IN THE SUPREME COURT OF IOWA
Supreme Court No. 18-2222

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY ALAN MEYERS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR GUTHRIE COUNTY
THE HONORABLE PAUL R. HUSCHER, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

The State agrees that retention by this Court is appropriate for two reasons. First, the defendant is correct that this Court has never determined whether Lake Panorama meets the definition of a "privately owned lake" in Iowa Code section 462A.2(31). Second, if this Court determines that the lake does meet that definition or if it determines that the evidentiary record is insufficient to make that determination in this case, it should reconsider its prior decisions concerning an officer's reasonable mistake of law under the Iowa Constitution. It should hold that evidence need not be suppressed when probable cause or reasonable suspicion arises from an objectively reasonable mistake of law.

STATEMENT OF THE CASE

Nature of the Case

Jeffrey Alan Meyers appeals from his conviction for boating while intoxicated following a bench trial on the minutes. He argues that the district court erred when it denied his motion to suppress.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

Conservation officers from the Iowa Department of Natural Resources stopped the defendant for boating on Lake Panorama while displaying prohibited blue lights. Motion Tr. P.11 Ls.5-18, P.14 Ls.5-23. While performing a safety inspection incident to the stop, the officers began to suspect that the defendant was intoxicated. Motion Tr. P.15 L.21 – P.16 L.8. The defendant agreed to a preliminary breath test and blew greater than 0.08. Motion Tr. P.17 Ls.15-18. He was placed under arrest for boating while intoxicated. Motion Tr. P.17 Ls.19-23.

ARGUMENT

I. The District Court Did Not Err When It Denied the Defendant's Motion to Suppress.

Preservation of Error

The defendant filed a motion to suppress and received an adverse ruling from the district court, thereby preserving error for appellate review. *State v. Lovig*, 675 N.W.2d 557, 562 (Iowa 2004) (citing *State v. Naujoks*, 637 N.W.2d 101, 106 (Iowa 2001)).

Standard of Review

Review is de novo. *State v. Vance*, 790 N.W.2d 775, 780 (Iowa 2010). This Court will "independently evaluate the totality of the

circumstances found in the record, including the evidence introduced at both the suppression hearing and the trial." *Id.* (citing *State v. Bogan*, 774 N.W.2d 676, 679-80 (Iowa 2009)). It will defer to the district court's findings of fact, though it is not bound by them. *State v. Tyler,* 830 N.W.2d 288, 291 (Iowa 2013); *State v. Kreps*, 650 N.W.2d 636, 640 (Iowa 2002).

Merits

When a conservation officer observes a violation of a boating regulation, however minor, the officer has probable cause to stop the boat. *See State v. Harrison*, 846 N.W.2d 362, 365 (Iowa 2014). Iowa Code section 462A.12(4) prohibits a boater from displaying a blue light on his boat while operating "on the waters of this state under the jurisdiction of the conservation commission." The defendant does not dispute that he operated his boat while displaying a blue light, but he does dispute that he did so "on the waters of this state under the jurisdiction of the conservation commission."

A. Iowa Code section 462A.12(4) does not create an offense by implication.

The defendant first argues that because "conservation commission" is not defined in the Code, the prohibition on blue lights is unenforceable. The state conservation commission was abolished

in 1986 and replaced with the natural resources commission. *See* Iowa Acts 1986 (71st G.A.) ch. 1245 § 1808. The members of the conservation commission serving unexpired terms were transferred to the natural resources commission. *Id.* The definition of "commission" under the predecessor to Iowa Code section 462A.2(7) was amended from "state conservation commission" to "natural resource commission." *See* Iowa Acts 1986 (71st G.A.) ch. 1245 § 1824. The words "state conversation commission" or "conservation commission" were struck and replaced with the word "commission" as they appeared in the predecessors to Iowa Code sections 462A.2, 462A.3, and 462A.4. Iowa Acts 1986 (71st G.A.) ch. 1245 § 1826. That the same phrase was not changed in the predecessor to Iowa Code section 462A.12 appears to have been an oversight.

