

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF CANTON TOWNSHIP,

Plaintiff-Appellant,

UNPUBLISHED
March 7, 2013

v

JAMIE MICHAEL WILMOT,

Defendant-Appellee.

No. 305308
Wayne Circuit Court
LC No. 11-002563-AR

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

PER CURIAM.

The township appeals by leave granted the ruling of the circuit court, which affirmed the district court's decision to dismiss the charge of operating a motor vehicle while intoxicated (OWI) brought against defendant pursuant to township ordinance. The district court concluded that the police officer who made the traffic stop with respect to defendant's truck lacked a valid basis to approach defendant's vehicle after the stop and to confront defendant for a purported civil infraction under the Motor Vehicle Code, MCL 257.1 *et seq.* The alleged infraction was predicated on an obscured license plate as caused by the ball of a trailer hitch mounted on the rear of defendant's truck. The district court concluded, contrary to the officer's testimony, that there was no visual obstruction of the license plate number caused by the hitch ball, given that the ball was of average size. Because we conclude that there is no basis to invoke the exclusionary rule under the circumstances presented, we reverse and remand for reinstatement of the OWI charge.

On November 18, 2010, the officer observed the rear of defendant's truck while driving directly behind the truck in traffic. The officer noticed that the truck had a hitch ball secured to its bumper. The officer testified that the hitch ball was located in front of the license plate and that it partially obstructed the plate's "number," which was comprised of three letters and then four digits, such that the officer could not read the first digit found near the middle of the plate. The officer maneuvered his police cruiser to the right in an attempt to see around the hitch ball and view the full license plate number. From that vantage point, the officer read the license plate as best he could, entering the plate's information into the Law Enforcement Information Network (LEIN) via his computer in order to determine, in part, if the license plate matched defendant's truck. The information he received indicated that the license plate was not registered to the truck, but this was because the officer entered a wrong number relative to the first digit on the plate that had been blocked by the hitch ball. Upon receiving the information that the plate did

not match the vehicle, the officer initiated the traffic stop, pulling over defendant's truck. As he walked up to the stopped truck but before he made contact with defendant, the officer was able to see around the hitch ball and realized that he had entered the wrong plate number. The correct license plate number was not run through the LEIN until after the arrest, revealing that the plate was indeed registered to the truck.

The officer testified that he stopped defendant's truck because the license plate number did not appear to belong to the vehicle and because the hitch ball obstructed the truck's license plate number. He indicated that the obscured license plate was the only thing that initially drew his attention to defendant's truck. On discovering that he had entered the wrong license plate number, the officer nevertheless decided to proceed with the stop because of the obstructed plate, which he had been unable to completely read while in his police cruiser. The officer, who was the only person to testify, stated that the hitch ball was of "average size," that it was "a couple of inches," and that it was not abnormally large. No physical evidence, photographs, or videotape materials were admitted into evidence.

The officer identified defendant as the driver of the truck. The officer spoke with defendant after the stop and noticed that he had glassy, bloodshot eyes. This prompted the officer to ask defendant if he had been drinking, and defendant admitted that he had consumed three beers. Defendant was eventually arrested for drunk driving.

In the district court, defendant moved to suppress the evidence of intoxication and to dismiss the charge on the basis that his constitutional right to be free from unreasonable searches and seizures had been violated. The township argued that defendant violated the Motor Vehicle Code, and in particular MCL 257.225(2) as to an obstructed license plate, and that the officer therefore had probable cause to stop defendant's truck for a civil infraction. Defendant's position was that said statute did not apply and that, regardless, the hitch ball did not create any unlawful obstruction. The district court did not believe, "based on the facts presented, . . . that the plate was obstructed." The district court further stated, "I can't believe that every car that has . . . an average sized – the typical ball on it has an obstructed plate. I think it is dangerous to believe so." The district court did opine that it is proper for police to stop a vehicle when a license plate number does not match the vehicle's registration information. The court observed that when the officer here discovered that he entered the wrong plate number, he had the option of immediately entering the correct number into the LEIN, the option to simply inform defendant of his mistake and allow him to proceed, or the option of communicating his mistake to defendant but asking him to wait while the officer checked the correct plate number. The district court then stated, "I don't have that as the testimony here that he was going to just dismiss you because he found out he put in the wrong number;" rather, "he continued and got your registration and information . . . because he believed you had an obstructed plate." The district court suppressed the evidence and dismissed the charge. The circuit court subsequently affirmed the suppression and dismissal.

