

STATE OF MICHIGAN

IN THE SUPREME COURT

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff-Appellant,

vs.

CHARLES ALMONDO-MAURICE DUNBAR,

Defendant-Appellee.

SC File No. 150371

COA File No. 314877

Lower Court File No. 12-062736-FH
Muskegon County Circuit Court

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PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT OF DECISION APPEALED FROM AND RELIEF SOUGHT

The People seek leave to appeal from the published decision of the Court of Appeals in *People v Dunbar*, 306 Mich App 562; 857 NW2d 280 (2014) (Appendix A).

There are at least three errors involved. *First*, the Court of Appeals misinterpreted MCL 257.225(2), which 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.

The Court of Appeals erroneously limited its interpretation of MCL 257.225(2) to the third sentence of the statute, finding that it only prohibit sphysical obstructions *affixed to license plates* and, therefore, because there was no showing that the present license plate was dirty, rusted, defaced, scratched, snow-covered, or otherwise not “maintained” in legible condition, Defendant was not in violation of this statute when the stop was made.

Importantly, however, debating the meaning of the *third* sentence of MCL 257.225(2)—without considering the first and second sentence of the statute—overlooks the requirements that the statute be read as a whole and with common sense. *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009); *Marquis v Hartford Acc & Indem*, 444 Mich 638, 644; 513 NW2d 799 (1994).

The **first** sentence of MCL 257.225(2) has two directives. *First*, a license plate must be fastened in a *horizontal* position. License plates are designed and made so that they are read horizontally from left to right. Thus, by requiring that the plate be fastened securely in a “horizontal position”, the Legislature intends that it must be capable of being read easily as it

was designed and made. *Second*, a license plate must be securely fastened in a manner to avoid “swinging”. Obviously, a “swinging” plate could not be easily read. Hence, the Legislature directs that the plate must be securely fastened to avoid “swinging”.

The **second** sentence, in turn, establishes that “[t]he 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.*” (Emphasis supplied.) This requirement also has two directives. *First*, the plate must be at least “12 inches from the ground”. This would make it more easily read from a vehicle following the plated vehicle. Hence, the Legislature’s goal, again, is to make it as easy as possible for others to read the plate. *Second*, the plate must be positioned so that it is “clearly visible”. The word “visible” means: “**1.** That can be seen; perceptible to the eye **2.** Apparent manifest; obvious” **3.** being constantly or frequently in the public view; conspicuous *Random House Webster’s Unabridged Dictionary* (2d ed, 2007), p 2126. Or, “[p]erceptible, discernable, clear, distinct, evidence, open, conspicuous.” *Black’s Law Dictionary* (6th ed), p 1571.

The term “clearly” means “in a clear manner.” *Random House Webster’s Unabridged Dictionary* (2d ed, 2007), p 384. The word “clear” means, *inter alia*, “easily seen ...; free from obstructions or obstacles; open: *a clear view; a clear path.*” *Id.*, 383. Or, “[v]isible, unmistakable Without obscurity, obstruction, entanglement, confusion, or uncertainty....” *Black’s Law Dictionary* (6th ed), p 251. Thus, the license plate must be perceptible to the eye and free from obscurity or obstruction. Here, the trial court found that the plate’s visibility was blocked or obstructed by the trailer hitch. Thus, it was not “in a place and position that is clearly visible” or perceptible to the eye and free from obscurity or obstruction.

Thus, when reading the three sentences of MCL 257.225(2) together, giving them a common-sense reading, and according every word and phrase its plain and ordinary meaning and taking into account the context in which the words are used, the statute requires that the license plate be securely placed horizontally in a location or position sufficiently high enough where it does not swing, is clearly visible, and in a clearly legible condition so that the registration information can be seen and read without being obscured or obstructed. This is consistent with the obvious purpose for license plates, “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.” *Parks v State*, 247 P3d 857, 860 (Wyo, 2011); see also *State v Harrison*, 846 NW2d 362, 369 (Iowa, 2014) (“[a]n important purpose of Iowa Code section 321.37[3], along with related sections, is to allow police and citizens to identify vehicles”).

Second, the Court of Appeals failed to consider the fact that Defendant’s vehicle was stopped because the license plate as read by the officers came back on the Law Enforcement Information Network (LEIN) for a 2007 Chevrolet Equinox rather than for an older 1990s model Ford Ranger pickup truck. Thus, the Court of Appeals failed to consider that a traffic stop based on a police officer’s incorrect but reasonable assessment of the facts does not violate the Fourth Amendment. See, e.g., *Brinegar v United States*, 338 US 160, 176; 69 S Ct 1302, 1311; 93 L Ed 1879 (1949) (“[b]ecause many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability”); *United States v Delfin-Colina*, 464 F3d 392, 398 (CA 3, 2006)

(“mistakes of fact are rarely fatal to an officer’s reasonable, articulable belief that an individual was violating a traffic ordinance at the time of a stop”).

Third, if the Court of Appeals’ interpretation of MCL 257.224(2) is correct, the Court failed to consider whether a law enforcement officer’s objectively reasonable mistake of law can support reasonable suspicion for an investigatory stop under the Fourth Amendment. See *Heien v North Carolina*, ___ US ___; 135 S Ct 530, 536-537, 540; 190 L Ed 2d 475 (2014), (“[t]here 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”; “[i]t was ... objectively reasonable for an officer in Sergeant Darisse’s position to think that Heien’s faulty right brake light was a violation of North Carolina law[, a]nd[,therefore,] because the mistake of law was reasonable, there was reasonable suspicion justifying the stop”). If the statute does not proscribe an obstruction such as a hitch ball, the deputies’ mistaken belief that it does was objectively reasonable and, therefore, their decision to stop Defendant’s pickup truck did not violate the Fourth Amendment.

Accordingly, for the foregoing reasons (and those stated in the body of this application), this Honorable Court should grant leave *or* summarily reverse the Court of Appeals, affirm the trial court’s denial of Defendant’s motion to suppress, and remand the matter for trial.

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STATEMENT OF THE QUESTIONS PRESENTED

- I. BECAUSE MCL 257.225(2) REQUIRES THAT 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”, “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”, AND “BE MAINTAINED FREE FROM FOREIGN MATERIALS THAT OBSCURE OR PARTIALLY OBSCURE THE REGISTRATION INFORMATION AND IN A CLEARLY LEGIBLE CONDITION”, DOES PLACEMENT OF A PLATE THAT ALLOWS ALL OR A PART OF ITS INFORMATION TO BE BLOCKED OR OBSTRUCTED (SUCH AS BY A TRAILER HITCH BALL) VIOLATE THE STATUTE AND RENDER THE DEPUTIES STOP OF DEFENDANT’S PICKUP TRUCK VALID?

Plaintiff-Appellant says, “Yes.”
Defendant-Appellee says, “No.”
The Court of Appeals says, “No.”

- II. DOES AN OBJECTIVELY REASONABLE MISTAKE OF FACT BY AN OFFICER AS TO WHETHER A VIOLATION OF LAW HAS OCCURRED SUPPORT THE STOP OF A MOTOR VEHICLE, AND, WHERE THE TWO DEPUTIES IMPUTED THE WRONG NUMBER FROM DEFENDANT’S LICENSE PLATE INTO THE LAW ENFORCEMENT INFORMATION NETWORK, WHICH CAME BACK TO A DIFFERENT VEHICLE THAN THE ONE DEFENDANT WAS DRIVING, DID THE DEPUTIES HAVE REASONABLE SUSPICION UPON WHICH TO JUSTIFY THE STOP OF DEFENDANT’S VEHICLE?

Plaintiff-Appellant says, “Yes.”
Defendant-Appellee says, “No.”
The Court of Appeals did not answer this question.

- III. DOES AN OBJECTIVELY REASONABLE MISTAKE OF LAW BY AN OFFICER AS TO WHETHER A VIOLATION OF LAW HAS OCCURRED SUPPORT THE STOP OF A MOTOR VEHICLE, AND, WHERE THE TWO DEPUTIES BELIEVED THAT DEFENDANT’S TRAILER HITCH BALL RENDERED HIS PLATE NOT “CLEARLY VISIBLE” AS REQUIRED BY MCL 257.225(2), DID THE DEPUTIES HAVE REASONABLE SUSPICION UPON WHICH TO JUSTIFY THE STOP OF DEFENDANT’S VEHICLE?

Plaintiff-Appellant says, “Yes.”
Defendant-Appellee says, “No.”
The Court of Appeals says, “No.”

STATEMENT OF JURISDICTION

This Court has ordered argument on the application and re-briefing.

STATEMENT OF THE FACTS

The People apply for leave to appeal from the September 9, 2014, published 2-1 decision of the Court of Appeals in *People v Dunbar*, 306 Mich App 562; 857 NW2d 280 (2014) (Appendix A), that reversed the January 30, 2013, opinion and order of the 14th Judicial Circuit Court for Muskegon County that denied Defendant's motion to suppress (Appendix B), the Honorable TIMOTHY G. HICKS, presiding. This Court has ordered re-briefing and oral argument on the application (Appendix G).

Defendant is charged with possession of 50 grams or more but less than 450 grams of the controlled substance, cocaine, second offense, MCL 333.7403(2)(a)(iii), MCL 333.7413(2), carrying a concealed weapon (handgun), MCL 750.227, possession of marijuana, second offense, MCL 333.7403(2)(d), MCL 333.7413(2), felony-firearm (cocaine charge), MCL 750.227b, and being a habitual offender, fourth offense, MCL 769.12.

