

**STATE OF MICHIGAN
IN THE SUPREME COURT**

People of the State of Michigan,

Plaintiff-Appellant,

v.

Charles Almando-Maurice Dunbar,

Defendant-Appellee.

Supreme Court
Case No. 150371

Court of Appeals
Case No. 314877

Muskegon Circuit Court
Case No. 12-062736-FH

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**BRIEF AMICUS CURIAE
OF CRIMINAL DEFENSE ATTORNEYS OF MICHIGAN**

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INTEREST OF AMICUS CURIAE

Since its founding in 1976, Criminal Defense Attorneys of Michigan (CDAM) has been the statewide association of criminal defense lawyers in Michigan, representing the interests of the criminal defense bar in a wide array of matters. CDAM has more than 400 members.

As reflected in its bylaws, CDAM exists in part to “promote expertise in the area of criminal law, constitutional law and procedure and to improve trial, administrative and appellate advocacy,” “provide superior training for persons engaged in criminal defense,” “educate the bench, bar and public of the need for quality and integrity in defense services and representation,” and “guard against erosion of the rights and privileges guaranteed by the United States and Michigan Constitutions and laws.” Toward these ends, CDAM regularly conducts training seminars for criminal defense attorneys, publishes a newsletter with articles on various subjects relating to criminal law and procedure, provides relevant information to the state legislature regarding contemplated changes of laws, engages in other educational activities and participates as an amicus curiae in litigation of relevance to the organization’s interests. As in this case, CDAM is often invited to file briefs amicus curiae in the Michigan appellate courts, and is permitted to file as amicus without leave of the Court. MCR 7.306(D)(2).

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ARGUMENT

“Common experience reveals that thousands of vehicles in Michigan are equipped with trailer hitches and towing balls”¹—not to mention bicycle carriers, bungee cords, cargo racks, boats, campers, and other objects—which “obscure or partially obscure the registration information” found on license plates.² Every Friday during the Michigan summer, countless of these vehicles travel north on our freeways, unmolested by police.

But when Charles Almando-Maurice Dunbar drove his pickup through Muskegon Heights at 1:00 a.m. with a tow ball obstructing a small portion of a single digit of his license plate from a particular angle, the police stopped him. They did not stop him because they wished to issue a citation under MCL 257.225(2) for driving with an obstructed license plate; the Muskegon County Sheriff’s Department never issues such citations.³ Rather, police officers wanted an excuse to investigate whether more serious criminal activity was afoot.

While the police were permitted to conduct a pretextual traffic stop “based on probable cause to believe that [Mr. Dunbar] had violated the traffic code,”⁴ they were not free to rely on conduct that “ordinary people”⁵ (such as three of the six Court of Appeals judges to consider this statute) would deem lawful. MCL 257.225(2) is void for vagueness as applied to tow balls, trailer hitches, and other like objects, and the traffic stop that gave rise to this prosecution was unlawful.

Ironically, however, precisely the same vagueness gives rise to a legitimate question of whether suppression is appropriate. If “ordinary people” can also read the statute to prohibit tow

¹ *People v Dunbar*, 857 NW2d 280, 282; 306 Mich App 562 (2014).

² MCL 257.225(2).

³ Between January 1, 2013 and May 21, 2015, the Muskegon County Sheriff’s Department issued exactly *zero* citations for violation of MCL 257.225(2). (Exhibit 1.)

⁴ *Whren v United States*, 517 US 806, 818; 116 S Ct 1769; 135 L Ed 2d 89 (1996).

⁵ *Kolender v Lawson*, 461 US 352, 357; 103 S Ct 1855; 75 L Ed 2d 903 (1983).

balls that partially obscure license plates, then is there anything to be gained by sanctioning the police officers who claim to have interpreted the statute in that manner?

While CDAM does not concede that the good faith exception to the exclusionary rule⁶ should apply in this case, it also does not argue against good faith. That is not the point of this Amicus Brief. Rather, CDAM wishes to explain the importance of resolving the underlying statutory interpretation, Due Process, and Fourth Amendment issues. The Court should decline to excuse the prosecution's failure to preserve the good faith argument in the courts below. Alternatively, even if the Court elects to resolve this case on the basis of good faith, it should not do so before issuing a definitive ruling on the scope of MCL 257.225(2).

