STATE OF MICHIGAN

IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN,	SC File No.
Plaintiff-Appellant,	COA File No. 314877
vs.	Lower Court File No. 12-062736-FH Muskegon County Circuit Court
CHARLES ALMONDO-MAURICE DUNBAR,	
Defendant-Appellee.	

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PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF DECISION APPEALED FROM AND RELIEF SOUGHT

The People seek leave to appeal from the published decision of the Court of Appeals in *People v Dunbar*, ___ Mich App ___; ___ NW2d ___; 2014 WL 4435838 (2014) (Appendix A).

There are at least four errors involved. ***First***, the Court of Appeals misinterpreted MCL 257.225(2), which provides:

> A registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which the plate is issued so as to prevent the plate from swinging. The plate shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, in a place and position that is clearly visible. The plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition.

The Court of Appeals erroneously interpreted MCL 257.225(2) only to prohibit physical obstructions *affixed to license plates* and, therefore, because there was no showing that the present license plate was dirty, rusted, defaced, scratched, snow-covered, or otherwise not "maintained" in legible condition, Defendant was not in violation of this statute when the stop was made. Reading the statute as a whole, the intent of the statute is to assure clear legibility of the plate. The Court of Appeals focused solely on the last sentence. The penultimate sentence, however, establishes that "[t]he plate shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, *in a place and position that is clearly visible*." (Emphasis supplied.) This means that the plate must be positioned so that it is clearly visible, meaning, of course, so that its visibility is not blocked or obstructed. Here, the trial court found that the plate's visibility was blocked or obstructed by the trailer hitch. Thus, it was not "in a place and position that is clearly visible." The last sentence provides that "[t]he plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." The term "maintain" means "**1**. to keep in

existence or continuance; preserve; retain. **2**. to keep in due condition, operation or force; keep unimpaired. **3**. to keep in a specified state, position, etc." *The Random House College Dictionary* (rev ed, 1984), p 807. The Court of Appeals erroneously limited the term "maintain" to mean the physical state of the plate itself rather than to include "keep[ing the plate] unimpaired" or "to keep in a specified ... position" "free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." And, when reading the last two sentences to the statute together, the intent of the statute is to require that the plate is in a location or position that makes it clearly visible. An obstruction affixed to the vehicle that does not satisfy this requirement violates the statute. See and compare *People of Canton Twp v Wilmot*, unpublished opinion per curiam of the Court of Appeals, issued March 7, 2013 (Docket No 305308); 2013 WL 951109 (Appendix C).

Second, the Court of Appeals failed to consider the fact that Defendant's vehicle was stopped because the license plate as read by the officers came back on the Law Enforcement Information Network (LEIN) for a 2007 Chevrolet Equinox rather than for an older 1990s model Ford Ranger pickup truck. Thus, the Court of Appeals failed to consider that a traffic stop based on a police officer's incorrect but reasonable assessment of the facts does not violate the Fourth Amendment. See, e.g., *United States v Chanthasouxat*, 342 F3d 1271, 1276-1277 (CA 11, 2003), citing *Saucier v Katz,* 533 US 194, 205; 121 S Ct 2151, 2158; 150 L Ed 2d 272 (2001); *United States v. Garcia-Acuna,* 175 F3d 1143, 1147 (CA 9, 1999); *United States v Lang,* 81 F3d 955, 966 (CA 10, 1996); *United States v Shareef,* 100 F3d 1491, 1503 (CA 10, 1996); *United States v Hatley,* 15 F3d 856, 859 (CA 9, 1994); *United States v Gonzalez*, 969 F2d 999, 1006 (CA 11, 1992). See also *United States v Delfin-Colina*, 464 F3d 392, 398 (CA 3, 2006)

("mistakes of fact are rarely fatal to an officer's reasonable, articulable belief that an individual was violating a traffic ordinance at the time of a stop").

Third, if the Court of Appeals' interpretation of MCL 257.224(2) is correct, the Court failed to consider whether a law enforcement officer's objectively reasonable mistake of law can support reasonable suspicion for an investigatory stop under the Fourth Amendment. This issue is now at the United States Supreme Court in *Heien v North Carolina*, ___ US ___; 188 S Ct 1872; 188 L Ed 2d 910 (2014); *State v Heien*, 366 NC 271, 276; 737 SE2d 351, 355 (NC, 2012) (the North Carolina Supreme Court stated the issue as "whether a stop is ... permissible when an officer witnesses what he reasonably, though mistakenly, believes [is] ... a traffic violation").[1]

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[1] The North Carolina Supreme Court concluded that there was no Fourth Amendment violation when a police officer stopped a motorist because of a faulty brake light where the statute (as later interpreted) only required one functioning brake light, stating, in part:

> concerns about the rules of construction regarding the substantive statutes at issue seem to us to be more applicable to the subsequent judicial interpretation of a statute and not to a routine traffic stop that needs to be based only on reasonable suspicion. A *post hoc* judicial interpretation of a substantive traffic law does not determine the reasonableness of a previous traffic stop within the meaning of the state and federal constitutions. Such a *post hoc* determination resolves whether the conduct that previously occurred is actually within the contours of the substantive statute. But that determination does not resolve whether the totality of the circumstances present at the time the conduct transpired supports a reasonable, articulable suspicion that the statute was being violated. It is the latter inquiry that is the focus of a constitutionality determination, not the former.... [W]e think the Fourth Amendment's reasonable suspicion standard is not offended by an officer's objectively reasonable mistake of law.
>
> Furthermore, we note that a decision to the contrary would be inconsistent with the rationale underlying the reasonable suspicion doctrine. "[R]easonable suspicion" is a "commonsense, nontechnical conception[] that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Ornelas v United States,* 517 US 690, 695; 116 S Ct 1657, 1661; 134 L Ed 2d 911, 918 (1996) (citations and internal quotation marks omitted). And while "reasonable suspicion" is more than "an inchoate and unparticularized suspicion or hunch of criminal activity," *Illinois v Wardlow,* 528 US 119, 124; 120 S Ct 673, 676; 145 L Ed 2d 570, 576 (2000) (citation and internal quotation marks omitted), "'some minimal level of objective justification'" is all that is demanded, *United States v Sokolow,* 490 US 1, 7; 109

When, as here, a statute might be subject to more than one interpretation by an objectively reasonable police officer, the officer's suspicion of wrongdoing in the field resulting in a stop should be judged by whether the officer's interpretation at the time was reasonable, regardless whether a court later decides that the officer's interpretation is incorrect. This method of review is proper because "the ultimate touchstone of the Fourth Amendment is 'reasonableness[,]'" *Riley v California*, ___ US ___; 134 S Ct 2473, 2482; 189 L Ed 2d 430 (2014), quoting *Brigham City v Stuart*, 547 US 398, 403; 126 S Ct 1943; 164 L Ed 2d 650 (2006), rather than "reducing it to '"a neat set of legal rules,'" *United States v Arvizu*, 534 US 266, 274; 122 S Ct 744, 751; 151 L Ed 2d 740 (2002) ("the concept of reasonable suspicion is somewhat abstract. *Ornelas, supra,* at 696 (principle of reasonable suspicion is not a '"finely-tuned standar[d]"'); *Cortez, supra,* at 417, 101 S Ct 690 (the cause 'sufficient to authorize police to stop a person' is an 'elusive concept'). But we have deliberately avoided reducing it to '"a neat set of legal rules,"' *Ornelas, supra,* at 695-696 [quoting *Illinois v Gates,* 462 US 213, 232; 103 S Ct 2317; 76 L Ed 2d 527 [1983]). See and compare *United States v Smart*, 393 F3d 767, 770 (CA 8, 2005) ("the validity of a stop depends on whether the officer's actions were objectively reasonable in the circumstances, and in mistake cases the question is simply whether the mistake, whether of law or of fact, was an objectively reasonable one"); *United States v Martin*, 411 F3d 998, 1002 (CA 8, 2005) ("we think the level of clarity [of the statute] falls short of that required to declare [the officer's] belief and actions objectively unreasonable under the

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> S Ct 1581, 1585; 104 L Ed 2d 1, 10 (1989) (quoting *INS v Delgado,* 466 US 210, 217; 104 S Ct 1758, 1763; 80 L Ed 2d 247, 255 (1984)). To require our law enforcement officers to accurately forecast how a reviewing court will interpret the substantive law at issue would transform this "commonsense, nontechnical conception" into something that requires much more than "some minimal level of objective justification." We would no longer merely require that our officers be reasonable, we would mandate that they be omniscient. This seems to us to be both unwise and unwarranted. [*Heien* 366 NC at 280-281; 737 SE2d at 357-358.]

circumstances. This conclusion is consistent with our court's prior suggestion that a misunderstanding of traffic laws, if reasonable, need not invalidate a stop made on that basis"); *United States v Sanders*, 196 F3d 910, 913 (CA 8, 1999) (the stop was valid because the officer "could have reasonably believed at the time that the trailer was subject to the two taillight requirement" and, therefore, because the "Court should not expect state highway patrolmen to interpret the traffic laws with the subtlety and expertise of a criminal defense attorney" the officer's belief, although wrong, cannot be held "unreasonable")

Fourth, the Court of Appeals failed to consider, separately, constitutional violations and remedies in the Fourth Amendment context. *United States v Leon*, 468 US 897, 907; 104 S Ct 3405, 3412; 82 L Ed 2d 677 (1984) ("[w]hether the exclusionary sanction is appropriately imposed in a particular case … is 'an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct'" [citation omitted]); *Herring v United States*, 555 US 135, 140; 129 S Ct 695, 700; 172 L.Ed.2d 496 (2009) ("[t]he fact that a Fourth Amendment violation occurred—*i.e.*, that a search or arrest was unreasonable—does not necessarily mean that the exclusionary rule applies"); *Davis v United States*, ___ US ___; 131 S Ct 2419, 2431; 180 L Ed 285 (2011) ("exclusion of evidence does not automatically follow from the fact that a Fourth Amendment violation occurred…. The remedy is subject to exceptions and applies only where its 'purpose is effectively advanced'").

The Court of Appeals failed to consider the purpose of the judicially created exclusionary rule—i.e., "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system…. [T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Herring*,

555 US at 144; 129 S Ct at 702. In other words, the Court of Appeals failed to address whether the purpose of the exclusionary rule is achieved by suppressing the cocaine, marijuana and gun evidence when the deputies acted in good faith in deciding to stop Defendant's vehicle, but the Court of Appeals thereafter found the stop invalid.

The exclusionary rule "is a 'judicially created' sanction, ... specifically designed as a 'windfall' remedy to deter future Fourth Amendment violations." *Davis*, 131 S Ct at 2434. Such "[s]uppression of evidence ... has always been [the Supreme Court's] last resort, not [its] first impulse." *Hudson v Michigan*, 547 US 586, 591; 126 S Ct 2159, 2163; 165 L Ed 2d 56 (2006). The reason for exercising judicial caution in expanding "'[t]he exclusionary rule [is becasue it] generates 'substantial social costs,' ... which sometimes include setting the guilty free and the dangerous at large." *Id.*, quoting *Leon*, 468 US at 907; 104 S Ct at 3412, and *Colorado v Connelly*, 479 US 157, 166; 107 S Ct 515; 93 L Ed 2d 473 (1986). This "'costly toll' upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its] application[.]" *Hudson*, 547 US at 591; 126 S Ct at 2163. Accordingly, the Court has "rejected '[i]ndiscriminate application' of the rule, ... and ha[s] held it to be applicable only 'where its remedial objectives are thought most efficaciously served,' ... that is, 'where its deterrence benefits outweigh its "substantial social costs,"'" *Id.* (citations omitted).

"An error that arises from nonrecurring and attenuated negligence is ... far removed from the core concerns that led [the United States Supreme Court] to adopt the [exclusionary] rule in the first place." *Herring*, 555 US at 144; 129 S Ct at 702. Instead, "[t]o trigger the exclusionary rule, police conduct must be *sufficiently deliberate* that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.... [T]he

exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances *recurring or systemic negligence.*" *Id.* (emphasis added).

The good-faith exception has been applied to accommodate objectively reasonable police reliance on subsequently invalidated search warrants, *Leon, supra,* subsequently invalidated statutes, *Illinois v Krull,* 480 US 340; 107 S Ct 1160; 94 L Ed 2d 364 (1987), inaccurate court records, *Arizona v Evans,* 514 US 1; 115 S Ct 1185; 131 L Ed 2d 34 (1995), negligently maintained police records, *Herring supra,* and misinterpretation of Supreme Court precedent, *Davis v United States,* ___ US ___; 131 S Ct 2419; 180 L Ed 285 (2011).

Accordingly, for the foregoing reasons (and those stated in the body of this application), this Honorable Court should grant leave *or* summarily reverse the Court of Appeals, affirm the trial court's denial of Defendant's motion to suppress, and remand the matter for trial.

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STATEMENT OF THE QUESTIONS PRESENTED

I. BECAUSE MCL 257.225(2) REQUIRES THAT A REGISTRATION PLATE BE "ATTACHED ... IN A PLACE AND POSITION THAT IS CLEARLY VISIBLE" AND IT MUST "BE MAINTAINED FREE FROM FOREIGN MATERIALS THAT OBSCURE OR PARTIALLY OBSCURE THE REGISTRATION INFORMATION AND IN A CLEARLY LEGIBLE CONDITION", DOES PLACEMENT OF A PLATE THAT ALLOWS ALL OR A PART OF ITS INFORMATION TO BE BLOCKED OR OBSTRUCTED (SUCH AS BY A TRAILER HITCH BALL) VIOLATE THE STATUTE AND RENDER THE DEPUTIES STOP OF DEFENDANT'S PICKUP TRUCK VALID?

Plaintiff-Appellant says, "Yes."
Defendant-Appellee says, "No."
The Court of Appeals says, "No."

II. DOES AN OBJECTIVELY REASONABLE MISTAKE OF FACT BY AN OFFICER AS TO WHETHER A VIOLATION OF LAW HAS OCCURRED SUPPORT THE STOP OF A MOTOR VEHICLE, AND, WHERE THE TWO DEPUTIES IMPUTED THE WRONG NUMBER FROM DEFENDANT'S LICENSE PLATE INTO THE LAW ENFORCEMENT INFORMATION NETWORK, WHICH CAME BACK TO A DIFFERENT VEHICLE THAN WHAT DEFENDANT WAS DRIVING, DID THE DEPUTIES HAVE REASONABLE SUSPICION UPON WHICH TO JUSTIFY THE STOP OF DEFENDANT'S VEHICLE?

Plaintiff-Appellant says, "Yes."
Defendant-Appellee says, "No."
The Court of Appeals did not answer this question.

