

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF CANTON TOWNSHIP,

Plaintiff-Appellant,

v

JAMIE MICHAEL WILMOT,

Defendant-Appellee.

UNPUBLISHED

March 7, 2013

No. 305308

Wayne Circuit Court

LC No. 11-002563-AR

Before: MURPHY, C.J., and DONOFRIO and GLEICHER, JJ.

GLEICHER, J., (*dissenting*).

The question presented is whether the arresting police officer had probable cause to seize defendant's vehicle. The officer testified that he initiated a traffic stop because a trailer hitch obscured the officer's view of the registration information displayed on defendant's license plate. The district court disbelieved that the trailer hitch obscured the clearly legible condition of the plate, determined that the officer lacked probable cause to stop defendant's car, and dismissed the case.

The majority disputes the district court's factual findings, labeling them "problematic." According to the majority's interpretation of the officer's testimony, "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." Notwithstanding this observation, the majority holds that because "there is no evidence of misconduct by the officer," no basis exists to invoke the exclusionary rule.

I respectfully dissent for three reasons. First, the plain language of the statute at issue does not apply to trailer hitches mounted behind license plates. Second, even if the statute could be construed to prohibit trailer hitches mounted behind license plates, the fact finder rejected that defendant's trailer hitch obscured the officer's view of the registration information contained on defendant's plate. Third, the officer's decision to stop defendant based on the position of the trailer hitch was not objectively reasonable. Because the absence of probable cause rendered the traffic stop of defendant's vehicle unlawful, the district court correctly dismissed the operating while intoxicated (OWI) charge.

I. UNDERLYING FACTS

Officer Craig Wilsher of the Canton Township police department was the sole witness at the suppression hearing. Officer Wilsher testified that he observed defendant's Chevy truck traveling eastbound on Warren Road and noticed that the truck's "hitch ball . . . was obstructing the license plate." The ball "was secured to the bumper of the vehicle in front of the plate." After moving his police vehicle to the right, Wilsher made a judgment as to the numbers and letters on the plate. He entered the information into his computer and determined that the plate did not match the vehicle. Wilsher then initiated a traffic stop.¹ He testified under direct examination by the prosecutor that he stopped the vehicle because "[a]fter running the plate it didn't appear to belong to that vehicle."

Defendant's counsel cross-examined Wilsher concerning the legal basis for the stop. Wilsher agreed that he stopped defendant's truck "because he had an obstructed license plate." The district court then questioned Wilsher extensively concerning his perception of the license plate:

The Court: There is – you said you could not see the plate because of the hitch ball that was on the plate and you maneuvered around the vehicle and then you wanted to see if the plate was actually registered to that vehicle; is that correct?

[Mr. Wilsher]: As I was driving behind the vehicle I was traveling directly behind it. The ball hitch was in front of the first digit. *I was unable to read that first digit.* To make an attempt to read it, I moved my vehicle to the right so I could see around it. At that point in time I entered the plate which I thought it was.

The Court: . . . You then ran the plate?

[Mr. Wilsher]: Yes.

The Court: It came back showing based on the numbers that you had entered, it came back showing registered to – it wasn't registered to that vehicle?

[Mr. Wilsher]: Correct.

The Court: Then you made the stop?

[Mr. Wilsher]: Yes.

The Court: So now you made a stop for what specific reason?

¹ According to Wilsher, the hitch ball made it difficult for him to see the first number displayed on defendant's plate after the three letters. Wilsher entered an "8" into his computer; the actual number was "9."

[Mr. Wilsher]: I could not read the plate that showed it belonged to that vehicle. The truck, — I was unable to read that license plate completely.

* * *

The Court: Was it just the ball or the ball and the natural structure of the hitch that was obstructing the plate?

[Mr. Wilsher]: Well the ball is attached to the bumper which was in the section where the plate is, so it is sitting directly in front of the plate.

The Court: How big was the ball?

