

Order

Michigan Supreme Court
Lansing, Michigan

July 26, 2024

Elizabeth T. Clement,
Chief Justice

165806

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 165806
COA: 353646
Tuscola CC: 20-015154-AR

DAVID ALLAN LUCYNSKI,
Defendant-Appellant.

On April 17, 2024, the Court heard oral argument on the application for leave to appeal the April 27, 2023 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REMAND this case to the Tuscola Circuit Court for further proceedings consistent with this order.

This case appears before this Court for a second time. The pertinent facts are unchanged. We previously ordered oral argument on the application, after which this Court issued an opinion. We held that: (1) defendant was seized by Deputy Ryan Robinson when Deputy Robinson parked behind defendant and blocked defendant's egress, *People v Lucynski*, 509 Mich 618, 657 (2022); (2) defendant did not violate MCL 257.676b(1) because defendant did not interrupt the natural flow of traffic, *id.* at 649-650; (3) Deputy Robinson's interpretation of MCL 257.676b(1) was an unreasonable mistake of law, *id.* at 656, and therefore; (4) because Deputy Robinson lacked reasonable suspicion, defendant was seized in violation of the Fourth Amendment, *id.*

Having determined that a Fourth Amendment violation in fact occurred, we remanded this case to the Court of Appeals to consider whether the exclusionary rule applied. *Id.* at 657-658. On remand, the Court of Appeals concluded that application of the exclusionary rule was not appropriate in this case. *People v Lucynski*, unpublished per curiam opinion of the Court of Appeals, issued April 27, 2023 (Docket No. 353646). The Court of Appeals, relying on *Herring v United States*, 555 US 135 (2009), concluded that, although this Court held that Deputy Robinson's mistake of law was objectively unreasonable, it was "also true that Deputy Robinson did not demonstrate any deliberate, reckless, or grossly negligent conduct." *Lucynski*, unpub op at 5. Further, the panel found no record evidence that "Deputy Robinson acted in bad faith when he effectuated a traffic stop of [defendant]. Nor was there any evidence this stop was part of a systemic effort to subvert [defendant's] constitutional rights." *Id.*

We disagree with the Court of Appeals and hold that the exclusionary rule applies in this case. “Application of the exclusionary rule to a constitutional violation is a question of law that is reviewed de novo.” *People v Frazier*, 478 Mich 231, 240 (2007). “Generally, evidence obtained in violation of the Fourth Amendment is inadmissible as substantive evidence in criminal proceedings.” *In re Forfeiture of \$176,598*, 443 Mich 261, 265 (1993); see also *Mapp v Ohio*, 367 US 643 (1961). The exclusionary rule does not automatically apply once a court finds a Fourth Amendment violation. Instead, “[t]he suppression of evidence should be used only as a last resort.” *Frazier*, 478 Mich at 247, citing *Hudson v Michigan*, 547 US 586 (2006). This is because “ ‘[t]he exclusionary rule is “a harsh remedy designed to sanction and deter police misconduct where it has resulted in a violation of constitutional rights” ’ ” *Frazier*, 478 Mich at 247 (citations omitted). More specifically, the exclusionary rule “is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it.” *Id.* at 247-248 (quotation marks and citations omitted). “ ‘[T]he proper focus is on the deterrent effect on law enforcement officers, if any.’ ” *Id.* at 248, quoting *People v Goldston*, 470 Mich 523, 539 (2004) (alteration in original).

Here, Deputy Robinson provided two reasons for the traffic stop: (1) the factually unsupported suspicion that a drug deal took place, which he communicated to defendant during the traffic stop; and (2) a suspected violation of MCL 257.676b(1), which he did not mention until the preliminary examination in this case. The former reason unquestionably weighs in favor of application of the exclusionary rule. An officer who seizes a person based only on an unsupported, inchoate hunch has acted in clear violation of a defendant’s Fourth Amendment rights and, thus, has committed misconduct. Exclusion is warranted in such a circumstance. See *People v Soulliere*, 509 Mich 950, 951 (2022) (explaining that a trial court did not err by granting the defendant’s motion to suppress evidence where a deputy’s observation that gave rise to a traffic stop amounted “to nothing more than an inchoate and unparticularized suspicion or hunch”) (quotation marks and citations removed).

Similarly, Deputy Robinson’s objectively unreasonable belief that defendant violated MCL 257.676b(1) also weighs in favor of exclusion. Although the Court of Appeals here relied on *Herring*, in which a police error was not found to warrant application of the exclusionary rule, that decision is distinguishable from this case. In *Herring*, an officer unknowingly relied on an invalid arrest warrant when arresting the defendant, due to a “bookkeeping” error beyond the arresting officer’s knowledge or control. 555 US at 137-138. Under these facts, the United States Supreme Court explained that suppressing evidence “obtained in objectively reasonable reliance on a subsequently recalled warrant” produces a marginal or nonexistent deterrent effect on police misconduct. *Id.* at 146. It is easy to follow the logic of this decision. Suppression “turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct.” *Id.* at 137. Therefore, excluding evidence that was obtained as a result of reasonable

reliance on a mistake made by a third-party would not necessarily deter police misconduct because there is no culpable or wrongful police conduct to deter.¹ In other words, where the police error “was the result of isolated negligence attenuated from the arrest,” the exclusionary rule should not apply. *Id.* at 137.²

