

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UNPUBLISHED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

STATE OF MICHIGAN
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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.