A trial court's factual findings at a suppression hearing are reviewed for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake was made." *People v Hornsby*, 251 Mich App 462, 466; 650 NW2d 700 (2002). "But the application of constitutional standards regarding searches and seizures to essentially uncontested facts is entitled to less

deference; for this reason, we review de novo the trial court's ultimate ruling on the motion to suppress.” *Williams*, 472 Mich at 313. The Fourth Amendment of the United States Constitution and Const 1963, art 1, § 11, secure the right of the people to be free from unreasonable searches and seizures. *People v Brown*, 279 Mich App 116, 130; 755 NW2d 664 (2008). The touchstone of any Fourth Amendment analysis is reasonableness, and reasonableness is measured by examination of the totality of the circumstances. *Williams*, 472 Mich at 314.

“A police officer who witnesses a person violating . . . [the Motor Vehicle Code] . . ., which violation is a civil infraction, may stop the person, detain the person temporarily for purposes of making a record of vehicle check, and prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a written citation[.]” MCL 257.742(1). “Temporary detention of individuals during the stop of an automobile, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning” of the Fourth Amendment. *Whren v United States*, 517 US 806, 809-810; 116 S Ct 1769; 135 L Ed 2d 89 (1996). A traffic stop of a motor vehicle cannot be unreasonable. *Id.* at 810. Generally speaking, “the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Id.* A traffic stop is generally not unlawful and does not violate the Fourth Amendment if the officer conducting the stop has probable cause or a reasonable and articulable suspicion to believe that a violation of the Motor Vehicle Code had been committed or was occurring. *People v Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002); *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999).

MCL 257.225 governs the attachment and display of license plates and provides in relevant part:

(2) 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.

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.¹ However, for the reasons discussed below, we ultimately find it unnecessary to resolve the dispute regarding the proper construction of § 225(2).

With respect to the district court's factual findings, they are problematic. The officer testified that the hitch ball partially obscured the license plate such that he could not read the first digit on the plate. And even after maneuvering his cruiser in an attempt to obtain a better view, the officer still could not clearly see the plate as evidenced by entry of the wrong plate number. There was no evidence to the contrary. The district court's conclusion that there was no obstruction was based entirely on the officer's testimony that the hitch ball was of average size or typical for hitch balls.² The court appeared to be more concerned with the prospect that all hitch balls could be deemed to obscure license plates if the court did not rule otherwise. This logic is legally strained, as the relevant inquiry, assuming the applicability of § 225(2), should have been whether the hitch ball on defendant's truck obscured the license plate given its placement and position, and the fact that the ball was typical or of average size did not necessarily mean that there was no obstruction. Stated more precisely, the question to be answered was whether the officer had *probable cause or a reasonable suspicion* to conclude that a civil infraction had been committed, i.e., that the license plate was not clearly visible due to the presence of the hitch ball. The district court failed to address the matter in the context of probable cause or reasonable suspicion, ostensibly examining instead whether there was an actual statutory violation. See *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998) ("Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of criminal activity."). And again, 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. Minimally, and assuming the applicability of § 225(2), the evidence would appear to have established that there was probable cause or a reasonable

¹ The dissent analyzes the language focused on by the parties, the last sentence in § 225(2), concluding that it does not apply to trailer hitches. There may be some merit to the dissent's position, but we decline to rule on the issue. In response to our suggestion that the "clearly visible" sentence in § 225(2) might apply to items such as the hitch ball, the dissent states that there was no evidence indicating that the plate was attached in an unusual place or position, that the evidence supported a conclusion that it was affixed in a standard location for the vehicle, that the plate was clearly visible from that place and position, that had the district court believed the officer's testimony claiming an obscured plate, the evidence at issue would have been admissible, and that suppression was necessary because the court did not believe the officer's testimony that the plate was obscured. *Post*, slip op at 7 n 4. This 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. The 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.