B. Lake Panorama is not a "privately owned lake" under the Iowa Code.

The core of the defendant's argument is that he did not violate the blue light prohibition because the prohibition applies only on waters subject to the jurisdiction of the commission. Iowa Code § 462A.12(4). Waters subject to the jurisdiction of the commission are defined as "any navigable waters within the territorial limits of this state … exempting only farm ponds and privately owned lakes." Iowa

Code § 462A.2(45). The defendant argues that Lake Panorama is a privately owned lake and is therefore not subject to the jurisdiction of the commission.

The Code defines "privately owned lakes" as:

> [A]ny lake, located within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals, or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests.

Iowa Code § 462A.2(31). If Lake Panorama meets that definition, it is exempt from the blue light prohibition in Iowa Code section 462A.12(4). It is not disputed in this case that the land surrounding Lake Panorama and the lake bed itself are privately owned by individuals or the Lake Panorama Association. The dispute in this case centers on the phrases "not open to the use of the general public" and "used exclusively by the owners and their personal guests."

1. *Lake Panorama is open to the use of the public from the Middle Raccoon River.*

The defendant attempts to center the dispute on the exclusivity of use by the Lake Panorama property owners. But the State's position is that Lake Panorama does not meet the requirement that a privately owned lake is "not open to the use of the general public."

Iowa Code § 462A.2(31). The evidence in the record in this appeal shows that Lake Panorama is accessible to the public from the Middle Raccoon River. Department of Natural Resources supervisor Brian Smith testified that the public can access the river from a public boat ramp located north of Lake Panorama at Springbrook State Park and float down to the lake. Motion Tr. P.28 Ls.7-25; State's Exh. 2; Conf. App. 31. Smith testified that when he was a conservation officer in Guthrie County he would most commonly access the lake from the Middle Raccoon for enforcement purposes. Motion Tr. P.30 Ls.3-12. He also testified that the Lake Panorama Association had in the past attempted to block access to the lake from the Middle Raccoon using a debris barrier. Motion Tr. P.40 Ls.4-13. They were told by the Department that they could not prevent the public from accessing the lake by floating down the river. Motion Tr. P.40 Ls.14-22.

The record contains other evidence that the Lake Panorama Association disagrees with the Department about whether the public is allowed to access the lake in that manner. Motion Tr. P.46 Ls.17-23; Defense Exh. B; Conf. App. 18-26. As the defendant points out in his brief, the Lake Panorama Association describes the lake publicly as a private lake. The defendant introduced evidence that access to

the lake is currently blocked from the Middle Raccoon by a log-type barrier. Motion Tr. P.49 Ls.1-14; Defense Exh. C; Conf. App. 27. But just as a trespasser cannot turn private property public, *see* Appellant's Br. P.28, public property does not become private just because someone erects a barrier. *See* Iowa Code § 657.2(3) (deeming a nuisance "[t]he obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.").

The defendant relies on an Attorney General Opinion from 1970 that the then-proposed Lake Panorama would, "under facts noted," constitute a privately owned lake under the Code. *See* 1970 WL 207619 (Iowa A.G.). But that opinion only concludes that the waters of Lake Panorama would qualify "if substantially all use thereof is limited to owners of the lake and their personal guests." *Id.* at *5. The Attorney General was not presented with facts concerning the public's access to the lake from the public boat ramp on the Middle Raccoon River and he therefore did not consider it.

Two other Attorney General opinions provide better analysis on this question. In 1996, the Attorney General explained the "substantial importance" of the public recreational use of Iowa's non-

meandered streams, like the Middle Raccoon, from public points of access. 1996 WL 169627 (Iowa A.G.) at *5. The opinion concluded that owners of navigable stream beds could not erect a barrier that would prevent boaters from floating past. *Id.* at *7.