Such is not the case here. Instead, we conclude that a seizure based on an officer’s *unreasonable* interpretation of the law warrants application of the exclusionary rule. This Court has already held that Deputy Robinson’s interpretation of MCL 257.676b(1) was an unreasonable mistake of law. We now conclude that the Fourth Amendment cannot excuse an unreasonable mistake of law. See *Heien v North Carolina*, 574 US 54, 66-67 (2014) (“The Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable. . . . [A]n officer can gain no

¹ The Court of Appeals appeared to consider the instant case under the good-faith exception to the exclusionary rule. The prosecution, however, did not raise the good-faith exception before this Court. While there is some conceptual overlap between the good-faith exception and the mistake-of-law doctrine, we do not believe that the good-faith exception applies here. The good-faith exception typically applies in circumstances where the officer’s conduct is the result of *another* individual’s error. See generally *United States v Herrera*, 444 F3d 1238, 1249-1250 (CA 10, 2006) (explaining that the “good-faith exception applies only narrowly, and ordinarily only where an officer relies, in an objectively reasonable manner, on a mistake made by someone other than the officer” and that application of the good-faith exception to the exclusionary rule “turns to a great extent on whose mistake produces the Fourth Amendment violation. And because the purpose underlying this good-faith exception is to deter *police* conduct, logically [the] exception most frequently applies where the mistake was made by someone other than the officer executing the search that violated the Fourth Amendment”).

² The dissent suggests that Deputy Robinson later engaged in lawful conduct during the seizure, such that Deputy Robinson’s “supposed negligence [was] plainly offset, i.e., attenuated, by Robinson’s otherwise lawful investigation.” *Herring*’s discussion of attenuation does not support the dissent’s assertion on this point. In *Herring*, the Supreme Court reasoned that, because an officer relied on a mistake *that was not his own*, the exclusionary rule’s underlying purpose of deterrence could not be satisfied because an objective review of the record revealed that it was not the officer who had committed misconduct. *Herring* does not support the notion that Deputy Robinson’s *own* misconduct can be excused by his later conduct in the investigation and arrest. Instead, the investigation could not be considered lawful at all, because the investigation resulted from an invalid seizure. See *Terry v Ohio*, 392 US 1, 19-20 (1968) (noting that the reasonableness of a search or seizure depends on whether “the officer’s action was justified at its inception”).

Fourth Amendment advantage through a sloppy study of the laws he is dutybound to enforce.”). Under these circumstances, application of the exclusionary rule is appropriate.³

In the dissent’s view, exclusion is not appropriate in this case because, though Deputy Robinson may have made an unreasonable mistake of law, “there was no egregious law enforcement misconduct.” The dissent relies heavily on *People v Salters*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2001 (Docket No. 215396), to suggest that Deputy Robinson’s understanding of the statute was reasonable, as *Salters* was the only case to have previously interpreted MCL 257.676b(1). Indeed, the dissent “would not blame Robinson for having been trained to understand that impeding traffic does not require an actual impediment to traffic.” The flaw in the dissent’s reliance on *Salters* and references to officer training, however, is that at no point in the proceedings did Deputy Robinson assert knowledge of the *Salters* opinion, nor did Deputy Robinson allege that he was trained in accordance with the reasoning in *Salters*. The prosecution also has not introduced any evidence that *Salters* or other officer training was the basis of Deputy Robinson’s seizure.⁴ In short, to the extent that the dissent posits that Deputy

³ The dissent states that our decision to apply the exclusionary rule where an officer has made an unreasonable mistake as to law is “in contradiction to current Supreme Court caselaw,” even though the United States Supreme Court has never ruled against exclusion where an unreasonable mistake of law has occurred. Nonetheless, our decision here is in accordance with how other jurisdictions have considered unreasonable mistakes and the exclusionary rule. Indeed, this Court has not found a case where evidence was gathered on the basis of an officer’s unreasonable mistake of law and the exclusionary rule did not apply, and neither the prosecution nor its supporting amicus has directed this Court to such a case. We have, however, located numerous decisions from other jurisdictions that have concluded that evidence seized on the basis of an unreasonable mistake of law was excluded from use by the prosecution at trial. While some of these cases have not considered the deterrent impact of the exclusionary rule, as we do here, we find it persuasive that overwhelming caselaw demonstrates that evidence obtained as a result of an unreasonable mistake of law favors exclusion. See, e.g., *State v Robertson*, 2023-Ohio-2746 (Ohio App, 2023); *United States v Boatright*, 678 F Supp 3d 1014, 1046 (SD Ill, 2023); *People v Jackson*, 2022 IL App (3d) 190621 (2022); *People v Kaczkowski*, 2020 IL App (3d) 170764 (2020); *United States v Flores*, 798 F3d 645, 648-650 (CA 7, 2015); *United States v Alvarado-Zarza*, 782 F3d 246, 249-251 (CA 5, 2015).

⁴ We, of course, do not expect officers to recall the various cases that support their understanding of certain statutes. We merely explain that, to the extent that the dissent turns to *Salters* or officer training in an attempt to explain why exclusion is not appropriate here, no record evidence supports the dissent’s assertion. Throughout this litigation, the prosecution has always relied on *Salters* for the limited purpose of demonstrating that Officer Robinson’s actions could have been considered reasonable because a panel of the

Robinson's unreasonable mistake of law could have still been conducted in good-faith reliance on unpublished authority from the Court of Appeals, no factual support of any such reliance has been offered throughout the pendency of this extensive litigation.