[Mr. Wilsher]: Average size ball, a couple of inches.

The Court: It wasn't abnormally large at all?

[Mr. Wilsher]: No. [Emphasis added].

At the conclusion of the hearing, the district court rendered a lengthy bench opinion, commencing:

The Court: All right, maybe I am still hyper sensitive to this because I have only been on the bench for two years, but I am constantly seeking the testimony from witnesses which is the evidence in the case upon which I can rely to make my decision.

I don't want to assume things that couldn't – could not ultimately be typed up in black and white, because they were never said.

So, I have to rely on the evidence, which is only what was said here today.

So, we have a stop. The officer believed the plate was obstructed; number one by what his testimony was an average sized trailer hitch ball. There was nothing abnormal about the size of that hitch. He did describe – I gave him the opportunity to see if he was going to go there, describe anything abnormal about the hitch itself, take the ball out of the equation, that it was raised or something, — that this wasn't typical about it. That was never presented.

After summarizing the testimony, the court addressed defendant as follows:

The only thing I can rely on is the testimony which was he continued and got your registration and information from you sir, because he believed you had an obstructed plate.

I don't believe based on the facts presented here that the plate was obstructed. I can't believe that every car that has got an average sized – the typical ball on it has an obstructed plate. I think it is dangerous to believe so.

II. ANALYSIS

A. THE STATUTORY TEXT

The statutory authority under which Wilsher initiated the traffic stop, 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 which 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.* [Emphasis supplied.]

I respectfully disagree with the majority's conclusion that "at best, the statute is ambiguous regarding its applicability to objects such as the hitch ball."² In my view, the statute unambiguously requires that drivers maintain the *plate* in a manner such that the *plate* "is free from foreign materials that obscure or partially obscure the registration information, and in a clearly legible *condition*." (Emphasis supplied). No evidence suggests that defendant failed to properly maintain his license plate.

When construing statutory language, which we review de novo, this Court must ascertain and give effect to the Legislature's intent. *People v Pasha*, 466 Mich 378, 382; 645 NW2d 275 (2002). "Because the Legislature is presumed to understand the meaning of the language it enacts into law, statutory analysis must begin with the wording of the statute itself." *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000); see also *Pasha*, 466 Mich at 382 ("The first step in that determination is to review the language of the statute itself.") (quotation marks and citation omitted). In examining the specific statutory language under consideration:

We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. Where the language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written. [*Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002) (quotation marks and citations omitted).]

² An "ambiguous" statute must be strictly construed under the rule of lenity. *People v Gilbert*, 414 Mich 191, 211; 324 NW2d 834 (1982). "The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." *United States v Harriss*, 347 US 612, 617; 74 S Ct 808; 98 L Ed 2d 989 (1954). Thus, the majority's determination that the statute is "at best . . . ambiguous" requires that the majority construe the statute in favor of defendant. This Court's uncertainty as to whether the language or structure of the statute prohibited the hitch ball supports that defendant had no fair warning that his hitch ball was placed in an illegal location.

In discerning legislative intent, this Court gives effect to every word, phrase and clause in the statute. *People v Couzens*, 480 Mich 240, 249; 747 NW2d 849 (2008). We endeavor to avoid interpreting a statute in a manner that renders any statutory language nugatory or surplusage. *Id.*

The last sentence in MCL 257.225(2) states: “The 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” is not a technical one. It means “to keep in a state of repair, efficiency, or validity: preserve from failure or decline.” *Hanson v Bd of Co Rd Comm’rs of Mecosta Co*, 465 Mich 492, 502; 638 NW2d 396 (2002), quoting *Webster’s Third New International Dictionary*, Unabridged Edition (1966), p 1362. By using the word “maintain,” the Legislature intended that drivers take care not to display dirty, rusted, defaced, scratched, or snow-covered plates. The “clearly legible condition” required by the statute refers to the plate’s registration information. Thus, the statutory language mandates a properly maintained license plate that legibly displays the registration information. The statute plainly refers to the condition of the plate itself, rather than to attachments to the vehicle unconnected to the license plate. No evidence suggests that defendant failed to properly maintain his truck’s license plate in a clearly legible condition. Indeed, officer Wilsher admitted that he was able to read the numbers on the plate as he walked toward it after the stop.