III. DOES AN OBJECTIVELY REASONABLE MISTAKE OF LAW BY AN OFFICER AS TO WHETHER A VIOLATION OF LAW HAS OCCURRED SUPPORT THE STOP OF A MOTOR VEHICLE, AND, WHERE THE TWO DEPUTIES BELIEVED THAT DEFENDANT'S TRAILER HITCH BALL RENDERED HIS PLATE NOT "CLEARLY VISIBLE" AS REQUIRED BY MCL 257.225(2), DID THE DEPUTIES HAVE REASONABLE SUSPICION UPON WHICH TO JUSTIFY THE STOP OF DEFENDANT'S VEHICLE?

Plaintiff-Appellant says, "Yes."
Defendant-Appellee says, "No."
The Court of Appeals says, "No."

STATEMENT OF THE QUESTIONS PRESENTED, continued

IV. SHOULD THE JUDICIALLY CREATED EXCLUSIONARY RULE BE APPLIED WHEN AN OFFICER, IN GOOD FAITH, STOPS A VEHICLE BELIEVING EITHER FACTUALLY OR LEGALLY THAT THE MOTORIST VIOLATED A TRAFFIC LAW?

Plaintiff-Appellee says, "No."
Defendant-Appellee says, "Yes."
The Court of Appeals says, "Yes."

STATEMENT OF JURISDICTION

The Supreme Court may review by appeal a case after decision by the Court of Appeals. MCR 7.301(A)(2). The procedures for such appeal are outlined in MCR 7.302. The Court of Appeals decision was entered on September 9, 2014. (Appendix A.) An application for leave in a criminal case must be filed within 56 days after the filing of the opinion appealed from. MCR 7.302(C)(2)(b). In this case the application is being filed on November 4, 2014. Accordingly, given that this application is being filed within 56 days of the filing of the Court of Appeals' September 9, 2014, opinion being appealed, it follows that this application for leave to appeal is timely.

STATEMENT OF THE FACTS

The People apply for leave to appeal from the September 9, 2014, published 2-1 decision of the Court of Appeals in *People v Dunbar*, ___ Mich App ___; ___ NW2d ___; 2014 WL 4435838 (2014) (Appendix A), that reversed the January 30, 2013, opinion and order of the 14th Judicial Circuit Court for Muskegon County that denied Defendant's motion to suppress (Appendix B), the Honorable TIMOTHY G. HICKS, presiding.

Defendant is charged with possession of 50 grams or more but less than 450 grams of the controlled substance, cocaine, second offense, MCL 333.7403(2)(a)(iii), MCL 333.7413(2), carrying a concealed weapon (handgun), MCL 750.227, possession of marijuana, second offense, MCL 333.7403(2)(d), MCL 333.7413(2), felony-firearm (cocaine charge), MCL 750.227b, and being a habitual offender, fourth offense, MCL 769.12.

On October 12, 2012, at approximately 1 a.m., Muskegon County Sheriff's Deputies James Ottinger and Jason Van Andel stopped an older 1990s model Ford Ranger pickup truck driven by Defendant in Muskegon Heights. (01/24/2013 Motion to Suppress ["M"] Tr, pp 6-8, 12-13, 22-23, 26.) The deputies were on Sixth Street at the intersection of Hackley and Sixth when they observed the pickup truck headed eastbound on Hackley. (M Tr, pp 7-8, 12, 29.) They turned left onto Hackley and followed the pickup truck, accelerating to catch up to it, and ran the license plate on the Law Enforcement Information Network (LEIN). (M Tr, pp 8, 13-14, 23.) Deputy Van Andel punched in the numbers on the plate, noting, however, that the first number was obstructed by the tow ball that was attached to the bumper. (M Tr, pp 8-9, 11, 15, 23, 25, 26.) At 1:03 a.m., Deputy Van Andel punched in the number "5" for the first number as a best guest as to what he and Deputy Ottinger could see. (M Tr, pp 8, 9, 23, 25, 28; People's motion exhibit 4 [LEIN printout].) LEIN came back that the plate was registered to a 2007

Chevrolet Equinox rather than a Ford Ranger. (M Tr, pp 8, 15, 23-24, 28-29; People's motion exhibit 4 [LEIN printout].) Accordingly, they stopped the pickup truck because it came back to a different vehicle and the plate was obstructed.[2] (M Tr, pp 9-10, 15, 16, 17-20, 23, 27.) After the stop, when approaching the vehicle, the license was observed and the first number on the plate was a "6" rather than a "5". (M Tr, pp 9-10, 16, 23-24.) The trial court confirmed from looking at People's motion exhibit 1 that, "clearly it's either a 5 or 6 and the ball obscures the entire lower half of the digit." (M Tr, p 40.)

The trial court issued its opinion and order on January 30, 2013, denying Defendant's suppression motion. (Appendix B.)

The Court of Appeals in a 2-1 decision, reversed. Judge SHAPIRO wrote the lead opinion, stating, in part:

> Common experience reveals that thousands of vehicles in Michigan are equipped with trailer hitches and towing balls. The prosecution argues, however, that the presence of such equipment behind a license plate is a violation of MCL 257.225(2) and, therefore, the officers had proper grounds to conclude that a traffic law was being violated. However, the mere presence of a towing ball is not a violation of MCL 257.225(2). The statute provides that *"[t]he plate* shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." (Emphasis added). The statute makes no reference to trailer hitches, towing balls, or other commonly used towing equipment that might partially obscure the view of an otherwise legible plate. There is no evidence that *the plate* on defendant's truck was not maintained free of foreign materials. There is similarly no evidence that defendant's plate was dirty, rusted, defaced, scratched, snow-covered, or otherwise not "maintained" in legible condition. The plate was well-lit and in essentially pristine condition. Moreover, the officers agreed that the plate was legible, a fact confirmed by the photos taken at the scene.
>
> In this case, the officers did not have grounds to believe that defendant was in violation of MCL 257.225(2) and they, as well as the prosecution, agree there was no other basis for the stop. Accordingly, we reverse the trial court's

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[2] The deputies were being proactive. (M Tr, pp 14, 27.) They ran a lot of plates that night. They thought it was improper, but, in any event, if it was proper and only obstructed, they would "tell the person that they needed an unobstructed plate." (M Tr, pp 27, 29.)

denial of defendant's motion to suppress the contraband seized during an automobile search conducted in violation of the Fourth Amendment. *Whren*, 517 US at 809-810. [*Dunbar*, slip op, p 2 (SHAPIRO, J.).]

Judge O'CONNELL concurred, stating, in part:

I concur with the result reached by the lead opinion. I write separately to state that MCL 257.225(2) is ambiguous. In fact, the statute casts a net so wide that it could be construed to make ordinary car equipment illegal, including equipment like bicycle carriers, trailers, and trailer hitches. This broad construction would render the statute unconstitutionally vague for failure to provide fair notice of the conduct the statute purports to proscribe. See *People v Hrlic*, 277 Mich App 260, 263; 744 NW2d 221 (2007). However, this Court must construe statutes to be constitutional if possible and must examine statutes in light of the particular facts at issue. *People v Harris*, 495 Mich 120, 134; 845 NW2d 477 (2014). Accordingly, I would interpret MCL 257.225(2) to require only that the *license plate itself* be maintained free from materials that obscure the registration information and that the *plate itself* be in a clearly legible condition. [*Dunbar*, slip op, p 1 (O'CONNELL, J., concurring).]

Judge METER dissented, stating, in part:

MCL 257.225(2) provides that a license plate "shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." A violation of MCL 257.225(2) constitutes a civil infraction. MCL 257.225(7). "A police officer who witnesses a civil infraction may stop and temporarily detain the offender...." *People v Chapo*, 283 Mich App 360, 366; 770 NW2d 68 (2009).

The record shows that the trial court did not clearly err in concluding that defendant's license plate was obstructed by a trailer hitch. At the hearing, deputies testified that they could not see the entire license-plate number because it was obstructed by a trailer hitch. The trial court determined that the deputies were credible, which is a determination that we will not disturb. See MCR 2.613(C) and *Farrow*, 461 Mich. at 209. Additionally, the trial court's finding is supported by pictures taken at the scene, which show that defendant's license plate was obstructed.

Further, because police officers may stop and detain an individual who commits a civil infraction, *Chapo*, 283 Mich App 366, the trial court correctly determined that the obstruction of defendant's license-plate number provided a lawful basis for the traffic stop pursuant to MCL 257.225(2) and that suppression of the drugs and handgun seized during the traffic stop was not required.

It is simply unreasonable to expect police officers to essentially "weave" within a lane in order to view the entire license plate of a vehicle. Moreover, the

lead and concurring opinions appear to indicate that the pertinent phrase from MCL 257.225(2)—"[t]he plate shall be maintained free from foreign materials ... and in a clearly legible condition"—concerns only items that touch the plate itself. This is not a reasonable reading of the statute. What if, for example, a person attached a sort of shield that entirely covered his or her license plate but did not touch the plate itself? Clearly the statute refers to keeping the plate free from obstructing materials. Random House Webster's Dictionary (1997) defines "maintain," in part, as "to keep in a specified state, position, etc." A license plate that is in otherwise perfect condition but that cannot be read because of obstructing materials is not being "kept" in "a clearly legible condition." [*Dunbar*, slip op, p 1 (METER, J., dissenting).]

The People seek leave.

LAW AND ARGUMENT

I. MCL 257.225(2) REQUIRES THAT A REGISTRATION PLATE BE "ATTACHED ... IN A PLACE AND POSITION THAT IS CLEARLY VISIBLE" AND IT MUST "BE MAINTAINED FREE FROM FOREIGN MATERIALS THAT OBSCURE OR PARTIALLY OBSCURE THE REGISTRATION INFORMATION AND IN A CLEARLY LEGIBLE CONDITION", AND, THEREFORE, PLACEMENT OF A PLATE THAT ALLOWS ALL OR A PART OF ITS INFORMATION TO BE BLOCKED OR OBSTRUCTED (SUCH AS BY A TRAILER HITCH BALL) VIOLATES THE STATUTE, WHICH RENDERS VALID THE DEPUTIES STOP OF DEFENDANT'S PICKUP TRUCK.

A. *Standard of review*

"Matters of statutory interpretation raise questions of law, which this Court reviews de novo." *People v Williams*, 491 Mich 164, 169; 814 NW2d 270 (2012).

B. *Analysis of the issue*

The Court's "fundamental obligation when interpreting statutes is 'to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute.'" *People v Thompson*, 477 Mich 146, 151; 730 NW2d 708 (2007), quoting *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002); see also *Williams*, 491 Mich at 172 ("'The cardinal rule of statutory construction is to discern and give effect to the intent of the

Legislature.' This Court may best discern that intent by reviewing the words of a statute as they have been used by the Legislature"). MCL 8.3a provides:

> All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

"This task begins by examining the language of the statute itself. The words of a statute provide 'the most reliable evidence of its intent....' If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written [and] ... [n]o further judicial construction is required or permitted...." *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999) (citations omitted); *Williams*, 491 Mich at 172 ("[w]hen a statute's language is clear and unambiguous, this Court will enforce that statute as written"). "When parsing a statute, [the Court] presume[s] every word is used for a purpose. As far as possible, [it] give[s] effect to every clause and sentence." *Pohutski v Allen Park*, 465 Mich 675, 683-684; 641 NW2d 219 (2002). "A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself[,]" *Roberts v Mecosta Co General Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002), and "[o]nly where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent." *Sun Valley Foods Co v Ward*, 460 Mich at 236.

In addition to "consider[ing] both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme[,]' ... effect should be given to every phrase, clause, and word in the statute." *Id.*, 237 (citation omitted). "The statutory language must be read and understood in its grammatical context, unless it is clear that something different

was intended." *Id.* Thus, "[t]he statute's words ... should be interpreted based on their ordinary meaning and the context within which they are used in the statute." *People v Lowe*, 484 Mich 718, 721-722; 773 NW2d 1 (2009) (citation omitted).

"Where a nontechnical undefined word is used in a statute, the Legislature has directed that the term should be 'construed and understood according to the common and approved usage of the language....' MCL 8.3a." *Chandler v Co of Muskegon,* 467 Mich 315, 319-320; 652 NW2d 224 (2002). "As might be expected, in undertaking to give meaning to words this Court has often consulted dictionaries." *Id.*, 320; see also *Koontz,* 466 Mich at 312.

Finally, "[o]nce the Court discerns the Legislature's intent, no further judicial construction is required or permitted 'because the Legislature is presumed to have intended the meaning it plainly expressed.'" *Lowe*, 484 Mich at 722 (citation omitted).

MCL 257.225(2) provides:

> A registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which the plate is issued so as to prevent the plate from swinging. The plate shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, in a place and position that is clearly visible. The plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition.

Read as a whole, the Legislature's intent is that a license plate must be readable. This is found in the second sentence where the Legislature used the phrase "clearly visible" and in the third sentence where it used the phrase "clearly legible".

The second sentence establishes that "[t]he plate shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, *in a place and position that is clearly visible.*" MCL 257.225(2) (emphasis supplied.) This means that the plate must be positioned so that it is clearly visible, meaning, of course, so that its visibility is not blocked or

obstructed. Here, the trial court found that the plate's visibility was blocked or obstructed by the trailer hitch. Thus, it was not "in a place and position that is clearly visible."

The last sentence provides that "[t]he plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." The term "maintain" means "**1**. to keep in existence or continuance; preserve; retain. **2**. to keep in due condition, operation or force; keep unimpaired. **3**. to keep in a specified state, position, etc." *The Random House College Dictionary* (rev ed, 1984), p 807. The Court of Appeals erroneously limited the term "maintain" to mean the physical state of the plate itself rather than to include "keep[ing the plate] unimpaired" or "to keep in a specified ... position." Thus, substituting the word "maintained" in the statute with the phrase: "to keep in a specified position" and adding the remaining part of the statute, "free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition", the statute would read: "to keep in a specified position" "free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." A trailer hitch would fit the definition of "foreign materials" and placing it on the bumper of a truck so that it "obscure[s] or partially obscure[s] the registration information" and renders the plate's condition illegible violates the statute.

Thus, when reading the last two sentences of the statute together and exercising commonsense, the intent of the statute is to require that the plate be placed in a location or position that makes it clearly visible, unimpaired and in a specified position to keep it free from foreign materials that would obscure or partially obscure the registration information so its condition remains clearly legible.

The Court of Appeals erroneously interpreted MCL 257.225(2) only to prohibit physical obstructions *affixed to license plates* and, therefore, because there was no showing that the present license plate itself was dirty, rusted, defaced, scratched, snow-covered, or otherwise not "maintained" in legible condition, Defendant was not in violation of this statute when the stop was made. This reading of the statute constitutes error.

