

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Frank J. Neal

No. 18-50744, United States Court of Appeals for the Fifth Circuit (September 26, 2019)

SUMMARY

Fifth Circuit affirmed denial of motion to suppress in DWI prosecution under Assimilative Crimes Act (18 U.S.C. § 13) incorporating Texas Penal Code § 49.04. Officers had reasonable suspicion of violating Texas Transportation Code § 545.060(a) when defendant's vehicle swerved across lane lines three times. Any mistaken belief that the statute required only failure to maintain lane, not unsafe movement, was objectively reasonable under **Heien v. North Carolina**, 135 S. Ct. 530 (2014).

OPINION

PER CURIAM.

Case: 18-50744 Document: 00515134380 Page: 1 Date Filed: 09/26/2019 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT No. 18-50744 United States Court of Appeals Fifth Circuit Summary Calendar FILED September 26, 2019 Lyle W. Cayce UNITED STATES OF AMERICA, Clerk Plaintiff-Appellee v. FRANK J. NEAL, Defendant-Appellant Appeal from the United States District Court for the Western District of Texas USDC No. 5:15-MJ-668-1 USDC No. 5:16-CR-491-1 Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM: * Frank J. Neal appeals his conviction for driving while intoxicated in violation of 18 U.S.C. § 13, the Assimilative Crimes Act, incorporating Texas Penal Code § 49.04. He challenges the district court's decision to uphold the magistrate judge's denial of Neal's motion to suppress evidence obtained following a traffic stop on Lackland Air Force Base.

Neal contends that the * Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4. Case: 18-50744 Document: 00515134380 Page: 2 Date Filed: 09/26/2019 No. 18-50744 officers' decision to conduct a stop of his vehicle was not justified at its inception.

Specifically, he argues that the Government did not present sufficient evidence that his failure to maintain a single lane involved unsafe or dangerous movement, and thus the officers did not have a reasonable suspicion that he had violated Texas Transportation Code § 545.060(a).

The two officers who stopped Neal on the night in question testified that, soon after passing the base's entry control point, they observed the left wheels of Neal's vehicle swerve three times across the white dotted line separating the two eastbound lanes of the divided street, with the vehicle driving down the middle of the white line the third time.

We view this evidence in the light most favorable to the Government and conclude that the officers reasonably suspected Neal of violating § 545.060(a). See *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005); see also *Learning v. State*, 227 S.W.3d 245, 248-49 (Tex. App. 2007). Further, any belief by the officers that § 545.060(a) required only failure to maintain a lane (and not, in addition, unsafe movement), even if mistaken, was objectively reasonable.

See *Heien v. North Carolina*, 135 S. Ct. 530, 534-40 (2014); see also *Leming v. State*, 493 S.W.3d 552, 556-61 (Tex. Crim. App. 2016) (plurality opinion). AFFIRMED. 2