We reiterate today that a touchstone principle of the exclusionary rule is the deterrence of future police misconduct. We believe that application of the exclusionary rule here properly achieves this deterrent effect. As we previously held, Deputy Robinson's unreasonably expansive interpretation of MCL 257.676b(1) conflicted with its unambiguous meaning. Using an unreasonable reading of the law to justify a traffic stop is the sort of misconduct that the exclusionary rule is designed to deter. Our decision, therefore, stands for the proposition that evidence gathered in clear violation of unambiguous law will not be admissible on the basis of explanations justified entirely by a subjective and erroneous misreading of the applicable law. See *Hooks v United States*, 208 A3d 741, 750 (DC, 2019) (explaining that, unlike in *Herring*, "here we have a patently unlawful seizure by officers unaware of the letter of the law they were trying to enforce. The circumstances of this case are precisely those we want to deter and amply justify the application of the exclusionary rule"). We believe that any holding to the contrary would actually *incentivize* police misconduct. If even unreasonable and unjustifiable errors do not warrant exclusion of illegally obtained evidence, the Fourth Amendment would be stripped of its substance, and officers would have less incentive to abide by the Fourth Amendment's constitutional constraints.⁵ For these reasons, we reverse the judgment of

Court of Appeals had a similar interpretation. The prosecution has not once demonstrated that Deputy Robinson actually relied on that opinion as authority to conduct the stop. Nor has the prosecution offered this Court any evidence of Deputy Robinson's training regarding traffic stops under MCL 257.676b(1).

⁵ We believe that the dissent characterizes the deterrent value of exclusion far too narrowly. The dissent believes that because this Court has now properly interpreted MCL 257.676b(1), see *Lucynski*, 509 Mich at 652-653, unjustified stops pursuant to a misreading of MCL 257.676b(1) will now be deterred.

To start, the dissent's assertion cannot be squared away with this Court's previous finding that the statute is unambiguous and that Deputy Robinson's misreading of an unambiguous statute was unreasonable. In other words, the officer's mistake should not have happened in the first instance because the statute itself clearly did not allow it. We fail to see how our prior holding in this case provides any more deterrent value than the clear and unambiguous statute itself provided.

Moreover, the deterrent impact of the exclusionary rule encompasses more than just future misapplications of the statute in question. The imposition of the exclusionary rule also broadcasts that unreasonable readings of the law cannot justify an illegal seizure and that the fruit of such unlawful seizures will not be admissible at trial.

the Court of Appeals and remand this case to the trial court for further proceedings consistent with this order.

CLEMENT, C.J. (*concurring*).

I continue to believe that the deputy's mistake of law in seizing defendant pursuant to an alleged violation of MCL 257.676b(1) was reasonable, especially given the existence of a Court of Appeals opinion supporting the same statutory interpretation that the deputy employed. See *People v Lucynski*, 509 Mich 618, 658 (2022) (*Lucynski III*) (CLEMENT, J., concurring in part and dissenting in part). However, I recognize that a majority of this Court considered and rejected this argument in *Lucynski III*, and I accept this conclusion as the law of the case moving forward. See *Grievance Administrator v Lopatin*, 462 Mich 235, 259 (2000). Accordingly, I now concur with the majority's general rule that where a law enforcement officer acts pursuant to an unreasonable mistake of law, the exclusionary rule should apply to suppress the resultant evidence. Because the exclusionary rule is designed to "deter[] official misconduct by removing incentives to engage in unreasonable searches and seizures," rather than to cure the constitutional violation itself, *People v Goldston*, 470 Mich 523, 529-530 (2004), suppression is appropriate only where "it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment," *Illinois v Krull*, 480 US 340, 348 (1987) (quotation marks and citation omitted). Where an officer executes a search or seizure pursuant to an objectively unreasonable mistake of law, it is true that the officer knew or should have known that the search was unconstitutional yet performed it anyway. Under those circumstances, application of the exclusionary rule deters such behavior, emphasizing the importance of officer education and minimizing the potential for malevolent abuse of authority. See *United States v Lopez-Valdez*, 178 F3d 282, 289 (CA 5, 1999) (noting that if officers are allowed to stop vehicles when drivers have not broken the law, "the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive").⁶ Accordingly, I concur.

ZAHRA, J. (*dissenting*).

⁶ I am sympathetic to many of the concerns articulated by Justice ZAHRA in his dissenting statement, including that application of the exclusionary rule here may operate to discourage reliance on existing caselaw from our lower courts. However, for me these concerns are due in large part to my disagreement with the *Lucynski III* majority regarding whether the police officer's mistake of law was reasonable rather than a fundamental disagreement with the majority in the present case regarding the application of the exclusionary rule when a police officer makes an unreasonable mistake of law.

The last time this case was here I disagreed with a majority of the Court that Tuscola County Sheriff's Deputy Ryan Robinson had seized defendant under the meaning of the Fourth Amendment.⁷ I further disagreed that Robinson had committed an "unreasonable" mistake of law by concluding that defendant had violated the civil obstructing-traffic statute.⁸ Indeed, Robinson's interpretation of this statute was consistent with an unpublished opinion of the Michigan Court of Appeals, the only relevant judicial decision in Michigan expounding on this statute at the time defendant was stopped.⁹ Nonetheless, this Court remanded the case to Court of Appeals "to determine whether application of the exclusionary rule was the appropriate remedy."¹⁰ On remand, the Court of Appeals held that application of the exclusionary rule was not a proper remedy.¹¹ A majority of the Court now again reverses the panel's unanimous decision by abstractly focusing only on its prior determination that Robinson's mistake was "unreasonable" and broadly holds "that a seizure based on an officer's *unreasonable* interpretation of the law warrants application of the exclusionary rule."