On October 12, 2012, at approximately 1 a.m., Muskegon County Sheriff's Deputies James Ottinger and Jason Van Anandel stopped an older 1990s model Ford Ranger pickup truck driven by Defendant in Muskegon Heights. (01/24/2013 Motion to Suppress ["M"] Tr, pp 6-8, 12-13, 22-23, 26.) The deputies were on Sixth Street at the intersection of Hackley and Sixth when they observed the pickup truck headed eastbound on Hackley. (M Tr, pp 7-8, 12, 29.) They turned left onto Hackley and followed the pickup truck, accelerating to catch up to it, and ran the license plate on the Law Enforcement Information Network (LEIN). (M Tr, pp 8, 13-14, 23.) Deputy Van Anandel punched in the numbers on the plate, noting, however, that the first number was obstructed by the tow ball that was attached to the bumper. (M Tr, pp 8-9, 11, 15, 23, 25, 26.) At 1:03 a.m., Deputy Van Anandel punched in the number "5" for the first number as a best guess as to what he and Deputy Ottinger could see. (M Tr, pp 8, 9, 23, 25, 28; People's

motion exhibit 4 [LEIN printout].) LEIN came back that the plate was registered to a 2007 Chevrolet Equinox rather than a Ford Ranger. (M Tr, pp 8, 15, 23-24, 28-29; People's motion exhibit 4 [LEIN printout].) Accordingly, they stopped the pickup truck because it came back to a different vehicle and the plate was obstructed.¹ (M Tr, pp 9-10, 15, 16, 17-20, 23, 27.) After the stop, when approaching the vehicle, the license was observed and the first number on the plate was a "6" rather than a "5". (M Tr, pp 9-10, 16, 23-24.) The trial court confirmed from looking at People's motion exhibit 1 that, "clearly it's either a 5 or 6 and the ball obscures the entire lower half of the digit." (M Tr, p 40.)

The trial court issued its opinion and order on January 30, 2013, denying Defendant's motion to suppress the cocaine, marijuana, and gun evidence. (Appendix B.)

The Court of Appeals in a 2-1 decision, reversed. Judge SHAPIRO wrote the lead opinion, stating, in part:

Common experience reveals that thousands of vehicles in Michigan are equipped with trailer hitches and towing balls. The prosecution argues, however, that the presence of such equipment behind a license plate is a violation of MCL 257.225(2) and, therefore, the officers had proper grounds to conclude that a traffic law was being violated. However, the mere presence of a towing ball is not a violation of MCL 257.225(2). The statute 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." (Emphasis added). The statute makes no reference to trailer hitches, towing balls, or other commonly used towing equipment that might partially obscure the view of an otherwise legible plate. There is no evidence that *the plate* on defendant's truck was not maintained free of foreign materials. There is similarly no evidence that defendant's plate was dirty, rusted, defaced, scratched, snow-covered, or otherwise not "maintained" in legible condition. The plate was well-lit and in essentially pristine condition. Moreover, the officers agreed that the plate was legible, a fact confirmed by the photos taken at the scene.

¹ The deputies were being proactive. (M Tr, pp 14, 27.) They ran a lot of plates that night. They thought it was improper, but, in any event, if it was proper and only obstructed, they would "tell the person that they needed an unobstructed plate." (M Tr, pp 27, 29.)

In this case, the officers did not have grounds to believe that defendant was in violation of MCL 257.225(2) and they, as well as the prosecution, agree there was no other basis for the stop. Accordingly, we reverse the trial court's denial of defendant's motion to suppress the contraband seized during an automobile search conducted in violation of the Fourth Amendment. *Whren*, 517 US at 809-810. [*Dunbar*, 306 Mich App at 565-566 (SHAPIRO, J.; emphasis by Judge SHAPIRO).]

Judge O'CONNELL concurred, stating, in part:

I concur with the result reached by the lead opinion. I write separately to state that MCL 257.225(2) is ambiguous. In fact, the statute casts a net so wide that it could be construed to make ordinary car equipment illegal, including equipment like bicycle carriers, trailers, and trailer hitches. This broad construction would render the statute unconstitutionally vague for failure to provide fair notice of the conduct the statute purports to proscribe. See *People v Hrlie*, 277 Mich App 260, 263; 744 NW2d 221 (2007). However, this Court must construe statutes to be constitutional if possible and must examine statutes in light of the particular facts at issue. *People v Harris*, 495 Mich 120, 134; 845 NW2d 477 (2014). Accordingly, I would interpret MCL 257.225(2) to require only that the *license plate itself* be maintained free from materials that obscure the registration information and that the *plate itself* be in a clearly legible condition. [*Dunbar*, 306 Mich App at 566-567 (O'CONNELL, J., concurring; emphasis by Judge O'CONNELL).]

Judge METER dissented, stating, in part:

MCL 257.225(2) 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." A violation of MCL 257.225(2) constitutes a civil infraction. MCL 257.225(7). "A police officer who witnesses a civil infraction may stop and temporarily detain the offender..." *People v Chapo*, 283 Mich App 360, 366; 770 NW2d 68 (2009).

The record shows that the trial court did not clearly err in concluding that defendant's license plate was obstructed by a trailer hitch. At the hearing, deputies testified that they could not see the entire license-plate number because it was obstructed by a trailer hitch. The trial court determined that the deputies were credible, which is a determination that we will not disturb. See MCR 2.613(C) and *Farrow*, 461 Mich. at 209. Additionally, the trial court's finding is supported by pictures taken at the scene, which show that defendant's license plate was obstructed.

Further, because police officers may stop and detain an individual who commits a civil infraction, *Chapo*, 283 Mich App 366, the trial court correctly determined that the obstruction of defendant's license-plate number provided a

lawful basis for the traffic stop pursuant to MCL 257.225(2) and that suppression of the drugs and handgun seized during the traffic stop was not required.

It is simply unreasonable to expect police officers to essentially “weave” within a lane in order to view the entire license plate of a vehicle. Moreover, the lead and concurring opinions appear to indicate that the pertinent phrase from MCL 257.225(2)—“[t]he plate shall be maintained free from foreign materials ... and in a clearly legible condition”—concerns only items that touch the plate itself. 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 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 that cannot be read because of obstructing materials is not being “kept” in “a clearly legible condition.” [*Dunbar*, 306 Mich App at 569-570 (METER, J., dissenting).]

The People seek leave.

LAW AND ARGUMENT

- I. **MCL 257.225(2) REQUIRES THAT 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”, “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”, AND “BE MAINTAINED FREE FROM FOREIGN MATERIALS THAT OBSCURE OR PARTIALLY OBSCURE THE REGISTRATION INFORMATION AND IN A CLEARLY LEGIBLE CONDITION”, AND, THEREFORE, PLACEMENT OF A PLATE THAT ALLOWS ALL OR A PART OF ITS INFORMATION TO BE BLOCKED OR OBSTRUCTED (SUCH AS BY A TRAILER HITCH BALL) VIOLATES THE STATUTE, WHICH RENDERS VALID THE DEPUTIES’ STOP OF DEFENDANT’S PICKUP TRUCK.**

A. *Standard of review*

“Matters of statutory interpretation raise questions of law, which this Court reviews de novo.” *People v Williams*, 491 Mich 164, 169; 814 NW2d 270 (2012). “This Court will not disturb a trial court’s ruling at a suppression hearing unless that ruling is found to be clearly

erroneous. Resolution of facts about which there is conflicting testimony is a decision to be made initially by the trial court. The trial judge’s resolution of a factual issue is entitled to deference. This is particularly true where a factual issue involves the credibility of the witnesses whose testimony is in conflict.” *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999) (quotation marks and citation omitted).

B. Analysis of the issue

1. Rules of Statutory Interpretation

“[W]hen considering the correct interpretation, the statute must be read as a whole.” *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009). The Court’s “analysis [of a statute] begins, as it must, with the language of the . . . statute[itself].” *Williams*, 491 Mich at 172. “The cardinal rule of statutory construction is to discern and give effect to the intent of the Legislature. This Court may best discern that intent by reviewing the words of a statute as they have been used by the Legislature.” *Id.* (quotation and citation omitted). “When a statute’s language is clear and unambiguous, this Court will enforce that statute as written.” *Id.* (citation omitted).

MCL 8.3a provides:

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

“As might be expected, in undertaking to give meaning to words this Court has often consulted dictionaries.” *Chandler v Co of Muskegon*, 467 Mich 315, 320; 652 NW2d 224 (2002). “When parsing a statute, [the Court] presume[s] every word is used for a purpose. As far as possible, [it] give[s] effect to every clause and sentence.” *Pohutski v Allen Park*, 465 Mich

675, 683-684; 641 NW2d 219 (2002). And when interpreting a statute, “a court should not abandon the canons of common sense.” *Marquis v Hartford Acc & Indem*, 444 Mich 638, 644; 513 NW2d 799 (1994).

2. The statute under review: MCL 257.225(2)

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 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.

This provision thus has three requirements:

1. 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.
2. 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.
3. The plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition.

3. Applying the rules of statutory interpretation to MCL 257.225(2)

Read as a whole, the statute requires that a license plate must be capable of being read.²

This view is supported by considering the three requirements of the statute. The **first** requirement has two directives. *First*, the plate must be fastened in a *horizontal* position.

² The People agree with the observations made in *State v Harrison*, 846 NW2d 362, 369 (Iowa, 2014) (“[a]n important purpose of [the statute] along with related sections, is to allow police and citizens to identify vehicles”), and *Parks v State*, 247 P3d 857, 860 (Wyo, 2011) (“[l]icense 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”).

License plates are designed and made so that they are read horizontally from left to right. Thus, by requiring that the plate be fastened securely in a “horizontal position”, the Legislature directs that it must be capable of being read easily as it was designed and made.³ *Second*, the plate must be securely fastened in a manner to avoid “swinging”. Obviously, a “swinging” plate could not be easily read.⁴ Hence, the Legislature directs that the plate must be securely fastened to avoid “swinging”.