An earlier opinion relied upon heavily by the district court addressed whether the private lagoons attached to Lake Okoboji constituted privately owned lakes. 1962 WL 122803 (Iowa A.G.). Like Lake Panorama, the lagoons were dug privately and the land on all sides was privately owned. *Id.* at *1. But because the water flowed into the lagoons from the natural lake and the lagoons were accessible by boat from navigable waters, the Attorney General concluded that they were not privately owned lakes. *Id.* at *2. As the district court held in this case, "Lake Panorama is an impoundment of water to which the public has a right of access from a navigable stream inlet, the Middle Raccoon River." Ruling P.7; Conf. App. 38. For that reason alone, it is not a privately owned lake under the Code.

2. *The legislature did not include lakes accessible to the public through navigable waters in the definition of privately owned lakes.*

The legislature has given the public broad access to Iowa's waterways, whether public or privately owned. *See* Iowa Code §§

462A.2(22), 462A.2(45), 462A.3A; 1996 WL 169627 (A.G. Iowa) at *3-5. It is in that spirit that this Court should interpret the definition of a privately owned lake. A lake that is accessible by boat from a navigable water is open to the use of the general public. That was the conclusion of the Attorney General in the Okoboji lagoons opinion. 1962 WL 122803 (Iowa A.G.).

The defendant argues that the legislature could not have meant what it said because "almost every lake in the state of Iowa has an ingress and egress of flowing water in the form of a river, stream or creek, i.e. public waters." Appellant's Br. P.24. First, that statement is nowhere supported by the evidentiary record in this case. Second, even if it had support, the defendant cannot explain why the legislature would have wanted a large number of privately owned lakes exempt from the jurisdiction of the commission as opposed to a small number. Indeed, given the very broad definition of navigable waters and waters under the jurisdiction of the commission, the opposite conclusion is warranted.

The defendant is also incorrect when he argues that the State's interpretation of section 462A.2(31) would result in uncertainty, vagueness, or arbitrary enforcement. He claims that the

commission's jurisdiction would be dependent upon "the tides, seasons, and everchanging whims of Mother Nature." Appellant's Br. P.30. Not so. A navigable water under the code must be able to "support a vessel capable of carrying one or more persons during a total of six months in one out of every ten years." Iowa Code 462A.2(22). The commission's jurisdiction does not evaporate along with the water in navigable waters that might dry up in a dry season. That a body of water is not accessible on a particular day by accident of nature does not affect the commission's jurisdiction if the waterbody is accessible by the public from a navigable water generally.

For the same reason, the State did not need to prove that the public could access Lake Panorama from the Middle Raccoon River on the night that the defendant was arrested. Appellant's Br. P.33-34. The evidence in the record supported the district court's conclusion that the Middle Raccoon River is accessible from a public boat ramp north of Lake Panorama and that the public can float from there into Lake Panorama absent an artificial barrier. Motion Tr. P.28 Ls.7-25; State's Exh. 2; Conf. App. 31. That access makes the lake open to the public. It does not mean that the public can trespass on the property

of Lake Panorama landowners or the Association to access the lake, but the Association and the owners cannot prevent the public from accessing the navigable waterway from the public boat ramp. Lake Panorama is not a privately owned lake under the Code; it is subject to the jurisdiction of the commission and the blue light prohibition applied to the defendant the night he was arrested.

C. Even if the conservation officer was mistaken in his belief that the blue light prohibition applied on Lake Panorama, his belief was objectively reasonable.

In *State v. Tyler*, this Court held that while an officer's reasonable mistake of fact could justify a traffic stop, "we have elected not to extend this permissiveness to mistakes of law, holding a mistake of law is not sufficient to justify a stop." 830 N.W.2d 288, 294 (Iowa 2013) (citing *State v. Louwrens*, 792 N.W.2d 649, 650 (Iowa 2010)). In *Heien v. North Carolina*, the United States Supreme Court disagreed under the Fourth Amendment, holding that objectively reasonable mistakes of law can justify traffic stops. 574 U.S. 54, 132 S.Ct. 530, 536-40 (2014). This Court has suggested in footnotes in two separate opinions that it would not follow *Heien* under the Iowa Constitution. *State v. Scheffert*, 910 N.W.2d 577, 585

n.2 (Iowa 2018); *State v. Coleman*, 890 N.W.2d 284, 298 n.2 (Iowa 2017). It should reconsider that stance.

