." It saw reasonable mistakes of law as no different than mistakes of fact.

So what is the rule in Kansas? Arguably, Heien tops Martin and reasonable mistakes about how many lighted brake lamps are required will constitute reasonable suspicion for a stop. A word of caution, however: state courts are free to grant defendants greater rights under the state constitution than the United States Supreme Court grants under the Federal Constitution.[1] So far, Kansas Courts have not done so,[2] but you never know when they might start. Two justices, Rosen and

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[1]. See, e.g., California v. Trombetta, 467 U.S. 479, 491 n.12 (1984) ("[States] remain free to adopt more rigorous safeguards governing the admissibility of scientific evidence than those imposed by the Federal Constitution.").

[2]. Section 15 of the Kansas Constitution Bill of Rights provides protection identical to that provided under the Fourth Amendment to the United States Constitution. See State v. Johnson, 253 Kan. 356, 362, 856 P.2d 134 (1993) ("[T]he

Luckert, dissented in the Martin case and would have applied the exclusionary rule. Now deceased Justice Davis did not participate in the ruling, and neither did Justice Johnson, but given the recent turnover on our state supreme court, the justices could decide to grant defendants greater protection under § 15 of the Kansas Bill of Rights and effectively ignore the Heien decision. Please advise if you have any questions.

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wording and scope of the two sections are identical for all practical purposes. If conduct is prohibited by one it is prohibited by the other."); State v. Schultz, 252 Kan. 819, 824, 850 P.2d 818 (1993).