The **second** requirement expressly uses the phrase “clearly visible”, stating that “[t]he 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.*” MCL 257.225(2) (emphasis supplied.) This requirement also has two directives. *First*, the plate must be at least “12 inches from the ground”. This would make it more easily read from a vehicle following the plated vehicle. Hence, the Legislature’s goal, again, is to make it as easy as possible for others to read the plate. *Second*, the plate must be positioned so that it is “clearly visible”. The word “visible” means: “**1.** That can be seen; perceptible to the eye **2.** Apparent manifest; obvious” **3.** being constantly or frequently in the public view; conspicuous *Random House Webster’s Unabridged Dictionary* (2d ed, 2007), p 2126. Or, “[p]erceptible, discernable, clear, distinct, evidence, open, conspicuous.” *Black’s Law Dictionary* (6th ed), p 1571.

³ Although the Supreme Court of Vermont found the angle of the plate de minimis and gave an interesting interpretation of the word “horizontal”, it nevertheless required that the plate be capable of being read: “we find a proper reading of the statute to be that a license plate ceases to be ‘horizontal’ when the angle of the license makes it difficult for a person with normal vision to read it.” *State v Tuma*, 194 Vt 345, 350; 79 A3d 883, 887 (2013).

⁴ Cf. *Tuma*, 194 Vt at 349; 79 A3d at 886 (2013) (“[n]aturally enough, then, all of the mandates in § 511 governing the manner of display of license plates are related to visibility and readability of the plate: the license plate must be unobscured, legible, and ‘so fastened as not to swing’—*swinging, of course, makes the license plate harder to read*” [emphasis supplied]).

The term “clearly” means “in a clear manner.” *Random House Webster’s Unabridged Dictionary* (2d ed, 2007), p 384. The word “clear” means, *inter alia*, “easily seen ...; free from obstructions or obstacles; open: *a clear view; a clear path.*” *Id.*, 383. Or, “[v]isible, unmistakable Without obscurity, obstruction, entanglement, confusion, or uncertainty....” *Black’s Law Dictionary* (6th ed), p 251. Thus, the license plate must be perceptible to the eye and free from obscurity or obstruction. Here, the trial court found that the plate’s visibility was blocked or obstructed by the trailer hitch. Thus, it was not “in a place and position that is clearly visible” or perceptible to the eye and free from obscurity or obstruction.

Finally, the **third** provision requires 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.” Judge SHAPIRO limited the term “maintain” to mean the physical state of the plate itself (requiring that the plate not be “dirty, rusted, defaced, scratched, [or] snow-covered,” *Dunbar*, 306 Mich App at 566 [SHAPIRO, J., opinion]). That certainly is one reading of the third sentence. Judge METER, however, dismissed this limited interpretation, stating:

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 cannot be read because of obstructing materials is not being “kept” in “a clearly legible condition.” [*Dunbar*, 306 Mich App at 570 (METER, J., dissenting).]

This too is a reasonable reading of the third sentence of MCL 257.225(2).⁵ Importantly, however, debating the meaning of the *third* sentence of MCL 257.225(2)—without considering

⁵ Defendant accuses this writer of using a dictionary that is too old. In its day, it was the one used by this Court’s Reporter of Decisions. Here are some definitions of “maintain” from the *Random House Webster’s Unabridged Dictionary* (2d ed, 2007), p 1160:

1. to keep in existence or continuance; preserve; retain **2.** to keep in an appropriate condition, operation, or force; keep unimpaired **3.** to keep in a specified state, position, etc.

the first and second sentence of the statute—overlooks the requirements that the statute be read as a whole and with common sense. *Bush*, 484 Mich at 167; *Marquis*, 444 Mich at 644. When reading the three sentences of MCL 257.225(2) together, giving them a common-sense reading, and according every word and phrase its plain and ordinary meaning and taking into account the context in which the words are used, the statute requires that the plate be securely placed horizontally in a location or position sufficiently high enough where it does not swing, is clearly visible, and in a clearly legible condition so that the registration information can be seen and read without being obscured or obstructed. This is consistent with the obvious purpose for license plates, “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.” *Parks*, 247 P3d at 860; see also *Harrison*, 846 NW2d at 369 (“[a]n important purpose of Iowa Code section 321.37[3], along with related sections, is to allow police and citizens to identify vehicles”).

Significantly, when the stop in this case occurred on October 12, 2012, no appellate decision existed that interpreted MCL 257.225(2). About five months later, on March 7, 2013, the Court of Appeals decided *People of Canton Twp v Wilmot*, unpublished opinion per curiam of the Court of Appeals, issued March 7, 2013 (Docket No 305308); 2013 WL 951109 (Appendix C). At issue was whether the stop—“predicated on an obscured license plate ...

Thus, substituting the word “maintained” in the statute with the phrase: “to keep in a specified position” and adding the remaining part of the statute, “free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition”, the statute would read: “to keep in a specified position” “free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition.” Thus, a trailer hitch ball would fit the definition of “foreign materials” (because it is not actually part of the plate) and when placing it on the bumper of a truck so that it “obscure[s] or partially obscure[s] the registration information”, this renders the plate’s condition illegible (i.e., unreadable or obscured).

caused by the ball of a trailer hitch mounted on the rear of [the] defendant's truck"—was valid under the Fourth Amendment. “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.” *Wilmot*, slip op, p 1; 2013 WL 951109, * 1 (Appendix C). The majority in *Wilmot* discussed the statute and essentially agreed with the People's interpretation of the statute, but avoided the necessity to draw a conclusion as to the correct interpretation of the statute as follows:

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.* However, for the reasons discussed below, we ultimately find it unnecessary to resolve the dispute regarding the proper construction of § 225(2). [*Wilmot*, slip op, pp 3-4; 2013 WL 951109, * 3 (Appendix C). Emphasis supplied.]

The *Wilmot* majority's observation is correct. “Clear visibility of the license plate seems to be the legislative goal” and focusing exclusively on the third sentence of MCL 257.625(2) fails to recognize the significance of the second sentence (or, as noted above, the first sentence as well). Thus, by placing the hitch ball as it was, “one could reasonably posit that the plate was not attached in a place or position that made it clearly visible.” *Id.* The *Wilmot* majority later explained that, “[h]ere, we tend to believe ... 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.” *Id.*, slip op, p 6; 2013 WL 951109, * 5 (Appendix C). It noted the dissent’s view that, because there was no evidence that the defendant’s plate was affixed in an unusual place or anywhere other than in a standard location (i.e., where the manufacturer intended it to be), and the district court found that the plate was not obscured by the hitch ball, suppression was necessary because the district court did not believe the officer. *Id.*, slip op, p 4 n 1; 2013 WL 951109, * 3 n 1. The majority rejected the dissent’s view because it misses the mark:

Th[e dissent’s] 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. [Thus, t]he 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. [*Wilmot*, slip op, p 4 n 1; 2013 WL 951109, *3 n 1 (Appendix C).]

Indeed, the dissent in *Wilmot* failed to read the language of the statute that says nothing about a “usual place” for a license plate. Had the Legislature decided that the manufacturer’s designed location was adequate, it would have indicated this in the statute. Instead of saying that a “plate [had to 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 Legislature would have said, “a plate shall be attached to the area designated by the manufacturer for the plate”. Because that is not the language of the statute, the “usual place” paradigm of the dissent in *Wilmot* is meaningless. The actual language of the statute recognizes that the so-called “usual place” is not always the “*clearly visible*” one. For example, when one installs something that blocks the plate, such as a new after-market bumper or, as here, a hitch ball, the motorist must make sure his or her license “plate [is] ... 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.*” MCL 257.225(2) (emphasis supplied). Hence, although the manufacturer might provide an area for a plate, that location might not comply with the statutory requirement if the motorist later installs aftermarket items on the back of the vehicle. In such a case, the motorist is responsible for attaching the plate in a manner that makes it “clearly visible.”

On the facts as testified to by the officer in *Wilmot*, the majority observed that “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.” *Wilmot*, slip op, p 4; 2013 WL 951109, *4 (Appendix C). Thus, “[m]inimally, and assuming the applicability of § 225(2), 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.” *Id.* Thus, the majority in *Wilmot* found merit to the interpretation of the second sentence in MCL 257.225(2) to support the stop if the hitch ball obstructed the license plate. Nevertheless, the majority in *Wilmot* was still faced with the findings of the district court that factually held that the hitch ball did *not* obstruct the plate.

The *Wilmot* majority, however, indicated that it did not have to find clear error in the district court’s factual assessment or definitively interpret the statute to authorize the stop (although it clearly viewed this as an appropriate interpretation of the statute), and, instead, held that this was *not* an appropriate case for the judicially created exclusionary rule:

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.

* * *

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.

* * *

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. Moreover, assuming a lack of probable cause or 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.

* * *

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. [*Wilmot*, slip op, pp 5-9; 2013 WL 951109, *4-7 (Appendix C).]

It is noteworthy that the majority in *Wilmot* anticipated, correctly, the United States Supreme Court's view that mistakes of law, when objectively reasonable, support a seizure or stop. The *Wilmot* majority cited, among other cases, *State v Heien*, 366 NC 271, 276; 737 SE2d 351, 355 (NC, 2012), which was later affirmed by the United States Supreme Court in *Heien v North Carolina*, ___ US ___; 135 S Ct 530; 190 L Ed 2d 475 (2014), stating:

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 S.E.2d 440 (2001) (an officer's actions are not rendered improper by a later legal determination that a statute was not violated by the defendant 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”). [*Wilmot*, slip op, pp 6-7; 2013 WL 951109, * 5 (Appendix C).]

The *Wilmot* majority, of course, “recognize[d] ... that there are also many opinions in which courts have ruled to the contrary[,]” but, “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.” *Wilmot*, slip op, p 7 n 5; 2013 WL 951109, *5-6 n 5 (Appendix C). The United States Supreme Court would confirm the soundness of the *Wilmot* majority’s view, but did not base its holding on exclusionary rule principles—as the *Wilmot* majority deemed itself compelled to do—but rather, the United States Supreme Court held, explicitly, that a mistake of law, when objectively reasonable, authorizes a seizure under the Fourth Amendment. *Heien*, 135 S Ct at 536-537, 540 (“[t]here 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”; “[i]t was ... objectively reasonable for an officer in Sergeant Darisse’s position to think that Heien’s faulty right brake light was a violation of North Carolina law[, a]nd[,therefore,] because the mistake of law was reasonable, there was reasonable suspicion justifying the stop”).