Only one Michigan case was found that addressed a stop involving a trailer hitch ball. It is the unpublished decision in *People of Canton Twp v Wilmot*, unpublished opinion per curiam of the Court of Appeals, issued March 7, 2013 (Docket No 305308); 2013 WL 951109 (Appendix C). The majority in *Wilmot* discussed the statute and seemed to agree that the stop was valid, but avoided the necessity to draw a conclusion as to the correct interpretation of the statute as follows:

> A violation of MCL 257.225(2) constitutes a civil infraction as indicated in MCL 257.225(6). The parties' arguments are focused almost entirely on the applicability of the last sentence in § 225(2), which provides that a license "plate shall be maintained free from foreign materials that obscure or partially obscure the registration information, and in a clearly legible condition." The nature of the discourse is whether, as argued by defendant, this language applies only to problems related to the plate itself, i.e., foreign materials located directly on the plate or numerals and letters that are in a condition that render them illegible, or whether, as argued by the township, the language can apply to objects or obstacles located separate and apart from the plate itself that obscure or partially obscure the plate, such as the hitch ball. We, however, take note of the preceding sentence in § 225(2), which provides that a "plate shall be attached ... in a place and position which is clearly visible." If a hitch ball or some other object obscured a license plate, one could reasonably posit that the plate was not attached in a place or position that made it clearly visible. Clear visibility of the license plate seems to be the legislative goal. However, for the reasons discussed below, we ultimately find it unnecessary to resolve the dispute regarding the proper construction of § 225(2). [*Wilmot*, 2013 WL 951109, * 3.]

The *Wilmot* majority's observation is correct. "Clear visibility of the license plate seems to be the legislative goal" and focusing exclusively on the third paragraph fails to recognize the significance of the second sentence. Thus, by placing the hitch ball as it was, "one could

reasonably posit that the plate was not attached in a place or position that made it clearly visible." *Id.* The majority late explained that, "[h]ere, we tend to believe ... that MCL 257.225(2) was implicated, where the subsection demands, in part, that a license plate be placed and positioned in a manner that makes it clearly visible. This is a fair reading of the statute." Id., 2013 WL 951109, * 5. It noted the dissent's view that, because there was no evidence that the defendant's plate was affixed in an unusual place or anywhere other than in a standard location (i.e., where the manufacturer intended it to be), and the district court found that the plate was not obscured by the hitch ball, suppression was necessary because the district court did not believe the officer. *Wilmot*, 2013 WL 951109, * 3 n 1. The majority rejected the dissent's view because it misses the mark:

> Th[e dissent's] argument, however, addresses whether there was evidence that the plate was in a place and position that made it clearly visible, thereby suggesting that if the evidence indisputably showed an obstruction, the penultimate sentence in § 225(2) would indeed apply. [Thus, t]he dissent's argument does not appear to constitute a purely legal interpretation of the statute that is at odds with our thoughts set forth above. [*Wilmot*, 2013 WL 951109, *3 n 1.]

Indeed, the dissent in *Wilmot* failed to read the language of the statute that says nothing about a "usual place" for a license plate. Had the Legislature decided that the manufacturer's designed location was adequate, it would have indicated this in the statute. Instead of saying that a "plate [had to be] ... attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, in a place and position that is clearly visible", the Legislature would have said, "a plate shall be attached to the area designated by the manufacturer for the plate". Because that is not the language of the statute, the "usual place" paradigm of the dissent is meaningless. The actual language of the statute recognizes that the so-called "usual place" is not always the "*clearly visible*" one. For example, when one installs something that blocks the plate,

such as a new after-market bumper or, as here, a hitch ball, the motorist must make sure his or her license "plate [is] ... attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, *in a place and position that is clearly visible.*" MCL 257.225(2). Hence, although the manufacturer might provide an area for a plate, that location might not comply with the statutory requirement if the motorist later installs aftermarket items on the back of the vehicle. In such a case, the motorist is responsible for attaching the plate in a manner that makes it "clearly visible."

On the facts as testified to by the officer in *Wilmot*, the majority observed that "there was no evidence contradicting the officer's testimony that the hitch ball obstructed his view of the license plate; the plate number in its entirety was not clearly visible." *Wilmot*, 2013 WL 951109, *4. Thus, "[m]inimally, and assuming the applicability of § 225(2), the evidence would appear to have established that there was probable cause or a reasonable suspicion to believe that the license plate was not clearly visible because of an obstruction caused by the hitch ball." *Id.*

The *Wilmot* majority, however, indicated that it did not have to find clear error in the district court's factual assessment or definitively interpret the statute to authorize the stop (although it clearly viewed this as an appropriate interpretation of the statute), and, instead, held that this was *not* an appropriate case for the judicially created exclusionary rule:

> Regardless of whether MCL 257.225(2) was implicated under the circumstances presented or whether the district court's factual findings were clearly erroneous with respect to whether the officer had probable cause or reasonable suspicion to conclude that a civil infraction occurred, we hold that there is no basis to invoke the exclusionary rule, as there is no evidence of misconduct by the officer.
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> * * *
>
> Here, we tend to believe, without ruling so, that MCL 257.225(2) was implicated, where the subsection demands, in part, that a license plate be placed and positioned in a manner that makes it clearly visible. This is a fair reading of

the statute. However, assuming that none of the language in § 225(2) was actually triggered under the circumstances, such a conclusion is not readily apparent or evident from the statutory language; at best, the statute is ambiguous regarding its applicability to objects such as the hitch ball. A police officer's mistake of law concerning the proper construction of a motor vehicle statute, an alleged violation of which served as the basis to stop a vehicle, does not result in a constitutional violation if the mistake was objectively reasonable.

* * *

Limiting our ruling to the question of whether the exclusionary rule should be invoked here, any presumed mistake that the officer made in regard to whether a civil infraction arises when an object separate and apart from a license plate obscures the plate was objectively reasonable. The officer's conclusion that a civil infraction does occur under the statute in such circumstances was also not the result of any deliberateness, gross negligence, or reckless disregard for constitutional rights and requirements. There are no appellate court opinions construing MCL 257.225(2) in a manner that conflicts with the officer's view. There is simply no evidence of bad faith or any misconduct. Moreover, assuming a lack of probable cause or reasonable suspicion factually speaking, the evidence was certainly sufficient to show that the officer's conduct in stopping defendant's truck and detaining him was not the result of any deliberate or intentional effort to violate the law, nor was it the result of any recklessness, gross negligence, bad faith, or misconduct. There is no reason to invoke the exclusionary rule. Had the statute clearly not applied, as reflected in plain language or precedent, we would likely reach a different conclusion on the matter.

* * *

With respect to stopping defendant's truck in the first place based, in part, on entry of an inaccurate license plate number in the LEIN, we again observe that there is no indication that the officer did so intentionally or in bad faith; the entry was not the result of misconduct. Therefore, there is no basis to invoke the exclusionary rule, even if there was a constitutional violation for pulling defendant over premised on an inaccurate LEIN entry. There is no evidence suggesting that entry of the wrong license plate number was the result of deliberate, reckless, or grossly negligent conduct, nor was it the result of recurring or systemic negligence. There was no misconduct or reckless disregard of constitutional requirements. One can even reasonably argue that there was no simple or ordinary negligence on the officer's part, which would not suffice anyway for purposes of implicating the exclusionary rule. The harsh sanction of exclusion is not justified under the circumstances. And again, removing consideration of the plate obstruction matter, there necessarily would still have been some contact between defendant and the officer, if only for the purpose of the officer informing defendant that he could continue on his way, and this contact would have led to the observation of defendant's intoxicated state, thereby

giving rise to probable cause or reasonable suspicion to continue the stop and further investigate. [*Wilmot*, 2013 WL 951109, *4-7.]

Although the lead opinion in *Wilmot* was heavily relied on by the prosecutor in the Court of Appeals, the Court of Appeals in *Dunbar* ignored it completely. Although it did not have to follow *Wilmot* because it was unpublished, MCR 7.215(C)(1), its discussion should have merited comment given that the majority and dissent clearly addressed the issues, including whether the judicially created exclusionary rule was appropriate. The prosecutor submits here that the majority opinion in *Wilmot* has persuasive value.[3]

Four decisions from other jurisdictions (California, Wyoming, Tennessee, and Kansas) support the view that the intent of the Legislature is that the license plate must be clearly visible or readable.

In *People v White*, 93 Cal App 4th 1022; 113 Cal Rptr 2d 584 (Cal App 4 Dist, 2001), a sheriff's deputy "stopped [the] defendant's pickup truck after noticing that a trailer hitch or tow ball on the truck's rear bumper blocked the deputy's view of the middle numeral of the rear license plate." *Id.*, 1024; 113 Cal Rptr at 585. The Superior Court Appellate Division revered the trial court's granting of the defendant's motion to suppress, finding "that the trailer hitch ball was positioned in a manner that violated Vehicle Code section 5201." *Id.*, 1025; 113 Cal Rptr 2d at 585. The California Court of Appeals agreed and adopted the Superior Court's reasoning, stating:

> The traffic law at issue in this case is Vehicle Code section 5201, which provides in pertinent part, that "License plates shall at all times be ... mounted in a position to be clearly visible, and shall be maintained in a condition so as to be clearly legible." The statute imposes two obligations—that the plate be clearly visible when mounted on the vehicle and that it also be clearly legible. In reversing the trial court's order granting defendant's motion to suppress, the

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[3] A court is entitled to conclude that the reasoning of an unpublished decision is persuasive. *Steele v Dep't of Corrections*, 215 Mich App 710, 714 n 2; 546 NW2d 725 (1996).

Superior Court concluded, as evidenced by the words used, i.e., "clearly visible," that the Legislature intended in enacting the noted Vehicle Code section that the view of the license plate be entirely unobstructed. We agree with that conclusion.

* * *

The words "clearly visible" are unambiguous. "Visible" means "capable of being seen," "perceptible to vision," "exposed to view," "conspicuous." (Webster's 9th New Collegiate Dict. (1987) p. 1318.) The term "clearly" means "free from obscurity ... unmistakable ... unhampered by restriction or limitation, unmistakable." (*Id.* at p. 247, 48 Cal.Rptr.2d 77, 906 P.2d 1232.) In using the phrase "clearly visible" in Vehicle Code section 5201, it is apparent that the Legislature meant a license plate must not be obstructed in any manner and must be entirely readable. A license plate mounted in a place that results in it being partially obstructed from view by a trailer hitch ball violates Vehicle Code section 5201 and, thus, provides a law enforcement officer with a lawful basis upon which to detain the vehicle and hence its driver. Because the detention was lawful, the trial court erred in granting defendant's motion to suppress and dismissing the charges. [*Id.*, 1025-1026; 113 Cal Rptr 2d at 586.]

In *Parks v State*, 247 P3d 857, 858 (Wyo, 2011), an officer stopped an older model Chevrolet pickup truck because a trailer hitch mounted in a predrilled hole in the truck's factory bumper partially blocked the license plate. The defendant challenged the stop, claiming that he was not in violation of Wyo Stat Ann § 31–2–205, which provided:

(a) License plates for vehicles shall be:

(i) Conspicuously displayed and securely fastened to be ***plainly visible:***

...

(ii) Secured to prevent swinging;

(iii) Attached in a horizontal position no less than twelve (12) inches from the ground;

(iv) Maintained free from foreign materials and in a condition to be ***clearly legible.*** [*Parks*, 247 P3d at 858 -859 (emphasis by the court).]

The Supreme Court of Wyoming disagreed with the defendant's position, stating:

We find that the pertinent language of Wyo Stat Ann.§ 31–2–205 is unambiguous. "Visible" means "capable of being seen," "perceptible by vision,"

"easily seen," "conspicuous." *Webster's Third New International Dictionary* 2557 (3d ed. 2002). "Plainly" means "with clarity of perception or comprehension," "clearly," "in unmistakable terms." *Id.* at 1729. "Legible" means "capable of being read or deciphered," "distinct to the eye," "plain." *Id.* at 1291. The requirements that a license plate be "plainly visible" and "clearly legible" indicate that a license plate must not be obstructed in any manner. This interpretation is in accord with the purpose of the statute. License plates need to be easily read in order to facilitate law enforcement and ordinary citizens in reporting and investigating hit-and-run accidents, traffic violations, gas-pump drive offs, and other criminal activity. *See United States v Rubio-Sanchez,* 2006 US Dist LEXIS 21230; 2006 WL 1007252 (D Kan Apr 17, 2006) ("Law enforcement [officers] frequently must determine from tag numbers whether a vehicle is stolen; whether it is properly registered; or whether its occupant is suspected of a crime, is the subject of a warrant, or is thought to be armed.") (quoting *State v Hayes,* 8 Kan App 2d 531, 533; 660 P2d 1387, 1389 (1983)). The plain language and the purpose of the statute indicate that a trailer ball mounted in a place that causes it to partially obstruct a license plate from view is a violation of Wyo Stat Ann § 31–2–205.

Our holding is also consistent with our recent decision in *Lovato,* 228 P3d 55. In that case, the appellant's license plate was obscured by a translucent plastic cover. The police officer stopped the appellant because he was unable to read the appellant's license plate number until he was very close behind his vehicle. The district court found that the cover violated the statute, providing justification for the stop. *Id.,* ¶ 22, 228 P3d at 60. On appeal, we found that "it is conceivable that in some angles of sunlight, the combination of glare and tinting could make the license plate harder to read." *Id.,* ¶ 21, 228 P3d at 60. We upheld the district court's decision that the stop was justified, despite the fact that the plate may have been visible from certain angles or positions. *Id.,* ¶ 22, 228 P3d at 60.

In support of his argument, Mr. Parks relies on *Harris v State,* 11 So 3d 462 (Fla Dist Ct App 2d Dist, 2009), a Florida case in which the court found that a trailer hitch ball which partially blocked a license plate did not violate Florida's license plate display statute. However, that case is distinguishable. The relevant portion of Fla. Stat. § 316.605(1) reads as follows:

> [A]ll letters, numerals, printing, writing, and other identification marks upon the plates regarding the word "Florida," the registration decal, and the alphanumeric designation shall be clear and distinct and free from defacement, mutilation, grease, and other obscuring matter, so that they will be plainly visible and legible at all times 100 feet from the rear or front.

Harris, 11 So 3d at 463 (emphasis omitted). The court found that the "plainly visible" language of the statute was not a stand-alone requirement but, rather, applied to "license plates [that were] obstructed by defacement, mutilation,

grease, or 'other obscuring matter.'" *Id.* To interpret the statute as it applied to trailer hitches, the court used the doctrine of *ejusdem generis*. That doctrine provides that where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. *Id.* The court then determined that "[m]atters external to the tag, such as trailer hitches, bicycle racks, handicap chairs, u-hauls, and the like are not covered by the statute" because they are not in the same class as the obscuring matter identified in the statute. *Id.* at 463-64. Wyoming's license plate display statute, however, is significantly different from the Florida statute. Under Wyo Stat Ann § 31–2–205(a)(i), the requirement that a license plate be "plainly visible" is not connected to any class of "obscuring matter," and the doctrine of *ejusdem generis* is not applicable.