In reaching this holding, the majority glosses over the case-specific, fact-intensive inquiry necessary to determine whether suppression of evidence is appropriate. This approach conflicts with guidance from the Supreme Court of the United States for applying the exclusionary rule. Applying the correct test, I conclude that Deputy Robinson committed no deliberate, reckless, or grossly negligent violations of the Fourth Amendment. Nor can it be said that Robinson's overbroad understanding of MCL 257.676b(1) justifies a prophylactic rule "that a seizure based on an officer's *unreasonable* interpretation of the law warrants application of the exclusionary rule" regardless of whether Robinson conducted himself in good faith. That which a majority of this Court believes to be an unreasonable interpretation does not equate to insolent or flagrant misconduct by a law enforcement official of the magnitude that the exclusionary rule is solely intended to deter. There is no indication that any state or local law enforcement agency routinely or systematically relied on an overbroad understanding of MCL 257.676b(1) to violate the constitutional rights of Michigan residents. Nor is it plausible to suggest that law enforcement officers will continue to rely on an overbroad

⁷ *People v Lucynski*, 509 Mich 618, 658-666 (2022) (ZAHRA, J., dissenting).

⁸ *Id.* at 667-672, discussing MCL 257.676b(1).

⁹ *Id.* at 669, citing *People v Salters*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2001 (Docket No. 215396).

¹⁰ *Lucynski*, 509 Mich at 658 (opinion of the Court).

¹¹ *People v Lucynski (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued April 27, 2023 (Docket No. 353646), pp 4-5.

understanding of MCL 257.676b(1) after this Court has published an opinion holding that the understanding of MCL 257.676b(1) embraced by a prior panel of the Michigan Court of Appeals and Robinson conflicted with its meaning. This Court's decision already provides significant deterrence such that if any Michigan law enforcement officer relies on this overbroad understanding of MCL 257.676b(1) in the future, that reliance may rise to the level of insolent and flagrant behavior that would justify application of the exclusionary rule. Because the Court of Appeals reached the correct result for the proper reasons, I would deny defendant's application for leave to appeal in this Court.¹²

But the Court bootstraps its way to a categorical application of the exclusionary rule for conduct that does not warrant that remedy, in contradiction to current Supreme Court caselaw. Further, the majority's approach perversely encourages police to ignore the construction of statutes by our own Court of Appeals. By the majority's reasoning, police officers should now disregard instruction or persuasive authority from Michigan's lower courts and instead divine how this Court will someday read a pertinent statute. Because the majority order doubles down on the Court's prior erroneous conclusions, fails to consider and properly apply governing precedent from the Supreme Court of the United States, and fosters uncertain application of the law for both the public and law enforcement, all without a scintilla of deterrence value, I dissent.

I. FACTS AND PROCEDURAL HISTORY

Because application of the exclusionary rule is a "fact-intensive inquiry,"¹³ Deputy Robinson's alleged misconduct must be understood in context of the following facts:

¹² A fundamental flaw in the majority order and Chief Justice CLEMENT's concurring statement is that it equates all unreasonable mistakes of law with police misconduct that is "deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Herring v. United States*, 555 US 135, 144 (2009). Not all unreasonable mistakes of law require the exclusion of evidence. And not all determinations by a court that law enforcement has committed an unreasonable mistake of law align with the exclusionary rule's elevated purpose to deter "deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Id.* This is why the application of the exclusionary rule is a "fact-intensive inquiry." *United States v. Duenas*, 691 F3d 1070, 1082 (CA 9, 2012). But under today's order, when a court concludes law enforcement has made an unreasonable mistake of law, application of the exclusionary rule is a foregone conclusion. The majority's new rule operates as an "indiscriminate blunderbuss" instead of "a carefully controlled scalpel." *State v. Klingenstein*, 92 Md App 325, 342 (1992), *aff'd in part and rev'd in part on other grounds* 330 Md 402 (1993).

¹³ *Duenas*, 691 F3d at 1082. The Supreme Court has made clear that application of the exclusionary rule to a Fourth Amendment violation hinges on the culpability of police

On a brisk January morning, Tuscola County Sheriff's Deputy Ryan Robinson was traveling westbound on Old State Road in rural Wisner Township when he observed two cars stopped in the middle of the road from some distance away.¹ At the preliminary-examination hearing, Robinson testified that the vehicles were facing opposite directions with the drivers' windows next to one another and that the drivers appeared to be talking to one another with their windows down. One of the vehicles, a red Chevrolet Cobalt, was defendant's car. Robinson did not observe any narcotics activity and did not hear what the drivers said, but he testified that he thought a drug transaction might have occurred. Even though there were no other vehicles on Old State Road at the time, Robinson testified at the preliminary-examination hearing that he believed the vehicles were impeding traffic in violation of MCL 257.676b. Robinson also testified that he saw both cars begin moving when he was approximately 800 feet away, he did not have to slow down or avoid either vehicle, and he did not observe any erratic driving.

Robinson testified that he followed defendant's car "with the intention to stop the red Cobalt for impeding traffic." Robinson followed defendant in a marked patrol vehicle and turned onto the same one-lane driveway that defendant had entered, parking a few feet behind defendant's car and blocking the only path of egress. While a single lane was cleared within the driveway, the surrounding area was covered with several inches of snow. Neither the siren nor the emergency lights on Robinson's vehicle were activated by the officer.

