People v. Burnett

2019 CO 2 (2019) | Cited 0 times | Supreme Court of Colorado | January 14, 2019

ADVANCE SHEET HEADNOTE January 14, 2019

2019 CO 2

No. 18SA180, People v. Burnett Searches and Seizures Reasonable Suspicion Mistake of Law.

In this interlocutory appeal, the supreme court considers whether a Colorado State Patrol trooper made a reasonable mistake of law when the trooper stopped a car for making what he believed to be an illegal lane change after witnessing the driver flash her turn signal twice over a distance of less than 200 feet and then change lanes. The supreme 42-4-903, C.R.S. (2018), did not constitute an objectively reasonable mistake of law. It is plain from the text of the statute that a driver is not required to signal continuously for any set distance before changing lanes on a highway; the statute only requires that a driver use a signal before changing lanes. Thus, because this was not a reasonable mistake of law, the trooper did not have reasonable suspicion to justify the investigatory

The Supreme Court of the State of Colorado 2 East 14 th

2019 CO 2

Supreme Court Case No. 2018SA180 Interlocutory Appeal from the District Court El Paso County District Court Case No. 18CR950 Honorable Gregory R. Werner, Judge Honorable Gilbert A. Martinez, Senior Judge

People v. Burnett

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Plaintiff-Appellant:

The People of the State of Colorado,

v.

Defendant-Appellee:

Devon Paul Garrett Burnett.

Order Affirmed en banc January 14, 2019

Attorneys for Plaintiff-Appellant: Daniel H. May, District Attorney, Fourth Judicial District Andrew Lower, Deputy District Attorney Doyle Baker, Senior Deputy District Attorney Colorado Springs, Colorado

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JUSTICE HOOD delivered the Opinion of the Court. JUSTICE BOATRIGHT dissents, and CHIEF JUSTICE COATS joins in the dissent. ¶1 While driving down a highway, a Colorado State Patrol (CSP) trooper observed

another driver flash her turn signal twice over a distance of less than 200 feet and then

change lanes. Apparently b n illegal lane change, the trooper

stopped the car in which there was a passenger the defendant, Devon Burnett.

¶2 A subsequent search of the car revealed a handgun, drug paraphernalia, and

suspected methamphetamine. As a result, Burnett was charged with multiple offenses,

including possession with intent to manufacture or distribute a controlled substance and

possession of a weapon by a previous offender.

¶3 Burnett filed a motion to suppress the evidence found during the search that flowed from the stop for the allegedly illegal lane change. He argued that the statute governing turning movements and required signals, section 42-4-903(2), C.R.S. (2018), doesn t require a person to signal for a minimum distance before changing lanes; therefore, the trooper did not have reasonable suspicion to stop the car. The trial court agreed and suppressed the fruits of the search.

¶4 The People filed this interlocutory appeal, contending in part that the trooper at worst made an objectively reasonable mistake of law when he concluded that changing lanes on the highway without signaling for 200 feet violated section 42-4-903(2). Consequently, the People argue that the trooper had reasonable suspicion to stop the car.

¶5 We conclude that the construction of section 42-4-903(2) was objectively unreasonable. The plain language of the statute clearly distinguishes between turns and lane changes, and the statute does not require a driver to signal continuously for any set distance before changing lanes on a highway it only requires that a driver use a signal s suppression order.

I. Facts and Procedural History 1

¶6 Burnett was a passenger in a black sedan traveling along Highway 21 in El Paso County. Trooper Stephen Wall watched as the driver engaged the sedan turn signal, allowed it to flash twice for less than 200 feet, and then changed lanes. Trooper Wall stopped the sedan.

¶7 As the sedan pulled over, Trooper Wall noticed the passenger moving around in

afety, Trooper Wall radioed for cover. When Trooper Wall

approached the car, he noticed that Burnett looked unusually nervous. This seemed

strange to Trooper Wall, considering Burnett was only the passenger and not the subject

of the stop. In addition to Burnett to show the trooper his identification. Burnett complied.

