

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellant,

v

CHARLES ALMONDO-MAURICE DUNBAR,
Defendant-Appellee.

No. 150371

L.C. 12-062736-FH
COA No. 314877

BRIEF OF THE PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN AS
AMICUS CURIAE IN SUPPORT OF THE PEOPLE OF THE STATE OF MICHIGAN

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Statement of the Question

I.

MCL 257.225(2) requires that a registration plate be “attached ... in a place and position that is clearly visible,” and the plate must “be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition.” Where the visibility of the plate is obscured by a device attached to the vehicle, is this statute violated; further, even if the statute is read differently, is *this* reading a reasonable one, and so the Fourth Amendment was not violated by the stop here even if the officer made a reasonable mistake of law in stopping the vehicle for violation of the statute?

Amicus answers: YES

Statement of Facts

Amicus adopt the Statement of Facts of the People.

Argument

I.

MCL 257.225(2) requires that a registration plate be “attached ... in a place and position that is clearly visible,” and the plate must “be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition.” Where the visibility of the plate is obscured by a device attached to the vehicle, this statute is violated. Further, even if the statute is read differently, *this* reading is a reasonable one, and so the Fourth Amendment was not violated by the stop here even if the officer made a reasonable mistake of law in stopping the vehicle for violation of the statute.

A. The Opinion of the Court of Appeals

The Court of Appeals opinion consists of three opinions.

The lead opinion. Judge Shapiro wrote the lead opinion, and said that there was no traffic violation observed by the officers, and thus no valid stop. Judge Shapiro concluded that there was no traffic violation because in his view the provision of the statute, MCL 257.225(2), that “[a vehicle's license] plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition,”¹ requires only 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” but does not otherwise require that the plate be *visible*.² Because there was no evidence that the *plate itself* was not “free of foreign

¹ *People v. Dunbar*, 306 Mich App 562, 565 (2014).

² *Dunbar*, 306 Mich App at 566.

materials,” no traffic violation occurred.³ Under this view, so long as the plate is not rendered illegible by some foreign material on the plate itself, it matters not if some device attached to the vehicle blocks the visibility of the plate in whole or in part.

The concurring opinion. Judge O’Connell concurred, agreeing that it is only the plate itself that must be maintained free of foreign material, so that if the plate is blocked, in whole or in part, by such items as “bicycle carriers, trailers, and trailer hitches,”⁴ that is of no moment; further, to read the statute otherwise would render it unconstitutionally vague.⁵

The dissenting opinion. Judge Meter dissented, also focusing solely on that portion of the statute providing that the license plate “shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition.” Judge Meter disagreed with his fellow judges view that the statute “concerns only items that touch the plate itself,” concluding that this “is not a reasonable reading of the statute. What if, for example, a person attached a sort of shield that entirely covered his or her license plate but did not touch the plate itself? Clearly the statute refers to keeping the plate free from obstructing materials. Random House Webster's College Dictionary (1997) defines ‘maintain,’ in part, as ‘to keep in a specified state, position, etc.’ A license plate that is in otherwise perfect condition but

³ *Dunbar*, 306 Mich App at 566.

⁴ That placing bicycle racks in a position to block license plates should be held to violate the statute, as will be argued, would hardly render the statute vague. And trailers have their own plates. MCL § 257.216. Further, trailer hitches with removable balls are readily available.

⁵ *Dunbar*, 306 Mich App at 566-567.

cannot be read because of obstructing materials is not being ‘kept’ in ‘a clearly legible condition.’”⁶

While Judge Meter is correct in his view of the statutory language discussed by the Court of Appeals, all of the judges of the panel addressed only a part of the statute, and the remainder of the statute justifies the officers stop for the traffic violation here.

B. The Statute

The statute—*in its entirety*—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 that 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).

There are thus *two* provisions concerning the readability of the license plate in the statute, not just the one discussed by the Court of Appeals:

- 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 that 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*.

With numbers of the license plate blocked from view by police officers by the trailer hitch, the plate was not “in a place and position” so that it was “clearly visible.”

⁶ *Dunbar*, 306 Mich App at 570.

C. Decisions From Other Jurisdictions

Other jurisdictions have concluded that the blocking of the license plate by such items as trailer hitches or balls violates statutes designed to require that the plate be readable—and after all, it makes little sense to the legislative purpose to provide that the plate be readable by being *itself* kept free of foreign material, while allowing the visibility of the plate to be blocked in part or even in whole by apparatus attached to the vehicle.⁷ In *State v Beal*⁸ a stop was held justified where the rear license plate could not be read because a part of it was blocked by a “ball hitch,” and a license plate bracket also obscured the portion of the plate indicating in which state the vehicle was registered. The statute⁹ provided that “[a]ll letters, numbers, printing, writing, and other identification marks upon [a vehicle’s license] plates . . . shall be kept clear and distinct . . . so that they shall be *plainly visible* at all times.” Similarly, in *Parks v State*¹⁰ the license plate was partially obstructed by a trailer hitch ball so that an officer could not read it. The statute provided that license plates were required to be “conspicuously displayed and securely fastened to be *plainly visible*,” and *also*, as in Michigan, “maintained to be free from foreign materials and in a condition to be clearly legible.”¹¹ The court found that the statute had been violated:

⁷ “The evident purpose of what a text seeks to achieve is an essential element of context that gives meaning to words.” Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, p. 20.