Body-camera footage of the encounter that followed was introduced at the preliminary-examination hearing.

¹ Old State Road is a two-mile stretch of rural road, which Deputy Robinson described as "dirt" or unpaved. Old State Road is approximately 10 miles east of Bay City, Michigan, and appears to provide access to a handful of farms and residential homes before reconnecting to Michigan Highway 25.^[14]

At this point, elaboration on the body-camera footage is required. The video begins while Deputy Robinson is driving on Old State Road and approaching the driveway entered

conduct and the degree to which exclusion will deter future police misconduct. *Herring*, 555 US at 141-144 (2009). These factors necessarily vary based on the facts of a case.

¹⁴ *Lucynski*, 509 Mich at 627-628 (opinion of the Court).

by defendant. After about eight seconds, Robinson comes to a complete stop on Old State Road near the driveway. According to Robinson's testimony, at this point he "ran the plate" and learned that the registered owner of red Cobalt resided in Reese, Michigan, some 11 miles away. Over 10 seconds then elapsed before Robinson pulled his marked vehicle into the driveway behind the red Cobalt.

Deputy Robinson did not activate the vehicle's siren or emergency lights. The red Cobalt was parked with its engine turned off, and defendant is first seen standing about three to four feet outside of his car, next to the driver-side fender and facing Robinson.

[Deputy] Robinson immediately asked whether defendant lived there, and defendant responded that it was a friend's house as he walked toward the deputy. Robinson asked what defendant was doing on the road, to which defendant replied, "Just talking about fishing." During this period, defendant had moved to put his hands in his pockets, and Robinson ordered him not to do so; defendant complied with the directive. Robinson then said, "I didn't know if maybe there was a drug deal going on, and that when I ran the plate it [came] back to" an address in Reese, Michigan. Defendant denied any drug transaction and said that Reese was where he lived and that he worked just up the road. After confirming the name of the homeowner, Robinson asked defendant if defendant had his driver's license, to which defendant replied in the negative^[15]

After defendant admitted he did not have a driver's license, Deputy Robinson questioned, "So that's why you pulled in here then—'cause you saw me, and you said: *nope, I don't have a license and I need to visit my buddy quick, right?*" And defendant nodded along. Robinson smelled the odor of marijuana. Defendant admitted that he had recently smoked marijuana and later admitted he earlier consumed "a can" of beer. Defendant then consented to a search of his vehicle, and Robinson found both marijuana and an open container of alcohol inside.

Defendant was charged, as a third habitual offender, with operating a motor vehicle while intoxicated, operating a motor vehicle with a suspended license, and possession of an open container of alcohol in a vehicle. Ultimately, the case reached this Court,¹⁶ and a majority of this Court held that defendant was "seized under the Fourth Amendment when the officer blocked the driveway and defendant's path of egress with a marked patrol car because, under the totality of the circumstances, a reasonable person would not have felt

¹⁵ *Lucynski*, 509 Mich at 628-629 (opinion of the Court) (alteration in original).

¹⁶ The lower court proceedings are detailed at *Lucynski*, 509 Mich at 629-632 (opinion of the Court).

free to leave or to terminate the interaction.”¹⁷ The majority remanded this case to the Court of Appeals to determine whether application of the exclusionary rule was the appropriate remedy.¹⁸ On remand, the Court of Appeals, relying on precedent established by the Supreme Court of the United States, held that “Deputy Robinson did not demonstrate any deliberate, reckless, or grossly negligent conduct, and “[t]here is no evidence in the record showing that Deputy Robinson acted in bad faith when he effectuated a traffic stop of [defendant]. Nor was there any evidence this stop was part of a systemic effort to subvert defendant’s constitutional rights.”¹⁹ Defendant again sought relief from this Court and an argument on the application was ordered to consider:

whether application of the exclusionary rule is proper where the deputy sheriff had no reasonable suspicion to believe that the defendant violated the law, given that there was no evidence to support the deputy’s hunch that an illegal drug transaction had taken place and the deputy did not make a reasonable mistake of law to the extent that he stopped the defendant for a suspected violation of MCL 257.676b(1).^[20]

II. THE EXCLUSIONARY RULE

“The Fourth Amendment protects ‘[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,’ but ‘contains no provision expressly precluding the use of evidence obtained in violation of its commands.’ ”²¹ Nonetheless, the Supreme Court of the United States established “an exclusionary rule that, when applicable, forbids the use of improperly obtained evidence at trial.”²² The Supreme Court has observed “that this judicially created rule is ‘designed to safeguard Fourth Amendment rights generally through its deterrent effect.’ ”²³

¹⁷ *Id.* at 626.

¹⁸ *Id.* at 657-658.

¹⁹ *Lucynski (On Remand)*, unpub op at 3-4, citing *Herring*, 555 US 135. I disagree with the Court of Appeals’ characterization of Deputy Robinson effectuating a traffic stop of defendant. I believe that the videorecording shows that Robinson approached defendant as he was standing outside his vehicle.

²⁰ *People v Lucynski*, 512 Mich 958 (2023).

²¹ *Herring*, 555 US at 139, quoting *Arizona v Evans*, 514 US 1, 10 (1995).

²² *Herring*, 555 US at 139.

²³ *Id.* at 139-140, quoting *United States v Calandra*, 414 US 338, 348 (1974).