I. MCL 257.225(2) IS UNCONSTITUTIONALLY VAGUE AS APPLIED TO TOW BALLS AND OTHER LIKE OBJECTS WHICH DO NOT MAKE PHYSICAL CONTACT WITH A LICENSE PLATE ITSELF

“To satisfy due process, ‘a penal statute [must] define the criminal offense [1] with sufficient definiteness that ordinary people can understand what conduct is prohibited and [2] in a manner that does not encourage arbitrary and discriminatory enforcement.’”⁷ As applied to tow balls, trailer hitches, bicycle racks, and other like objects, MCL 257.225(2) satisfies neither of these requirements. It requires “men of common intelligence [to] guess at its meaning”⁸ and enables “a standardless sweep [that] allows policemen . . . to pursue their personal predilections.”⁹

⁶ See *United States v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984).

⁷ *Skilling v United States*, 561 US 358, 402-03; 130 S Ct 2896; 177 L Ed 2d 619 (2010) (quoting *Kolender*, 461 US at 357). See also *People v Lino*, 447 Mich 567, 576; 527 NW2d 434 (1994) (“there are at least three ways a penal statute may be found unconstitutionally vague: (1) failure to provide fair notice of what conduct is prohibited, (2) encouragement of arbitrary and discriminatory enforcement, or (3) being overbroad and impinging on First Amendment freedoms.”).

⁸ *Connally v Gen Constr Co*, 269 US 385, 391; 46 S Ct 126; 70 L Ed 322 (1926).

⁹ *Smith v Goguen*, 415 US 566, 574-575; 94 S Ct 1242; 39 L Ed 2d 605 (1974).

A. Ordinary people would not necessarily understand that MCL 257.225(2) prohibits tow balls or other like objects which partially obscure a license plate without making contact

“Objections to vagueness under the Due Process Clause rest on the lack of notice.”¹⁰ “[B]ecause we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.”¹¹ A statute is void for vagueness where “men of common intelligence must necessarily guess at its meaning.”¹² “No one may be required at the peril of life, liberty or property to speculate as to the meaning of penal statutes.”¹³

In this case, the relevant statutory provision provides that “[t]he *plate* shall be *maintained* free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition.”¹⁴ The first clause in this sentence is most naturally understood to require drivers to “maintain[]” the “plate” *itself*, keeping it free from “foreign materials” such as mud or snow. Ordinary people think they can “maintain” the “plate” while also using a trailer hitch—hardly what comes to mind when one thinks of “foreign material.” While the legislature could have drafted a statute providing that a “*vehicle* shall be maintained such that *the license plate is not obscured or partially obscured*,” that is not what the statute says.

The second clause, which requires the plate to be maintained “in a clearly legible condition,” is no more helpful to the Prosecution’s argument. Again, the most natural reading of this requirement is that the “plate” must be “maintained” in a “legible condition”—meaning without

¹⁰ *Maynard v Cartwright*, 486 US 356, 361; 108 S Ct 1853; 100 L Ed 2d 372 (1988).

¹¹ *Grayned v City of Rockford*, 408 US 104, 108; 92 S Ct 2294; 33 L Ed 2d 222 (1972).

¹² *Connally*, 269 US at 391.

¹³ *Lanzetta v New Jersey*, 306 US 451, 453; 59 S Ct 618; 83 L Ed 888 (1939).

¹⁴ MCL 257.225(2) (emphasis added).

rust, decay, or damage rendering it illegible. People of common intelligence do not necessarily understand “clearly legible” to mean “clearly visible from all angles.”