¶8 After dispatch advised Trooper Wall that Burnett was subject to a restraining order

that prohibited Burnett from possessing weapons, another trooper observed a handgun

magazine on the passenger side of the car. Law enforcement personnel then searched the

entire passenger compartment. The troopers found a handgun underneath Burnett s seat,

along with a substance believed to be methamphetamine, drug paraphernalia, baggies,

1 These facts are drawn from undisputed testimony and the trial the suppression hearing. and a scale. CSP arrested Burnett, who was later charged with multiple offenses,

including possession with intent to manufacture or distribute a controlled substance and

possession of a weapon by a previous offender.

¶9 Burnett moved to suppress all evidence resulting from the stop, claiming Trooper

Wall had no reasonable suspicion to believe a traffic violation had occurred under section

42-4-903(2). The trial court granted the motion to suppress, concluding that section

42-4-903(2) does not require a car to signal continuously for 200 feet before changing lanes

on a highway only applies to turning right or

¶10 The People filed a motion to reconsider the suppression order, arguing that the

trooper made a reasonable mistake of law because section 42-4-903(2) can be read as

applying to lane changes. They contended that under Heien v. North Carolina, 135 S. Ct.

530 (2014), this objectively reasonable mistake of law provided reasonable suspicion for

the traffic stop. The trial court denied the motion to reconsider, without explicitly

addressing the reasonable mistake of law argument under Heien. 2

¶11 The People filed this interlocutory appeal.

2 The People raised the Heien argument for the first time in their motion to reconsider. Burnett responded to the argument, first urging the court to apply a plain error standard to review the Heien argument and, alternatively, arguing that if the court reached the merits of the Peopl the trial court did not explicitly address Heien when denying the motion to reconsider, it the underlying motion to suppress. II. Analysis

¶12 We first review relevant Fourth Amendment principles, including precedent from

the U.S. Supreme Court stating that an objectively reasonable mistake of law can support

a finding that there was reasonable suspicion to justify an investigatory stop. We then

address section 42-4-903 and determine that its plain language only requires that a driver

signal before changing lanes it does not require a driver to signal continuously for any

set distance before changing lanes. Because the text of the statute is clear, we conclude

that -4-903 was not objectively reasonable.

A. Standard of Review

¶13 suppressing evidence presents a mixed question of law and

fact. People v. Chavez-Barragan, 2016 CO 16, ¶ 9, 365 P.3d 981,

t evidence,

Id.

Id.

B. The Fourth Amendment and Mistakes of Law

¶14 The Fourth Amendment to the U.S. Constitution protects individuals against

unreasonable searches and seizures. 3 U.S. Const. amend. IV.

3 Article II, Section 7 of the Colorado Constitution provides similar protections. Burnett encourages us to reject the reasonable-mistake-of-law doctrine by holding that Article II, Section 7 affords greater protection than the Fourth Amendment in this area. But, Burnett made no argument below clearly invoking the Colorado Constitution. And the trial court did not explicitly ground its suppression ruling on state constitutional law. Accordingly, [i]n the absence of a clear statement that a suppression ruling is grounded on state as s seizure of the occupants of the vehicle and therefore must

Heien, 135 S. Ct. at 536. As

relevant here, a brief, investigatory traffic stop is constitutional when the officer has a

reasonable, articulable suspicion that criminal activity has occurred, is taking place, or is

about to take place. Chavez-Barragan, ¶ 10, 365 P.3d at 983 (quoting People v. Ingram, 984

P.2d 597, 603 (Colo. 1999)). An officer may thus stop a vehicle if the officer has a

reasonable suspicion that the driver has committed a traffic violation.

¶15 Reasonable suspicion may exist even if an officer is mistaken about a critical fact

or about the proper interpretation of a statute. However, [t]he Fourth Amendment

tolerates only reasonable mistakes, and those mistakes whether of fact or of law must

be objectively reasonable. Heien, 135 S. Ct. at 539.

