STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee,

v

DAVID ALLAN LUCYNSKI,
Defendant-Appellant

Mich Sup. Ct. No.: 165806
Court of Appeals: 20-353646
Circuit Court: 20-15454-AR
District Court: 20-0045-FD

BRIEF BY THE CRIMINAL DEFENSE ATTORNEYS OF MICHIGAN (CDAM) IN SUPPORT OF DAVID ALLAN LUCYNSKI

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QUESTIONS PRESENTED

I. WHETHER APPLICATION OF THE EXCLUSIONARY RULE IS PROPER WHERE THE DEPUTY SHERIFF HAD NO REASONABLE SUSPICION TO BELIEVE THAT THE DEFENDANT VIOLATED THE LAW, GIVEN THAT THERE WAS NO EVIDENCE TO SUPPORT THE DEPUTY'S HUNCH THAT AN ILLEGAL DRUG TRANSACTION HAD TAKEN PLACE AND THE DEPUTY DID NOT MAKE A REASONABLE MISTAKE OF LAW TO THE EXTENT THAT HE STOPPED THE DEFENDANT FOR A SUSPECTED VIOLATION OF MCL 257.676B(1).

Defendant/Appellant Lucynski says, "yes."

Plaintiff-Appellee says, "no."

The Court of Appeals says, "no."

The Criminal Defense Attorneys of Michigan says, "yes."

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus joins the statement of facts and relevant procedural history as is found in Defendant-Appellant's Supplemental Brief on Appeal

INTRODUCTION

On September 20, 2023, this Court directed the parties, and invited *amicus,* to address a seemingly straight forward question: Whether the application of the exclusionary rule is proper where the deputy sheriff had no reasonable suspicion to believe that the defendant violated the law, given that there was no evidence to support the deputy's hunch that an illegal drug transaction had taken place and the deputy did not make a reasonable mistake of law to the extent that he stopped the defendant for a suspected violation of MCL 257.676b(1). While one might debate whether the Court of Appeals adequately considered the directive of the remand by this court as originally set forth in this court's July 26, 2022, opinion, both briefs in support of the prosecution's position fail to fully address the question presented, and instead seem to endeavor to either second guess this Court's July 26, 2022, opinion, or to avoid directly answering the question as presented by this court in its Order dated September 20, 2023. The position of Defendant-Appellant, however, as set carefully and thoroughly set forth in his brief, addresses the questions presented, and after throughly considering the law and issues presented, reaches the position that should be adopted by this court: The exclusionary rule applies.

ARGUMENT

It is plain from the briefing supporting the prosecution that they are unhappy with this court's underlying ruling[1]. It is plain that they are unhappy with the scope of the Court's order[2] relating to the pending issues, and are not happy with being constrained by the directives of answering the question in the context of no reasonable suspicion, an unsupported hunch, and an

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[1] This court's Opinion and Order dated July 26, 2022.

[2] This court's Order dated September 20, 2023.

unreasonable mistake of law. It is plain that their arguments seek to avoid the plain application of these directives, and either fault this court in one way or another for specifically limiting the issues, contesting that this court's determinations were erroneous, and/or more generally asking, with out specifically saying so, that there should be a new exception to exclusionary rule.[3]

While there are exceptions to the exclusionary rule, not only is it not directly argued that any of existing exceptions apply, but they fail to clearly articulate a new rule that should apply. It is here suggested that the failure of the advocates for the prosecution's position to specifically identify an established exception is a concession that is there is no applicable existing exception. The failure to articulate a well grounded new exception highlights that the majority of any argument in support of the prosecution's position is little more than reframed arguments attacking this Court's July 26, 2022, opinion.

Generally speaking, if a seizure is unconstitutional, *i.e.*, illegal, absent some other significant doctrine that applies, it has been generally considered axiomatic that such evidence is excludable. Because there is no such "significant doctrine" that actually applies here, it is not entirely surprising that the arguments in support of the prosecution's position fail to articulate any such doctrine. The arguments made in support of the prosecution are more or less the opposite of a well established or even articulable exception. Instead, their arguments seem to be that the officer's mistake was indeed reasonable (notwithstanding this court's directive to analyze the

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[3] In terms of the alluded to, but not fully articulated, the suggested new exceptions seem to be: (1) The Fourth Amendment violation was not "unreasonable;" and (2) An "objective officer" exception that somehow survives a determination that there was no reasonable suspicion and no reasonable mistake of law. It might also be said that Plaintiff-Appellee seems to suggest they are not proposing a new exception to the exclusionary rule, but instead adding another level of hurdles that must be jumped by defendants seeking to exclude unconstitutionally obtained evidence.

issue otherwise), and by arguing as such, they essentially render their arguments into a circular argument of redefining what this court has already ruled. In other words, an argument that a mistake of law that was not reasonable, according to Plaintiff-Appellee, can somehow be recast or resurrected as "reasonable," such that the exclusionary rule does not apply. Such an exercise in recasting and re-defining is not only untenable, but seems likely to lead trial courts into a quagmire of "reasonable" unreasonableness.

At the same time, it would be a mistake to equate something akin to a "good faith exception" to an unreasonable mistake of law by the arresting officer. The two definitions seem mutually exclusive. It would seem impossible to be acting in good faith, and at the same time be deemed to have made an unreasonable mistake of law. There are no magic words or crafty "legal argument" that can harmonize those two conflicting conclusions.

This court should decline an invitation to rule, and should generally refuse to rule, that by way of the arguments in favor of the prosecution's circular arguments, that a reasonable officer should be excused from making unreasonable mistakes of law in terms of the operation of the exclusionary rule. Likewise, this court should decline to redefine the test of what is an unconstitutional search to avoid the exclusionary rule.