Missing from both of these clauses is any mention of the perspective from which a license plate must be unobscured. From certain low angles, a license plate will inevitably be obstructed by the bumper; from above or alongside, it may be obstructed by a trunk door or other protrusions inherent in the vehicle’s design. If an individual on foot standing behind his vehicle can see his license plate without any obstructions—as the officers in this case testified they could—the driver should reasonably be able to conclude that his license plate information is unobstructed. If the Michigan Legislature demanded more from Michigan drivers, it easily could have specified as much. Its failure to do so indicates that the statute was only intended to prohibit materials in direct contact with the plate that make the registration information illegible from *all* perspectives.¹⁵

More to the point, however, is that whatever the legislature *intended*, its ambiguity allowed multiple reasonable interpretations. The parties’ briefs illustrate the point well. The Prosecution spends twelve pages arguing that “[r]ead as a whole, the statute requires that a license plate must be capable of being read.” (Pros Br 6-15.) While not preposterous, this analysis proves too much. That the prosecution must resort to abstract thinking and creative lawyering just demonstrates the reasonableness of the contrary view. Defendant, by contrast, spends fourteen pages explaining why MCL 257.225(2) does not implicitly regulate that which it does not explicitly mention. (Df Br 9-24.) While convincing, this argument is ultimately unnecessary, as Defendant’s burden is not to show

¹⁵ *Grayned*, 408 US at 108. See also *Colautti v Franklin*, 439 US 379, 391, 394; 99 S Ct 675; 58 L Ed 2d 596 (1979) (Where it is “unclear whether the statute imports a purely subjective standard, or whether it imposes a mixed subjective and objective standard” it “conditions potential criminal liability on confusing and ambiguous criteria [and] therefore presents serious problems of notice [and] discriminatory application.”).

that his reading is necessarily correct, but simply that “ordinary people”¹⁶ might read the statute in the same manner.

Even more telling are the opinions by the Court of Appeals in this case and *People of Canton Twp v Wilmot*.¹⁷ Judge Shapiro’s lead opinion in this case found that the statute simply could not be read to apply to “equipment behind a license plate” or specifically “trailer hitches, towing balls, or other commonly used towing equipment that might partially obscure the view of an otherwise legible plate.”¹⁸ Judge O’Connell’s concurrence found the statute ambiguous, but construed it narrowly to preserve its constitutionality.¹⁹ Judge Meter’s dissent, however, rejected both of those approaches and found that MCL 257.225(2) “refers to keeping the plate free from obstructing materials”—including tow balls.²⁰

In *Wilmot*, a case in which the admissibility of key evidence was also determined based on the correct interpretation of MCL 257.225(2), a different Court of Appeals panel came to a different conclusion as to how the statute should be interpreted. *Wilmot*, like the instant case, involved a defendant who was stopped for violating MCL 257.225(2) due to a tow ball that obstructed the officer’s view of the license plate. In a per curiam opinion, the majority wrote, “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. . . . [A]t best, the statute is ambiguous regarding its applicability to objects such as the hitch ball.”²¹ In dissent, however, Judge

¹⁶ *Koleander*, 461 US at 357.

¹⁷ *People v Wilmot*, 2013 WL 951109 (Mich Ct App Mar 7, 2013).

¹⁸ *People v Dunbar*, 306 Mich App 562, 566; 857 NW2d 280 (2014).

¹⁹ *Id.* at 567-68.

²⁰ *Id.* at 569-70.

²¹ *Wilmot*, 2013 WL at *5 (emphasis added).

Gleicher wrote that “the plain language of the statute at issue does not apply to trailer hitches mounted behind license plates.”²²

Presumably, the six judges on these two Michigan Court of Appeals panels possess an intelligence and knowledge of the law that is well beyond that of the ‘ordinary man’ construct. They have signed five different opinions regarding the reach of MCL 257.225(2). This, more than anything else, demonstrates that “men of common intelligence must necessarily guess at [the Statute’s] meaning and differ as to its application.”²³

To preserve the constitutionality of MCL 257.225(2), the statute should be construed narrowly to exclude objects that do not make physical contact with the license plate.

B. A broad reading of MCL 257.225(2) would encourage arbitrary and discriminatory enforcement

Even if a penal statute is found to give proper notice, it still violates due process under the void for vagueness doctrine if the offense is worded in a manner that “is so indefinite that ‘it encourages arbitrary and erratic arrests and convictions.’”²⁴

[T]he more important aspect of the vagueness doctrine “is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement.” Where the legislature fails to provide such minimal guidelines, a criminal statute may permit “a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.”²⁵

A statute is “impermissibly vague” where “it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests.”²⁶ A vague

²² *Id.* at *8 (Gleicher, J., dissenting).