In addition, the court in *Harris* noted that it was in the minority of jurisdictions finding that a trailer hitch ball which obstructs a license plate is not a traffic violation. Indeed, a number of jurisdictions have considered this issue and nearly all have determined that a trailer hitch that partially obstructs a license plate is a traffic violation. *See, e.g., Rubio-Sanchez,* 2006 US Dist LEXIS 21230, at *23; 2006 WL 1007252, at *5 ("A license plate is not clearly visible and legible if obscured by a ball hitch."); *United States v Unrau,* 2003 US Dist LEXIS 12307, at *8; 2003 WL 21667166, at *3 (D Kan Jun 16, 2003) ("A tag is not positioned to be plainly visible when it is behind a ball hitch that blocks an officer from reading the entire plate while following at a reasonably safe distance."); *People v White,* 93 Cal App 4th 1022; 113 Cal Rptr 2d 584, 586 (2001) ("In using the phrase 'clearly visible' ... it is apparent that the Legislature meant a license plate must not be obstructed in any manner and must be entirely readable."); *State v Hill,* 2001–NMCA–094, 131 NM 195, 203; 34 P3d 139, 147 (NM App, 2001) (license plate is not clearly legible when a trailer hitch obstructs part of the plate from some viewing angles); *State v Smail,* 2000 Ohio App LEXIS 4599, at *7; 2000 WL 1468543, at *2 (Ohio Ct App Sept. 27, 2000) (the middle numbers of a license plate are not in "plain view" if obstructed by a ball hitch even though readable from the side of the vehicle); *State v McCue,* 119 Wash App 1039, 2003 WL 22847338, at *3 (Wash Ct App 2003) (a license plate is not plainly seen and readable if partially obscured by a trailer hitch and only fully visible at certain angles). We agree with the majority of jurisdictions that have considered this issue and determined that a trailer ball positioned so as to partially obstruct a license plate constitutes a violation of the respective license plate display statute. The traffic stop in this case was justified based on an observed violation of Wyo Stat Ann § 31–2–205. [*Parks*, 247 P3d at 859-861.]

In *United States v Ratcliff*, unpublished opinion of the United States District Court for the Eastern District of Tennessee, issued September 25, 2006 (No. 1:06-cr-55); 2006 WL 2771014 (Appendix D), a police officer could not read the registration tag on an older Chevrolet pickup

truck because his line of vision was obstructed by a trailer hitch attached to the rear bumper of the pickup truck. *Ratcliff*, 2006 WL 2771014, * 1. The statute, Tennessee Code Annotated § 55-4-110(b), "provid[ed], in pertinent part, that '[e]very registration plate shall at all times be ... in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.'" The federal district court rejected the defendant's argument that the statute did not authorize the stop, stating:

> In the case of *Tennessee v Matthews,* No. M200100754CCAR3DC, 2002 WL 31014842 (Tenn Crim App Sept 10, 2002), the Tennessee Court of Criminal Appeals had occasion to interpret this statute in the context of a review of the trial court's denial of a motion to suppress on the grounds that an officer's stop of the subject vehicle occurring at approximately 7:07 p.m. on September 18, 1999, was unreasonable where the officer complained that the stopped vehicle had no light over the license tag and as a result the officer was unable to see whether the car had a license plate. The parties stipulated that the vehicle in question had a light over the license plate which came on when the headlights were turned on, but that at the time of the stop the lights were not on. *Id.* at *1.
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> The court in *Matthews* concluded that, while Tennessee law did not require headlights to be on at the time of the stop in question, Tenn Code Ann § 55-4-110(b) required that a vehicle" license plate be *clearly* visible at *all* times. *Id.* at *3. The court observed:
>
> > Even if the legislature intended as a general rule not to require the display of headlights until a half hour following sunset, it also intended that vehicle license plates be clearly visible at all times. By failing to keep his license plates visible during the half hour following sunset the appellant gave Officer Placone more than sufficient reason to effectuate a stop of the appellant's vehicle. As stipulated by the parties, in an American automobile the license plate light is activated by turning on the headlights. This unfortunate design feature in the appellant's vehicle does not excuse his failure to keep his license plate illuminated so as to keep it clearly visible.
>
> *Id.*
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> The *Matthews* case was recently cited by the United States Court of Appeals for the Sixth Circuit in its decision in *United States v Dycus,* 151 F App'x 457 (CA 6, 2005). In that case, the court had another opportunity to determine whether a police officer had probable cause to stop a vehicle based on

violation of Tenn Code Ann § 55-4-110(b). In *Dycus*, the Court upheld the validity of the traffic stop because the officers had probable cause to believe that the defendant had violated § 55-4-110(b) where the police officer testified that upon the commencement of their pursuit of defendant's vehicle they could not make out the registration plate due to darkness, although they conceded that they could see the tag as illuminated by the emergency blue lights on their patrol car once they pulled within fifteen to twenty yards of defendant's vehicle. *Id.* at 461.

Taken together, the Court concludes that the teaching of *Matthews* and *Dycus* is that § 55-4-110(b) imposes on the driver of a vehicle on Tennessee roads an obligation to ensure that the registration tag on the vehicle is clearly visible at *all* times, and that *any* invisibility or obstruction to visibility of any portion of the tag could constitute a violation of the statute, even if such invisibility or obstruction to visibility is temporary—or even momentary—and may be easily cured, as by the turning on of headlights or by a slight change in distance or the position of the vehicle in relation to the observer.

Under this standard, it is clear that the placement of the trailer hitch on the rear of Defendant Ratcliff's vehicle, albeit legal, and the interposition of that trailer hitch between a numeral on the registration plate and Officer Posey's line of sight on the evening in question, however momentary, was enough to permit Officer Posey to conclude that the Defendant was violating, or had violated, Tenn Code Ann § 55-4-110(b). The Court concludes, therefore, that Officer Posey possessed the requisite probable cause to stop Defendant's vehicle on this basis. [*Ratcliff*, 2006 WL 2771014, * 4-5.]

In *United States v Unrau*, unpublished opinion of the United States District Court for Kansas, issued June 16, 2003 (No. 03-40009-01-SAC); 2003 WL 21667166 (Appendix D), the defendant was stopped when the trooper was unable to read the fourth digit on the defendant's license plate because it was blocked by the trailer hitch ball on the bumper of his pickup truck. The district court interpreted Kansas Stat Ann 8-133 as supporting the stop. The statute reads in relevant part:

Every license plate shall at all times be securely fastened to the vehicle to which it is assigned so as to prevent the plate from swinging, and at a height not less than 12 inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible.

The district court ruled on the stop issue as follows:

> The defendant contends that Trooper Brockman conducted the stop without a reasonable, articulable suspicion that a traffic violation had occurred. The defendant insists there is no traffic law in Kansas that is violated simply because an officer's vantage point, an officer's vision or other circumstances outside of the defendant's control preclude the officer from seeing a license plate. The evidence introduced at the hearing establishes that Trooper Brockman's inability to read the defendant's license plate until he was immediately behind the pickup was not caused by anything unreasonable or even questionable about the trooper's vantage point or other circumstances uncontrollable by the defendant. Rather, someone following at a reasonable distance could not read all of the defendant's license plate, because the plate was filthy and because the ball hitch blocked the fourth number. As the government points out, Kansas law requires a license plate to be secured on a vehicle "in a place and position to be clearly visible." K.S.A. 8–133.
>
> The Kansas Court of Appeals has interpreted K.S.A. 8–133 as meaning "that *all* of the tag must be legible" and, therefore, it follows that ... all of the tag also must be "visible." *State v Hayes,* 8 Kan App 2d 531, 532; 660 P2d 1387 (1983). This statute applies to license plates issued by other states and secured to cars being operated in Kansas. *Id.* at 533. The violation of this statute is a misdemeanor under K.S.A. 8–149. *Id.* A tag is not positioned to be plainly visible when it is behind a ball hitch that blocks an officer from reading the entire plate while following at a reasonably safe distance. Trooper Brockman had reasonable articulable suspicion to believe that the defendant had violated these Kansas traffic laws. The first prong of a reasonable traffic stop is met here. [2003 WL 21667166, * 2-3.]

A contrary view is held by the Illinois Court of Appeals in *People v Gaytan*, 372 Ill Dec 478; 992 NE2d 17 (2013), lv granted 374 Ill Dec 571; 996 NE2d 18 (2013), wherein the Appellate Court of Illinois, as a matter of first impression, held that the partial obstruction of a license plate by a trailer ball hitch does not constitute a violation of the Illinois Vehicle Code, 625 ILCS 5/3–413(b) (West 2010), which provided:

> "Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than 5 inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained in a condition to be clearly legible, *free from any materials that would obstruct the visibility of the plate,* including, but not limited to, glass covers and plastic covers. Registration stickers issued as evidence of renewed annual registration shall be attached to registration plates as required by

the Secretary of State, and be clearly visible at all times." (Emphasis added.) 625 ILCS 5/3–413(b) (West 2010). [*Gaytan*, 372 Ill Dec at 482; 992 NE2d at 21.]

The Illinois intermediate court agreed with the defendant's position that the statute proscribes only materials physically covering the registration plate itself rather than any object, such as a trailer hitch, that may come between the plate and the viewer:

> Before using rules of statutory construction, we look to the plain language of the statute. Section 3–413(b) of the Vehicle Code provides the "registration plate shall at all times be * * * free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers." 625 ILCS 5/3–413(b) (West 2010). The Vehicle Code does not define the word "material" and " obstruct." "Material" is defined as "of, relating to, or consisting of matter." Webster's Third New International Dictionary 1392 (1976). See also *People ex rel. State Board of Health v Jones,* 92 Ill App 447, 449 (1900) (defining "material" as "[r]elating to, or consisting of matter; corporeal; not spiritual; physical" (internal quotation marks omitted)). "Matter" is defined as "the substance of which a physical object is composed." Webster's Third New International Dictionary 1394 (1976). The relevant definition of "obstruct" is "to cut off from sight." Merriam-Webster's Collegiate Dictionary 801 (10th ed 2000).
>
> Obviously, a trailer hitch is a physical object capable of obstructing a viewer's visibility. Read in isolation, the phrase "any materials that would obstruct the visibility of the plate" appears to support the State's interpretation any physical object obstructing the visibility of the plate is a violation of section 3–413(b). However, the subject matter of this statute is registration plates and not vehicle accessories or attachments. The statute pertains to the requirements on a registration plate and that the "registration plate must at all times be * * * free from" obstructing materials. An alternative definition of "free" is "clear." Merriam-Webster's Collegiate Dictionary 463 (10th ed 2000). "From" is defined as "a function word to indicate a starting point of a physical movement or a starting point in measuring or reckoning or in a statement of limits" and is "used as a function word to indicate physical separation or an act or condition of removal, abstention, exclusion, release, subtraction, or differentiation." Merriam-Webster's Collegiate Dictionary 467–68 (10th ed 2000). Read in totality and applying the definition of "from" to the statute, a plain reading supports defendant's interpretation the registration plate must be physically separated from any material obstructing visibility of the plate. In other words, section 3–413(b) prohibits objects obstructing the registration plate's visibility that are connected or attached to the plate *itself.*
>
> The State's interpretation is premised on the "clearly visible" and "clearly legible" language contained in the clause addressing the plate's visibility, legibility, "place and position," and "condition." This interpretation appears to

reword the statute by applying requirements from other clauses of the statute to the relevant clause for the conclusion any object partially obstructing a police officer's visibility of the plate causes the plate to not be "clearly visible" and is a violation of section 3–413(b). This appears unworkable as, taken to its logical conclusion, it would prohibit any object such as a traffic sign, post, tree, or even another vehicle from obstructing a police officer's "clear visibility" of the plate. See *People v Isaacson,* 409 Ill App 3d 1079, 1082; 351 Ill Dec 355; 950 NE2d 1183, 1187 (2011) ("[W]e presume the legislature did not intend absurdity, inconvenience, or injustice."). The second sentence of section 3–413(b) requires annual registration stickers attached to the registration plate must be "clearly visible at all times." This "at all times" language is noticeably absent from the first sentence of section 3–413(b), and its absence implies the legislature does not require the visibility of a registration plate to be unobstructed "at all times" from all angles. See *People v Edwards,* 2012 IL 111711, ¶ 27, 360 Ill Dec 784; 969 NE2d 829 ("Where language is included in one section of a statute but omitted in another section of the same statute, we presume the legislature acted intentionally and purposely in the inclusion or exclusion."). Section 3–413(b) differs significantly from the California and Wyoming statutes discussed, because it has an additional obstruction requirement, similar to the Florida statute, and the clause "including, but not limited to, glass covers and plastic covers." Section 3–413(b)'s obstruction requirement differs in construction from the Florida statute, which includes the phrase "'other obscuring matter.'" *Harris,* 11 So 3d at 463.

Defendant, relying on the doctrine of *ejusdem generis,* asserts the language "including, but not limited to, glass covers and plastic covers" qualifies the term "material" in the clause to limit the obstructing material to an object like a glass or plastic cover. Unlike the Florida statute, the general words in the section 3–413(b) do not follow the enumeration of particular classes of things, *i.e.,* the statute does not read "free from glass covers, plastic covers, or any other materials that would obstruct the visibility of the plate." We note, the legislature often uses the phrase "'including, but not limited to'" to indicate the list following is illustrative rather than exhaustive. *People v Perry,* 224 Ill 2d 312, 330; 309 Ill Dec 330; 864 NE2d 196, 208 (2007). If "materials" is restricted to those materials attached to or affixed to the registration plate, as the plain language implies, then a glass or plastic cover is an illustrative example of impermissible materials. This interpretation comports with our review of the legislative history. [*Gaytan*, 372 Ill Dec at 484-486; 992 NE2d at 23-25.[4]]

The Illinois court referenced the Florida decision in *Harris v State,* 11 So 3d 462 (Fla Dist Ct App 2d Dist, 2009), which is also discussed by Wyoming's *Parks* decision. As observed

[4] The Supreme Court of Illinois allowed an appeal from this holding, *People v Gaytan*, 374 Ill Dec 571; 996 NE2d 18; (2013), and it was on page 3 of the court's docket for the September Term. http://www.state.il.us/Court/SupremeCourt/Docket/2014/09-14_Docket_Book.pdf.

in *Parks*, the Florida statute reviewed in *Harris* is clearly distinguishable from the statute under review in *Parks*. The same can be said for the Illinois case and the statute here. The Florida Court of Appeals quoted the Florida statute as follows:

> [A]ll letters, numerals, printing, writing, and other identification marks upon the plates regarding the word "Florida," the registration decal, and the alphanumeric designation shall be clear and distinct and free from defacement, mutilation, grease, and *other obscuring matter,* so that they will be plainly visible and legible at all times 100 feet from the rear or front. [*Harris*, 11 So 3d at 463, quoting Fla Stat Ann § 316.605(1) (emphasis by the court).]