The Court of Appeals in *Dunbar* gave no regard or reference to *Wilmot* despite the prosecutor’s reliance on it, bypassing the objectively reasonable actions of the deputies in

making the stop of Dunbar’s truck and failing to consider whether it was inappropriate to apply the judicially created exclusionary rule.⁶

4. Other Jurisdictions that have addressed hitch balls that obstructed a license plate vis-à-vis statutes that require that license plates be “clearly visible” or “clearly legible”.

Other jurisdictions (e.g., California, Wyoming, Georgia, Tennessee, Kansas, New Mexico, Montana, and Washington) support the view that the Legislature requires license plates to be clearly visible or readable and unobstructed by such items as trailer hitch balls.

In *People v White*, 93 Cal App 4th 1022; 113 Cal Rptr 2d 584 (Cal App 4 Dist, 2001), a sheriff’s deputy “stopped [the] defendant’s pickup truck after noticing that a trailer hitch or tow ball on the truck’s rear bumper blocked the deputy’s view of the middle numeral of the rear license plate.” *Id.*, 1024; 113 Cal Rptr at 585. The Superior Court Appellate Division reversed the trial court’s granting of the defendant’s motion to suppress, finding “that the trailer hitch ball was positioned in a manner that violated Vehicle Code section 5201.” *Id.*, 1025; 113 Cal Rptr 2d at 585. The California Court of Appeals agreed and adopted the Superior Court’s reasoning, stating:

The traffic law at issue in this case is Vehicle Code section 5201, which provides in pertinent part, 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.” The statute imposes two obligations—that the plate be clearly visible when mounted on the vehicle and that it also be clearly legible. In reversing the trial court’s order granting defendant’s motion to suppress, the Superior Court concluded, as evidenced by the words used, i.e., “clearly visible,” that the Legislature intended in enacting the noted Vehicle Code section that the view of the license plate be entirely unobstructed. We agree with that conclusion.

⁶ Although the Court of Appeals in *Dunbar* did not have to follow *Wilmot* because it was unpublished, MCR 7.215(C)(1), the discussion in *Wilmot* should have merited comment given that the majority and dissent clearly addressed the issues, including whether the judicially created exclusionary rule was appropriate. A court is entitled to conclude that the reasoning of an unpublished decision is persuasive. *Steele v Dep’t of Corrections*, 215 Mich App 710, 714 n 2; 546 NW2d 725 (1996).

* * *

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.” (*Id.* at p. 247, 48 Cal.Rptr.2d 77, 906 P.2d 1232.) 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 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. Because the detention was lawful, the trial court erred in granting defendant's motion to suppress and dismissing the charges. [*White*, 93 Cal App 4th at 1025-1026; 113 Cal Rptr 2d at 586.]

In *Parks v State*, 247 P3d 857, 858 (Wyo, 2011), an officer stopped an older model Chevrolet pickup truck because a trailer hitch mounted in a predrilled hole in the truck’s factory bumper partially blocked the license plate. The defendant challenged the stop, claiming that he was not in violation of Wyo Stat Ann § 31–2–205, which provided:

(a) License plates for vehicles shall be:

(i) Conspicuously displayed and securely fastened to be ***plainly visible***:

...

(ii) Secured to prevent swinging;

(iii) Attached in a horizontal position no less than twelve (12) inches from the ground;

(iv) Maintained free from foreign materials and in a condition to be ***clearly legible***. [*Parks*, 247 P3d at 858 -859 (emphasis by the court).]

The Supreme Court of Wyoming disagreed with the defendant’s position, stating:

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. *See United States v Rubio-Sanchez*, 2006 US Dist LEXIS 21230; 2006 WL 1007252 (D Kan Apr 17, 2006) (“Law enforcement [officers] frequently must determine from tag numbers whether a vehicle is stolen; whether it is properly registered; or whether its occupant is suspected of a crime, is the subject of a warrant, or is thought to be armed.”) (quoting *State v Hayes*, 8 Kan App 2d 531, 533; 660 P2d 1387, 1389 (1983)). 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.

Our holding is also consistent with our recent decision in *Lovato*, 228 P3d 55. In that case, the appellant’s license plate was obscured by a translucent plastic cover. The police officer stopped the appellant because he was unable to read the appellant’s license plate number until he was very close behind his vehicle. The district court found that the cover violated the statute, providing justification for the stop. *Id.*, ¶ 22, 228 P3d at 60. On appeal, we found that “it is conceivable that in some angles of sunlight, the combination of glare and tinting could make the license plate harder to read.” *Id.*, ¶ 21, 228 P3d at 60. We upheld the district court’s decision that the stop was justified, despite the fact that the plate may have been visible from certain angles or positions. *Id.*, ¶ 22, 228 P3d at 60.

In support of his argument, Mr. Parks relies on *Harris v State*, 11 So 3d 462 (Fla Dist Ct App 2d Dist, 2009), a Florida case in which the court found that a trailer hitch ball which partially blocked a license plate did not violate Florida’s license plate display statute. However, that case is distinguishable. The relevant portion of Fla. Stat. § 316.605(1) reads as follows:

[A]ll letters, numerals, printing, writing, and other identification marks upon the plates regarding the word “Florida,” the registration decal, and the alphanumeric designation shall be clear and distinct and free from defacement, mutilation, grease, and other obscuring matter, so that they will be plainly visible and legible at all times 100 feet from the rear or front.

Harris, 11 So 3d at 463 (emphasis omitted). The court found that the “plainly visible” language of the statute was not a stand-alone requirement but, rather, applied to “license plates [that were] obstructed by defacement, mutilation, grease, or ‘other obscuring matter.’” *Id.* To interpret the statute as it applied to trailer hitches, the court used the doctrine of *ejusdem generis*. That doctrine

provides that where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. *Id.* The court then determined that “[m]atters external to the tag, such as trailer hitches, bicycle racks, handicap chairs, u-hauls, and the like are not covered by the statute” because they are not in the same class as the obscuring matter identified in the statute. *Id.* at 463-64. Wyoming’s license plate display statute, however, is significantly different from the Florida statute. Under Wyo Stat Ann § 31–2–205(a)(i), the requirement that a license plate be “plainly visible” is not connected to any class of “obscuring matter,” and the doctrine of *ejusdem generis* is not applicable.

In addition, the court in *Harris* noted that it was in the minority of jurisdictions finding that a trailer hitch ball which obstructs a license plate is not a traffic violation. Indeed, a number of jurisdictions have considered this issue and nearly all have determined that a trailer hitch that partially obstructs a license plate is a traffic violation. *See, e.g., Rubio-Sanchez*, 2006 US Dist LEXIS 21230, at *23; 2006 WL 1007252, at *5 (“A license plate is not clearly visible and legible if obscured by a ball hitch.”); *United States v Unrau*, 2003 US Dist LEXIS 12307, at *8; 2003 WL 21667166, at *3 (D Kan Jun 16, 2003) (“A tag is not positioned to be plainly visible when it is behind a ball hitch that blocks an officer from reading the entire plate while following at a reasonably safe distance.”); *People v White*, 93 Cal App 4th 1022; 113 Cal Rptr 2d 584, 586 (2001) (“In using the phrase ‘clearly visible’ ... it is apparent that the Legislature meant a license plate must not be obstructed in any manner and must be entirely readable.”); *State v Hill*, 2001–NMCA–094, 131 NM 195, 203; 34 P3d 139, 147 (NM App, 2001) (license plate is not clearly legible when a trailer hitch obstructs part of the plate from some viewing angles); *State v Smail*, 2000 Ohio App LEXIS 4599, at *7; 2000 WL 1468543, at *2 (Ohio Ct App Sept. 27, 2000) (the middle numbers of a license plate are not in “plain view” if obstructed by a ball hitch even though readable from the side of the vehicle); *State v McCue*, 119 Wash App 1039, 2003 WL 22847338, at *3 (Wash Ct App 2003) (a license plate is not plainly seen and readable if partially obscured by a trailer hitch and only fully visible at certain angles). We agree with the majority of jurisdictions that have considered this issue and determined that a trailer ball positioned so as to partially obstruct a license plate constitutes a violation of the respective license plate display statute. The traffic stop in this case was justified based on an observed violation of Wyo Stat Ann § 31–2–205. [*Parks*, 247 P3d at 859-861.]

In *Worlds v State*, 328 Ga App 827, 827; 762 SE2d 829, 830 (2014), the defendant’s vehicle was stopped for a violation of OCGA § 40–2–41,⁷ because the fourth digit of her license

⁷ OCGA § 40–2–41 addressed “Display of license plates” and provided:

Unless otherwise permitted under this chapter, every vehicle required to be registered under this chapter, which is in use upon the highways, shall at all

plate was obstructed by a trailer ball hitch installed on the bumper. She appealed from the denial of her motion to suppress the drugs that were discovered in plain view during the stop, claiming that a single, partially obscured digit on a license plate does not violate the law. The Georgia Court of Appeals disagreed:

Worlds also argues that OCGA § 40–2–41 applies only to items such as a plate cover that are attached to the license plate itself, not to other items attached to the motor vehicle, such as a trailer hitch attached directly to the bumper. OCGA § 40–2–41 provides in pertinent part that the license plate “shall be at all times plainly visible,” that “[i]t shall be the duty of the operator of any vehicle to keep the license plate legible at all times,” and that “[n]o apparatus that obstructs or hinders the clear display and legibility of a license plate shall be attached to the rear of any motor vehicle required to be registered in the state.” Georgia decisions have interpreted this Code section to forbid license plate frames and covers that obscure portions of the plate. See *Davis, supra*, 283 Ga App at 201(1); 641 SE2d 205 *Bailey, supra*; *Nelson, supra*; and *Aguirre, supra*; see also *Wilson v State*, 306 Ga App 286, 286-287(1); 702 SE2d 2 (2010) (registration decal). But the question of whether the statute forbids items other than those attached to the license plate itself has not been addressed in Georgia.