The special concurrence in *Louwrens* anticipated in many ways the United States Supreme Court's decision in *Heien*. *See Louwrens*, 792 N.W.2d at 654-55 (Cady, J., specially concurring). The special concurrence says the following regarding what was, at the time, the "minority view" (but became the basis for the decision in *Heien*):

> It is universally agreed that a stop is reasonable as long as the police officer reasonably believed a criminal offense was committed, even if a defendant was not actually committing an offense. From this point, the majority reasons that a police officer's mistaken belief in the existence of a law prohibiting the conduct can never support probable cause because such a belief could never be objectively reasonable. Of course, many policy grounds accompany this position, as the majority identifies. Yet, the minority rule actually reaches the same conclusion, and the real difference between the two approaches appears to be the willingness of the minority rule to recognize that the distinction between a mistake of law and a mistake of fact can be very difficult to discern and depends upon the particular facts and circumstances in each case. Application of law always depends upon the facts. The minority approach simply stays with the reasonableness doctrine throughout the analysis to sort through those facts and circumstances of the case to determine if a stop tainted with mistaken impressions of the law by the police officer could nevertheless be objectively

> reasonable. Yet, in those cases, like this case, in which no law actually covered the conduct observed by the police officer, the mistaken belief of the police officer that the conduct violated the law can never be objectively reasonable under the minority rule.

Louwrens, 792 N.W.2d at 654-55 (Cady, J., specially concurring).

The footnote in *Coleman* suggested that adopting the *Heien* rule would be inconsistent with this Court's rejection of the good faith exception under the Iowa Constitution in *State v. Cline*, 617 N.W.2d 277, 292-93 (Iowa 2000). But it is not. As the concurrence in *Heien* points out, the mistake of law must be *objectively* reasonable. 132 S.Ct. at 540-41 (Kagan, J., concurring). It explains:

> First, an officer's "subjective understanding" is irrelevant: As the Court notes, "[w]e do not examine" it at all. That means the government cannot defend an officer's mistaken legal interpretation on the ground that the officer was unaware of or untrained in the law. And it means that, contrary to the dissenting opinion in the court below, an officer's reliance on "an incorrect memo or training program from the police department" makes no difference to the analysis.

Id. at 541.

This case is an example of the case where "the distinction between a mistake of law and a mistake of fact can be very difficult to discern." *Louwrens*, 792 N.W.2d at 655 (Cady, J., specially

concurring). In fact, a good argument could be made for either. An objectively reasonable conservation officer believes that blue lights are not allowed on Lake Panorama. But why? Because the Department's position is that Lake Panorama is not a privately owned lake and thus the prohibition applies. The defendant disagrees. This Court has not weighed in. If it turns out that the defendant is right, whether the mistake one of fact or law just depends on how it is described. But either way, the mistake was objectively reasonable. This Court should adopt the *Heien* rule under the Iowa Constitution and permit evidence obtained as the result of an objectively reasonable mistake of fact or law.

CONCLUSION

For the foregoing reasons, the defendant's conviction should be affirmed.

REQUEST FOR ORAL SUBMISSION

The State requests to be heard in oral argument.

Respectfully submitted,

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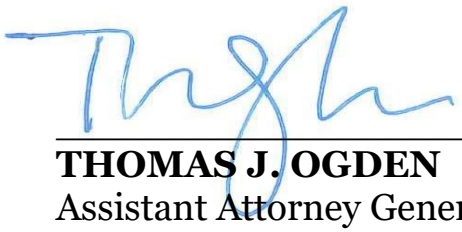

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CERTIFICATE OF COMPLIANCE

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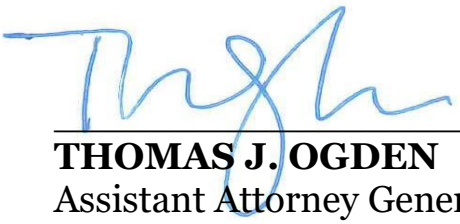

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