²³ *Connally*, 269 US at 391.

²⁴ *Id.* at 390 (quoting *Papachristou v Jacksonville*, 405 US 156, 162; 92 S Ct 839; 31 L Ed 2d 110 (1972)).

²⁵ *Kolender*, 461 US at 358 (quoting *Goguen*, 415 US at 574-575).

²⁶ *Chicago v Morales*, 527 US 41, 52; 119 S Ct 1849; 144 L Ed 2d 67 (1999).

statute “necessarily entrusts lawmaking to the moment-to-moment judgment of the policeman on his beat.”²⁷

This prong of the test is concerned with “the effect of the unfettered discretion [an indefinite statute] places in the hands of the [] police”²⁸ This is precisely why “vagrancy laws,” which were sufficiently worded to give citizens notice of what conduct was prohibited, still violated Due Process: they “furnishe[d] a convenient tool for ‘harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.’”²⁹ “[I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.”³⁰

The officers in this case took advantage of the statute’s ambiguity to stop a motorist who “was driving safely, they did not see him violate any traffic laws governing vehicle operation, and he did not engage in any suspicious behavior.”³¹ They were not seeking to *enforce* MCL 257.225(2) in an overly broad manner,³² but rather used the statute as a justification for a traffic stop where no reasonable suspicion would otherwise exist. Regardless, the broad interpretation “allows policemen . . . to pursue their personal predilections”³³ by seizing people in the absence of probable cause or reasonable suspicion that any actual defined offense has been committed.

This is not how the Due Process Clause, or the Search and Seizure Clause for that matter, were intended to operate. The void for vagueness doctrine limits the discretion of law enforcement

²⁷ *Morales*, 527 US at 60.

²⁸ *Papachristou*, 405 US at 168.

²⁹ *Id.* at 170 (quoting *Thornhill v Alabama*, 310 US 88, 97-98; 60 S Ct 736 (1940)).

³⁰ *Grayned*, 408 US at 108-109.

³¹ *Dunbar*, 306 Mich App at 565.

³² See *supra* Note 3.

³³ *Smith*, 415 US at 574-575.

officers by requiring that legislatures sufficiently define offenses so that indefinite or ambiguous statutes cannot be used as a tool for “ad hoc and subjective” or “arbitrary and discriminatory”³⁴ police activity “against particular groups deemed to merit their displeasure.”³⁵

II. THE COURT SHOULD NOT RESOLVE THIS CASE ON THE BASIS OF THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE BECAUSE THE PROSECUTION DID NOT PRESERVE THE ISSUE ON APPEAL

For the first time in its Brief to the Michigan Supreme Court, the Prosecution invokes the good faith exception to the exclusionary rule, arguing that even if the tow ball partially obscuring a single digit of Defendant’s license plate number was not a violation of MCL 257.225(2), and the traffic stop was therefore unlawful, the evidence should not be excluded because of the law enforcement officers’ good faith misinterpretation of the statute. Because the Prosecution did not argue the good faith issue in the trial court or in the Court of Appeals, it should not be allowed to do so here.

“A general rule of trial practice is that failure to timely raise an issue waives review of that issue on appeal.”³⁶ Nevertheless, “[m]ost jurisdictions recognize the authority of an appellate court to review an issue, even where the issue was not preserved, when some fundamental error would otherwise result in some egregious result.”³⁷ “While this Court does have inherent power to review even if error has not been saved, that authority should be exercised only under compelling

³⁴ *Grayned*, 408 US at 108-109.

³⁵ *Papachristou*, 405 US at 170 (quoting *Thornbill*, 310 US at 97-98).

³⁶ *Napier v Jacobs*, 429 Mich 222, 227; 414 NW2d 862 (1987) (citing *Spencer v Black*, 232 Mich 675; 206 NW 493 (1925); *Molitor v Burns*, 318 Mich 261, 263-265; 28 NW2d 106 (1947)).