Exclusion of evidence is not a necessary consequence of a Fourth Amendment violation. “The 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.”²⁴ The Supreme Court of the United States has cautioned that “exclusion ‘has always been our last resort, not our first impulse,’ and our precedents establish important principles that constrain application of the exclusionary rule.”²⁵ Significantly, “the exclusionary rule is not an individual right and applies only where it result[s] in appreciable deterrence. . . . Instead we have focused on the efficacy of the rule in deterring Fourth Amendment violations *in the future*.”²⁶

“The extent to which the exclusionary rule is justified by these deterrence principles varies with the culpability of the law enforcement conduct.”²⁷ “‘[A]n assessment of the flagrancy of the police misconduct constitutes an important step in the calculus’ of applying the exclusionary rule.”²⁸ “[E]vidence should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.”²⁹ “‘[T]he beneficent aim of the exclusionary rule to deter police misconduct can be sufficiently accomplished by a practice . . . outlawing evidence obtained by flagrant or deliberate violation[s] of rights.’”³⁰

In sum, “[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.”³¹

²⁴ *Herring*, 555 US at 140, citing *Illinois v Gates*, 462 US 213, 223 (1983).

²⁵ *Herring*, 555 US at 140, quoting *Hudson v Michigan*, 547 US 586, 591 (2006).

²⁶ *Herring*, 555 US at 141 (quotation marks and citations omitted; emphasis added).

²⁷ *Id.* at 143.

²⁸ *Id.*, quoting *United States v Leon*, 468 US 897, 911 (1984).

²⁹ *Herring*, 555 US at 143 (quotation marks and citations omitted).

³⁰ *Id.*, quoting Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 Calif L Rev 929, 953 (1965) (footnotes omitted).

³¹ *Herring*, 555 US at 144.

III. APPLICATION

A brief perusal of the majority's cursory and impetuous order in this case reveals that a majority of the Court in this case has simply disregarded the United States Supreme Court's precedent regarding the exclusionary rule. The majority does not at all attempt to apply the exclusionary rule as a last resort but rather acts on impulse to broadly hold "that a seizure based on an officer's unreasonable interpretation of the law warrants application of the exclusionary rule."³² This holding is not at all reflective of a case-specific, fact-intensive inquiry that is necessary to determine whether suppression of evidence is appropriate.

The majority's order fails to address Deputy Robinson's degree of culpability. For the reasons below, I conclude that Robinson's actions were not culpable, much less "deliberate, reckless, or grossly negligent."³³ Recall that the majority's previous holding in this case set two new precedents. The first precedent established that a violation of MCL 257.676b(1) "require[s] some evidence that the accused's conduct *actually affected* the usual smooth, uninterrupted movement or progress of the *normal flow* of traffic on the roadway, which requires an assessment of traffic at the time of the alleged offense."³⁴ Before that opinion was issued, the only relevant authority addressing the statute was an

³² Emphasis omitted.

³³ *Herring*, 555 US at 144.

³⁴ *Lucynski*, 509 Mich at 648 (opinion of the Court). And the majority's interpretation of MCL 257.676b(1) is not nearly as clear-cut as it suggests. The statute discusses the normal flow of vehicular or pedestrian traffic, and then excepts "persons maintaining, rearranging, or constructing public utility or streetcar facilities in *or adjacent to a street or highway*." MCL 257.676b(1) (emphasis added). While I do not quibble with the majority's application of the statute in this case, it seems that MCL 257.676b(1) contemplates that it may be applied in some cases where there is a potential effect on traffic. Moreover, the majority's interpretation of MCL 257.676b(1) may itself be ambiguous. Taking the instant case, as Deputy Robinson approached the stopped vehicles that were blocking the road, there must be some point at which the stopped vehicles must have moved to avoid impeding Robinson's approaching vehicle. Had the stopped vehicles not moved so soon, there would be a cloudy factual question relating to when the stopped vehicle actually impeded Robinson's approach. Another common situation is when a motorist sees vehicles blocking the road ahead and chooses to take another route, regardless of whether those vehicles would have moved had the motorist continued along the originally intended route. In that situation, I would argue that the presence of the parked vehicles alone actually impeded traffic.

unpublished decision from our Court of Appeals,³⁵ which is, admittedly, not a precedential statement of law.³⁶ Had this decision been published, there would be no discussion of the exclusionary rule in this case. It simply would not apply.³⁷ Yet the majority faults Robinson for interpreting MCL 257.676b(1) consistently with the only relevant judicial interpretation of that law at the time he acted. I would not blame Robinson for having been trained to understand that impeding traffic does not require an actual impediment to traffic.³⁸ Indeed, every lawyer in the state would acknowledge that, while not binding and subject to debate, unpublished opinions of the Michigan Court of Appeals are instructive and potentially persuasive authority in Michigan Courts.³⁹ So too should the unpublished Court of Appeals opinion justify Robinson’s understanding at least with regard to whether Robinson’s conduct was so insolent and flagrant that the evidence obtained in his encounter with defendant should be subject to exclusion. The majority order perversely encourages law enforcement officers to ignore their training. By the majority’s reasoning, law enforcement officers should from now on disregard instruction or persuasive authority from the judiciary and instead rely on their own lay readings of statutes with the hope that such a lay reading of the statute will someday conform to this Court’s subsequent interpretation of law. This places law enforcement officers in an untenable position of having to predict how a bare majority of this Court may later determine whether their training is supported by a “reasonable” interpretation of law.⁴⁰

³⁵ *Salters*, unpub op. Notably, this Court denied the defendant’s application for leave to appeal in *Salters*, 465 Mich 920 (2001), and a federal district court denied the defendant’s habeas petition, *Salters v Palmer*, 271 F Supp 2d 980, 989 (ED Mich, 2003), noting the Michigan “courts addressed the merits of the claim and determined that police had reasonable suspicion to effectuate the traffic stop and to search his vehicle.”