In my view, the presence of a trailer hitch does not implicate a motorist’s duty to “maintain” his or her license plate in a “clearly legible condition.” The statute uses the verb “shall be maintained” to refer to the word “plate.” Officer Wilsher’s interpretation of the statute renders meaningless the term “maintained,” widening the plain language to prohibit trailer hitches, bicycle racks, tow bars, or other commonly-used paraphernalia positioned directly *behind* a license plate that may “obscure or partially obscure” an police officer’s vision of the plate. This construction unreasonably expands the statutory language in a manner that disregards the “maintenance” commandment and renders thousands of unknowing drivers guilty of a civil infraction.³

Referring to the penultimate sentence of MCL 257.225(2), the majority states:

We . . . take note of the proceeding 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).

This sentence clearly and unambiguously refers to the plate itself, and not the registration information contained on the plate (which forms the subject of the statute’s last sentence). The command that a “plate shall be attached . . . in a place and position which is clearly visible”

³ This interpretation also permits an officer’s purely subjective belief that a license plate is “partially obscured” from a distance and angle of the officer’s choosing to serve as probable cause for a traffic stop. In my view, subjective judgments of this sort do not supply an objective basis for suspecting a legal violation.

prohibits attaching the plate in a “place or position” that makes it difficult to find. No evidence suggests that defendant’s plate was attached to his vehicle in an unusual place or position. To the contrary, the evidence supports that the plate was affixed in a standard location for a Chevy truck. In that place and position, the plate itself was clearly visible. Moreover, had the district court believed Officer Wilsher’s testimony that the hitch ball rendered the license plate not “clearly visible,” the evidence uncovered during the traffic stop would have been admissible. Suppression was required, however, because the district court heard the officer’s testimony and disbelieved that the registration information was obstructed or that the plate itself lacked clear visibility.

B. THE TRIAL COURT’S FINDINGS

Even if the statutory language may be stretched to cover attachments to the rear of a vehicle that partially obscure a license plate number, I respectfully disagree with the majority’s characterization of the district court’s factual findings as “problematic.” The majority recounts the officer’s testimony that he could not clearly see the plate numbers even after maneuvering his cruiser to obtain a better view, and notes, “There was no evidence to the contrary.” That no evidence to the contrary was presented is simply irrelevant. The district court was free to disbelieve the officer, even absent countervailing testimony. See *Ykimoff v Foote Mem Hosp*, 285 Mich App 80, 125-127; 776 NW2d 114 (2009); *People v Cummings*, 139 Mich App 286, 293-294; 362 NW2d 252 (1984).

The district court expressed disbelief that the trailer ball obscured the officer’s view of the plate: “I don’t believe based on the facts presented here that the plate was obstructed.” Under the clear error standard, “regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” MCR 2.613(C). This Court is charged with upholding a district court’s factual findings unless they are clearly erroneous. Under this standard, we must defer to the district court’s view of the facts unless we are left with the definite and firm conviction that the district court erred. See *Herald Co, Inc v Eastern Mich Univ Bd of Regents*, 475 Mich 463, 471-472; 719 NW2d 19 (2006). We must not substitute our judgment for that of the district court. Based on the district court’s finding that the plate was not obscured by the trailer hitch, I would affirm the district court.⁴

C. THE OFFICER’S GOOD FAITH

The majority opinion provides:

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.

⁴ MCL 257.224(6) provides: “The registration plate and the required letters and numerals on the registration plate shall be of sufficient size to be plainly readable from a distance of 100 feet during daylight.” No evidence suggests that defendant’s plate violated this law.