¶16 In Heien, the Supreme Court traffic law was reasonable and, thus, could still justify a stop under the Fourth

Amendment. Id. at 534. At issue was a North Carolina statute that required drivers to

have at least one working brake light. Id. at 535. The officer pulled a vehicle over for

failing to have two working brake lights because he incorrectly believed that was what

the statute required. Id. at 534. Because the language of the statute was unclear and had

he U.S. Supreme

opposed to federal constitutional law, we will presume that a court relied on federal law in reaching its decision. People v. McKinstrey, 852 P.2d 467, 469 (Colo. 1993). Court determined that

provide reasonable suspicion to justify the stop under the Fourth Amendment. Id. at 540.

In reaching so the Fourth Amendment allows for some mistakes on the part of government officials,

giving Id. at 536

(quoting Brinegar v. United States, 338 U.S. 160, 176 (1949)); see also Casillas v. People, 2018

CO 78M, ¶¶ 44 45, 427 P.3d 804, 815 (Samour, J., dissenting) (discussing the rationale

behind the Heien Heien thus held that a mistaken interpretation of

the law can still support a finding of reasonable suspicion if the mistake is objectively

reasonable. Heien, 135 S. Ct. at 539. As a corollary of this holding, courts should not

. 4 Id.

4 In concurrence, Justice Kagan embraced d that a reliance on Id. at

541 (Kagan, J., concurring) (quoting North Carolina v. Heien, 737 S.E.2d 351, 360 (N.C. 2012) (Hudson, J., dissenting)) Id. (quoting The Friendship, 9 F.

Cas. 825, 826 (C.C.D. Mass. 1812) (No. 5,125)). So, as Justice Kagan explained hard interpretive work, then the officer has made a reasonable mistake. Id.

Perhaps in an effort to make the Heien majority Heien for guidance.

See, e.g., State v. Sutherland, 176 A.3d 775, 782 83 (N.J. 2018) followed or acknowledged [her] narrow interpretation of an objectively reasonable

State v. Hurley, 117 A.3d 433, 441 (Vt. ¶17 With these Fourth Amendment principles in mind, we now examine what section 42-4-903 requires.

C. Section 42-4-903

¶18 Trooper Wall stopped the car in which Burnett was a passenger, on the belief that

a failure to signal continuously for 200 feet before changing lanes on Highway 21

constituted a violation of section 42-4-903(2).

¶19 The relevant provisions of section 42-4-903 require a driver to signal continuously

for 200 feet when intending to turn on any highway where the posted speed limit is more

than forty miles per hour, but it also distinguishes between turns and lane changes. In

relevant part, the statute provides:

(2) A signal of intention to turn right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning in urban or metropolitan areas and shall be given continuously for at least two hundred feet on all four-lane highways and other highways where the prima facie or posted speed limit is more than forty miles per hour. . . .

. . . .

(4) The signals provided for in section 42-4-608(2) shall be used to indicate an intention to turn, change lanes, or start from a parked position and shall not be flashed on one side only on a parked or disabled vehicle or flashed

reasonable); State v. Houghton explanation of an objectively reasonable mistake of law).

We need not decide whether to join those courts that have relied upon Heien. While her thoughts

might prove instructive in another case, they are not necessary for us to resolve the case before us today. from the rear.

§ 42-4-903. 5

¶20 We employ common tools of statutory interpretation to aid in our understanding

of this statute.

People v.

Stellabotte, 2018 CO 66, ¶ 32, 421 P.3d 174, 180 (quoting State Farm Mut. Auto. Ins. Co. v. Fisher, 2018 CO 39, ¶ 12, 418 P.3d 501, 504). We therefore look to the text of the statute first and, if it is clear, Perfect Place, LLC v. Semler, 2018 CO 74, ¶ 40, 426 P.3d 325, 332. A statute must also be considered Id. (quoting Whitaker v. People, 48 P.3d 555, 558 (Colo. 2002)). We may not construe a statute in a manner that would render any words or phrases superfluous. People v. Rediger, 2018 CO 32, ¶ 22, 416 P.3d 893, 899.

