

## Reasonable Mistakes and Reasonable Suspicion

**Author :** Jeff Welty

**Categories :** [Search and Seizure](#), [Uncategorized](#)

**Tagged as :** [hopper](#), [mclamb](#), [mistake of fact](#), [mistake of law](#), [reasonable suspicion](#)

**Date :** April 21, 2010

The court of appeals issued several opinions yesterday. Among the most interesting is [State v. Hopper](#), a case that addresses when an officer's mistaken beliefs can support an investigative stop.

The defendant in *Hopper* was driving on Piedmont Circle, a loop road in an apartment complex in Winston-Salem. It was raining heavily. An officer noticed that the defendant's tail lights were not on, and concluded that the defendant was violating G.S. 20-129, which requires a vehicle's tail lights to be on whenever the vehicle is on a public street and its windshield wipers are in use. The officer therefore stopped the defendant. During the stop, the officer noticed drugs and a gun, which led to criminal charges against the defendant.

The defendant moved to suppress, arguing that Piedmont Circle was not a public street and that the officer therefore lacked reasonable suspicion for the stop. The trial court denied the motion to suppress, the defendant pled guilty and appealed, and the court of appeals affirmed. The appellate court assumed *arguendo* that Piedmont Circle was not a public street, but held that even if it wasn't, the officer reasonably believed that it was, and that a reasonable mistake of fact can provide the reasonable suspicion necessary for a traffic stop.

The principle that a reasonable mistake of *fact* can provide reasonable suspicion appears to be uncontroversial. But a reasonable mistake of *law* cannot provide reasonable suspicion in North Carolina. *State v. McLamb*, 186 N.C. App. 124 (2007). (How to handle officers' reasonable mistakes of law is controversial nationally. 38 Geo. L. J. Ann. Rev. Crim. Pro. 43, 48 (2009) (noting that "[t]he circuits have split on whether an officer's mistaken belief that a traffic violation has occurred will support an investigatory stop if the mistake is one of law," and collecting cases).)

So, was the mistake in *Hopper* really one of fact, or was it one of law? This issue received little or no attention from the court and from the parties, but *McLamb* provides an interesting comparison. The officer in that case believed that the speed limit on a particular road was 20 m.p.h., when it was actually 55 m.p.h. In *Hopper*, the officer believed that a particular road was a public street, though the court of appeals assumed *arguendo* that it was not. It may not be immediately obvious whether these are mistakes of law or fact, but it seems to me that whatever they are, *they are the same thing*. In other words, I don't think that the assumed facts of *Hopper* can be distinguished from the facts of *McLamb*, which held that the officer's mistake about the speed limit was one of law.

As it happens, I tend to think that both mistakes were mistakes of fact. But it seems to me that the defendant in *Hopper* could have trumpeted both the holding of *McLamb* and the statement in that case that a stop should not be upheld when an officer "stop[s] [a] vehicle[] based upon [his] subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred." (Internal quotation marks and citation omitted.) It certainly strikes me as odd that neither the opinion in *Hopper*, nor either party's brief, even cites *McLamb*. Unless and until the state supreme court addresses officers' reasonable mistakes, lawyers and judges may have trouble categorizing such mistakes, and so may have difficulty determining whether stops based on such mistakes should be upheld.