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## State v. Wiles

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### Mistakes of Fact

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### ROLL CALL TRAINING

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Welcome to the work-at-home social distancing Legal Question of the Week! As I write this, my wife and daughter who are school teachers are in their respective bedrooms preparing online lessons for their students. My son is in the den meeting online with his class by videoconference<sup>1</sup> and I am in the dining room typing this update to prove that I'm actually working and not treating my banishment to home as a vacation.<sup>2</sup> I really didn't think this COVID-19 stuff was going to be that big of a deal, but here we are: nothing on the grocery store shelves, no gatherings of more than 100 people,<sup>3</sup> no bars open, and only take-out or delivery from restaurants. Welcome to a prequel of the "Walking Dead."<sup>4</sup>

You might say that I made a mistake of fact when I considered the impact that COVID-19 would have on our society. You might even say that based on the information that I had, such a mistake was a reasonable one. But what if an officer makes a reasonable mistake of fact that he uses as the basis for a vehicle stop? How might that affect the stock market or the price of gasoline? Is the stop constitutionally defective?

From that rough segue, let's discuss reasonable mistakes of fact as we look at this week's N.C. Court of Appeals case of State v. Wiles.<sup>5</sup> When our defendant, Toby Jay Wiles, drove past a State Trooper around 8:00 p.m., the trooper observed that the front seat passenger did not appear to be wearing his seatbelt. He performed a traffic stop and as he approached the passenger side of the truck, he "almost instantaneously" noticed the odor of alcohol<sup>6</sup> coming out of the passenger window. When he reached the passenger, he realized that the passenger did, in fact, have his seatbelt on. However, the seatbelt was gray and the passenger had on a gray shirt which may have resulted in a camouflage effect leading the officer to believe no seatbelt was being worn. He decided at that point not to issue a citation to the passenger.

Nevertheless, because of the odor, the trooper asked the occupants if they had been drinking and they admitted that they had. He asked them to exit the truck and observed the driver had "red, glassy, and bloodshot" eyes. He conducted an horizontal gaze nystagmus (HGN) test on the defendant which indicated that he was impaired. He arrested him and the defendant was subsequently convicted of driving while impaired.

On appeal, Wiles argued that because the passenger was wearing his seatbelt the whole time, the trooper had no reasonable suspicion to stop the vehicle. At trial, the trooper had testified that except for the seatbelt issue, there were no other traffic violations. He also stated that although he "did truly, 100% believe" that the passenger was not wearing his seat belt, in giving him the benefit of the doubt, he couldn't swear that with him having a gray

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<sup>1</sup> And by the sound of it, I am thankful I am not the teacher for his class.

<sup>2</sup> I know that it will take more than one legal update to convince you of that. I can happily say that I have found the secret to family harmony through social distancing (the home game version.) Lock everyone in their own room and give them tasks to complete.

<sup>3</sup> including churches and a funeral that we had to keep from happening that was going to bring in more than 200 folks. We sometimes have to be the ones who enforce the tough rules.

<sup>4</sup> Does anyone watch this anymore? Or has it just turned into the latest reality show?

<sup>5</sup> COA 19-381 (17 March 2020) also known as Home Quarantine Day 1.

<sup>6</sup> Do defense attorneys still insist that alcohol has no odor and the officer must say the "odor of an alcoholic beverage" or has that finally run its course like every pandemic ultimately does?

shirt that the seatbelt was not being worn. So, assuming the trooper was mistaken about whether the seatbelt was on, does that mistake of fact cause the seizure to be unconstitutional?

Since the Fourth Amendment by its text prohibits only “unreasonable” searches and seizures, the foundational question for any case like this is whether the officer acted reasonably.<sup>7</sup> Since reasonableness is the question, courts have said that the Fourth Amendment can tolerate objectively reasonable mistakes.<sup>8</sup> The defendant argued that the mistaken observation “that a passenger is not wearing a seatbelt cannot logically serve as the objectively reasonable basis for” stopping a vehicle but the Court of Appeals disagreed based in part on a previous ruling in State v. Kincaid.<sup>9</sup>

In Kincaid, an officer recognized a defendant driving past him and believed that the defendant’s license had been revoked for several years. However, once he stopped the defendant, he found that his driver’s license was indeed valid. Despite that, the officer had previously heard that the defendant was a drug dealer and so he asked if he could search the vehicle. The defendant gave consent and the search discovered marijuana for which he was charged. The court ruled that “although the officer’s suspicion turned out to be incorrect,” the mistake was a reasonable one considering the totality of the circumstances and therefore, the officer had reasonable suspicion.

Similarly, in the present case, the trooper’s reasonable mistake as to whether the passenger was wearing a seatbelt did not rob him of the reasonable suspicion necessary to conduct the stop. Once he “instantaneously” smelled alcohol, that gave him reasonable suspicion to extend the stop to conduct an impaired driving investigation. As a result, the defendant’s conviction was upheld.

The Fourth Amendment requires reasonableness, not perfection. These “reasonable mistakes of fact” have consistently been held to be okay in other areas also, such as the case where a search is done based on the consent of an occupant with apparent authority (but as it turns out, not legal authority) to give that consent. A seizure and search of a person who closely matches a suspect description but turns out not to be the bad guy is considered legitimate as well. And we also know that mistakes of law (such as how many brake lights have to be operable to be legal) can also be objectively reasonable after the Heien case.<sup>10</sup>

Now before we celebrate mediocrity here at the police department and decide that we should not be careful to articulate actual, good, and correct facts to support our actions, let me remind everyone that our mistakes must be objectively reasonable. The fact that officers are not required under the law to be 100% perfect and correct in every situation should not prevent us from striving to do so. Like the COVID-19 pandemic,<sup>11</sup> even small percentages that go wrong can spell disaster for a lot of people.

And with that, it’s time to go back into my protective bubble coated with hand sanitizer and await the inevitable apocalypse. Remember to wash your hands frequently and thoroughly, maintain a separation of at least six feet, and be kind to one another at the grocery store. We can get through this together if we have no personal contact with another living soul, which frankly is what I’ve been advocating for years.

Stay safe and healthy!

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<sup>7</sup> I know that many officers believe that they ALWAYS act reasonably and you are, of course, entitled to that opinion. However, the courts generally take a more objective view of reasonableness and they are the ones with the gavels.

<sup>8</sup> See State v. Eldridge, 249 N.C. App. 493 (2016).

<sup>9</sup> 147 N.C. App. 94 (2001). Remember when the viruses we were really worried about were computer viruses? The first known computer virus appeared in 1971 and was called the “Creeper virus.” (Minecraft players will appreciate that name.) In the 1970’s and early 80’s, viruses were typically spread by infected floppy disks. Insert obligatory “be careful where you stick your floppy disk” joke here.

<sup>10</sup> Heien v. North Carolina, 574 U.S. 54 (2014).

<sup>11</sup> Thanks to my other housemate, “Alexa,” I now know the difference between an epidemic and a pandemic. An epidemic is “a widespread occurrence of an infectious disease in a community at a particular time.” A pandemic is “an epidemic that has spread over several countries or continents.” Feel free to use that information to sound smart at social gatherings, should those ever be permitted again.

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**ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they're pretty cool guys.**



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