³⁶ MCR 7.215(C)(1). “Although unpublished opinions of [the Court of Appeals] are not binding precedent, . . . they may . . . be considered *instructive* or persuasive.” *Paris Meadows, LLC v Kentwood*, 287 Mich App 136, 145 n 3 (2010) (emphasis added). See also *Redmond v Heller*, 332 Mich App 415, 431 n 7 (2020).

³⁷ *Davis v United States*, 564 US 229, 238 (2011).

³⁸ The majority order criticizes my dissenting statement because “at no point in the proceedings did [Deputy] Robinson assert knowledge of the *Salters* opinion, nor did [he] allege that he was trained in accordance with” the reasoning in *Salters*. This is beside the point. Regardless of whether Robinson could cite *Salters* and demonstrate that he was specifically trained based on *Salters*, that decision shows that his mistake was not egregious even if it was unreasonable.

³⁹ See note 36 of this statement.

⁴⁰ As Chief Justice CLEMENT points out in her concurrence, she previously held that Deputy Robinson’s mistake of law in seizing defendant pursuant to an alleged violation of MCL

The second new rule set by the majority’s previous holding in this case is even more remarkable. The majority held that “using a marked police vehicle to block a civilian vehicle’s ability to exit a single-lane driveway to facilitate questioning or an investigation *is a show of force on behalf of the police* that can give rise to a seizure within the meaning of the Fourth Amendment.”⁴¹ The civilian in question, defendant, was no longer in the vehicle, and based on information gathered from running the license plate of defendant’s car, Deputy Robinson was not without justification to inquire whether defendant was trespassing on private property to evade him. No decision from the Supreme Court of the United States or this Court supported this radical understanding of the Fourth Amendment. Indeed, as pointed out in my prior dissent, the majority’s reliance on federal circuit court caselaw was highly suspect as well.⁴²

257.676b(1) was reasonable. Yet, she now dismisses her previous holding because this Court’s prior decision is now “the law of the case moving forward.” To be clear, this dissent is not premised on the notion that the majority was wrong in its assessment that Deputy Robinson’s conduct amounted to an unreasonable mistake of law. I agree with Chief Justice CLEMENT that this issue has been resolved by this Court. This dissent argues that the majority is wrong when it concludes “that a seizure based on an officer’s *unreasonable* interpretation of the law warrants application of the exclusionary rule.” Robinson’s *culpability* cannot be evaluated based on “the law of the case moving forward.” Rather, it must be evaluated upon the law at the time of his conduct. No facts cited in the majority order support the conclusion that Deputy Robinson acted deliberately, recklessly, in a grossly negligent manner, or in a pattern of recurring or systemic negligence. See *Herring*, 555 US at 144. Hence, the law of the case moving forward does not assign to Robinson the culpability necessary to satisfy the exclusionary rule’s purpose of deterrence.

⁴¹ *Lucynski*, 509 Mich at 643 (opinion of the Court) (emphasis added).

⁴² *Lucynski*, 509 Mich at 660-665 (ZAHRA, J., dissenting). More remarkable is that in the ensuing term a majority of this Court relied on this poorly reasoned decision as a platform to continue its “recent trend of recharacterizing routine police-citizen interactions as constitutional violations.” *People v Duff*, ___ Mich ___ (VIVIANO, J., dissenting) (2024); slip op at 1; see also *People v Hicks*, ___ Mich ___ (2024). In doing so, the majority continues to presuppose that a police officer’s presence alone is coercive to a reasonable person while at the same time failing to acknowledge that the “reasonable person” test presupposes an innocent person. See *Florida v Bostick*, 501 US 429, 438 (1991). For instance, the majority in this case previously asserted that “[i]f a reasonable person in defendant’s place did not have an independent desire to leave, but nevertheless did not want to interact with [the officer], the other options available to them would have been to attempt to enter a home that they did not own (and without knowledge whether the owner was home) or wander off into a frozen field some distance from town in a rural area.” *Lucynski*, 509 Mich at 645 (opinion of the Court). Of course, an innocent person would

Viewed against in this backdrop, I find it impossible to ascribe culpability to Deputy Robinson's actions. I certainly agree with the Court of Appeals that "Deputy Robinson did not demonstrate any deliberate, reckless, or grossly negligent conduct"⁴³ Even assuming that Robinson's misunderstanding of law was negligent, when his actions are viewed objectively at the time of defendant's arrest, there simply was no egregious law enforcement misconduct.

Deputy Robinson observed two vehicles stopped in the middle of a single-lane road. He suspected a drug deal and believed that the vehicles were potentially impeding traffic. As he approached the stopped vehicles, they resumed driving. Robinson followed the vehicle in his lane of travel, which abruptly turned into the driveway of a private residence. But Robinson did not then continue to follow the vehicle. Rather, Robinson confirmed that the vehicle was not registered to the residence. Accordingly, Robinson was justified in believing that the vehicle he had been following was attempting to evade him. Certainly, further investigation of the vehicle's unknown occupant was warranted.

