ELEVENTH CIRCUIT UPHOLDS TRAFFIC STOP BASED ON REASONABLE MISTAKE OF TAG LAW

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On March 15, 2017, the Eleventh Circuit Court of Appeals decided the *United States v. McCullough*[i], in which the court discussed whether a traffic stop that was conducted because the officer mistakenly thought the driver of a vehicle was in violation of Alabama traffic law when he observed that his tag frame covered part of the license plate, although all of the letters and numbers on the tag were visible. The relevant facts of *McCullough*, taken directly from the case, are as follows:

> Roger McCullough drove along the highway one evening in his late father's truck when a police officer stationed on the side of the road used a machine to read the license plate on the truck. The machine interprets alphanumeric symbols on license plates and constructs an image of the plate. It then cross-references those symbols against a database to search for, among other things, stolen vehicles and Amber alerts. The truck was outfitted with an Alabama license plate that read "God Bless America." A bracket in the shape of an eagle with outstretched wings obscured parts of the license plate, including the invocation and the state of issue.
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> Alabama law provides that "[e]very motor vehicle operator . . . shall at all times keep attached and *plainly visible* on the rear end of such motor vehicle a license tag or license plate." Ala. Code § 32-6-51 (emphasis added). The officer turned on his lights to stop McCullough because the officer believed McCullough had violated this provision by driving with the eagle bracket. McCullough refused to stop for several miles. When McCullough finally did stop, the officer detained McCullough for safety reasons. The officer also wrote McCullough tickets for failing to have a plainly visible license plate and for failing to yield to an emergency vehicle.
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> McCullough's situation worsened when the officer smelled marijuana wafting from the truck. The officer searched the truck and discovered $8,335 and a substance the officer believed was marijuana. The officer arrested McCullough, searched him, and seized from his person more than $4,000 and a key to a hotel room. Police obtained a warrant to search the hotel room. The room contained several plastic bags, more than $1,000, three

> gallon-size bags filled with what the police believed was marijuana, weighing scales, a marijuana grinder, multiple phones, and a handgun.[ii]

McCullough was ultimately charged with federal drug and weapons violations. He filed a motion to suppress, which was denied. He ultimately pled guilty with a right to appeal the denial of the motion to suppress. On appeal, McCullough raised numerous issues related to his case and sentencing; the one examined by this article is the Fourth Amendment issue pertaining to whether the officer's alleged mistake of law regarding the tag violation rendered the stop a violation of the Fourth Amendment such that the evidence derived from the stop should be suppressed.

The Eleventh Circuit first noted the law pertaining to the issue at hand. The court stated

> The Fourth Amendment protects individuals from unreasonable search and seizure," *United States v*. *Holt*, 777 F.3d 1234, 1256 (11th Cir. 2015), including traffic stops, *United States v*. *Spoerke*, 568 F.3d 1236, 1248 (11th Cir. 2009). **"[b]ecause the ultimate touchstone of the Fourth Amendment is 'reasonableness**,'" *Brigham City v*. *Stuart*, 547 U.S. 398, 403 (2006), **an officer conducts a valid traffic stop even if he makes an "*objectively* reasonable" mistake of law—such as incorrectly believing the law requires all brake lights to be operational instead of just one**. *Heien v*. *North Carolina*, 135 S. Ct. 530, 539 (2014).[iii] [emphasis added]

The statute at issue in this case states "…every motor vehicle operator…shall at all times keep attached and plainly visible…a license tag or plate."[iv] The state argued that this supported the stop such that even if the officer made a mistake of law, the mistake was a reasonable mistake based on the plain reading of the statute.

McCullough argued rather that Ala. Code Sec. 40-12-242 controls. It states, in pertinent part, "no private passenger automobile and no motorcycle shall be used …unless the proper license tag…is securely attached…with the number thereof in an upright position and plainly visible." Thus, the crux of McCullough's argument on appeal was that the law requires that the alphanumeric symbols on the license plate be plainly visible, rather than the full plate being plainly visible.

In analyzing the arguments of both the government and McCullough, the court, in examining Ala. Code Sec. 32-6-51, stated

> This text leaves open the possibility that more than the alphanumeric symbols must be plainly visible. That interpretation finds support in a revenue regulation governing the design of license plates that specifies that "'Alabama' must clearly be visible and must appear at the top of the license plate." Ala. Admin. Code r. 810-5-1-.217(4) (2012).[v]

Further, regarding the Ala. Code Sec. 40-12-242, the court stated

> [R]eading both statutes together—as McCullough contends we should—supports the conclusion that the officer's interpretation was reasonable. The absence of any limit in section 32-6-51 suggests the section applies to more than alphanumeric symbols. Scalia & Garner, *supra*, at 107; *Russello v*. *United States*, 464 U.S. 16, 23 (1983).[vi]

Finally, McCullough also argued that an Alabama appellate court case supported his interpretation of the statute that he provided.[vii] To this, the Eleventh Circuit stated

> [E]ven if the Alabama court had construed the statute and arrived at a result different from the officer, the presence or absence of an appellate decision is not dispositive of whether an officer's interpretation is objectively reasonable. *Heien*, 135 S. Ct. at 540.[viii]

Thus, the Eleventh Circuit held that, *if* the officer was mistaken as to his interpretation of Alabama law related to license plate visibility, the mistake was reasonable and as such, the traffic stop was not a violation of the Fourth Amendment. Therefore, the court affirmed the denial of the motion to suppress.

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[i] No. 15-15430 (11th Cir. Decided March 15, 2017)
[ii] Id. at 2-4
[iii] Id. at 11
[iv] Id. at 12 (citing Ala. Code 32-6-51)
[v] Id.
[vi] Id.
[vii] Id. at 13 (see *Whistenant v. State,* 278 So. 2d 183, 193-94 (Ala. Crim. App. 1973)
[viii] Id. at 13