The *Harris* court relied on the doctrine of *ejusdem generis*, concluding:

> the doctrine of ejusdem generis causes this language to apply only to matter on the tag itself. Pursuant to the "'ejusdem generis' canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated." *Black's Law Dictionary* 514 (6th ed 1990). Here, a reading of the language in the statute shows that the license plate must be free from obscuring matter, be it grease, grime, or some other material placed over the plate. However, it would not include a trailer hitch that is properly attached to the truck's bumper.
>
> The dissent reads the "plainly visible" from 100 feet language as if such language was separate from "defacement, mutilation, grease, and other obscuring matter." We believe that section 316.605(1), which is all one sentence and contains 196 words, is neither clear nor concise, and therefore, the doctrine of ejusdem generis is applicable. Further, the "plainly visible" language applies to license plates obstructed by defacement, mutilation, grease, or "other obscuring matter." The sole issue is the meaning of "other obscuring matter." This phrase, under the doctrine of ejusdem generis applies to obstructions "on" the tag such as grease, grime or rags. Matters external to the tag, such as trailer hitches, bicycle racks, handicap chairs, u-hauls, and the like are not covered by the statute. If the legislature chooses to bring such items external to the license plate within the statute, simple and concise language can accomplish the task. [*Harris*, 11 So 3d at 463-464. Footnote omitted.]

The Florida statute does require "defacement, mutilation, grease, and other obscuring matter", which establishes that some substance on or defacing of the plate itself must be involved before a violation of the Florida statute is triggered.

The same is not true with Michigan's statute. The plate must be affixed "in a place and position that is clearly visible." If a motorist places aftermarket items on the back of a vehicle that renders the plate not "clearly visible", the statute is violated. The Court of Appeals sole consideration of the third sentence to MCL 257.225(2) establishes that it did not consider this language and did not read the statute as a whole.

Because Defendant violated the statute by allowing a trailer hitch ball to block from view a portion of his license plate, the stop of his pickup truck was valid. *Whren v United States,* 517 US 806, 809-810; 116 S Ct 1769; 135 L Ed 2d 89 (1996) ("the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred").

II. AN OBJECTIVELY REASONABLE MISTAKE OF FACT BY AN OFFICER AS TO WHETHER A VIOLATION OF LAW HAS OCCURRED SUPPORTS THE STOP OF A MOTOR VEHICLE AND, THEREFORE, WHERE THE TWO DEPUTIES IMPUTED THE WRONG NUMBER FROM DEFENDANT'S LICENSE PLATE INTO THE LAW ENFORCEMENT INFORMATION NETWORK, WHICH CAME BACK TO A DIFFERENT VEHICLE THAN WHAT DEFENDANT WAS DRIVING, THE DEPUTIES HAD REASONABLE SUSPICION UPON WHICH TO JUSTIFY THE STOP OF DEFENDANT'S VEHICLE.

A. *Standard of review*

A lower court's factual findings following a suppression hearing are reviewed for clear error, but the trial court's ultimate ruling is reviewed de novo. *People v John Lavell Williams,* 472 Mich 308, 313; 696 NW2d 636 (2005).

B. *Analysis of the issue*

The Court of Appeals failed to consider the fact that Defendant's vehicle was stopped because the license plate as read by the officers came back on the Law Enforcement Information Network (LEIN) for a 2007 Chevrolet Equinox rather than for an older 1990s model Ford Ranger pickup truck. Thus, the Court of Appeals failed to consider that a traffic stop based on a

police officer's incorrect but reasonable assessment of the facts does not violate the Fourth Amendment. See, e.g., *United States v Chanthasouxat*, 342 F3d 1271, 1276-1277 (CA 11, 2003), citing *Saucier v Katz*, 533 US 194, 205; 121 S Ct 2151, 2158; 150 L Ed 2d 272 (2001); *United States v Garcia-Acuna*, 175 F3d 1143, 1147 (CA 9, 1999); *United States v Lang*, 81 F3d 955, 966 (CA 10, 1996); *United States v Shareef*, 100 F3d 1491, 1503 (CA 10, 1996); *United States v Hatley*, 15 F3d 856, 859 (CA 9, 1994); *United States v Gonzalez*, 969 F2d 999, 1006 (CA 11, 1992). See also *United States v Delfin-Colina*, 464 F3d 392, 398 (CA 3, 2006) ("mistakes of fact are rarely fatal to an officer's reasonable, articulable belief that an individual was violating a traffic ordinance at the time of a stop").

III. AN OBJECTIVELY REASONABLE MISTAKE OF LAW BY AN OFFICER AS TO WHETHER A VIOLATION OF LAW HAS OCCURRED SUPPORTS THE STOP OF A MOTOR VEHICLE AND, THEREFORE, WHERE THE TWO DEPUTIES BELIEVED THAT DEFENDANT'S TRAILER HITCH BALL RENDERED HIS PLATE NOT "CLEARLY VISIBLE" AS REQUIRED BY MCL 257.225(2), THE DEPUTIES HAD REASONABLE SUSPICION UPON WHICH TO JUSTIFY THE STOP OF DEFENDANT'S VEHICLE.

A. *Standard of review*

See Argument II.A.

B. *Analysis of the issue*

If the Court of Appeals' interpretation of MCL 257.225(2) is correct, the Court of Appeals failed to consider whether a law enforcement officer's objectively reasonable mistake of law can support reasonable suspicion for an investigatory stop under the Fourth Amendment. This issue is now at the United States Supreme Court in *Heien v North Carolina*, ___ US ___; 188 S Ct 1872; 188 L Ed 2d 910 (2014); *State v Heien*, 366 NC 271, 276; 737 SE2d 351, 355 (NC, 2012) (the North Carolina Supreme Court stated the issue as "whether a stop is ...

permissible when an officer witnesses what he reasonably, though mistakenly, believes [is] ... a traffic violation").

The North Carolina Supreme Court concluded that there was no Fourth Amendment violation when a police officer stopped a motorist because of a faulty brake light where the statute (as later interpreted) only required one functioning brake light, stating, in part:

> [C]oncerns about the rules of construction regarding the substantive statutes at issue seem to us to be more applicable to the subsequent judicial interpretation of a statute and not to a routine traffic stop that needs to be based only on reasonable suspicion. A *post hoc* judicial interpretation of a substantive traffic law does not determine the reasonableness of a previous traffic stop within the meaning of the state and federal constitutions. Such a *post hoc* determination resolves whether the conduct that previously occurred is actually within the contours of the substantive statute. But that determination does not resolve whether the totality of the circumstances present at the time the conduct transpired supports a reasonable, articulable suspicion that the statute was being violated. It is the latter inquiry that is the focus of a constitutionality determination, not the former.... [W]e think the Fourth Amendment's reasonable suspicion standard is not offended by an officer's objectively reasonable mistake of law.
>
> Furthermore, we note that a decision to the contrary would be inconsistent with the rationale underlying the reasonable suspicion doctrine. "[R]easonable suspicion" is a "commonsense, nontechnical conception[] that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Ornelas v United States,* 517 US 690, 695; 116 S Ct 1657, 1661; 134 L Ed 2d 911, 918 (1996) (citations and internal quotation marks omitted). And while "reasonable suspicion" is more than "an inchoate and unparticularized suspicion or hunch of criminal activity," *Illinois v Wardlow,* 528 US 119, 124; 120 S Ct 673, 676; 145 L Ed 2d 570, 576 (2000) (citation and internal quotation marks omitted), "'some minimal level of objective justification'" is all that is demanded, *United States v Sokolow,* 490 US 1, 7; 109 S Ct 1581, 1585; 104 L Ed 2d 1, 10 (1989) (quoting *INS v Delgado,* 466 US 210, 217; 104 S Ct 1758, 1763; 80 L Ed 2d 247, 255 (1984)). To require our law enforcement officers to accurately forecast how a reviewing court will interpret the substantive law at issue would transform this "commonsense, nontechnical conception" into something that requires much more than "some minimal level of objective justification." We would no longer merely require that our officers be reasonable, we would mandate that they be omniscient. This seems to us to be both unwise and unwarranted. [*Heien* 366 NC at 280-281; 737 SE2d at 357-358.]

Indeed, "[a]rticulating precisely what 'reasonable suspicion' and 'probable cause' mean is not possible." *Ornelas v United States*, 517 US 690, 695; 116 S Ct 1657; 134 L Ed 2d 911 (1996). "They are commonsense, nontechnical conceptions that deal with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Id.*, quoting *Illinois v Gates*, 462 US 213, 231; 103 S Ct 2317; 76 L Ed 2d 527 (1983).

When, as here, a statute might be subject to more than one interpretation by an objectively reasonable police officer, the officer's suspicion of wrongdoing in the field resulting in a stop should be judged by whether the officer's interpretation at the time was reasonable, regardless whether a court later decides that the officer's interpretation is incorrect. This method of review is proper because "the ultimate touchstone of the Fourth Amendment is 'reasonableness[,]'" *Riley v California*, ___ US ___; 134 S Ct 2473, 2482; 189 L Ed 2d 430 (2014), quoting *Brigham City v Stuart*, 547 US 398, 403; 126 S Ct 1943; 164 L Ed 2d 650 (2006), rather than "reducing it to '"a neat set of legal rules,'" *United States v Arvizu*, 534 US 266, 274; 122 S Ct 744, 751; 151 L Ed 2d 740 (2002) ("the concept of reasonable suspicion is somewhat abstract. *Ornelas, supra,* at 696 (principle of reasonable suspicion is not a '"finely-tuned standar[d]"'); *Cortez, supra,* at 417, 101 S Ct 690 (the cause 'sufficient to authorize police to stop a person' is an 'elusive concept'). But we have deliberately avoided reducing it to '"a neat set of legal rules,"' *Ornelas, supra,* at 695-696 [quoting *Illinois v Gates*, 462 US at 232; 103 S Ct 2317; 76 L Ed 2d 527 [1983]").

A mistake of law is not foreign to Supreme Court jurisprudence as supporting a seizure. As early as 1809, the United States Supreme Court stated that "[a] doubt as to the true construction of the law is as reasonable a cause for seizure as doubt respecting the fact." *United*

States v Riddle, 9 (5 Cranch) US 311, 313; 3 L Ed 110 (1809). "[I]t is settled that [probable cause] imports circumstances which warrant suspicion, and that a doubt respecting the true construction of the law is as reasonable a cause of seizure as a doubt respecting a fact." *Averill v Smith*, 84 (17 Wall) US 82, 92; 21 L Ed 613 (1873). And reliance on a statute or ordinance later held unconstitutional in making an arrest "does not undermine the validity of the arrest made for violation of that ordinance." *Michigan v DeFillippo*, 443 US 31, 40; 99 S Ct 2627; 61 L Ed 2d 343 (1979).

The Eighth Circuit supports the view that an officer's mistake of law, if objectively reasonable, does not render a stop invalid under the Fourth Amendment.[5] See, e.g., *United*

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[5] It is noted that the Eighth Circuit's view is considered to be the minority view. See, e.g., *Gilmore v State*, 204 Md App 556, 572-576; 42 A3d 123, 132-135 (2012), noting:

> A majority of courts have held that an officer's mistake of law, no matter how reasonable, cannot provide objectively reasonable grounds for a stop. *See United States v Lopez-Valdez,* 178 F3d 282 [288–89] (CA 5, 1999) [(because there was a ten-year old appellate opinion on point holding that a damaged tail light could not serve as the basis for a traffic stop, "no well-trained Texas police officer could reasonably believe that white light appearing with red light through a cracked red taillight lens constituted a violation of traffic law")]; *United States v Miller,* 146 F3d 274 [279] (CA 5, 1998)[(flashing turn signal without turning or changing lanes is not a violation of Texas law and did not create probable cause for the stop)]; *United States v Urrieta,* 520 F3d 569 [574–75] (CA 6, 2008) [(officer's mistaken belief that defendant was not allowed to drive in Tennessee with a Mexican driver's license did not justify an extended detention)]; *United States v McDonald,* 453 F3d 958 [962] (CA 7, 2006) [(officer's mistaken belief that using a turn signal while rounding a bend in the road was illegal could not support probable cause for arrest)]; *United States v King,* 244 F3d 736 [741–42] (CA 9, 2001) [(officer's mistaken belief that a placard hanging from a rearview mirror violated the law could not form the basis for reasonable suspicion to initiate a traffic stop)]; *United States v Twilley,* 222 F3d 1092 [1096] (CA 9, 2000) [(officer's mistaken belief that an out-of-state car lacking a front license plate violated the law did not constitute reasonable suspicion required for a traffic stop)]; *United States v Lopez-Soto,* 205 F3d 1101 [1105-1106] (CA 9, 2000) [(officer's mistaken belief that a registration sticker was required to be visible from the rear of a vehicle did not provide objectively reasonable basis for the stop of the vehicle)]; *United States v Pena-Montes,* 589 F3d 1048 [1053-1054] (CA 10, 2009) [(officer's mistaken belief about the lawful use of dealer plates did not

provide reasonable suspicion to justify detention)]; *United States v Tibbetts,* 396 F3d 1132 [1138] (CA 10, 2005) [(holding that the "failure to understand the law by the very person charged with enforcing it is not objectively reasonable")]; *United States v DeGasso,* 369 F3d 1139 [1145] (CA 10, 2004) [(Oklahoma traffic law regarding use of fog lights did not provide trooper with objectively justifiable basis for the stop)]; *United States v Chanthasouxat,* 342 F3d 1271 [1280] (CA 11, 2003) [(officer's mistaken belief that law required an inside rear-view mirror cannot provide reasonable suspicion or probable cause to justify a traffic stop)]. *See also People v Ramirez,* 140 Cal App 4th 849 [854]; 44 Cal Rptr 3d 813 [816] (2006) [(a suspicion founded on a mistake of law cannot constitute the reasonable basis for a lawful traffic stop)]; *Hilton v State,* 961 So 2d 284 [298–99] (Fla, 2007) [(small crack in lower right windshield did not render defendant's vehicle unsafe or provide a particularized and objective basis for the stop)]; *Martin v Kan Dep't of Rev,* 285 Kan 625 [639]; 176 P3d 938 [948] (2008) [(officer misunderstood and misapplied ordinance regarding how many rear brake lights on a vehicle had to be functioning and thereby lacked constitutional authority for the stop)]; *State v Anderson,* 683 NW2d 818 [823–24] (Minn, 2004)[(officer's mistaken interpretation of a statute may not form the particularized and objective basis for suspecting criminal activity necessary to justify a traffic stop)]; *State v George,* 557 NW2d 575 [578-579] (Minn, 1997) [(officer's mistaken belief that defendant's motorcycle had three headlamps did not provide an objective legal basis for the stop)]; *State v Kilmer,* 741 NW 2d 607 [611-612] (Minn App 2007) [(a mistaken interpretation of the law cannot provide the requisite objective basis for suspecting a motorist of criminal activity even if the officer believes, in good faith, that the driving conduct that prompted the stop was illegal)]; *Couldery v State,* 890 So 2d 959 [965-966] (Miss.App.2004) [(officer had no reasonable basis to believe that defendant committed a traffic offense by driving in left lane of traffic and, therefore, lacked a reasonable basis for the stop)]; *State v Lacasella,* 2002 MT 326 [¶ 32], 313 Mont 185 [195]; 60 P3d 975 [982] (2002) [(because license plate was taped to windshield, officer did not have particularized suspicion to conduct stop)]; *Byer v Jackson,* 241 App Div 2d 943 [944-945]; 661 NYS2d 336 [338] (1997) [(traffic laws did not require motorist to signal a turn from a private driveway and officer's good faith belief that there was a violation of the traffic laws did not provide reasonable suspicion to justify the stop)]; *State v Williams,* 185 SW3d 311 [319] (Tenn, 2006) [(where motorist was not obstructing traffic, officer lacked reasonable suspicion to justify a stop)]; *State v Lussier,* 171 Vt 19 [37]; 757 A2d 1017 [1029] (2000) [(where rear license plate was properly illuminated, the State failed to articulate a reasonable and articulable basis for the stop)]; *State v Longcore,* 226 Wis 2d 1 [9]; 594 NW2d 412 [416] (1999) [(when an officer relates facts to a specific offense, it must be an offense; a lawful stop cannot be predicated upon a mistake of law)].