³⁷ *Id.*

circumstances to avoid a miscarriage of justice or to accord a defendant a fair trial.”³⁸ The Court has historically been shrewd in considering issues not properly preserved by a party.³⁹

A review of this Court’s precedents demonstrates that there are three general categories of cases in which the Court will consider issue that were not properly preserved: (1) where ignoring the party’s failure to raise the issue would allow the Court to address a novel and important legal issue that may otherwise go unresolved;⁴⁰ (2) to prevent a miscarriage of justice from occurring;⁴¹ and (3) where review is necessary to protect a fundamental right of a criminal defendant.⁴²

In this case, not only are the customary reasons for considering an unpreserved issue not present, the Court’s refusal to consider the good faith issue would actually allow the Court to address the novel and important legal issue of the proper and constitutional interpretation of MCL 257.225(2)—an issue which would otherwise evade review indefinitely.

Whether a law enforcement officer acts in good faith in misinterpreting a statute or in applying a statute in a manner that is constitutionally impermissible presents no novel legal issue that would warrant the Court deviating from its general rule that issues are waived if not preserved. The

³⁸ *People v Farmer*, 380 Mich 198, 208; 156 NW2d 504 (1968) (citing *People v Dorrikas*, 354 Mich 303; 92 NW2d 305 (1958)).

³⁹ See, e.g., *Napier v Jacobs*, 429 Mich 222, 224; 414 NW2d 862 (1987) (review inappropriate in case in which there was insufficient evidence to support the verdict because defendant failed to preserve the issue); *Moden v Superintendents of the Poor*, 183 Mich 120, 125-126; 149 NW 1064 (1914) (statute of limitations defense waived by failure to raise it at trial); *Farmer*, 380 Mich at 204 (defendant waived right to *Walker* hearing by not requesting one despite factual circumstances indicating coercion); *People v Carter*, 462 Mich 206; 612 NW2d 144 (2000) (review inappropriate in case in which trial court refused the jury’s request for the testimony of witnesses, in violation of MCR 6.414(H) where the issue was waived by defense counsel).

⁴⁰ See, e.g. *Moskalik v Dunn*, 392 Mich 583, 596; 221 NW2d 313 (1974) (review appropriate due to its importance as case of first impression on two legal issues despite appellant’s lack of objection).

⁴¹ See, e.g., *People v Howe*, 392 Mich 670, 678; 221 NW2d 350 (1974) (judge’s foreclosure of a jury’s review of testimony merits reversal, even though defense counsel failed to object).

⁴² See, e.g., *People v Shirk*, 383 Mich 180; 174 NW2d 772 (1970) (review appropriate where defendant’s right to confrontation was violated without objection); *People v Harrison*, 386 Mich 269; 191 NW2d 371 (1971) (review appropriate where defendant’s right to a speedy trial at issue without objection).

issue (if properly preserved) could be resolved by turning to a simple ‘reasonable officer’ construct. No miscarriage of justice will result from the Court’s refusal to consider an issue that the Prosecution did not raise.

Conversely, Defendant’s fundamental right to prepare and present his own defense would be seriously undermined by the Court’s consideration of an argument that the Prosecution failed to pursue until the matter had been reviewed by two other courts.

Of broader significance, however, is that by not considering the good faith issue, the Court would compel itself to focus on the issue that is of great significance to all Michigan motorists, not to mention police: whether the use of tow balls, trailer hitches, trailers, bicycle racks, bungee cords, and any other objects which do not touch the registration plate but which partially obstruct the license plate number (from certain angles) is unlawful under MCL 257.225(2). This is an issue on which the Michigan Court of Appeals has contradicted itself, and an issue of great practical importance in this state.

A significant drawback of the good faith exception to the exclusionary rule is that it leads court to only decide the issue of good faith while neglecting the case’s central legal issue.⁴³ The Court could and should avoid this pitfall by refusing to create another exception to the general rule that the Court will not consider issues that were not raised at trial and in the Court of Appeals.