¶21 The plain language of the statute treats for a driver turning right or left, while subsection (4) delineates when a turn signal must be used to, among other things, turn or change lanes. By referring to both lane changes and turns in subsection (4), the legislature made clear that the 5 Section 42-4-608(2), C.R.S. (2018), requires that motor vehicles that exceed specified on highways to give required signals. the act of changing lanes. General Assembly to a Id. (quoting Robinson v. Colo. State Lottery Div., 179 P.3d 998, 1010 (Colo. 2008)). To interpret the statute otherwise would render language in subsection (4) superfluous change, there would have been no need to state specifically in subsection (4) that a signal must be used when changing lanes. Accordingly, the provision that Trooper Wall believed the driver of the black sedan violated, subsection (2), does not apply to lane changes. Because subsection (2) does not apply to lane changes, and because there was no violation of subsection (4) since the driver signaled twice before changing lanes,

Trooper Wall did not witness a traffic violation before stopping the car in which Burnett

was a passenger.

¶22 So, it was a mistake of law for Trooper Wall to interpret section 42-4-903 as he did.

We now consider whether this mistake of law was nevertheless objectively reasonable.

D. The Mistake of Law Was Objectively Unreasonable

¶23 The People argue that section 42-4-903(2) can reasonably be construed as Trooper

Wall apparently construed it. We disagree. Because section 42-4-903(2) is unambiguous,

we conclude that not objectively reasonable.

¶24 The statute requires vehicles to signal continuously for at least 200 feet before

turning right or left on a highway. There is no ambiguity as to whether a turn includes a

lane change because subsection (4) specifically lists lane changes as distinct from turns.

Thus, there is no need to consider whether a lane change is a type of turning movement

encompassed in the definition of turn as the People suggest. Regardless of whether the statutory scheme treats

turns and lane changes differently. Consequently not

objectively reasonable under the plain language of the statute.

¶25 Though this is the first time section 42-4-903 has been interpreted by one of our

appellate courts, the lack of such precedent does not transform interpretation into an objectively reasonable reading of the provision. While it is more

likely that a mistake of law may be reasonable if there is no precedent contrary to an

, lack of precedent alone cannot rehabilitate a statutory

interpretation that is unwarranted by the plain language and structure of the statute. See

United States v. Stanbridge, 813 F.3d 1032, 1037 (7th Cir. 2016) (Heien does not support the proposition that a police officer acts in an objectively reasonable manner by misinterpreting an unambiguous statute

¶26 The People offer United States v. Rubio-Sepulveda, 237 F. Supp. 3d 1116 (D. Colo. 2017), appeal docketed, No. 18-1055 (10th Cir. Feb. 13, 2018), as support for their argument In Rubio-Sepulveda, law enforcement stopped the defendant for failing to signal continuously for a set distance before changing lanes. Id. at 1122. Though the federal district court ultimately deemed the stop valid for another reason, in a footnote the court discusses reasonable mistake of law. Concluding that the officer erred because section 42-4- failure to signal for [a required distance] before changing lanes, id. at 1122 n.4, the federal district court found this mistake reasonable because there was no precedent interpreting the statute, and the Department of Revenue driver handbook contained the same incorrect interpretation. Id. But this footnoted analysis misses the mark as previously noted, an appellate court need not explicitly define the parameters of a clear and unambiguous statute. And here, that is what we have. Thus, t Rubio-Sepulveda is misplaced.