Although the Eighth Circuit has taken the minority position [*see United States v Martin,* 411 F3d 998, 1002 (CA 8, 2005) (concluding that "a misunderstanding of traffic laws, if reasonable, need not invalidate a stop made on that basis")], it is not alone in this view. *See United States v Southerland,* 486 F3d

States v Smart, 393 F3d 767, 770 (CA 8, 2005) ("the validity of a stop depends on whether the officer's actions were objectively reasonable in the circumstances, and in mistake cases the question is simply whether the mistake, whether of law or of fact, was an objectively reasonable one"); *United States v Martin*, 411 F3d 998, 1002 (CA 8, 2005) ("we think the level of clarity [of the statute] falls short of that required to declare [the officer's] belief and actions objectively unreasonable under the circumstances. This conclusion is consistent with our court's prior suggestion that a misunderstanding of traffic laws, if reasonable, need not invalidate a stop made on that basis"); *United States v Sanders*, 196 F3d 910, 913 (CA 8, 1999) (the stop was valid because the officer "could have reasonably believed at the time that the trailer was subject to the two taillight requirement" and, therefore, because the "Court should not expect state highway

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1355 [1359]; 376 US App DC 235 [239] (DC Cir, 2007) [(even though officers erroneously believed license plate had to be affixed to the front bumper, the license plate was on the dashboard and not affixed to the front of the car as required by Maryland law, and stop was objectively reasonable)]. *See also Travis v State*, 331 Ark 7 [10–11]; 959 SW2d 32 [34] (1998) [(officer reasonably, but erroneously, believed license plate was required to display expiration stickers)]; *People v Teresinski*, 30 Cal 3d 822 [839]; 180 Cal Rptr 617 [626-627]; 640 P2d 753 [762-763] (1982) [(although detention was illegal because curfew law had not been violated, a robbery victim's testimony was admissible)]; *People v Glick*, 203 Cal App 3d 796 [803]; 250 Cal Rptr 315 [319] (1988) [(officer's stop of New Jersey vehicle was reasonable even though based on officer's erroneous understanding of New Jersey registration laws)]; *Stafford v State*, 284 Ga 773 [774-775]; 671 SE2d 484 [485] (2008) [(officer erroneously believed it was illegal to stop in the middle of a residential street, but a statute made it illegal to park in the middle of a two-way roadway, which provided a sound basis for the officer's stop)]; *State v McCarthy*, 133 Idaho 119 [125]; 982 P2d 954 [960] (1999) [(even allowing for reasonable mistakes of law by police, stop could not be upheld)]; *Harrison v State*, 800 So 2d 1134 [1139] (Miss, 2001) [(in addressing validity of probable cause in light of a mistake of law, if probable cause is based on good faith and a reasonable basis, then it is valid)]; *DeChene v Smallwood*, 226 Va 475 [479]; 311 SE2d 749 [751] (1984) [(arrest resulting from mistake in law should be judged by same test as one stemming from mistake in fact; that is, whether the arresting officer acted in good faith and with probable cause)]. [Citing *State v Wright*, 791 NW2d 791, 797 n 2 (SD, 2010).]

patrolmen to interpret the traffic laws with the subtlety and expertise of a criminal defense attorney" the officer's belief, although wrong, cannot be held "unreasonable")

In *People v Glick*, 250 Cal Rptr 315, 319 (Ct App, 1988), the California Court of Appeals held that an officer's reasonable misunderstanding of New Jersey vehicle requirements justified the stop of a motor vehicle.

In *Harrison v State*, 800 So 2d 1134 (Miss, 2001), an officer stopped a vehicle traveling through a construction zone, believing that the defendant's vehicle was traveling at a speed greater than allowed in such zones. The statute, however, only established a violation when the speeding occurred where workers were present. Because no workers were present, the statute was not violated. Nevertheless, the Supreme Court of Mississippi held that the stop was valid, stating:

> Here, the officers testified that they based their stop on the belief that Harrison was in violation of the traffic laws that made it illegal to exceed the posted speed limit, which was sixty (60) miles per hour. In essence, the stop was based on a mistake of law. In addressing the validity of probable cause in light of a mistake of law, several courts have determined that if the probable cause is based on good faith and a reasonable basis then it is valid. *See United States v Wallace,* 213 F3d 1216 (CA 9, 2000) (finding probable cause existed because of reasonable belief that suspect committed or was committing crime even though officer was mistaken that all front-window tint was illegal); *United States v Sanders,* 196 F3d 910 (CA 8, 1999) (officer objectively had reasonable basis for probable cause even though, vehicle was not technically in violation of the statute); *DeChene v Smallwood,* 226 Va 475; 311 SE2d 749 (1984) (holding arrest resulting from mistake of law should be judged by the same test as one stemming from mistake of fact; whether the arresting officer acted "in good faith and with probable cause").
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> In *Sanders,* Sanders was a passenger in a pick-up truck that was towing a trailer. *Sanders,* 196 F3d at 910. An officer stopped the vehicle because one of the two taillights was missing a red lens and was emitting white light from the exposed bulb, in violation of South Dakota law. *Id.* In fact, it was not in violation of the statute because the statute was only applicable to trailers assembled after July 1, 1973, and this trailer was manufactured prior to 1973. *Id.* at 912. The court began its inquiry with whether or not the officer had an "objectively had reasonable basis for believing that the driver has breached a traffic law." The

court then reasoned that even if the trailer was not technically in violation of the statute, the officer could have reasonably believed that the trailer was in violation of the statute. *Id.* Citing *Arizona v Evans,* 514 US 1, 17; 115 S Ct 1185; 131 L Ed 2d 34 (1995), the federal court found that the determination of whether probable cause existed is not to be made with the vision of hindsight, but instead by looking to what the officer reasonably knew at the time. 196 F3d at 912. The court concluded that even if the officer was wrong, it could not say that the officer's belief was unreasonable. *Id.*

> We find this analysis persuasive. In the instant case, the two deputies paced Harrison as driving between 67–70 miles per hour, which was in violation of the posted sixty (60) mile per hour speed limit. Regardless of whether there were construction workers present in the area the deputies had an objective reasonable basis for believing that Harrison violated the traffic laws of Mississippi by exceeding the speed limit. Indeed, the trial court and half of the judges of the court of appeals interpret the law to find a violation. Based on the totality of circumstances and the valid reasonable belief that Harrison was violating the traffic laws, the two deputies had probable cause to stop Harrison, even though it was based on a mistake of law. Accordingly, we find that the deputies had sufficient probable cause to stop Harrison, even in light of the mistake of law. [*Harrison*, 800 So 2d at 1138-1139.]

Later, in *Moore v State*, 986 So 2d 928 (2008), the Supreme Court of Mississippi revisited the mistake-of-law paradigm where an officer stopped a vehicle because it only had one functioning taillight—the same type of stop made in *Heien, supra*. However, as in North Carolina, Mississippi law only requires one taillight. Nevertheless, the Supreme Court of Mississippi held that the stop was valid, relying on *Harrison* as follows:

> With our holding in *Harrison* squarely before us, we now return to the facts of today's case, which we find likewise involves a mistake-of-law issue. From the totality of the record before us, we conclude that Officer Moulds had an objective, reasonable basis for believing that Moore was in violation of the law for driving a vehicle on a public street with only one operative tail light. In other words, based on the totality of the circumstances with which Officer Moulds was confronted, including a valid, reasonable belief that Moore was violating a traffic law, Officer Moulds had sufficient probable cause to pull Moore over, although, as it turns out, Officer Moulds based his belief of a traffic violation on a mistake of law. [*Moore*, 986 So 2d at 935. Footnote omitted.]

In *State v Cartwright*, ___ SE2d ___; 2014 WL 4723611 (Ga App, 2014), the defendant's vehicle was stopped by a police officer because the center light at the top of the back window

was not working when the defendant stopped at a red light. This, however, is not a violation of any law in Georgia so long as the two brake lights are working. The Georgia Court of Appeals ruled that the stop was valid because the officer's belief that the law required that the light remain functional was objectively reasonable:

> "[I]t is well settled that police may conduct a brief investigatory stop of a vehicle if they have specific, articulable facts that give rise to a reasonable suspicion of criminal conduct." *Lancaster v State,* 261 Ga App at 350(1); 582 SE2d 513. Moreover, "[i]f the officer acting in good faith believes that an unlawful act has been committed, his actions are not rendered improper by a later determination that the defendant's actions *were not a crime according to a technical legal definition or distinction determined to exist in the penal statute.*" (Citation and punctuation omitted and emphasis supplied.) *State v Hammang,* 249 Ga App 811; 549 SE2d 440 (2001) (officer" honest but mistaken belief that defendant had violated traffic law by driving without headlights on through poorly lit intersection when it was "almost dark outside" provided reasonable articulable suspicion for traffic stop.) Thus, even if the officer was mistaken in his belief that the light at issue was a brake light and that Georgia law required that all brake lights be illuminated, "the officer's reasonable belief that an offense had been committed, though he may have been mistaken either as to fact or law, was yet a sufficient 'founding suspicion' to enable the trial court to determine the stop was not mere arbitrariness or harassment, which is the real question." *McConnell v State,* 188 Ga App 653, 654(1); 374 SE2d 111 (1988) (physical precedent only). The trial court's reasoning in this regard "misses the mark, as it presupposes that a crime must have been committed for the stop to have been valid." *Dixon v State,* 271 Ga App 199, 201; 609 SE2d 148 (2005) (officer's later discovery that a vehicle was not required to have functioning fog lights did not render the stop on that basis invalid).
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> Accordingly, as it is undisputed both that the light at issue was not functioning when Cartwright was stopped and that the officer had acted with the good faith belief that Cartwright had violated OCGA § 40–8–25(b), the trial court erred in granting Cartwright's motion to dismiss. [*Cartwright*, 2014 WL 4723611, * 3.]

In *Travis v State*, 331 Ark 7; 959 SW2d 32 (1998), a deputy stopped a pickup truck with Texas plates because he erroneously believed that Texas law required expiration-date stickers to be displayed on the license plate. The defendant had an expired operator's license and was arrested. While taking the defendant into custody, the deputy observed a gun in plain view. The

Supreme Court of Arkansas followed, in part, the California decision in *Glick, supra,* and upheld the stop, stating:

> It is not disputed that Deputy Smith made the stop on the basis of his belief that the Texas license plate was required to display an expiration sticker and that the truck was thus being operated in violation of the law. Mr. Travis does not contend that Deputy Smith's action in stopping the truck was pretextual. His contention is that, because the deputy's understanding of the Texas licensing requirements was erroneous, there was no "probable cause," or even "reasonable suspicion," to make the stop.
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> * * *
>
> As mentioned, Deputy Smith testified that he stopped Mr. Travis's truck because he believed the Texas license plate was required to display an expiration sticker and that the truck was thus being operated in violation of the law. Arkansas Code Ann. § 27–14–704 (Repl.1994) specifies the instances in which a vehicle licensed and registered in another state may be operated in Arkansas. One of the requirements is that the out-of-state vehicle comply with the other state's applicable registration laws.
>
> Deputy Smith believed that the law of Texas, like the law of Arkansas, required license plates to display expiration stickers. Although the deputy was erroneous, the question of whether an officer has probable cause to make a traffic stop does not depend upon whether the defendant is actually guilty of the violation that was the basis for the stop. As we said in the *Burris* case, "all that is required is that the officer had probable cause to believe that a traffic violation had occurred. Whether the defendant is actually guilty of the traffic violation is for a jury or a court to decide, and not an officer on the scene." *Burris v State,* 330 Ark at 73; 954 SW2d 209, citing *Whren v United States, supra; State v Jones,* 310 Ark 585; 839 SW2d 184 (1992).
>
> The facts of this case are unlike those found in *Delaware v Prouse,* 440 US 648; 99 S Ct 1391; 59 L Ed 2d 660 (1979), which formed the foundation of the Court of Appeals decision in this case. There was no issue of reasonable or probable cause in the *Prouse* decision because that case involved a "random" traffic stop. We cannot say that Deputy Smith lacked reasonable cause to stop Mr. Travis's truck simply because the truck ultimately was found to have been operated in compliance with Texas law. At the time of the stop, Deputy Smith reasonably, albeit erroneously, believed the license plate was required to display expiration stickers. That the license plate was later found to have been in compliance with Texas law does not mean that the deputy lacked probable cause to make the stop. See *People v Glick,* 250 Cal Rptr 315, 319; 203 Cal App 3d 796 (Cal App 1 Dist, 1988) (holding officer's stop of New Jersey vehicle was reasonable even though based on officer's erroneous understanding of New Jersey

registration laws and stating "An officer cannot reasonably be expected to know the different vehicle registration laws of all the sister states."). [*Travis*, 331 Ark at 9-11; 959 SW2d at 34-35.