III. EVEN IF THE COURT FINDS THAT THE GOOD FAITH EXCEPTION APPLIES, IT SHOULD NEVERTHELESS REACH THE MERITS AND CLARIFY THE LAW FOR POLICE AND MOTORISTS ALIKE

In the event that the Court agrees with the Prosecution’s argument that the good faith exception to the exclusionary rule applies in this case, and decides to apply the exception despite the Prosecution’s waiver of the issue, it should still interpret MCL 257.225(2), and state explicitly whether or not the statute prohibits the use of tow balls, trailer hitches, trailers, bicycle racks, bungee

⁴³ See, e.g., *US v Warshak*, 631 F 3d 266, 282 n 13 (CA6 2010).

cords, bicycles, bungee cords, and any other objects that do not touch the registration plate but obstruct the view of the license plate number. Without a clear statement by the Court explaining the proper interpretation of MCL 257.225(2), Michigan motorists will remain confused and uncertain of what the statute actually prohibits, and will therefore be unable to act accordingly, and police will remain free to violate the Due Process and Fourth Amendment rights of Michigan citizens based on an erroneous interpretation of the statute. Additionally, the Court is unlikely to be presented with the opportunity to pass on the correct interpretation of MCL 257.225(2) based on a direct challenge to a citation issued for a violation of the statute, because, as noted above, law enforcement officers do not appear to actually issue citations for violations of the statute.⁴⁴

In his concurrence in the United States Supreme Court's decision in *Illinois v Gates*, Justice White wrote that when a case presents a "novel question of law whose resolution is necessary to guide future action by law enforcement officers and magistrates, there is sufficient reason for the Court to decide the violation issue before turning to the good-faith question."⁴⁵ The United Court of Appeals for the Sixth Circuit recently stated precisely why courts should decide the Fourth Amendment issue prior to passing on good faith in cases such as the one at hand:

Though we may surely do so, we decline to limit our inquiry to the issue of good-faith reliance. If every court confronted with a novel Fourth Amendment question were to skip directly to good faith, the government would be given carte blanche to violate constitutionally protected privacy rights, provided, of course, that a statute supposedly permits them to do so. The doctrine of good-faith reliance should not be a perpetual shield against the consequences of constitutional violations. In other words, if the exclusionary rule is to have any bite, courts must, from time to time, decide whether statutorily sanctioned conduct oversteps constitutional boundaries.⁴⁶

⁴⁴ See *supra* Note 3.

⁴⁵ 462 US 213, 264-265 n 18; 103 S Ct 2317; 76 L Ed2d 527 (1983) (White, J., concurring) (citing *O'Connor v Donaldson*, 422 US 563; 95 S Ct 2486; 45 L Ed2d 396 (1975)).

⁴⁶ *Warshak*, 631 F3d at 282 n 13. Several other courts have agreed that when a case raises a novel Fourth Amendment issue, that issue should be addressed before courts move on to whether the good faith exception should apply. See e.g., *US v Maggitt*, 778 F 2d 1029, 1033 (CA5 1985).

Many scholars have also argued that one danger of the good faith exception to the exclusionary is that it leads to courts only deciding whether the police officer acted in good faith, and not passing firmly on the actual legal issue.⁴⁷ Indeed, on the exact issue in a different case, the Michigan Court of Appeals has already failed to clearly articulate its interpretation of the statute due to the decision's outcome resting on the good faith exception to the exclusionary rule.⁴⁸

It would be regrettable if the Court were to decide this case without articulating a clear standard for what MCL 257.225(2) prohibits. This case presents an opportunity to remove the uncertainty Michigan drivers face when utilizing seemingly legal and innocuous equipment such as tow balls and bicycle racks on the backs of their vehicles. The Court should seize this opportunity to explain what MCL 257.225(2) does and does not prohibit so that Michigan drivers will no longer expose themselves to potential unlawful citations and searches and seizures due to a lack of common understanding of the statute's meaning by Michigan's law enforcement officers, citizens, and judges.

⁴⁷ See e.g., Kerr, Orin S., *Good Faith, New Law, and the Scope of the Exclusionary Rule*, 99 Geo L J 1077, 1082 (2011) ("The exclusionary rule for changing law provides the litigation incentives needed to help courts weigh constitutional interests accurately and thus adopt accurate Fourth Amendment rules. The availability of a suppression remedy gives criminal defendants an incentive to argue for changes in the law by allowing them to benefit if they successfully persuade courts to overturn adverse precedents.").