¶27 For two reasons, we are also unpersuaded by the presence of an erroneous interpretation of section 42-4-903(2) stating that a turn signal is required for at least 200 feet prior to changing lanes. First, there is no evidence in the record that Trooper Wall reviewed or relied on the interpretation. And even if Trooper Wall had read the handbook, it would

be irrelevant to our analysis because it would relate to the subjective

understanding of the section and therefore justify the seizure. Heien, 135 S. Ct.

at 539. Second, the handbook expressly states that [i]t is not a book of laws and should

not be used as a basis for any legal claims or actions. It is a book of information only and

does not supersede Colorado Revised Statutes.

Revenue, DR-2337, Colorado Driver Handbook 4 (2017). The handbook also refers readers

back to Title 42, which does not require vehicles to signal continuously for either 100 or

200 feet before simply making a lane change. ¶28 -4-903 runs counter to the plain

text of the statute, we conclude that his interpretation was not objectively reasonable and

cannot support a finding of reasonable suspicion to justify the traffic stop at issue here. 6

III. Conclusion

¶29 We conclude that Trooper Wall s construction of section 42-4-903(2) was not an

objectively reasonable mistake of law. It is plain from the text of the statute that a driver

is not required to signal continuously for any set distance before changing lanes on a

highway. The statute only requires that a driver use a signal before changing lanes.

JUSTICE BOATRIGHT dissents, and CHIEF JUSTICE COATS joins in the dissent.

6 Because the parties have not addressed what remedy should follow if the stop was invalid, we are not confronted with the question of whether the proper remedy was exclusion of evidence. In cases such as this, there are potentially two issues: (1) whether law enforcement violated the Fourth Amendment; and, (2) if so, whether the remedy should be exclusion. Heien, 135 S. Ct. at 539; Casillas, ¶¶ 29 30, 427 P.3d at 812 (majority opinion). In the notice of interlocutory appeal, the People framed the issue as follows: [the] defendant was riding made the stop without reasonable suspicion that a traffic

infrac whether there was a Fourth Amendment violation. Neither party briefed application of

the exclusionary rule. Because we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present, Greenlaw v. United States, 554 U.S. 237, 243 (2008), we decline to address whether the exclusionary rule should apply in this instance. In the absence of any argument to the contrary, exclusion remains the remedy here. JUSTICE BOATRIGHT, dissenting.

¶30 The -4-903(2), C.R.S.

interpretation of the statute was arguably correct. Second, even if his interpretation was

incorrect, it was objectively reasonable. Finally, even if Trooper Wall was incorrect and

objectively unreasonable, his conduct does not warrant application of the exclusionary

rule. Therefore, I respectfully dissent.

¶31 While the majority correctly recites the facts, it is important to note the immediate

circumstances of the traffic stop. Trooper Wall was driving on a highway with a speed

limit of fifty-five miles per hour when he saw a car give two quick blinks of its turn signal

and change lanes. At such a speed, that is not enough notice to change lanes safely. I

must note that over 250,000 accidents are caused by lane-change errors each year in the

United States, meaning that one lane-change accident occurs every two minutes. See Highway Traffi Analysis of Lane

Change Crashes (Mar. 2003). We are clearly dealing with a safety issue that requires

regulation by the legislature and, ultimately, law enforcement attention.

I. terpretation of Section 42-4-903(2) Is Arguably Correct

¶32 The majority determines that Trooper Wall did not reasonably enforce subsection

(2) of section 42-4-903 because the later subsection (4) distinguishes lane changes from

turns. Maj. op. ¶¶ 23 24. But that distinction is not quite so simple. ¶33

provision consistently and in

Whitaker v. People, 48 P.3d 555, 558 (Colo. 2002). T

and it contains five subsections.

¶34 Subsection (1) explains when a signal must be given, describing situations such as

turning at an intersection or onto a private road or turning from a direct course or moving

a vehicle left or right:

No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section 42-4-901, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety and then only after giving an appropriate signal in the manner provided in sections 42-4-608 and 42-4-609.

§ 42-4-903(1) (emphasis added). The plain language of subsection (1) applies to lane

Id. Thus, a driver may not change lanes until the lane

Id.