In my view, the majority misapprehends both the probable cause standard and the good faith exception to that standard.

“The Fourth Amendment prohibits ‘unreasonable searches and seizures,’” and “its protections extend to brief investigatory stops of . . . vehicles that fall short of traditional arrest.” *United States v Arvizu*, 534 US 266, 273; 122 S Ct 744; 151 L Ed 2d 740 (2002). “An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation.” *Delaware v Prouse*, 440 US 648, 662; 99 S Ct 1391; 59 L Ed 2d 660 (1979). A vehicle stop remains “subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.” *Whren v United States*, 517 US 806, 810; 116 S Ct 1769; 135 L Ed 2d 89 (1996). Probable cause exists when an officer reasonably believes that a driver has committed a traffic offense. *Id.*

“[T]he touchstone of the Fourth Amendment is reasonableness.” *Ohio v Robinette*, 519 US 33, 39; 117 S Ct 417; 136 L Ed 2d 347 (1996) (quotation marks and citation omitted). Although officers possess broad leeway to stop traveling vehicles, the United States Supreme Court explained in *Prouse*, 440 US at 663, that absent probable cause or reasonable suspicion, the police lack the authority to stop a vehicle to inspect its registration documents:

[E]xcept in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver’s license and the registration of the automobile are unreasonable under the Fourth Amendment.

In *Terry v Ohio*, 392 US 1, 21-22; 88 S Ct 1868; 20 L Ed 2d 889 (1968), the Supreme Court highlighted that the reasonableness of a search must be judged *objectively* by a neutral and detached judge:

The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard; would the facts available to the officer at the moment of the seizure or the search “warrant a man of reasonable caution in the belief” that the action taken was appropriate?

Officer Wilsher testified that he stopped defendant because he had an “obstructed” license plate. In my view, as well as the district court’s Wilsher incorrectly and unreasonably believed that the presence of the trailer hitch constituted a statutory violation. A police officer’s “incorrect belief that a motorist is in violation of state traffic laws is insufficient to justify a traffic stop.” *United States v Granado*, 302 F3d 421, 423 (CA 5, 2002), superseded in part by statute on other grounds as noted in *United States v Contreras-Trevino*, 448 F3d 821, 823 (CA 5, 2006). “[I]t is well-established Fourth Amendment doctrine that the sufficiency of the claimed probable cause must be determined by considering the conduct and circumstances deemed

relevant within the context of the *actual* meaning of the applicable substantive provision, rather than the officer's claimed interpretation of that statute." 4 LaFave, Search and Seizure (4th ed), § 9.3(a), p 361 (emphasis in original).

United States v Twilley, 222 F3d 1092 (CA 9, 2000), illustrates the principle that a traffic stop premised on a police officer's fundamental misperception of the law lacks probable cause, and thus violates the Fourth Amendment. In *Twilley*, a California police officer noticed a Dodge Intrepid traveling on a California highway with a single Michigan license plate, located on the Intrepid's rear. The officer knew that California law required vehicles to display two license plates, i.e., a front plate and a back plate, and he believed the same rule applied in Michigan. The officer stopped the Intrepid and advised the occupants of his reason for the stop. The driver informed the officer that Michigan issued, and thus required, only one plate. *Id.* at 1094. The officer nonetheless continued to question the Intrepid's occupants, became suspicious when they supplied conflicting responses to his questions, and eventually "began to suspect that the vehicle carried narcotics," prompting him to call for assistance from a drug-sniffing dog. *Id.* The dog alerted to the Intrepid's rear, and officers found cocaine in the trunk. *Id.* After the police arrested the defendant and the other occupants of the Intrepid, the district court denied the defendant's motion to suppress the cocaine, finding that the officer's mistake regarding Michigan law was "reasonable." *Id.* at 1095-1096.