Other states, however, have determined that a bumper hitch that obscures part of a license plate violates a statute requiring that a plate be “plainly visible” or “legible.” In *People v White*, 93 Cal App 4th 1022; 113 Cal Rptr 2d 584 (2001), a deputy testified that he stopped White because the bumper hitch on his pickup truck blocked the lower half of the middle numeral on the license plate. *Id.* at 1024; 113 Cal Rptr 2d 584. The trial court granted White’s motion to suppress because it believed the statute dealt only with “dirt or grit or grime or material on the license plate.” *Id.* The California Court of Appeals considered the applicable

times display the license plate issued to the owner for such vehicle, and the plate shall be fastened to the rear of the vehicle in a position so as not to swing and shall be at all times *plainly visible*. No person shall display on the rear of a motor vehicle any temporary or permanent plate or tag not issued by the State of Georgia which is intended to resemble a license plate which is issued by the State of Georgia. The commissioner is authorized to adopt rules and regulations so as to permit the display of a license plate on the front of certain vehicles. *It shall be the duty of the operator of any vehicle to keep the license plate legible at all times.* No license plate shall be covered with any material unless the material is colorless and transparent. *No apparatus that obstructs or hinders the clear display and legibility of a license plate shall be attached to the rear of any motor vehicle required to be registered in the state.* Any person who violates any provision of this Code section shall be guilty of a misdemeanor. [*Worlds*, 328 Ga App at 828-829; 762 SE2d at 830-831 (emphasis supplied).]

Vehicle Code section 5201, which provided: “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.” The court concluded that partial obstruction by a trailer hitch ball violated this Code section because “a license plate must not be obstructed in any manner and must be entirely readable.” *Id.* at 1026; 113 Cal Rptr 2d 584. It therefore reversed the trial court’s grant of the motion to suppress. *Id.*

In *Parks v State*, ... 247 P3d 857 (2011), as here, a “trailer hitch ball was mounted in a predrilled hole in the truck’s factory bumper so that the license plate was partially obstructed.” 247 P3d at 858. The applicable law, Wyo Stat Ann § 31–2–205, provided that a license plate shall be “plainly visible” and “[m]aintained free from foreign materials and in a condition to be clearly legible.” *Id.* at 858-859. The Wyoming Supreme Court concluded:

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.... Law enforcement officers frequently must determine from tag numbers whether a vehicle is stolen; whether it is properly registered; or whether its occupant is suspected of a crime, is the subject of a warrant, or is thought to be armed. 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.

(Citations and punctuation omitted.) *Id.* at 860. Here, once the officer stopped Worlds’ vehicle and was able to read the complete license plate number, he discovered that the vehicle’s registration was suspended and there was no valid insurance on it.

The Florida Court of Appeals in *Harris v State*, 11 So 3d 462 (Fla Dist Ct App 2d Dist, 2009), reached a different result based upon Fla Stat § 316.605(1), requiring that numbers and other marks on license plates “shall be clear and distinct and free from defacement, mutilation, grease, and *other obscuring matter*.” (Emphasis in original.) *Id.* at 463. The court applied the statutory construction principle of “*eiusdem generis*” to hold that the language “*other obscuring matter*” applied “only to matter on the tag itself” and that “[m]atters external to the tag, such as trailer hitches, bicycle racks, handicap chairs, u-hauls, and the like are not covered by the statute.” *Id.* at 463–464.³

The court acknowledged that its holding was in the minority on this point, noting *White, supra*, as well as decisions from New Mexico and Ohio finding that statutes with the “clearly legible” or “visible” language prohibited license plates partially obscured by trailer hitches. *Harris, supra*, 11 So 3d at 464.⁴ Similarly, the Supreme Court of Wyoming in *Parks, supra*, observes that “a number of jurisdictions have considered this issue and nearly all have determined that a trailer hitch that partially obstructs a license plate is a traffic violation,” citing United States district court decisions from Kansas and a Washington State Court of Appeals decision as well as the decisions cited by the Florida court. 247 P3d at 861.

Bearing in mind these decisions, the plain wording of OCGA § 40–2–41 does not limit its prohibition to items attached to the license plate itself, but includes any “apparatus” that is “attached to *the rear of any motor vehicle*” (emphasis supplied), such as the bumper hitch at issue here. It is not clear whether a distinction can be made between an attachment that obscures the license plate and is more or less permanent—such as a trailer ball bolted to the vehicle itself—and a temporary attachment such as a separate, removable trailer hitch inserted into a receiver welded to the vehicle frame, a bicycle rack whether loaded or unloaded, or a hitch tray or step folded in an upright position against the rear of the vehicle or piled high with luggage. But that is not a question that need be answered here, although the General Assembly would be the proper body to clarify the point.

³ Similarly, in *People v Gaytan*, 2013 Ill App 4th 120217; 372 Ill Dec 478; 992 NE2d 17, 25-26 (2013), the Appellate Court of Illinois construed a statute requiring that “[e]very registration plate ... shall be maintained in a condition to be clearly legible, *free from any materials that would obstruct the visibility of the plate*, including, but not limited to, glass covers and plastic covers.” (Emphasis in original.) *Id.*, 372 Ill Dec 478; 992 NE2d at 20-21(II)(B). The court held that this provision applied only to materials attached to the plate and not to a trailer ball hitch. The court noted the distinction between statutes using the “clearly/plainly legible” and “visible” language and the Illinois and Florida statutes which refer to the plate itself. *Id.*, 372 Ill Dec 478; 992 NE2d at 22-23(II)(B).

⁴ The Florida court also cited to a different Ohio Court of Appeals case holding that the trial court did not err in granting a motion to suppress when a state trooper contended that a portion of the defendant’s license plate was obscured by a trailer hitch, but that decision does not consider the wording of the applicable statute, if any. *State v Ronau*, 2002 Ohio 6687; 2002 WL 31743012; 2002 Ohio App LEXIS 6480 (Ohio App, 2002). [*Worlds*, 328 Ga App at 828-832; 762 SE2d at 830-833.]

In *United States v Ratcliff*, unpublished opinion of the United States District Court for the Eastern District of Tennessee, issued September 25, 2006 (No. 1:06-cr-55); 2006 WL 2771014

(Appendix D), a police officer could not read the registration tag on an older Chevrolet pickup truck because his line of vision was obstructed by a trailer hitch attached to the rear bumper of the pickup truck. *Ratcliff*, 2006 WL 2771014, * 1. The statute, Tennessee Code Annotated § 55-4-110(b), “provid[ed], in pertinent part, that ‘[e]very registration plate shall at all times be ... in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.’” The federal district court rejected the defendant’s argument that the statute did not authorize the stop, stating:

In the case of *Tennessee v Matthews*, No. M200100754CCAR3DC, 2002 WL 31014842 (Tenn Crim App Sept 10, 2002), the Tennessee Court of Criminal Appeals had occasion to interpret this statute in the context of a review of the trial court’s denial of a motion to suppress on the grounds that an officer’s stop of the subject vehicle occurring at approximately 7:07 p.m. on September 18, 1999, was unreasonable where the officer complained that the stopped vehicle had no light over the license tag and as a result the officer was unable to see whether the car had a license plate. The parties stipulated that the vehicle in question had a light over the license plate which came on when the headlights were turned on, but that at the time of the stop the lights were not on. *Id.* at *1.

The court in *Matthews* concluded that, while Tennessee law did not require headlights to be on at the time of the stop in question, Tenn Code Ann § 55-4-110(b) required that a vehicle’s license plate be *clearly* visible at *all* times. *Id.* at *3. The court observed:

Even if the legislature intended as a general rule not to require the display of headlights until a half hour following sunset, it also intended that vehicle license plates be clearly visible at all times. By failing to keep his license plates visible during the half hour following sunset the appellant gave Officer Placone more than sufficient reason to effectuate a stop of the appellant’s vehicle. As stipulated by the parties, in an American automobile the license plate light is activated by turning on the headlights. This unfortunate design feature in the appellant’s vehicle does not excuse his failure to keep his license plate illuminated so as to keep it clearly visible.

Id.

The *Matthews* case was recently cited by the United States Court of Appeals for the Sixth Circuit in its decision in *United States v Dycus*, 151 F

App'x 457 (CA 6, 2005). In that case, the court had another opportunity to determine whether a police officer had probable cause to stop a vehicle based on violation of Tenn Code Ann § 55-4-110(b). In *Dycus*, the Court upheld the validity of the traffic stop because the officers had probable cause to believe that the defendant had violated § 55-4-110(b) where the police officer testified that upon the commencement of their pursuit of defendant's vehicle they could not make out the registration plate due to darkness, although they conceded that they could see the tag as illuminated by the emergency blue lights on their patrol car once they pulled within fifteen to twenty yards of defendant's vehicle. *Id.* at 461.

Taken together, the Court concludes that the teaching of *Matthews* and *Dycus* is that § 55-4-110(b) imposes on the driver of a vehicle on Tennessee roads an obligation to ensure that the registration tag on the vehicle is clearly visible at *all* times, and that *any* invisibility or obstruction to visibility of any portion of the tag could constitute a violation of the statute, even if such invisibility or obstruction to visibility is temporary—or even momentary—and may be easily cured, as by the turning on of headlights or by a slight change in distance or the position of the vehicle in relation to the observer.