At this point, Deputy Robinson had not engaged in any misconduct. However, according to the majority, this all changed when Robinson continued to follow the vehicle onto private property. While the majority is not clear when Robinson engaged in misconduct, there are two potential points at which the misconduct occurred. The first is that by turning onto a single-lane driveway, Robinson blocked the vehicle's egress and therefore committed misconduct because he had "seized" perhaps the lone occupant of the car, defendant. Still, it would be difficult to say Robinson committed misconduct at this point because his vision of the long driveway was obscured by foliage, and he could not have known there were no other means of vehicular egress. The second is that Robinson blocked the defendant's egress when he parked his marked vehicle directly behind the vehicle defendant had been driving. At this point, however, defendant had already alighted from the vehicle. So, taking a page from the majority's interpretation of the civil obstructing-traffic statute, Robinson's vehicle was "potentially" but not "actually" blocking defendant's egress.

The fact remains that this Court's previous decision in this case established two new precedents from which a majority of the Court is only now able to deem that Deputy

not have tried to evade the officer by furtively turning into a private driveway and place themselves in this situation. Moreover, these are not the only options that an innocent person would have under the circumstances. An innocent person could ignore the officer, knock on the door, and maybe then wait for his friend to return home or ask the officer to move the police vehicle so he could leave.

⁴³ *Lucynski (On Remand)*, unpub op at 5.

Robinson committed misconduct. Robinson simply cannot be faulted for conduct which was sanctioned before a majority of this Court established two new precedents that retroactively prohibited Robinson's behavior. If his conduct is viewed objectively, as we must, Robinson did not engage in any misconduct. Even if Robinson misunderstood that the civil obstructing-traffic statute applied only to persons "actually" impeding traffic and not to persons "potentially" impeding traffic, he nonetheless conducted a lawful investigation that did not run afoul of the Fourth Amendment.

The majority does not claim Deputy Robinson engaged in any deliberate, reckless, or grossly negligent conduct. Rather, the majority order hides this analytical shortcoming by ignoring all details and leaning on its prior declaration that Robinson made an "unreasonable mistake of law."⁴⁴ The majority's focus on Robinson's "unreasonable mistake of law" obscures the significance of its previous dubious holding that Robinson seized defendant by pulling into the driveway and parking his vehicle directly behind defendant. There was no precedent from this Court, our Court of Appeals, or the Supreme Court of the United States from which Robinson, let alone legal scholars in this state, could have been made aware that his conduct would have resulted in an unconstitutional seizure. Had Robinson been aware that this Court's overbroad understanding of a seizure under the Fourth Amendment, perhaps he would have approached the situation differently. At best, Robinson inadvertently committed a seizure by pulling into the driveway and parking directly behind the vehicle defendant had been driving.

Yet, the majority sullies Deputy Robinson's inadvertent seizure by asserting all his conduct stemmed from his "unreasonable mistake of law." The majority acknowledges that where a law enforcement error "was the result of isolated negligence attenuated from the arrest," the exclusionary rule should not apply.⁴⁵ Yet, Robinson's "unreasonable mistake of law" only brought him to the brink of his inadvertent seizure. While stopped

⁴⁴ In a footnote, the majority order faults the prosecution for not arguing "the good-faith exception" to the exclusionary rule. It is strange that the majority keys in on this exception—dating from the Supreme Court's 1984 *Leon* decision—but ignores the general test for applying the exclusionary rule that the Supreme Court has developed in more recent cases like *Herring* and *Davis*.

⁴⁵ Quotation marks and citation omitted.

on Old State Road in front of the driveway, he then ran the plate of the vehicle he was following and discovered the vehicle was not registered to that address. This additional information prompted Robinson to pull into the driveway and investigate. Robinson’s “unreasonable mistake of law” became attenuated when he developed additional information that prompted him, at least in part, to investigate the vehicle and its driver. And at the time, Robinson could not have had any culpability ascribed to him for conducting a basic investigation and pulling his vehicle into the driveway and parking behind the vehicle defendant had been driving. Here, Robinson’s so-called “unreasonable interpretation of the law” was at most negligent. But this supposed negligence is plainly offset, i.e., attenuated, by Robinson’s otherwise lawful investigation.

Remarkably, the majority order engages with neither the relevant facts nor the governing law. This leaves a neutral observer bemused as to the basis for the majority’s conclusion. A review of the facts uncovers little in the way of law enforcement conduct that should or could be deterred by excluding evidence of defendant’s criminal activity. Certainly, it is difficult to see how any deterrence value could “ ‘pay its way’ ” and justify excluding relevant evidence from the truth-finding process.⁴⁶ Nor is it plausible to suggest that officers will continue to rely on an overbroad understanding of MCL 257.676b(1) after this Court published an opinion holding that Robinson’s understanding of MCL 257.676b(1) conflicted with its meaning.⁴⁷ This Court’s decision already provides significant deterrence such that if a police officer now relies on this overbroad understanding of MCL 257.676b(1), that conduct may rise to the level of insolent and flagrant behavior that may justify application of the exclusionary rule.

For these reasons, I dissent. I would affirm the Court of Appeals’ opinion on the above basis or deny the application.

VIVIANO, J., joins the statement of ZAHRA, J.

⁴⁶ *Davis*, 564 US at 238, quoting *Leon*, 468 US at 919.

⁴⁷ See *Lucynski*, 509 Mich 619.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 26, 2024

Clerk