² Although not expressly stated by the district court, it apparently concluded that MCL 257.225(2) could apply to the hitch ball if it truly obscured the license plate.

suspicion to believe that the license plate was not clearly visible because of an obstruction caused by the hitch ball.³

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. The exclusionary rule is a judicially created remedy that is designed to safeguard Fourth Amendment rights through its deterrent effect; it is not a personal constitutional right of an aggrieved party. *Illinois v Krull*, 480 US 340, 347; 107 S Ct 1160; 94 L Ed 2d 364 (1987). In *Herring v United States*, 555 US 135; 129 S Ct 695; 172 L Ed 2d 496 (2009), the police stopped Herring's car after it was discovered that there was an active arrest warrant for him as reflected in a computer database. A search incident to an arrest revealed drugs and a firearm in Herring's pockets. Subsequently, it was learned that the arrest warrant had been recalled five months earlier, but "[f]or whatever reason, the information about the recall of the warrant for Herring did not appear in the [computer] database." *Id.* at 137-138. The Supreme Court noted that a violation of the Fourth Amendment does not necessarily mean that the exclusionary rule applies; rather, exclusion is an avenue of last resort. *Id.* at 140. The Court further indicated:

To 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. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence. The error in this case does not rise to that level.

...

³ We do not contest the dissent's assertion that the district court was free to disbelieve the officer's testimony. However, although the record is not entirely clear, it does not appear as if the court was of the belief that the officer was intentionally being deceitful about his difficulty observing the plate; rather, the court was simply not prepared to find, because it would be "dangerous to believe so," that the average-sized hitch ball obstructed the plate. Public policy concerns seemingly crept into the district court's analysis, instead of confining the analysis to a straightforward and proper examination of the facts. The district court did state that the plate was not obstructed "based on the facts presented." However, said facts apparently consisted solely of the officer's testimony that the hitch ball was of average size and not abnormally large. As noted above, this evidence does not necessarily result in a conclusion that there could be no obstruction, as matters concerning the placement and location of the hitch ball in relationship to the plate would also be relevant. Again, we construe the court's ruling as one that reflected worry about the impact of finding an obstruction upon other situations where a plate is obscured by hitches, bike racks, or other similar items. But that is a legislative concern and not one that should have invaded the factfinding process.

If the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified under our cases should such misconduct cause a Fourth Amendment violation. . . .

. . .

Petitioner'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, 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.” In such a case, the criminal should not “go free because the constable has blundered.” [*Id.* at 144-148 (citations omitted).]

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.⁴ 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; see also *Krull*, 480 US at 347-356 (exclusionary rule should generally not be invoked when an officer acts in objectively reasonable reliance on a statute that is subsequently found unconstitutional); *Illinois v Rodriguez*, 497 US 177, 185-186; 110 S Ct 2793; 111 L Ed 2d 148 (1990) (given the ambiguity of many situations that confront officers, they need not always be correct and room must be allowed for some mistakes, but the mistakes must be those of reasonable men); *United States v Smart*, 393 F3d 767, 770 (CA 8, 2005) (“[T]he 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.”); *State v Hammang*, 249 Ga App 811, 811; 549 SE2d 440 (2001)(an officer's actions are not rendered improper by a later legal determination that a statute was not violated by the defendant

⁴ The dissent maintains that we are required to construe the statute in favor of defendant under the rule of lenity, given our statement that MCL 257.225(2) is ambiguous at best. We are only presuming ambiguity, and if this presumption requires us to also presume, under the rule of lenity, that the statute cannot give rise to a civil infraction for obstructing a license plate with a hitch ball, such an assumption does not negate or affect our exclusionary rule analysis or our conclusion that the officer inevitably and properly would have observed the signs of intoxication, *see infra*.

