

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

Bradley Louis Audette,

**FILED**  
Jane F Morrow  
Court Administration

Petitioner,

vs.

JUN 11 2009

**ORDER**

Commissioner of Public Safety,

~~NYKIA STRECKER~~  
Deputy

Court File No. 02-CV-08-5420

Respondent.

This matter is before the Honorable James A. Cunningham, Jr., Judge of District Court, Tenth Judicial District on Petitioner Bradley Louis Audette's challenge to the revocation of his driver's license under Minnesota's implied consent statute § 169A.53. Petitioner raised the issue the legality of the initial stop of his motor vehicle by the officer, and moved for discovery of the Intoxilyzer source code. The implied consent hearing was heard on May 6, 2009. The Court ordered the disclosure of the source code at the hearing and took the remaining issues under advisement.

Petitioner was present and was represented by counsel, Ryan P. Garry, Esq. Respondent was represented by Assistant Minnesota Attorney General Jeffrey Bilcik, Esq. The Court heard testimony from Officer Karen Laine, Spring Lake Park Police Department and the Petitioner.


Based on the records, files, and proceedings, and the arguments of the parties, the Court makes the following:

**ORDER**

1. The Minnesota Commissioner of Public Safety's order of revocation is **RESCINDED.**
2. All other motions are **DENIED.**
3. The attached memorandum is incorporated by reference herein.
3. The Court Administrator shall mail a copy of this Order to counsel for Petitioner and Respondent. Said mailing shall constitute due and proper notice of its provisions for all purposes.

**BY THE COURT:**

Dated: 6/11/09

  
The Honorable James A. Cunningham, Jr.  
Judge of District Court  
Tenth Judicial District

## MEMORANDUM

### *Facts*

On or about June 20, 2008 Spring Lake Park Police Officer Karen Laine (hereinafter "Officer Laine") saw a vehicle, later identified as belonging to Petitioner, make a complete stop at the intersection of 81<sup>st</sup> Avenue and Able Street in the City of Spring Lake Park, Anoka County at approximately 12:01 a.m. Petitioner then continued east bound on 81<sup>st</sup> Avenue. Officer Laine also began heading east on 81<sup>st</sup> Avenue and testified that shortly after she turned onto 81<sup>st</sup> Avenue and was directly behind Petitioner's vehicle she saw an object, which she believed was a cigarette butt, thrown from the driver's side of Petitioner's vehicle. She also testified that the license plate light on Petitioner's vehicle was not working properly.

Officer Laine then activated her emergency lights and initiated a stop. Officer Laine was not able to definitively testify whether the license plate light was working because she "did not take a close look at it." She also admitted on the record that the video would be a more accurate depiction of what happened in comparison to her recollection of the events. Officer Laine did not definitively determine if it was a cigarette butt that was thrown out the window and onto the roadway.

When Officer Laine approached the vehicle she stated she smelled the odor of alcohol, however, she did not smell smoke. Officer Laine also stated that Petitioner told her at the time of the stop that he does not smoke. Upon approach of the vehicle, Officer Laine noticed an odor of alcohol and Petitioner submitted to a preliminary breath test which showed a reading of 0.08 or more. Petitioner also submitted to an Intoxilyzer 5000 test where it showed a reported value of 0.09.

During the Implied Consent hearing, a video recording from the squad car was entered into evidence. The video was not shown in open court due to technical difficulties. The video was subsequently reviewed in chambers. In the video, an object is seen on the roadway, but it cannot be seen coming from Petitioner's vehicle. Petitioner's rear license plate light appears to be working properly.

Petitioner testified that he does not smoke, nor does he let people smoke while inside his vehicle, and that his license plate light was working. Additionally, there was no property inventory received of cigarettes in Petitioner's car.

*Applicable Law and Analysis*

An officer must have a specific and articulable suspicion of a violation before a stop of a vehicle may be justified. *Marben v. State, Dept. of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980), *reh'g denied*, Aug. 1, 1980. It is not the role of the court to decide if an officer had a good faith belief that a law has been violated or his or her suspicion was genuine; the role of the court is to determine if the suspicion was objectively reasonable. *State v. Britton*, 604 N.W.2d 84, 88 (Minn. 2000). "If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate...." *Terry v. Ohio*, 392 U.S. 1, 22 (1968)(quoting *Beck v. State of Ohio*, 379 U.S. 89, 97 (1964)).

An officer's reasonable, articulable suspicion based on a mistake of law will invalidate a stop. *See State v. George*, 557 N.W.2d 575 (Minn. 1997)(finding a stop invalid where an officer had stopped a motorcycle on a mistaken belief that its headlight configuration was illegal). However, "honest, reasonable mistake of facts are unobjectionable under the Fourth Amendment," *State v. Licari*, 659 N.W.2d 243, 245 (Minn. 2003), and do not invalidate an otherwise valid stop. *State v. Duesterhoeft*, 311 N.W.2d 365, 370 (Minn. 1981); *see also City of St. Paul v. Vaughn*, 237 N.W.2d 365, 370 (Minn. 1975)(finding that a mistake of identity was not enough to invalidate a stop). In the instant case, Officer Laine's mistake of fact was not objectionably reasonable because although her report indicated Petitioner's rear license plate was out, her testimony was ambivalent and the video itself depicts Petitioner's rear license plate light as working properly. The alleged "cigarette butt" seen in the video is not seen coming from Petitioner's vehicle and could merely have been a reflection or litter in the roadway. Petitioner stated he does not smoke and Officer Laine testified that she did not smell smoke when she approached the vehicle. Those factors, along with the police video, lead this Court to conclude that Officer Laine's mistake of fact was unreasonable, thus invalidating the stop.

- J.A.C.