⁸ *State v Beal*, 846 NW23d 282 (Neb App, 2014).

⁹ Neb. Rev. State § 60-399(2).

¹⁰ *Parks v State*, 247 P3d 857 (Wy, 2011).

¹¹ Wyo. Stat. Ann. § 31-2-205.

We find that the pertinent language of Wyo. Stat. Ann. § 31–2–205 is unambiguous. “Visible” means “capable of being seen,” “perceptible by vision,” “easily seen,” “conspicuous.” Webster’s Third New International Dictionary 2557 (3d ed. 2002). “Plainly” means “with clarity of perception or comprehension,” “clearly,” “in unmistakable terms.” Id. at 1729. “Legible” means “capable of being read or deciphered,” “distinct to the eye,” “plain.” Id. at 1291. The requirements that a license plate be “plainly visible” and “clearly legible” indicate that a license plate must not be obstructed in any manner. This interpretation is in accord with the purpose of the statute. License plates need to be easily read in order to facilitate law enforcement and ordinary citizens in reporting and investigating hit-and-run accidents, traffic violations, gas-pump drive offs, and other criminal activity. . . . The plain language and the purpose of the statute indicate that a trailer ball mounted in a place that causes it to partially obstruct a license plate from view is a violation of Wyo. Stat. Ann. § 31–2–205.¹²

So also in *People v. White*,¹³ where the statute provided, noted the court, that “License plates shall at all times be ... mounted in a position to be *clearly visible*, and shall be maintained in a condition so as to be clearly legible.” By using the term “*clearly visible*”—also used in the Michigan statute—the court held that “the Legislature intended . . . that the view of the license plate be entirely unobstructed.”

The words “clearly visible” are unambiguous. “Visible” means “capable of being seen,” “perceptible to vision,” “exposed to view,” “conspicuous.” (Webster’s 9th New Collegiate Dict. (1987) p. 1318.) The term “clearly” means “free from obscurity ... unmistakable ... unhampered by restriction or limitation, unmistakable.” . . . In using the phrase “clearly visible” in Vehicle Code section 5201, it is apparent that the Legislature meant a license plate must not be obstructed in any manner and must be entirely readable. A license plate mounted in a place that results in it being partially obstructed from view by a trailer hitch ball

¹² *Parks v. State*, 247 P.3d at 859 -860.

¹³ *People v. White*, 93 Cal.App.4th 1022, 1025-1026, 113 Cal.Rptr.2d 584, 586 (Cal.App. 4 Dist.,2001).

violates Vehicle Code section 5201 and, thus, provides a law enforcement officer with a lawful basis upon which to detain the vehicle and hence its driver.¹⁴

An Illinois case, *People v Gaytan*,¹⁵ is to the contrary. There, too, the statute contained the familiar requirements that the plate be “in a place and position to be clearly visible “ and “maintained in a condition to be clearly legible, free from any materials that would obstruct the visibility of the plate.” The court, much like the Court of Appeals here, focused on the “free from any materials that would obstruct the visibility of the plate” requirement, finding that it referred only to the plate itself, not any attachments to the vehicle that might obstruct the plate.¹⁶ As to the State’s argument concerning the “clearly visible” language of the statute, the court’s opinion is extremely strained, rejecting the argument as “unworkable as, taken to its logical conclusion, it would prohibit any object such as a traffic sign, post, tree, or even another vehicle from obstructing a police officer’s ‘clear visibility’ of the plate.”¹⁷ This makes no sense. The statute requires that the plate be “securely fastened . . . in a place or position to be clearly visible.” If the plate-holder *attaches* something to the vehicle that blocks the plate in whole or part then the plate is not fastened “in a place or position to be clearly visible.” That something *external* to the vehicle can conceivably block the reading of the plate—say, another vehicle which pulls directly up to the back bumper of the vehicle—scarcely means that the plate-holder

¹⁴ *People v. White*, 93 Cal.App.4th 1022, 1025-1026, 113 Cal.Rptr.2d 584, 586 (Cal.App. 4 Dist.,2001).

¹⁵ *People v Gaytan*, 992 NE2d 17 (Ill App 4th, 2013).

¹⁶ *People v. Gaytan*, 992 N.E.2d 17, 24, 372 Ill.Dec. 478, 485 (Ill.App. 4 Dist.,2013)

¹⁷ *People v. Gaytan*, 992 N.E.2d 17, 24, 372 Ill.Dec. 478, 485 (Ill.App. 4 Dist.,2013)

has not fastened the plate in a place or position to be clearly visible. The Illinois court's straw-man argument is unavailing.