The Michigan Court of Appeals in *Wilmot* was prepared to conclude that a stop based upon a mistake of law does not give rise to a Fourth Amendment violation where the mistake was objectively reasonable, relying on *Heien* as follows: "A police officer's mistake of law concerning the proper construction of a motor vehicle statute, an alleged violation of which served as the basis to stop a vehicle, does not result in a constitutional violation if the mistake was objectively reasonable." *State v Heien*, ___ SE2d ___ (NC, 2012), slip op at 4–9[.]" *Wilmot*, 2013 WL 951109, * 5.

This Court should agree that an officer's mistake of law when making a stop does not constitute a violation of the Fourth Amendment where the mistake is objectively reasonable.

IV. THE JUDICIALLY CREATED EXCLUSIONARY RULE SHOULD NOT BE APPLIED WHEN AN OFFICER IN GOOD FAITH STOPS A VEHICLE BELIEVING EITHER FACTUALLY OR LEGALLY THAT THE MOTORIST VIOLATED A TRAFFIC LAW.

A. *Standard of review*

Application of the exclusionary rule is a question of law that this Court reviews *de novo*. *People v Stevens*, 460 Mich 626, 631; 597 NW2d 53 (1999).

B. *Analysis of the issue*

The Court of Appeals failed to consider, separately, constitutional violations and remedies in the Fourth Amendment context. *United States v Leon*, 468 US 897, 907; 104 S Ct 3405, 3412; 82 L Ed 2d 677 (1984) ("[w]hether the exclusionary sanction is appropriately imposed in a particular case ... is 'an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct'" [citation omitted]); *Herring v United States*, 555 US 135, 140; 129 S Ct 695, 700; 172 L.Ed.2d

496 (2009) ("[t]he fact that a Fourth Amendment violation occurred—*i.e.*, that a search or arrest was unreasonable—does not necessarily mean that the exclusionary rule applies"); *Davis v United States*, ___ US ___; 131 S Ct 2419, 2431; 180 L Ed 285 (2011) ("exclusion of evidence does not automatically follow from the fact that a Fourth Amendment violation occurred.... The remedy is subject to exceptions and applies only where its 'purpose is effectively advanced'").

The Court of Appeals failed to consider the purpose of the judicially created exclusionary rule—i.e., "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.... [T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Herring*, 555 US at 144; 129 S Ct at 702. In other words, the Court of Appeals failed to address whether the purpose of the exclusionary rule is achieved by suppressing the cocaine, marijuana and gun evidence when the deputies acted in good faith in deciding to stop Defendant's vehicle, but the Court of Appeals thereafter found the stop invalid.

The exclusionary rule "is a 'judicially created' sanction, ... specifically designed as a 'windfall' remedy to deter future Fourth Amendment violations." *Davis*, 131 S Ct at 2434. Such "[s]uppression of evidence ... has always been [the Supreme Court's] last resort, not [its] first impulse." *Hudson v Michigan*, 547 US 586, 591; 126 S Ct 2159, 2163; 165 L Ed 2d 56 (2006). The reason for exercising judicial caution in expanding "'[t]he exclusionary rule [is because it] generates 'substantial social costs,' ... which sometimes include setting the guilty free and the dangerous at large." *Id.*, quoting *Leon*, 468 US at 907; 104 S Ct at 3412, and *Colorado v Connelly*, 479 US 157, 166; 107 S Ct 515; 93 L Ed 2d 473 (1986). This "'costly toll' upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its]

application[.]" *Hudson,* 547 US at 591; 126 S Ct at 2163. Accordingly, the Court has "rejected '[i]ndiscriminate application' of the rule, ... and ha[s] held it to be applicable only 'where its remedial objectives are thought most efficaciously served,' ... that is, 'where its deterrence benefits outweigh its "substantial social costs,"'" *Id.* (citations omitted).

"An error that arises from nonrecurring and attenuated negligence is ... far removed from the core concerns that led [the United States Supreme Court] to adopt the [exclusionary] rule in the first place." *Herring,* 555 US at 144; 129 S Ct at 702. Instead, it bears repeating that, "[t]o trigger the exclusionary rule, police conduct must be *sufficiently deliberate* that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.... [T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances *recurring or systemic negligence.*" *Id.* (emphasis added).

The good-faith exception has been applied to accommodate objectively reasonable police reliance on subsequently invalidated search warrants, *Leon, supra,* subsequently invalidated statutes, *Illinois v Krull,* 480 US 340; 107 S Ct 1160; 94 L Ed 2d 364 (1987), inaccurate court records, *Arizona v Evans,* 514 US 1; 115 S Ct 1185; 131 L Ed 2d 34 (1995), negligently maintained police records, *Herring supra,* and misinterpretation of Supreme Court precedent, *Davis, supra.*

In *Davis*, the United States Supreme Court recognized that the defendant's Fourth Amendment rights had been violated by the search of the defendant's motor vehicle incident to his arrest based on its recent holding in *Arizona v Gant,* 556 US 332; 129 S Ct 1710; 173 L Ed 2d 485 (2009). It nevertheless rejected application of the judicially created exclusionary rule because, at the time of the search, *New York v Belton,* 453 US 454; 101 S Ct 2860; 69 L Ed 2d

768 (1981), could have been read to authorize such a search. The Court discussed the holdings of the Court leading up to *Belton* and how *Belton* could be read to establish a bright-line rule that motor vehicles could be searched incident to any arrest, regardless whether the suspect was unsecured or had access to the interior of the vehicle. Four justices making up the lead opinion rejected this reading of *Belton*, holding that "the *Chimel* rationale authorizes police to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." *Gant*, 556 US at 343; 129 S Ct at 1719. Four justices making up the dissent agreed that *Belton* "set[] forth a bright-line rule that permits a warrantless search of the passenger compartment of an automobile incident to the lawful arrest of an occupant—regardless of the danger the arrested individual in fact poses" and that "'[t]his bright-line rule' has now been interred." *Gant*, 556 US at 354; 129 S Ct at 1725-1726 (BREYER, J., dissenting), at 356-358; 129 S Ct at 1727 (ALITO, J., dissenting). Justice SCALIA read *Belton* as authorizing arresting officers to search arrestees' vehicles in order to protect the officers from hidden weapons, *Gant*, 556 US at 351-352; 129 S Ct at 1724 (SCALIA, J., concurring). He cast the deciding vote to "artificial[ly] narrow[]" *Belton*, to "hold that a vehicle search incident to arrest is *ipso facto* 'reasonable' only when the object of the search is evidence of the crime for which the arrest was made, or of another crime that the officer has probable cause to believe occurred." *Id.*, 353; 129 S Ct at 1725 (SCALIA, J., concurring). He added that, "[b]ecause respondent was arrested for driving without a license (a crime for which no evidence could be expected to be found in the vehicle), [he] would hold in the present case that the search was unlawful." *Id.*

In *Davis*, the police officer searched the suspect's vehicle incident to arrest without pretense that it was for officer safety. "The police handcuffed both Owens and Davis, and they

placed the arrestees in the back of separate patrol cars. The police then searched the passenger compartment of Owens's vehicle and found a revolver inside Davis's jacket pocket." *Davis*, 131 S Ct at 2425. Thus, although the officers certainly acted consistently with how many courts (including the Eleventh Circuit) had interpreted *Belton*, this interpretation of *Belton* was erroneous vis-à-vis *Gant* based on how the four justices in the lead opinion and Justice SCALIA interpreted *Belton*. In other words, five justices of the Court in *Gant* interpreted *Belton* to mean either that "police [could] search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search[,]" *Gant*, 556 US at 343; 129 S Ct at 1719, or arresting officers could search arrestees' vehicles in order to protect the officers from hidden weapons, *Gant*, 556 US at 351-352; 129 S Ct at 1724 (SCALIA, J., concurring). Given that neither of these circumstances existed in *Davis*, the officers' interpretation of *Belton* was incorrect and the search was in violation of the Fourth Amendment. Nevertheless, the Court in *Davis* ruled that the officers' search was executed in good faith because many courts had interpreted *Belton* to authorize precisely what the officers did in searching the vehicle.

The same rationale for application of the good-faith exception to the judicially created exclusionary rule exists here. This is true whether the stop is deemed a mistake of fact *or* a mistake of law, or both.

a. Mistake of fact

In *Arizona v Evans*, 514 US 1; 115 S Ct 1185; 131 L Ed 2d 34 (1995), the police were misinformed by a court that a suspect had a pending arrest warrant for failure to appear. In fact, the court's database was incorrect because the warrant had been quashed, but this information was not logged in the database. Relying on this information, the police officer arrested the

suspect and a search incident to that arrest produced illegal contraband. The Supreme Court applied the good-faith exception to the exclusionary rule, stating:

> Applying the reasoning of *Leon* to the facts of this case, we conclude that the decision of the Arizona Supreme Court must be reversed. The Arizona Supreme Court determined that it could not "support the distinction drawn ... between clerical errors committed by law enforcement personnel and similar mistakes by court employees," 177 Ariz at 203, 866 P.2d, at 871, and that "even assuming ... that responsibility for the error rested with the justice court, it does not follow that the exclusionary rule should be inapplicable to these facts," *ibid.*
>
> This holding is contrary to the reasoning of *Leon, supra; Massachusetts v Sheppard, supra,* and, *Krull, supra.* If court employees were responsible for the erroneous computer record, the exclusion of evidence at trial would not sufficiently deter future errors so as to warrant such a severe sanction. First, as we noted in *Leon,* the exclusionary rule was historically designed as a means of deterring police misconduct, not mistakes by court employees. See *Leon, supra,* 468 US at 916; 104 S Ct at 3417; see also *Krull, supra,* 480 US at 350; 107 S Ct at 1167. Second, respondent offers no evidence that court employees are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion. See *Leon, supra,* 468 US at 916; 104 S Ct 3417, and n 14; see also *Krull, supra,* 480 US at 350-351; 107 S Ct at 1167-1168. To the contrary, the Chief Clerk of the Justice Court testified at the suppression hearing that this type of error occurred once every three or four years. App. 37.
>
> Finally, and most important, there is no basis for believing that application of the exclusionary rule in these circumstances will have a significant effect on court employees responsible for informing the police that a warrant has been quashed. Because court clerks are not adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime, see *Johnson v United States,* 333 US 10, 14; 68 S Ct 367, 369; 92 L Ed 436 (1948), they have no stake in the outcome of particular criminal prosecutions. Cf. *Leon, supra,* 468 US at 917; 104 S Ct at 3417-3418; *Krull, supra,* 480 US at 352; 107 S Ct at 1168. The threat of exclusion of evidence could not be expected to deter such individuals from failing to inform police officials that a warrant had been quashed. Cf. *Leon, supra,* 468 US at 917; 104 S Ct at 3417-3418; *Krull, supra,* 480 US at 352; 107 S Ct at 1168.
>
> If it were indeed a court clerk who was responsible for the erroneous entry on the police computer, application of the exclusionary rule also could not be expected to alter the behavior of the arresting officer. As the trial court in this case stated: "I think the police officer [was] bound to arrest. I think he would [have been] derelict in his duty if he failed to arrest." App. 51. Cf. *Leon, supra,* 468 US at 920; 104 S Ct at 3419 ("'Excluding the evidence can in no way affect [the

officer's] future conduct unless it is to make him less willing to do his duty.'" quoting *Stone*, 428 US at 540; 96 S Ct at 3073 (White, J., dissenting)). The Chief Clerk of the Justice Court testified that this type of error occurred "on[c]e every three or four years." App. 37. In fact, once the court clerks discovered the error, they immediately corrected it, *id.*, at 30, and then proceeded to search their files to make sure that no similar mistakes had occurred, *id.*, at 37. There is no indication that the arresting officer was not acting objectively reasonably when he relied upon the police computer record. Application of the *Leon* framework supports a categorical exception to the exclusionary rule for clerical errors of court employees. See *Leon, supra*, 468 US at 916-922; 104 S Ct at 3417-3420; *Sheppard, supra*, 468 US at 990-991; 104 S Ct at 3428-3429. [*Evans*, 514 US at 14-16; 115 S Ct at 1193-1194.]

In *Herring*, an officer asked a clerk in his department whether an arrest warrant was pending on the defendant. The clerk consulted the department's computer, which indicated there were no warrants. She next consulted her counterpart in a neighboring county sheriff's department. That clerk found an arrest warrant on the sheriff's department's computer and relayed this information to the requesting clerk who relayed it to the requesting officer. Upon receiving this information, the officer arrested the defendant and a search incident to this arrest produced illegal contraband. Shortly thereafter it was learned that the arrest warrant had been withdrawn months earlier but this information was not logged in the sheriff's computer. The defendant's arrest, however, had already occurred. The Court found the distinction between an error by a court in *Evans* and by a law enforcement employee in *Herring* inapposite and applied the good-faith exception to the exclusionary rule:

> [The defendant's] claim that police negligence automatically triggers suppression cannot be squared with the principles underlying the exclusionary rule, as they have been explained in our cases. In light of our repeated holdings that the deterrent effect of suppression must be substantial and outweigh any harm to the justice system, *e.g.*, *Leon*, 468 US at 909-910; 104 S Ct 3405, we conclude that when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not "pay its way." *Id.*, at 907-908 n 6. In such a case, the criminal should not "go free because the constable has blundered." *People v Defore*, 242 NY 13, 21; 150 NE 585, 587 (1926) (opinion of the Court by Cardozo, J.). [*Herring*, 555 US at 147-148; 129 S Ct at 704.]

b. Mistake of law

The Supreme Court has not addressed whether a mistake of law can allow for application of the good-faith exception to the judicially created exclusionary rule. The majority view appears to be that it cannot. These cases appear to mix the violation together with the remedy, which the Supreme Court has held are separate inquires. In other words, these courts conclude that a mistake of law can never be considered objectively reasonable and, therefore, a mistake of law can never be remedied by the exclusionary rule. As an example, the DC Circuit recently addressed two traffic laws in the District of Columbia regarding license plate tags and whether an aftermarket frame that blocked part of the tag violated one of two traffic laws. It rejected a literal reading of the law and found that the stop was invalid, *Whitfield v United States*, ___ A3d ___; 2014 WL 4636033, * 4-10, and, as a consequence, held that the evidence seized had to be suppressed:

> We hold that the trial court erred in denying the motion to suppress because the police committed a mistake of law when they effectuated a traffic stop of appellant's vehicle based on their observation that appellant's license plate frame obscured the Texas state nickname found on the bottom of the license plate. Since we hold in favor of appellant on the motion to suppress[.] Whitfield, 2014 WL 4636033, * 10-11.