Under this standard, it is clear that the placement of the trailer hitch on the rear of Defendant Ratcliff's vehicle, albeit legal, and the interposition of that trailer hitch between a numeral on the registration plate and Officer Posey's line of sight on the evening in question, however momentary, was enough to permit Officer Posey to conclude that the Defendant was violating, or had violated, Tenn Code Ann § 55-4-110(b). The Court concludes, therefore, that Officer Posey possessed the requisite probable cause to stop Defendant's vehicle on this basis. [*Ratcliff*, 2006 WL 2771014, * 4-5.]

In *United States v Unrau*, unpublished opinion of the United States District Court for Kansas, issued June 16, 2003 (No. 03-40009-01-SAC); 2003 WL 21667166 (Appendix E), the defendant was stopped when the trooper was unable to read the fourth digit on the defendant's license plate because it was blocked by the trailer hitch ball on the bumper of his pickup truck. The district court interpreted Kansas Stat Ann 8-133 as supporting the stop. The statute reads in relevant part:

Every license plate shall at all times be securely fastened to the vehicle to which it is assigned so as to prevent the plate from swinging, and at a height not less than 12 inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible.

The district court ruled on the stop issue as follows:

The defendant contends that Trooper Brockman conducted the stop without a reasonable, articulable suspicion that a traffic violation had occurred. The defendant insists there is no traffic law in Kansas that is violated simply because an officer's vantage point, an officer's vision or other circumstances outside of the defendant's control preclude the officer from seeing a license plate. The evidence introduced at the hearing establishes that Trooper Brockman's inability to read the defendant's license plate until he was immediately behind the pickup was not caused by anything unreasonable or even questionable about the trooper's vantage point or other circumstances uncontrollable by the defendant. Rather, someone following at a reasonable distance could not read all of the defendant's license plate, because the plate was filthy and because the ball hitch blocked the fourth number. As the government points out, Kansas law requires a license plate to be secured on a vehicle "in a place and position to be clearly visible." K.S.A. 8-133.

The Kansas Court of Appeals has interpreted K.S.A. 8-133 as meaning "that *all* of the tag must be legible" and, therefore, it follows that ... all of the tag also must be "visible." *State v Hayes*, 8 Kan App 2d 531, 532; 660 P2d 1387 (1983). This statute applies to license plates issued by other states and secured to cars being operated in Kansas. *Id.* at 533. The violation of this statute is a misdemeanor under K.S.A. 8-149. *Id.* A tag is not positioned to be plainly visible when it is behind a ball hitch that blocks an officer from reading the entire plate while following at a reasonably safe distance. Trooper Brockman had reasonable articulable suspicion to believe that the defendant had violated these Kansas traffic laws. The first prong of a reasonable traffic stop is met here. [*Unrau*, 2003 WL 21667166, * 2-3.]

In *State v Hill*, 131 NM 195, 203; 34 P3d 139, 147 (2001), the defendant's registration information was obstructed by a trailer hitch. He was stopped and cited for the violation of NMSA 1978, § 66-3-18 (1998). Following his conviction, he appealed arguing that "there was insufficient evidence to support [his] conviction for improper display of a registration plate [because] ... to be in violation of NMSA 1978, § 66-3-18 (1998), the plate itself must be obscured, not merely the registration sticker." *Id.*, 203; 34 P2d at 147. The Court of Appeals of New Mexico disagreed, stating:

Section 66-3-18(A) requires "[t]he registration plate [to] be attached to the rear of the vehicle for which it is issued[.] ... It shall be in a place and position so as to be clearly visible, and it shall be maintained free from foreign material and

in a condition to be clearly legible.” Although this statute refers specifically to a registration plate, it is clear from reading the other registration statutes that “registration plate” is a broad term comprising everything that evidences registration, including plates, tabs, and renewal stickers. *See, e.g.*, NMSA 1978, § 66-3-17(A) (1995) (stating that “renewals of the registration plate ... shall cause the [motor vehicle] division to issue a validating sticker”); § 66-3-18(C) (referring to a “registration plate, including tab or sticker”); NMSA 1978, § 66-3-19(A)(5) (1995) (providing for “the issuance of validating stickers ... to signify the registration of the vehicle[]”). Thus, legibility and visibility of the registration plate would include legibility and visibility of any renewal sticker.

There was sufficient evidence to support Defendant’s conviction for improper display of the truck’s registration plate. Both Officer Briseno and Officer Fowler testified that the renewal sticker was not visible because it was obscured by one of the truck’s two trailer hitches. Defendant himself admitted that the hitch, located about an inch from the plate’s surface, obstructed part of the plate from some angles. In addition, when Officer Fowler told Defendant he should remove the hitch, Defendant said he had no intention of doing so. The jury could reasonably conclude that Defendant violated the registration laws. [*Hill*, 131 NM at 203; 34 P3d at 147.]

In *State v Haldane*, 368 Mont 396; 300 P3d 657 (2013), the defendant’s vehicle was stopped when two officers pulled up behind him and could not read his license plate because it was partially obstructed by snow and a trailer hitch ball. Following his conviction for drunk driving, the defendant appealed, “argu[ing] that Montana’s weather and the prevalence of farm and other towing vehicles make it unlawful for law enforcement officers to effectuate a stop on the sole basis that they cannot read a temporary registration permit due to snow and a ball hitch.” *Id.*, 401-402; 300 P3d at 663. The Montana Supreme Court disagreed based on “the plain language of § 61–3–301, MCA,”⁸ stating:

⁸ The *Haldane* Court identified the statutory language as follows:

The statute at issue here, § 61–3–301(1)(a), MCA, provides that “a person may not operate a motor vehicle ... upon the public highways of Montana unless the motor vehicle ... is properly registered and has the proper license plates conspicuously displayed on the motor vehicle.” Furthermore, § 61–3–301(1)(a), MCA, requires that the “license plate must be securely fastened to prevent it from swinging and may not be obstructed from plain view.” The statute defines “conspicuously displayed” as “obviously visible and firmly attached.” Section

While we note Justice Nelson’s concerns,⁹ we cannot ignore the plain language of § 61–3–301, MCA, which requires that a license plate “may not be obstructed from plain view” and must be “obviously visible.” The statute serves an important purpose of enabling officers to ascertain if the vehicle is properly registered. *Lacasella*, ¶ 16. Law enforcement officers are unable to check a vehicle’s registration if the plates are not conspicuously displayed.

Officer Shepherd testified at both the suppression hearing and at trial that the reason for the investigatory stop of Haldane was because his license plate was obstructed by snow and a ball hitch. Officer Richardson independently noticed that Haldane’s plates were obstructed, and observed this possible violation before discussing it with Officer Shepherd. Because of these obstructions, Officer Shepherd was unable to verify whether the vehicle was properly registered. Such observations are sufficient to allow an officer to develop a resulting suspicion that Haldane was in violation of § 61–3–301, MCA, by having a license plate that was “obstructed from plain view” and not “obviously visible.” Even if a vehicle is properly registered, a driver can still be cited for violation of § 61–3–301, MCA, which is a stand-alone offense. [*Haldane*, 368 Mont at 403-404; 300 P3d at 664.]

In *State v McCue*, 119 Wash App 1039; 2003 WL 22847338 (Wash Ct App 2003)

(unpublished) (Appendix H), the officer “could not read the middle character on the rear license plate of” a pickup truck because “[a] trailer hitch obscured [it] ... from her view.” *Id.*, 2003 WL 22847338, * 1. The Court of Appeals of Washington rejected the defendant’s argument that “he did not violate RCW 46.16.240 because [the officer] was able to read his truck’s license plate

61–3–301(4), MCA. Haldane possessed a temporary registration permit at the time of the stop. Section 61–3–224(5), MCA, contains the rules for display of a temporary permit, and similarly requires that the permit “must be plainly visible and firmly attached to the rear exterior of the vehicle where a license plate is required to be displayed.” [*Haldane*, 368 Mont at 401; 300 P3d at 663.]

⁹ Justice NELSON had written a concurrence in *State v Rutherford*, 350 Mont 403, 410; 208 P3d 389, 394 (2009), which was discussed by the Montana Supreme Court in *Haldane*. As part of Justice NELSON’s concurrence in *Rutherford*, he said:

I cannot conclude that the obscured license plate provided any particularized suspicion whatsoever for the stop of Rutherford’s vehicle. If we allow peace officers to stop the vehicles of Montanans for having rear license plates partially obscured by trailer hitches—or worse, wholly obscured by snow, mud, dust and dirt—we will be facilitating a significant abuse of drivers’ rights of individual privacy and freedom from unreasonable searches and seizures. [*Rutherford*, 350 Mont at 410; 208 P3d at 394 (NELSON, J., concurring).]

The Montana Supreme Court in *Haldane* rejected Justice NELSON’s concerns in favor of reading the statute as it was written.

when he turned the corner, [and, therefore,] ... the trial court erred when it found that the initial stop was justified[.]" *id.*, 2003 WL 22847338, * 3, stating:

RCW 46.16.240 provides that unless the 'body construction of the vehicle is such that compliance with this section is impossible' and the State Patrol grants the vehicle owner permission to deviate from the statute's requirements, '[t]he vehicle license number plates shall be attached conspicuously at the front and rear of each vehicle for which the same are issued and in such a manner that they can be plainly seen and read at all times.' Finding no ambiguities here, we employ a simple and straightforward analysis based upon the plain language of the statute.

The trial court found that although Deatherage was able to discern the entire plate number when McCue turned the corner, she was unable to view the entire plate number from directly behind McCue's truck because the trailer hitch obscured a portion of the plate. And, as discussed above, Deatherage's testimony supports this finding. A partially obscured license plate that is fully visible only at certain angles is not 'plainly seen and read at all times.' RCW 46.16.240. Thus, the trial court properly found that Deatherage was justified in stopping McCue for violating RCW 46.16.240. [*McCue*, 2003 WL 22847338, * 3 (Appendix H).]