The Ninth Circuit Court of Appeals reversed, holding that the officer's "belief based on a mistaken understanding of the law cannot constitute the reasonable suspicion required for a constitutional traffic stop." *Id.* at 1096. The Ninth Circuit acknowledged that a police officer "need not perfectly understand the law when he stops the vehicle," but that the officer's observation "must give him an objective basis to believe that the vehicle violates the law." *Id.* Although most states required two license plates and the officer had no experience with Michigan-registered cars, the Ninth Circuit rejected that the officer's belief that the Intrepid had violated California law qualified as "reasonable," explaining, "[H]is belief was wrong, and so cannot serve as a basis for a stop." *Id.* See also *United States v McDonald*, 453 F3d 958, 961 (CA 7, 2006) (holding that "a police officer's mistake of law cannot support probable cause to conduct a stop"); *United States v Tibbetts*, 396 F3d 1132, 1138 (CA 10, 2005) (observing that "failure to understand the law by the very person charged with enforcing it is not objectively reasonable"); *United States v DeGasso*, 369 F3d 1139, 1144 (CA 10, 2004) ("Trooper Cason's failure to understand the plain and unambiguous law he is charged with enforcing . . . is not objectively reasonable."); *United States v Chanthasouvat*, 342 F3d 1271, 1279 (CA 11, 2003) (holding that "a mistake of law, no matter how reasonable or understandable . . . cannot provide reasonable suspicion or probable cause to justify a traffic stop").

Officer Wilsher's *subjective* belief that he was properly enforcing MCL 257.225(2) does not create a good faith exception to the exclusionary rule. The United States Supreme Court good faith exception announced in *United States v Leon*, 468 US 897, 922; 104 S Ct 3405; 82 L Ed 2d 677 (1984), involved evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be invalid. Since deciding *Leon*, the United States Supreme Court has applied the good faith exception to the exclusionary rule in several other circumstances: reliance on a statute later declared unconstitutional, *Illinois v Krull*, 480 US 340; 107 S Ct 1160; 94 L Ed 2d 364 (1987); reliance on clerical errors made by court employees, *Arizona v Evans*, 514 US 1; 115 S Ct 1185; 131 L Ed

2d 34 (1995); and objectively reasonable reliance on binding appellate precedent. *Davis v United States*, __ US __; 131 S Ct 2419; 180 L Ed 2d 285 (2011). No binding precedent directed Wilsher to stop defendant's vehicle. No warrant or official statement authorized Wilsher to interpret the statute in the manner he did. Rather than relying in good faith on a third party's interpretation of the law, Officer Wilsher incorrectly analyzed his statutory authority, all on his own.⁵

The majority's expansion of the good-faith exception would encompass virtually every situation in which an officer relies only on his or her own erroneous interpretation of the law to conduct a warrantless search. Despite the sincerity of Officer Wilsher's subjective belief that MCL 257.225(2) permitted the stop, I believe that objectively, Officer Wilsher was wrong. "[I]f officers are allowed to stop vehicles based upon their subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred, the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive." *United States v Lopez-Valdez*, 178 F3d 282, 289 (CA 5 1999). Moreover, the majority's sweeping application of *Leon* undermines the basic rationale of the exclusionary rule, which is to deter unlawful searches and seizures. I would hold that regardless of Wilsher's personal interpretation of the pertinent statute, he lacked authority to ticket defendant based on the presence of the trailer hitch. Respectfully, I dissent.

/s/ Elizabeth L. Gleicher

⁵ As noted by the majority, once Officer Wilsher incorrectly determined that defendant committed a statutory violation, he ran a LEIN check of defendant's license plate number. Adding a link to his chain of errors, Officer Wilsher entered the wrong number, and thereby erroneously concluded that the license plate was not registered to defendant's vehicle. This second error does not cleanse the taint caused by the first and thus cannot justify the traffic stop, particularly in light of Wilsher's recognition of his error before he spoke to defendant. Wilsher's misread of defendant's license plate does not supply the objective evidentiary justification for a seizure required by the Fourth Amendment.