The court had also indicated that, "in such instances [where there has been a mistake of law], there is no good-faith exception to the exclusionary rule." *Id.*, 2014 WL 4636033, * 3, citing *In re TL*, 996 A2d 805, 816 (DC, 2010) ("[u]nlike an objectively reasonable mistake of *fact* ..., an officer's mistake of *law*, however reasonable, 'cannot provide the objective basis for reasonable suspicion or probable cause' needed to justify a search or seizure" [emphasis by the court]). The rejection of the good-faith exception for mistakes of law is based on the view that law enforcement officers should be perfect and are expected to know the law they are enforcing

and, therefore, the deterrence is based on the philosophy that officers must be trained and educated to know all laws: "'To create [such] an exception ... would defeat the purpose of the exclusionary rule, for it would remove the incentive for police to make certain that they properly understand the law that they are entrusted to enforce and obey.'" *In re TL*, 996 A2d at 816-817. This view is based, at least in part, on the notion that """the fundamental unfairness of holding citizens to 'the traditional rule that ignorance of the law is no excuse,' while allowing those 'entrusted to enforce' the law to be ignorant of it."""" *Id.*, 996 A2d at 817 n 39 (citation omitted). The court concluded:

> Thus, "[t]he justifications for the good-faith exception [to the exclusionary rule] do not extend to situations in which police officers have interpreted ambiguous precedent or relied on their own extrapolations from existing caselaw." "When law enforcement officers rely on precedent to resolve legal questions as to which '[r]easonable minds ... may differ,' the exclusionary rule is well-tailored to hold them accountable for their mistakes." [*Id.*, 996 A2d at 817.]

However, the Supreme Court's decision in *Davis, supra*, rejects the DC Circuit's conclusion that an officer's reliance on judicial precedent later overruled cannot justify application of the good-faith exception to the judicially created exclusionary rule.

Also, the argument that law enforcement should not be allowed to make mistakes has been rejected by the Supreme Court in *Herring*. There, the mistake was committed by a sheriff's department employee who failed to remove an arrest warrant from a database resulting in a citizen's arrest. The Supreme Court could have easily held that mistakes by law enforcement cannot be tolerated and, therefore, to deter mistakes, law enforcement employees are expected to be trained and educated to make sure that arrest warrants do not remain on a system to avoid arresting people. It did not so hold. The Court recognizes the fallibility of humans and seeks to apply the exclusionary rule only when "police conduct [is] ... sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the

price paid by the justice system.... [T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Herring*, 555 US at 144; 129 S Ct at 702.

The DC Circuit's approach fails to consider, separately, constitutional violations and remedies in the Fourth Amendment context. *Leon*, 468 US at 907; 104 S Ct at 3412 ("[w]hether the exclusionary sanction is appropriately imposed in a particular case ... is 'an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct'" [citation omitted]).

The reasoning behind the rule applies equally to mistakes of law. Absent sufficiently deliberate police conduct where "exclusion can[not] meaningfully deter it," the exclusionary rule has no place. Again, "the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Herring*, 555 US at 144; 129 S Ct at 702.

An officer in the field that cannot read a license plate because it is blocked by something the motorist installed on his vehicle, including a trailer hitch ball, certainly appears to violate MCL 257.225(2). At least three Court of Appeals judges viewed this as a violation, one in *Dunbar* and two in *Wilmot*. Two in *Dunbar* do not see a violation, but for different reasons, and each in *Dunbar* do so because of the third sentence rather than reading the statute as a whole. Judge SHAPIRO in *Dunbar* sees an outright violation based on the third sentence of the statute whereas Judge O'CONNELL in *Dunbar* sees an ambiguity in the third sentence justifying a limiting construction, but not one favorable to the deputies who stopped Defendant's pickup truck. On this record, how could suppressing the drug and gun evidence "serve to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic

negligence" as required when deciding to apply the exclusionary rule? *Herring*, 555 US at 144; 129 S Ct at 702.

The Ohio Court of Appeals has concluded that a good-faith misinterpretation of law avoids application of the exclusionary rule where the officer's misinterpretation of the law is "objectively reasonable". See, e.g., *State v Reedy*, unpublished opinion of the Ohio Court of Appeals, issued October 17, 2012 (No. 12-CA-1); 2012 WL 5209828 (Appendix F), wherein the court stated:

> An issue arises, however, when the traffic violation underlying the stop is questionably a violation of the law. We have previously noted "[u]nder limited circumstances, courts have held that the exclusionary rule may be avoided with respect to evidence obtained in a stop based on conduct that a police officer reasonably, but mistakenly, believes is a violation of the law." *State v Gunzenhauser,* supra, 2010–Ohio–761, ¶ 16, citing *City of Wilmington v Conner,* 144 Ohio App 3d 735, 740; 761 NE2d 663 (12th Dist, 2001); *State v Greer,* 114 Ohio App 3d 299, 300–301; 683 NE2d 82 (2nd Dist, 1996). Such cases necessarily involve a mistake of law rather than a mistake of fact. "Because courts must be cautious in overlooking a police officer's mistakes of law, the mistake must be objectively reasonable." *Id.* [*Reedy*, 2012 WL 5209828, * 3.]

Importantly, as noted by the *Herring* decision, the Supreme Court rejects the notion that law enforcement is not allowed to make mistakes when judging whether to apply the exclusionary rule. It jettisoned the notion that only mistakes by the courts (e.g., *Evans*) could allow the good-faith exception to apply when an officer relies on the court and extended it to mistakes committed by law enforcement itself (e.g., *Herring*). However, when applying the mistake-by-court paradigm, courts have allowed officers to rely on a magistrate's mistake of law when issuing a search warrant, even when the law was clear that a particular search clause was invalid:

> Here, we find that the first prong of the good faith exception rule is met in that the magistrate issued a facially valid condition to the grant of diversion. Appellant urges that the instant situation is distinguishable from *Barbarick* because there it was ambiguous whether a search condition could be attached to

> an OR release, while here, error was clear under *Frederick v. Justice Court, supra,* 47 Cal App 3d 687; 121 Cal Rptr 118. However, the focus of the exclusionary rule is to "deter police misconduct, not to correct the errors of judges or magistrates." (*Miranda v Superior Court,* 13 Cal App 4th 1628, 1632; 16 Cal Rptr 2d 858 [1993].) "Where the defect in paperwork derives not from police negligence, but from judicial error, no remedial benefit will come from suppressing the evidence." (*Ibid.*) Here, the error was not caused in whole or part by the police. (See, e.g., *People v Ivey*, 228 Cal App 3d 1423, 1426; 279 Cal Rptr 554 [1991] [exclusionary rule should apply where error of official transmission of misinformation by police occurred].) Despite appellant's arguments to the contrary, both *Leon* and *Barbarick* held that an improper legal determination, i.e., a mistake of law made by the magistrate in issuing a facially valid search condition, falls within the good faith exception to the exclusionary rule. (*People v Barbarick, supra,* 168 Cal App 3d at p 739; 214 Cal Rptr 322; see also, *People v Tellez,* 128 Cal App 3d 876; 180 Cal Rptr 579 [1982] [motion to suppress properly denied where, as a matter of law, parole with search condition had terminated before search].) [*People v Fleming*, 22 Cal App 4th 1566, 1573; 28 Cal Rptr 2d 78, 81-82 (1994).]

Thus, the court in *Fleming* forgave an officer's mistake of law because the magistrate had authorized the search notwithstanding the law. The court blamed the magistrate for the mistake of law, but if law enforcement officers are supposed to be perfect in knowing the law they enforce, how can they reasonably rely on a magistrate who blundered? The People agree that the exclusionary rule should *not* apply under such circumstances and this should likewise extend to mistakes of law in the field when "police conduct [is *not*] ... sufficiently deliberate that exclusion can meaningfully deter it," but rather, the exclusionary rule should only apply when the police conduct is "sufficiently culpable that such deterrence is worth the price paid by the justice system.... [T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Herring*, 555 US at 144; 129 S Ct at 702.

The majority in *Wilmot* saw it that way as well. It first concluded that the officer stopping the vehicle because of an obstruction of part of a license plate by a trailer hitch ball was objectively reasonable vis-à-vis MCL 257.225(2), and, therefore, the stop itself was valid. It also

concluded that these circumstances (i.e., a mistake of law if it was one) did not justify application of the judicially created exclusionary rule:

> Limiting our ruling to the question of whether the exclusionary rule should be invoked here, any presumed mistake that the officer made in regard to whether a civil infraction arises when an object separate and apart from a license plate obscures the plate was objectively reasonable. The officer's conclusion that a civil infraction does occur under the statute in such circumstances was also not the result of any deliberateness, gross negligence, or reckless disregard for constitutional rights and requirements. There are no appellate court opinions construing MCL 257.225(2) in a manner that conflicts with the officer's view. There is simply no evidence of bad faith or any misconduct. Moreover, assuming a lack of probable cause or reasonable suspicion factually speaking, the evidence was certainly sufficient to show that the officer's conduct in stopping defendant's truck and detaining him was not the result of any deliberate or intentional effort to violate the law, nor was it the result of any recklessness, gross negligence, bad faith, or misconduct. There is no reason to invoke the exclusionary rule.
>
> * * *
>
> With respect to stopping defendant's truck in the first place based, in part, on entry of an inaccurate license plate number in the LEIN, we again observe that there is no indication that the officer did so intentionally or in bad faith; the entry was not the result of misconduct. Therefore, there is no basis to invoke the exclusionary rule, even if there was a constitutional violation for pulling defendant over premised on an inaccurate LEIN entry. There is no evidence suggesting that entry of the wrong license plate number was the result of deliberate, reckless, or grossly negligent conduct, nor was it the result of recurring or systemic negligence. There was no misconduct or reckless disregard of constitutional requirements. One can even reasonably argue that there was no simple or ordinary negligence on the officer's part, which would not suffice anyway for purposes of implicating the exclusionary rule. The harsh sanction of exclusion is not justified under the circumstances. And again, removing consideration of the plate obstruction matter, there necessarily would still have been some contact between defendant and the officer, if only for the purpose of the officer informing defendant that he could continue on his way, and this contact would have led to the observation of defendant's intoxicated state, thereby giving rise to probable cause or reasonable suspicion to continue the stop and further investigate. [*Wilmot*, 2013 WL 951109, *5-6, 7.]

The same reasoning applies here.

RELIEF REQUESTED

For the foregoing reasons, the Court of Appeals should be reversed and the matter remanded for trial.

Respectfully submitted,
MUSKEGON COUNTY PROSECUTOR
Attorney for Plaintiff-Appellant

Dated: November 4, 2014

By: CHARLES F. JUSTIAN (P35428)
Chief Appellate Attorney

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STATE OF MICHIGAN

IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant, vs. CHARLES ALMONDO-MAURICE DUNBAR, Defendant-Appellee.	SC File No. COA File No. 314877 Lower Court File No. 12-062736-FH Muskegon County Circuit Court

MUSKEGON COUNTY PROSECUTOR Attorney for Plaintiff By: Charles F. Justian (P35428) Hall of Justice, Fifth Floor 990 Terrace Street Muskegon, MI 49442 (231) 724-6435	MICHAEL L. OAKES (P69267) Attorney for Defendant 1704 East Michigan Avenue Lansing, MI 48912 (517) 325-3309

NOTICE OF FILING PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

TO: Clerk of the Michigan Court of Appeals and Clerk of the 14th Judicial Circuit Court for the County of Muskegon

PLEASE TAKE NOTICE that, on Tuesday, November 4, 2014, Plaintiff-Appellant is filing Plaintiff-Appellant's Application for Leave to Appeal with the Michigan Supreme Court located at the Michigan Hall of Justice, 925 West Ottawa, Lansing, Michigan.

Dated: November 4, 2014

CHARLES F. JUSTIAN (P35428)
Chief Appellate Attorney
Muskegon County Prosecutor's Office
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(231) 724-6435

STATE OF MICHIGAN

IN THE SUPREME COURT

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff-Appellee,

vs.

CHARLES ALMONDO-MAURICE DUNBAR,

Defendant-Appellant.

SC File No.

COA File No. 314877

Lower Court File No. 12-062736-FH
Muskegon County Circuit Court

NOTICE OF HEARING

/

MUSKEGON COUNTY PROSECUTOR
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/

TO: The Clerk *and* Michael L. Oakes, Attorney for Defendant

PLEASE TAKE NOTICE that, on Tuesday, November 25, 2014, the Plaintiff-Appellant's Application for Leave to Appeal will be brought on for hearing before the Michigan Supreme Court located at the Michigan Hall of Justice, 925 West Ottawa, Lansing, Michigan. No oral argument will be had on this motion unless otherwise ordered by the Court.

Dated: November 4, 2014

CHARLES F. JUSTIAN (P35428)
Chief Appellate Attorney
Muskegon County Prosecutor's Office
BUSINESS ADDRESS & TELEPHONE:
Hall of Justice, Fifth Floor
990 Terrace Street
Muskegon, MI 49442
(231) 724-6435

STATE OF MICHIGAN

IN THE SUPREME COURT

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff-Appellant,

vs.

CHARLES ALMONDO-MAURICE DUNBAR,

Defendant-Appellee.

SC File No.

COA File No. 314877

Lower Court File No. 12-062736-FH
Muskegon County Circuit Court

NOTICE OF HEARING

/

MUSKEGON COUNTY PROSECUTOR
Attorney for Plaintiff
By: Charles F. Justian (P35428)
Hall of Justice, Fifth Floor
990 Terrace Street
Muskegon, MI 49442
(231) 724-6435

MICHAEL L. OAKES (P69267)
Attorney for Defendant
1704 East Michigan Avenue
Lansing, MI 48912
(517) 325-3309

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TO: The Clerk *and* Michael L. Oakes, Attorney for Defendant

PLEASE TAKE NOTICE that, on Tuesday, November 25, 2014, the Plaintiff-Appellant's Application for Leave to Appeal will be brought on for hearing before the Michigan Supreme Court located at the Michigan Hall of Justice, 925 West Ottawa, Lansing, Michigan. No oral argument will be had on this motion unless otherwise ordered by the Court.

Dated: November 4, 2014

CHARLES F. JUSTIAN (P35428)
Chief Appellate Attorney
Muskegon County Prosecutor's Office
BUSINESS ADDRESS & TELEPHONE:
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990 Terrace Street
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PROOF OF SERVICE

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MUSKEGON COUNTY PROSECUTOR
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/

I, Charles F. Justian, certify that, on November 4, 2014, I served the Clerk of the Michigan Court of Appeals and the Clerk of the 14th Judicial Circuit Court for the County of Muskegon with Notice of Filing Plaintiff-Appellant's Application for Leave to Appeal by hand-delivery and I served Defendant through his counsel of record with a copy of Plaintiff-Appellant's Application for Leave to Appeal *and* the Notice of Hearing by placing same in an envelope addressed thereto with first-class postage affixed and depositing same with the United States Postal Service.

CHARLES F. JUSTIAN (P35428)
Chief Appellate Attorney

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