¶35 Subsection (2), without defining w explains how long a

signal must be given :

A signal of intention to turn right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning in urban or metropolitan areas and shall be given continuously for at least two hundred feet on all four-lane highways and other highways where the prima facie or posted speed limit is more than forty miles per hour. § 42-4-903(2). Notably, subsection (2) does not require an intention to turn that causes a

car to leave the highway or even an intention to turn that creates a complete change in

direction.

¶36 Subsection (3) explains when signals (brake lights) are required for stops or

No person shall stop or suddenly decrease the speed of a

vehicle without first giving an appropriate signal in the manner provided in sections 42-4-608 and 42-4-609 to the driver of any vehicle immediately to the rear when there is opportunity to give such signal. § 42-4-903(3). While not applicable in this situation, as the signals referenced are brake lights, this subsection rounds out the situations where signals must be used.

¶37 Subsection (4) then explains how such signals should be used as well as how they should not be used:

> The signals provided for in section 42-4-608(2) shall be used to indicate an intention to turn, change lanes, or start from a parked position and shall not be flashed on one side only on a parked or disabled vehicle or flashed as a
>
> from the rear.

§ 42-4-903(4). The focus of subsection (4) is on the proper use of signals; they should be used to signal an intention to move but should not be used to signal an intention not to move. This is a logical provision to include in a signaling statute, as a signal cannot be effective if it is used to indicate contrary intentions.

¶38 o violates any provision of 42-4-903(5). ¶39 Therefore, section 42-4-903(1) begins by listing the turning movements that require a signal, (2) next dictates for how long the signal must be given before so moving, (3) then sets forth the rule for when stopping or suddenly slowing requires a signal, (4) emphasizes when a signal should not be used, and (5) last sets forth the penalty for violations. Thus, when reading the statute as a whole, I do not believe that the legislature intended for subsection (4) which explains when signals should not be used to limit

the scope of subsection (2) which explains for how long signals must be used.

¶40 Moreover, it makes sense to require a signal for an adequate distance before changing lanes. If the purpose of a signal is to make other drivers aware of your intention to deviate from your current path of travel, requiring you to indicate that intent for a specific distance is reasonable regardless of how far off your current path you intend to deviate. -4-903(2) that it applies to lane changes as well as turns is arguably correct.

s Interpretation of Section 42-4-903 Is Objectively Reasonable

¶41 concludes), his interpretation was nevertheless objectively reasonable for two reasons. First, the Department of Revenue repeatedly interpreted the statute the same way as Trooper Wall when creating its own literature. And second, a federal district court, addressing a similar situation, found the same interpretation to be objectively reasonable.

¶42 I begin with the De he Department creates

such literature to educate the public regarding Colorado traffic laws. And the most recent Colorado Driver Handbook interprets section 42-4- signaling requirements exactly as Trooper Wall did: must signal continuously for 100 feet before making a turn or lane change. On four-lane highways, where the posted speed limit is more than 40 mph, you must signal for 200

-2337, Colorado Driver Handbook

22 (2017) (emphasis added). This interpretation is consistent throughout the handbook. 1 When discussing turning, the handbook states that [a]t speeds above 40 mph you must signal continuously for 200 feet before making a turn or lane change. Id. at 21. When

ignal at least 200 feet

Id. at 24. When explaining

Id. at 32.

¶43 The majority is correct that whether Trooper Wall read the Department of

subjective

understanding of the statute. Maj. op. ¶ 27. The majority is also correct that the handbook

do . Id. Nevertheless, the interpretation in the

1 The previous edition of the Colorado Driver Handbook contained the same interpretation. See -2337, Colorado Driver Handbook 18, 21, 27 (2012). -4-903(2) was

objectively reasonable.

¶44 Giving further support to the objective reasonableness of interpretation United States v. Rubio-Sepulveda, 237

F. Supp. 3d 1116 (D. Colo. 2017), appeal docketed, No. 18-1055 (10th Cir. Feb. 13, 2018). In

that case, an officer interpreted section 42-4-903(2) in the same manner as Trooper Wall.