D. People of Canton Tp. v. Wilmot

An unpublished case, *People of Canton Tp. v. Wilmot*,¹⁸ speaks to the issue.¹⁹ There the panel, as do the People and amicus here, observed that the focus of the case had been “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.’” But the court found that the preceding sentence—that a “plate shall be attached ... in a place and position which is clearly visible,” seemed to mean that if a hitch ball obscured the 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.”²⁰ Amicus concurs, as detailed previously. But the panel did not decide the case on this basis, for in the end, said the court, *even if* the police had misunderstood the statute, the stop was not invalid, anticipating by several years the decision of the United States Supreme Court in *Heien v North Carolina*.²¹

¹⁸ *People of Canton Tp. v. Wilmot*, 2013 WL 951109, 3 (2013).

¹⁹ That the opinion is unpublished is rather ironic in light of the Adm Order 2014-9, publishing for comment a proposed revision to MCR 7.215 that would further tighten the standards for publication of opinions by the Court of Appeals, and specifically discourage the citation of unpublished opinions, additionally requiring a specific statement as to “why existing published authority is insufficient to resolve the issue.” *Wilmot* both considers the issue involved here, and anticipates the United States Supreme Court decision in *Heien v North Carolina*, *infra*, and yet is unpublished!

²⁰ *People of Canton Tp. v. Wilmot*, 2013 WL 951109, at 3.

²¹ *Heien v North Carolina*, __US__, 135 S Ct 530, 190 L Ed 2d 475 (2015).

E. *Heien v North Carolina and Reasonable Mistakes of Law*

Heien involved a state statute concerning vehicle brake lights, requiring that a vehicle could not be operated unless:

equipped with a stop lamp on the rear of the vehicle. The stop lamp shall display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamp may be incorporated into a unit with one or more other rear lamps.²²

The North Carolina Court of Appeals found that because the statute referred to “a stop lamp” and “the stop lamp”—singular terms—the statute only required a vehicle to have one working brake light, and Heien's vehicle did. Because Heien had been stopped because *one* of his brake lights had not been working, the stop, said that court, was unreasonable, and violated the Fourth Amendment. The North Carolina Supreme Court, however, disagreed. It did not disagree with the construction of the statute, but found that the officer *reasonably* misread the vehicle code to require that both brake lights be in good working order. Because his misunderstanding was reasonable, said the court, the stop was valid under the Fourth Amendment, as “an officer may make a mistake, including a mistake of law, yet still act reasonably under the circumstances.... [W]hen an officer acts reasonably under the circumstances, he is not violating the Fourth Amendment.”²³ The United States Supreme Court agreed. Relying heavily on *Michigan v DeFillippo*,²⁴ which held that an arrest based on an ordinance not at that time declared

²² N.C. Gen.Stat. Ann. § 20–129(g) (2007).

²³ *State v. Heien*, 737 S.E.2d 351, 356 (N.C.,2012).

²⁴ *Michigan v. DeFillippo*, 443 US 31, 99 S Ct 2627, 61 L Ed 2d 343 (1979).

unconstitutional is a valid arrest notwithstanding the constitutionality of the penal statute,²⁵ the Court said that:

the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’ . . . To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them “fair leeway for enforcing the law in the community's protection.” . . . We have recognized that searches and seizures based on mistakes of fact can be reasonable. The warrantless search of a home, for instance, is reasonable if undertaken with the consent of a resident, and remains lawful when officers obtain the consent of someone who reasonably appears to be but is not in fact a resident. . . . The limit is that “the mistakes must be those of reasonable men.” . . .

But reasonable men make mistakes of law, too, and such mistakes are no less compatible with the concept of reasonable suspicion. Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: the facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law.²⁶

The anticipation of the Court of Appeals of *Heien* in this regard in *Wilmot* is clear—the panel majority cited to the North Carolina Supreme Court decision:

²⁵ DeFillippo was arrested for violation of a Detroit “stop and identify” ordinance, which required provision of identification by one validly stopped on reasonable suspicion. The Court neither held the ordinance constitutional nor unconstitutional, but found that arrest for violation of the ordinance was valid *even if* the ordinance was unconstitutional. It was not until 25-years later that the constitutionality of a similar ordinance was confronted and the ordinance *upheld*. See *Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County*, 542 US 177, 124 S.Ct. 2451, 159 L Ed 2d 292 (2004).

²⁶ *Heien*, 135 S Ct at 536.

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. *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, — S.E.2d — (NC, 2012) . . .²⁷

The reading that the statute requires that nothing attached to the vehicle—nothing that does not itself carry a license plate—obscure the vehicle’s license plate is, as the panel said in *Wilmot*, a “fair reading” of the statute; indeed, amicus believes it to be the correct one. But even if incorrect, because any mistake of law by the police was reasonable, the stop was consistent with the Fourth Amendment, and no basis for suppression of evidence exists here.

²⁷ *People of Canton Tp. v. Wilmot*, 2013 WL 951109, at 5.

Relief

Wherefore, amicus respectfully request that this Court reverse the Court of Appeals.

Respectfully submitted,

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