A contrary view is held by the Illinois Court of Appeals in *People v Gaytan*, 372 Ill Dec 478; 992 NE2d 17 (2013), lv granted 374 Ill Dec 571; 996 NE2d 18 (2013), wherein the Appellate Court of Illinois, as a matter of first impression, held that the partial obstruction of a license plate by a trailer ball hitch does not constitute a violation of the Illinois Vehicle Code, 625 ILCS 5/3-413(b) (West 2010), which provided:

"Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than 5 inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained in a condition to be clearly legible, *free from any materials that would obstruct the visibility of the plate*, including, but not limited to, glass covers and plastic covers. Registration stickers issued as evidence of renewed annual registration shall be attached to registration plates as required by the Secretary of State, and be clearly visible at all times." (Emphasis added.) 625 ILCS 5/3-413(b) (West 2010). [*Gaytan*, 372 Ill Dec at 482; 992 NE2d at 21.]

The Illinois intermediate court agreed with the defendant's position that the statute proscribes only materials physically covering the registration plate itself rather than any object, such as a trailer hitch, that may come between the plate and the viewer:

Before using rules of statutory construction, we look to the plain language of the statute. Section 3–413(b) of the Vehicle Code provides the “registration plate shall at all times be * * * free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers.” 625 ILCS 5/3–413(b) (West 2010). The Vehicle Code does not define the word “material” and “obstruct.” “Material” is defined as “of, relating to, or consisting of matter.” Webster’s Third New International Dictionary 1392 (1976). See also *People ex rel. State Board of Health v Jones*, 92 Ill App 447, 449 (1900) (defining “material” as “[r]elating to, or consisting of matter; corporeal; not spiritual; physical” (internal quotation marks omitted)). “Matter” is defined as “the substance of which a physical object is composed.” Webster’s Third New International Dictionary 1394 (1976). The relevant definition of “obstruct” is “to cut off from sight.” Merriam-Webster’s Collegiate Dictionary 801 (10th ed 2000).

Obviously, a trailer hitch is a physical object capable of obstructing a viewer’s visibility. Read in isolation, the phrase “any materials that would obstruct the visibility of the plate” appears to support the State’s interpretation any physical object obstructing the visibility of the plate is a violation of section 3–413(b). However, the subject matter of this statute is registration plates and not vehicle accessories or attachments. The statute pertains to the requirements on a registration plate and that the “registration plate must at all times be * * * free from” obstructing materials. An alternative definition of “free” is “clear.” Merriam-Webster’s Collegiate Dictionary 463 (10th ed 2000). “From” is defined as “a function word to indicate a starting point of a physical movement or a starting point in measuring or reckoning or in a statement of limits” and is “used as a function word to indicate physical separation or an act or condition of removal, abstention, exclusion, release, subtraction, or differentiation.” Merriam-Webster’s Collegiate Dictionary 467-68 (10th ed 2000). Read in totality and applying the definition of “from” to the statute, a plain reading supports defendant’s interpretation the registration plate must be physically separated from any material obstructing visibility of the plate. In other words, section 3–413(b) prohibits objects obstructing the registration plate’s visibility that are connected or attached to the plate *itself*.

The State’s interpretation is premised on the “clearly visible” and “clearly legible” language contained in the clause addressing the plate’s visibility, legibility, “place and position,” and “condition.” This interpretation appears to reword the statute by applying requirements from other clauses of the statute to the relevant clause for the conclusion any object partially obstructing a police officer’s visibility of the plate causes the plate to not be “clearly visible” and is a

violation of section 3–413(b). This appears 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. See *People v Isaacson*, 409 Ill App 3d 1079, 1082; 351 Ill Dec 355; 950 NE2d 1183, 1187 (2011) (“[W]e presume the legislature did not intend absurdity, inconvenience, or injustice.”). The second sentence of section 3–413(b) requires annual registration stickers attached to the registration plate must be “clearly visible at all times.” This “at all times” language is noticeably absent from the first sentence of section 3–413(b), and its absence implies the legislature does not require the visibility of a registration plate to be unobstructed “at all times” from all angles. See *People v Edwards*, 2012 IL 111711, ¶ 27, 360 Ill Dec 784; 969 NE2d 829 (“Where language is included in one section of a statute but omitted in another section of the same statute, we presume the legislature acted intentionally and purposely in the inclusion or exclusion.”). Section 3–413(b) differs significantly from the California and Wyoming statutes discussed, because it has an additional obstruction requirement, similar to the Florida statute, and the clause “including, but not limited to, glass covers and plastic covers.” Section 3–413(b)’s obstruction requirement differs in construction from the Florida statute, which includes the phrase “other obscuring matter.” *Harris*, 11 So 3d at 463.

Defendant, relying on the doctrine of *ejusdem generis*, asserts the language “including, but not limited to, glass covers and plastic covers” qualifies the term “material” in the clause to limit the obstructing material to an object like a glass or plastic cover. Unlike the Florida statute, the general words in the section 3–413(b) do not follow the enumeration of particular classes of things, *i.e.*, the statute does not read “free from glass covers, plastic covers, or any other materials that would obstruct the visibility of the plate.” We note, the legislature often uses the phrase “including, but not limited to” to indicate the list following is illustrative rather than exhaustive. *People v Perry*, 224 Ill 2d 312, 330; 309 Ill Dec 330; 864 NE2d 196, 208 (2007). If “materials” is restricted to those materials attached to or affixed to the registration plate, as the plain language implies, then a glass or plastic cover is an illustrative example of impermissible materials. This interpretation comports with our review of the legislative history. [*Gaytan*, 372 Ill Dec at 484-486; 992 NE2d at 23-25.¹⁰]

The Illinois court referenced the Florida decision in *Harris v State*, 11 So 3d 462 (Fla Dist Ct App 2d Dist, 2009), which is also discussed by Wyoming’s *Parks* decision and Georgia’s *Worlds* decision. As observed in both *Parks* and *Worlds*, the Florida statute reviewed in *Harris* is clearly distinguishable from the statute under review in *Parks* and *Worlds*. The same can be

¹⁰ The Supreme Court of Illinois allowed an appeal from this holding, *People v Gaytan*, 374 Ill Dec 571; 996 NE2d 18; (2013), and it was on page 3 of the court’s docket for the September Term. http://www.state.il.us/Court/SupremeCourt/Docket/2014/09-14_Docket_Book.pdf.

said for the Michigan statute. The Florida Court of Appeals quoted the Florida statute as follows:

[A]ll letters, numerals, printing, writing, and other identification marks upon the plates regarding the word “Florida,” the registration decal, and the alphanumeric designation shall be clear and distinct and free from defacement, mutilation, grease, and *other obscuring matter*, so that they will be plainly visible and legible at all times 100 feet from the rear or front. [*Harris*, 11 So 3d at 463, quoting Fla Stat Ann § 316.605(1) (emphasis by the court).]

The *Harris* court relied on the doctrine of *ejusdem generis*, concluding:

the doctrine of *ejusdem generis* causes this language to apply only to matter on the tag itself. Pursuant to the “‘*ejusdem generis*’ canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.” *Black’s Law Dictionary* 514 (6th ed 1990). Here, a reading of the language in the statute shows that the license plate must be free from obscuring matter, be it grease, grime, or some other material placed over the plate. However, it would not include a trailer hitch that is properly attached to the truck’s bumper.

The dissent reads the “plainly visible” from 100 feet language as if such language was separate from “defacement, mutilation, grease, and other obscuring matter.” We believe that section 316.605(1), which is all one sentence and contains 196 words, is neither clear nor concise, and therefore, the doctrine of *ejusdem generis* is applicable. Further, the “plainly visible” language applies to license plates obstructed by defacement, mutilation, grease, or “other obscuring matter.” The sole issue is the meaning of “other obscuring matter.” This phrase, under the doctrine of *ejusdem generis* applies to obstructions “on” the tag such as grease, grime or rags. Matters external to the tag, such as trailer hitches, bicycle racks, handicap chairs, u-hauls, and the like are not covered by the statute. If the legislature chooses to bring such items external to the license plate within the statute, simple and concise language can accomplish the task. [*Harris*, 11 So 3d at 463-464. Footnote omitted.]

The Florida statute does require “defacement, mutilation, grease, and other obscuring matter”, which establishes that some substance on or defacing of the plate itself must be involved before a violation of the Florida statute is triggered.

The same is not true with Michigan’s statute. The plate must be affixed “in a place and position that is clearly visible.” There is no reference to “defacement, mutilation, grease, and

other obscuring matter[.]” In Michigan, if a motorist places aftermarket items on the back of a vehicle that renders the plate not “clearly visible”, the statute is violated. In *Dunbar*, the lead and concurring opinions solely considered the *third* sentence in MCL 257.225(2), establishing that they failed to consider this “clearly visible” language and, therefore, did not read the statute as a whole. Likewise, they failed to consider the first sentence in MCL 257.225(2) that requires the license plate to be “securely fastened in a horizontal position”, meaning that it has to be placed so it can be easily read as the license plate is designed to be read—horizontally—and “so as to prevent the plate from swinging”, meaning that it has to remain stationary so that it can be read.

Because Defendant violated the statute by allowing a trailer hitch ball to block from view a portion of his license plate, the stop of his pickup truck was valid. *Whren v United States*, 517 US 806, 809-810; 116 S Ct 1769; 135 L Ed 2d 89 (1996) (“the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred”).