Id. at 1122 n.4. The federal district court, relying on Heien interpretation was mistaken but objectively reasonable. Id. In doing so, the federal

district court distinguished a Fifth Circuit case, which held the officer s mistaken

interpretation of a similar Texas turn signal provision was not a reasonable mistake of

law in part because (1) the Texas Driver s Manuel [sic] supported an interpretation

contrary to the officer s, i.e. supported a plain reading of the statutory provision, and (2)

the Texas Court of Appeals had recently clarified the issue Id. (citing United States v.

Alvarado-Zarza, 782 F.3d 246, 250 (5th Cir. 2015)). Remarkably, our situation here is the

of the statute late

court had interpreted section 42-4-903(2) in any way, let alone in a way that says the

signaling requirements do not apply to lane changes. 2

2 The defe even if section 42-4-903 could have been construed as ambiguous before Rubio-Sepulveda was issued, that opinion put officers on notice that section 42-4-903(2) does not apply to lane changes While the Rubio- ¶45 Trooper Wall interpreted section 42-4-903(2) the same way the Department of

Revenue has been interpreting it for at least six years and in a manner that a different

incorrect, it was objectively reasonable.

III. The Exclusionary Rule Should Not Apply

¶46 The majority today determines that there was a Fourth Amendment violation, but

it declines to address whether suppression is warranted because the People framed the

. This misses the point. In affirming

determination that suppression was warranted. suppressing the evidence obtained as a

3 (emphasis added). Additionally, in the

whether the district

court erred in granting

Thus, in refusing to consider whether the exclusionary rule should apply, the majority

misses the central question raised in this case.

Sepulveda Court reading of the statute to be mistaken, it reached that conclusion in a footnote. Despite that footnote, the court relied on a different theory altogether to hold that the stop was legal. Rubio-Sepulveda, 237 F. Supp. 3d at 1122 n.4. I hold law enforcement to a high standard and expect officers to know the law, to conclude that this trooper acted objectively unreasonably because he was put on notice by an arguably irrelevant footnote in a non-binding case is unrealistic. ¶47 At the end of the day, the question of whether the exclusionary rule should apply

comes down to misconduct can and should be effectively deterred.

violation is found; rather, it should apply only in those circumstances where its remedial

People v. Gutierrez, 222 P.3d 925, 941 (Colo.

Casillas

v. People, 2018 CO 78M, ¶ 34, 427 P.3d 804, 813 deter deliberate, reckless, or grossly negligent conduct, or in some circumstances

lusion can meaningfully deter it, and sufficiently

Id. at ¶ 22,

427 P.3d at 810 (quoting Herring v. United States, 555 U.S. 135, 144 (2009)). Thus, the

deterrence value of merely negligent conduct is not sufficient to warrant the cost of the

exclusionary rule. See Herring, 555 U.S. at 147 48 (of negligence . . . rather than systemic error or reckless disregard of constitutional

requiremen (quoting United States v.

Leon, 468 U.S. 897, 907 n.6 (1984))).

¶48 s

interpretation was objectively unreasonable, that conclusion does not warrant

suppression here. Mere negligence is insufficient to invoke the exclusionary rule; and, the majority does not exclusionary rule should apply.

¶49 s interpretation of the statute is arguably a safer interpretation of the

majority gives it credit for, publication. Moreover, the federal district court in Rubio-Sepulveda found that the same

interpretation, under similar circumstances, did not rise even to the level of ordinary

negligence, let alone gross negligence.

Conclusion

¶50 interpretation was incorrect, however, it was objectively reasonable. And even if his

interpretation was objectively unreasonable, his conduct did not rise to the level of gross negligence that is required to apply the exclusionary rule. As such, I would reverse the

I am authorized to state that CHIEF JUSTICE COATS joins in this dissent.