It seems particularly instructive that this court, as part of its July 26, 2022, Opinion, noted in footnote 22:

> "While Heien instructs us not to "examine the subjective understanding of the particular officer involved," *Heien*, 574 US at 66, it is noteworthy that Robinson did not mention impeding or interfering with traffic during his recorded interactions with defendant. This is contrary to the facts in *Heien*, in which the officer clearly informed the occupants that he stopped their vehicle because of a faulty rear brake light. *Id.* at 57-58. While we need not decide the issue today, we question whether an explanation for a warrantless stop or seizure of an individual that was never conveyed to the individual and was not raised

> until after prosecution of the individual commenced is entitled to deference as a reasonable mistake of law."

It has always been concerning that *Heien* seems to stand for the position that ignorance of the law for a police officer is an excuse justifying an otherwise invalid traffic stop. Police officers take oaths to know, follow and enforce the law. Laws exist to prevent chaos and disorder. When it comes to the police, we introduce such chaos and disorder when we leave the laws open to subjective interpretation and erroneous legal determinations by officers are protected. This court should not facilitate innocuous explanations and unexplainable intervening events to justify violations of the Fourth Amendment. An unreasonable and erroneous recitation of the law must not justify any stop. The concern with *Heien* has always been that the ruling allows courts to erode the 4th amendment's protections against unreasonable search and seizure. In practice, observed behaviors like the failure to maintain a perfectly straight vector while driving are often cited as the reason for a stop, along with many other "stated" reasons for stops in the absence of anything consistent with unsafe driving or obvious violations of the criminal statutes.[4]

Our courts must be given the tools to determine the reasonableness of a police officer's interpretation of the laws, and when the officers actions are deemed not reasonable, the courts must have the ability to exclude evidence without clearing some new hurdle as proposed by the prosecution. As a preliminary matter, this *Amicus* suggests that whatever new hurdle the prosecution would impose would be a hurdle that either explicitly, or by operation of its inaccessibility to defendants (like the somehow requiring that the inner thoughts of the officer

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[4] It would seem that the *Amicus* for PAAM would extend the right to detain or perhaps even arrest citizens on the basis of an officer's desire to "ask for directions." It would seem bizarrely draconian for a court to rule a law enforcement office could detain with the force of law a citizen just to ask him for directions.

are revealed) would be impossible for any given defendant to establish. This court must not further erode the Fourth Amendment's protection of civil liberties in a context where that protection stands to be completely consumed by exceptions.

In terms of any type of balancing test that the court might find applicable (which *Amicus* CDAM states is not appropriate, here), it must be recognized by this Court that there is no societal benefit to officers arresting citizens based un unsupported hunches.[5] There is no societal benefit to officers making unreasonable mistakes of law. There is no societal benefit to this court licensing officers with the power to act in such a manner. Instead of being a societal benefit, we could instead expect such a rule to promote the erosion of public trust, and possibly increased resentment and fear of those charged with keeping the public safe. By doing so this Court would be encouraging police to act in arbitrary and unpredictable ways, leading to a widespread sense of fear and injustice.

Adopting the prosecution's positions would open the way for the abuse of power and misconduct, and could invite excessive force, unlawful arrests, racial profiling, and other violations of civil liberties. These challenges already plague law enforcement's efforts in many marginalized communities, and we could expect such a ruling by this Court to further challenge what was once a relationship of trust and cooperation between the public and police. The requested rule by the prosecution risks further interference with police investigations, making it harder to gather intelligence and make it less likely citizens will report crimes or cooperate with

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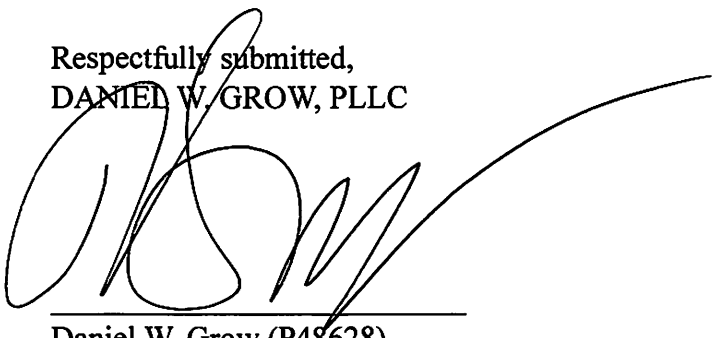
[5] The United States Supreme Court has stated that the purposes of the exclusionary rule are to protect a person's Fourth Amendment guarantees by deterring lawless conduct by police officers close the courthouse doors "to any use of evidence unconstitutionally obtained. *Wong Sun v. United States*, 371 U.S. 471, 486, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). *People v Goldston* , 470 Mich 523, 562, 682 N.W.2d 479, 499-500 (2004)(Dissent, Kavanaugh, J.).

investigations out of fear of retaliation or unfair treatment. In short, the adoption of any position consistent with what has been suggested by the prosecution seems more likely to be overwhelmingly negative for both public safety and trust in law enforcement. This invitation must be declined, and under the circumstances here, this Court should conclude the exclusionary rule applies.

CONCLUSION AND REQUESTED RELIEF

Amicus, the Criminal Defense Attorneys of Michigan, respectfully request that this honorable court grant leave to appeal and apply the exclusionary rule. It is proper to suppress the evidence and dismiss the charges.

Respectfully submitted,
DANIEL W. GROW, PLLC



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