⁴⁸ See *Wilmot*, 2013 WL at *5 ("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.") (emphasis added).

RELIEF

For the reasons discussed above, CDAM respectfully requests that this Court uphold the Court of Appeals and clarify that MCL 257.225(2) does not prohibit the use of tow balls, trailer hitches, and other objects that do not make contact with the license plate, even when such objects obstruct or partially obstruct a police officer's view of the registration information from certain angles. The Court should do so in spite of the Prosecution's new reliance on the good faith exception to the exclusionary rule.

Respectfully submitted,

s/ Steven Daniel Helton (P78141)

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Muskegon County Sheriff's Office

SHERIFF DEAN C. ROESLER
25 W. Walton Avenue, Muskegon, MI, 49442

UNDERSHERIFF DANIEL STOUT
(231)-724-6351 Phone (231)-777-9940 Fax

DATE: May 21, 2015

FOI Number: 15-062F (citations)

TO: Steven Helton

This department has received your request for certain records and has processed it under the provisions of the Michigan Freedom of Information Act (FOIA), P.A. 442 of 1976, as amended.

The records you have requested have been:

- Granted.
- Granted in part and denied in part. Portions of your request are exempt from disclosure based on provisions set forth in the act. (See comments on the enclosed notification.) Under the FOIA, Section 10, you have the right to appeal to the head of this public body or to a judicial review of the denial.
- Denied. (See comments on the enclosed notification.) Under the FOIA, Section 10, you have the right to appeal to the head of this public body or to a judicial review of the denial.
- The documents you requested are enclosed. Please pay the amount of \$ _____.
- Your request for photographs has been received and we will contact you regarding the cost for processing your request.
- Please pay the amount of \$ _____. Once we receive payment, the documents will be mailed to you.

Checks or money orders should be made payable to Muskegon County Sheriff Department and mailed to the address above. To ensure proper credit, please enclose a copy of this letter with your payment or write the FOI number on your check or money order. If you have any questions regarding this matter, please feel free to contact this office at the address above.

Sincerely,

Daniel A. Stout
Daniel A. Stout

Undersheriff/FOIA Coordinator, Muskegon County Sheriff Department

DENIAL OF RECORDS:

Denial is based on the following provision(s) of the Freedom of Information Act. (All that apply will be checked.)

- Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy:
 - Telephone number
 - Address
 - Date of birth
 - Physical characteristics
 - Driver's license number
 - Other _____
- Investigating records compiled for law enforcement purposes, but only to the extent that disclosure would do any of the following:
 - Interfere with law enforcement proceedings.
 - Deprive a person of the right to a fair trial or impartial administrative adjudication.
 - Constitute an unwarranted invasion of personal privacy.
 - Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
 - Endanger the life or physical safety of law enforcement personnel.
- Records of information specifically described and exempted from disclosure by statute.
Statute: _____
- Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action.
- Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public.
- Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:
 - Identify or provide a means of identifying an informer.
 - Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.
 - Identify or provide a means of identifying a person as a law enforcement officer, agent or informer.
 - Disclose personnel records of law enforcement agencies.
- Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.
- Information or records that would disclose the social security number of any individual.
- Your request is denied. However, if you provide a notarized, signed release of information from the individual to whom the records pertain, you will receive that information to which the individual signing the release is entitled.
- To the best of the Department's knowledge, information, and belief, under the information provided by you or by any other description reasonably known to the Department, the public records do not exist within the Department.
- Based on the information you provided, we are unable to locate any records pertaining to the incident you described. In order for us to continue processing your request, please comply with the following items. To ensure proper handling of your request, please include a copy of this letter with your response.
 - Specific location (i.e. city, county)
 - Muskegon County Sheriff Department incident number
 - Names of those involved in the incident
 - Specific dates (i.e., date of incident)
 - Name of driver and their birth date or driver license number
 - Date of birth
- The report you have requested has not yet been completed and filed. Please resubmit your request in 30 days.

Additional comments: **There are no citations for the citation code MCL 257.225(2) If you have further information/description of the needed citations, please resubmit your request.**