according to a technical legal definition or distinction, where the officer determined in good faith that a violation occurred and the nature of the mistake was not arbitrary and harassing); *Harrison v State*, 800 So2d 1134, 1138-1139 (Miss, 2001) (traffic stop was based on mistake of law relative to statute addressing construction-zone speed limits, but deputies had an objectively reasonable basis for believing statute was violated; Mississippi Supreme Court noted that the trial court and half the judges of the court of appeals also erroneously construed the statute in a manner that supported the finding of a violation); *Travis v State*, 331 Ark 7, 10-11; 959 SW2d 32 (1998) (no constitutional violation relative to a traffic stop where the officer reasonably, but erroneously, believed that the pertinent law required license plates to display expiration stickers); *DeChene v Smallwood*, 226 Va 475, 479-481; 311 SE2d 749 (1984) (finding it “fairly arguable” that garage-keeper statute allowed for an arrest under the facts, and therefore officer had a reasonable basis to believe in the applicability of the statute; the court noted that “an arrest resulting from a mistake of law should be judged by the same test as one stemming from a mistake of fact”).⁵

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.⁶ Moreover, assuming a lack of probable cause or

⁵ We recognize, as cited by the dissent, that there are also many opinions in which courts have ruled to the contrary. However, given the United States Supreme Court’s directives that reasonability must control the Fourth Amendment analysis and that the exclusionary rule should only be employed where there is misconduct beyond ordinary negligence, a reasonably objective mistake of law should not require exclusion.

⁶ The dissent maintains that “[t]he 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.” *Post*, slip op at 12. Contrary to these remarks, we quite clearly have indicated that any mistaken reliance on a statute must be *objectively* reasonable. If an officer takes an action in the performance of his or her duties pursuant to an erroneous understanding or interpretation of a statute, the understanding or interpretation must be objectively reasonable; a subjective belief alone is insufficient. By way of a hypothetical example, it would not suffice for an officer to make a traffic stop under an honest belief that a statute prohibited driving a vehicle while texting when the statutory language stated that texting was permissible while driving, as the officer’s belief would not be objectively reasonable. While there might often be factual disputes between the police and citizens regarding whether a charged traffic offense occurred, e.g., whether a motorist was actually driving in excess of 70 mph on the highway, it would seem to be the rare situation where there is a disagreement on the legal nature of the traffic offense, e.g., whether the maximum speed on the highway is indeed 70 mph.

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.

Furthermore, although we recognize that the officer testified that he decided to detain defendant for purposes of a full vehicle and record check on the basis of the alleged obstructed license plate, there can be no doubt and it is reasonable to infer that the officer would nonetheless have approached defendant if simply to inform him that he was free to proceed. Stated otherwise, contact between the officer and defendant was inevitable and would have occurred even had the officer decided not to pursue the matter concerning the obstructed license plate. The officer learned of his mistake regarding the license plate number only after defendant had already been pulled over, and part of the reason that the officer initiated the stop was because the plate number purportedly did not match the truck's registration, which generally would provide a proper basis to make a traffic stop. There is no indication whatsoever that the officer intentionally ran an inaccurate plate number through the LEIN as part of a ruse to stop defendant. Instead, all the evidence points to a good-faith mistake by the officer.

Because there would have been some minimal contact and communications between defendant and the officer, and because it was the mere observation of defendant's glassy, bloodshot eyes that reasonably triggered questioning and investigation into whether defendant was intoxicated, the minimal contact that certainly would have transpired absent an inquiry about the obstruction infraction would have also led the officer to discover the signs of intoxication. When the district court explored this precise avenue, defendant argued that "officers on many occasions . . . pull a driver over but then get called away for something maybe of greater importance, and they will just speed off and leave the driver there wondering what went on." The problem with this argument is that there is no indication in the record that the officer received any such calls or was otherwise interrupted during his detention of defendant.

The reasonableness of any stop must take into account evolving circumstances facing an officer, and when a "stop reveals a new set of circumstances, an officer is justified in extending the detention long enough to resolve the suspicion raised." *Williams*, 472 Mich at 315. Regardless of the obstructed plate matter, upon observing defendant's glassy, bloodshot eyes, the officer would have been justified in extending the detention and asking defendant whether he had been drinking, as occurred in this case. When defendant responded that he had consumed three beers, the officer would have been justified to further continue the detention, as the new set of circumstances provided probable cause or reasonable suspicion that defendant was operating a motor vehicle while intoxicated.

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.

Reversed and remanded for reinstatement of the OWI charge. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Pat M. Donofrio