II. **AN OBJECTIVELY REASONABLE MISTAKE OF FACT BY AN OFFICER AS TO WHETHER A VIOLATION OF LAW HAS OCCURRED SUPPORTS THE STOP OF A MOTOR VEHICLE AND, THEREFORE, WHERE THE TWO DEPUTIES IMPUTED THE WRONG NUMBER FROM DEFENDANT’S LICENSE PLATE INTO THE LAW ENFORCEMENT INFORMATION NETWORK, WHICH CAME BACK TO A DIFFERENT VEHICLE THAN THE ONE DEFENDANT WAS DRIVING, THE DEPUTIES HAD REASONABLE SUSPICION UPON WHICH TO JUSTIFY THE STOP OF DEFENDANT’S VEHICLE.**

A. Standard of review

A lower court’s factual findings following a suppression hearing are reviewed for clear error, but the trial court’s ultimate ruling is reviewed de novo. *People v John Lavell Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). “A finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite

and firm conviction that a mistake has been committed.” *Tuttle v Dep't of State Hwys*, 397 Mich 44, 46; 243 NW2d 244 (1976) (quotation marks and citation omitted).

B. Analysis of the issue

The Court of Appeals failed to consider the fact that Defendant’s vehicle was stopped because the license plate as read by the officers came back on the Law Enforcement Information Network (LEIN) for a 2007 Chevrolet Equinox rather than for an older 1990s model Ford Ranger pickup truck. Thus, the Court of Appeals failed to consider that a traffic stop based on a police officer’s incorrect but reasonable assessment of the facts does not violate the Fourth Amendment. See, e.g., *Brinegar v United States*, 338 US 160, 176; 69 S Ct 1302, 1311; 93 L Ed 1879 (1949) (“[b]ecause many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability”); *United States v Delfin-Colina*, 464 F3d 392, 398 (CA 3, 2006) (“mistakes of fact are rarely fatal to an officer’s reasonable, articulable belief that an individual was violating a traffic ordinance at the time of a stop”).

Accordingly, given that the trial court’s finding from looking at People’s motion exhibit 1 that, “clearly it’s either a 5 or 6 and the ball obscures the entire lower half of the digit” (M Tr, p 40), the deputies had a reasonable basis to input the numbers as they did based on what they could observe of Defendant’s license plate. Thus, when the LEIN reported that the license plate was attached to the wrong vehicle, the deputies had a reasonable, articulable belief that the driver of the truck was violating the traffic code at the time of the stop, rendering the stop valid under the Fourth Amendment.

III. **AN OBJECTIVELY REASONABLE MISTAKE OF LAW BY AN OFFICER AS TO WHETHER A VIOLATION OF LAW HAS OCCURRED SUPPORTS THE STOP OF A MOTOR VEHICLE AND, THEREFORE, WHERE THE TWO DEPUTIES BELIEVED THAT DEFENDANT’S TRAILER HITCH BALL RENDERED HIS PLATE NOT “CLEARLY VISIBLE” AS REQUIRED BY MCL 257.225(2), THE DEPUTIES HAD REASONABLE SUSPICION UPON WHICH TO JUSTIFY THE STOP OF DEFENDANT’S VEHICLE.**

A. Standard of review

See Argument II.A.

B. Analysis of the issue

On December 15, 2014, the United States Supreme Court affirmed the North Carolina Supreme Court’s decision in *State v Heien*, *supra*, in an 8-1 decision, holding that an objectively reasonable mistake of law can justify a stop vis-à-vis the Fourth Amendment and also upholding the North Carolina Supreme Court’s decision that the mistake of law in that case was objectively reasonable, stating in part:

The Fourth Amendment prohibits “unreasonable searches and seizures.” Under this standard, a search or seizure may be permissible even though the justification for the action includes a reasonable factual mistake. An officer might, for example, stop a motorist for traveling alone in a high-occupancy vehicle lane, only to discover upon approaching the car that two children are slumped over asleep in the back seat. The driver has not violated the law, but neither has the officer violated the Fourth Amendment.

But what if the police officer’s reasonable mistake is not one of fact but of law? In this case, an officer stopped a vehicle because one of its two brake lights was out, but a court later determined that a single working brake light was all the law required. The question presented is whether such a mistake of law can nonetheless give rise to the reasonable suspicion necessary to uphold the seizure under the Fourth Amendment. We hold that it can. Because the officer’s mistake about the brake-light law was reasonable, the stop in this case was lawful under the Fourth Amendment.

* * *

As the text indicates and we have repeatedly affirmed, “the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’” *Riley v California*, 573 US —, — (2014) (slip op, at 5) (some internal quotation marks omitted). 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.” *Brinegar v United States*, 338 US 160, 176; 69 S Ct 1302; 93 L Ed 1879 (1949). 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. See *Illinois v Rodriguez*, 497 US 177, 183-186; 110 S Ct 2793; 111 L Ed 2d 148 (1990). By the same token, if officers with probable cause to arrest a suspect mistakenly arrest an individual matching the suspect’s description, neither the seizure nor an accompanying search of the arrestee would be unlawful. See *Hill v California*, 401 US 797, 802-805; 91 S Ct 1106; 28 L Ed 2d 484 (1971). The limit is that “the mistakes must be those of reasonable men.” *Brinegar, supra*, at 176.

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.

* * *

Here we have little difficulty concluding that the officer’s error of law was reasonable. Although the North Carolina statute at issue refers to “a stop lamp,” suggesting the need for only a single working brake light, it also provides that “[t]he stop lamp may be incorporated into a unit with one or more *other* rear lamps.” N.C. Gen.Stat. Ann. § 20–129(g) (emphasis added). The use of “other” suggests to the everyday reader of English that a “stop lamp” is a type of “rear lamp.” And another subsection of the same provision requires that vehicles “have all originally equipped rear lamps or the equivalent in good working order,” § 20–129(d), arguably indicating that if a vehicle has multiple “stop lamp[s],” all must be functional.

The North Carolina Court of Appeals concluded that the “rear lamps” discussed in subsection (d) do not include brake lights, but, given the “other,” it would at least have been reasonable to think they did. Both the majority and the dissent in the North Carolina Supreme Court so concluded, and we agree. See 366

N.C., at 282–283, 737 S.E.2d, at 358–359; *id.*, at 283, 737 S.E.2d, at 359 (Hudson, J., dissenting) (calling the Court of Appeals’ decision “surprising”). This “stop lamp” provision, moreover, had never been previously construed by North Carolina’s appellate courts. See *id.*, at 283, 737 S.E.2d, at 359 (majority opinion). It was thus objectively reasonable for an officer in Sergeant Darisse’s position to think that Heien’s faulty right brake light was a violation of North Carolina law. And because the mistake of law was reasonable, there was reasonable suspicion justifying the stop. [*Heien*, 135 S Ct at 534, 536, 540.]

In the instant case, 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 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.

This statute had not been interpreted by any appellate court in this State when, on October 12, 2012, Muskegon County Sheriff’s Deputies James Ottinger and Jason Van Andel stopped Defendant’s older 1990s model Ford Ranger pickup truck in Muskegon Heights.

This stop occurred at approximately 1 a.m. (01/24/2013 Motion to Suppress [“M”] Tr, pp 6-8, 12-13, 22-23, 26.) The deputies were on Sixth Street at the intersection of Hackley and Sixth when they observed the pickup truck headed eastbound on Hackley. (M Tr, pp 7-8, 12, 29.) They turned left onto Hackley and followed the pickup truck, accelerating to catch up to it, and ran the license plate on the Law Enforcement Information Network (LEIN). (M Tr, pp 8, 13-14, 23.) Deputy Van Andel punched in the numbers on the plate, noting, however, that the first number was obstructed by the tow ball that was attached to the bumper. (M Tr, pp 8-9, 11, 15, 23, 25, 26.) At 1:03 a.m., Deputy Van Andel punched in the number “5” for the first number as a best guess as to what he and Deputy Ottinger could see. (M Tr, pp 8, 9, 23, 25, 28; People’s motion exhibit 4 [LEIN printout].) LEIN came back that the plate was registered to a 2007 Chevrolet Equinox rather than a Ford Ranger. (M Tr, pp 8, 15, 23-24, 28-29; People’s motion

exhibit 4 [LEIN printout].) Accordingly, the deputies stopped the pickup truck because it came back to a different vehicle and the plate was obstructed.¹¹ (M Tr, pp 9-10, 15, 16, 17-20, 23, 27.) After the stop, when approaching the vehicle, the license was observed and the first number on the plate was a “6” rather than a “5”. (M Tr, pp 9-10, 16, 23-24.) The trial court confirmed from looking at People’s motion exhibit 1 that, “clearly it’s either a 5 or 6 and the ball obscures the entire lower half of the digit.” (M Tr, p 40.)

Four months after this stop was made, the Court of Appeals issued its unpublished per curiam opinion in *Wilmot, supra* (Appendix C). The majority opinion of then-Chief Judge MURPHY and Judge DONOFRIO explained that, “[h]ere, we tend to believe ... 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.” *Id.*, slip op, p 6; 2013 WL 951109, * 5 (Appendix C).

In discussing the issue, Judge MURPHY and Judge DONOFRIO also viewed, favorably, the North Carolina Supreme Court’s decision in *State v Heien*, stating that “[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.” *Wilmot*, slip op, p 6; 2013 WL 951109, * 5 (Supp Appendix C).

In reviewing the statute, the majority opinion of Judge MURPHY and Judge DONOFRIO stated:

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

¹¹ The deputies were being proactive. (M Tr, pp 14, 27.) They ran a lot of plates that night. They thought it was improper, but, in any event, if it was proper and only obstructed, they would “tell the person that they needed an unobstructed plate.” (M Tr, pp 27, 29.)

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. [Wilmot, slip op, pp 3-4; 2013 WL 951109, * 3 (Appendix C). Emphasis supplied.]*

However, they ultimately found it “it unnecessary to resolve the dispute regarding the proper construction of § 225(2).” *Wilmot*, slip op, p 4; 2013 WL 951109, * 3 (Supp Appendix C). Instead, “[r]egardless ... whether MCL 257.225(2) was implicated under the circumstances presented ..., [they held] that there is no basis to invoke the exclusionary rule, as there is no evidence of misconduct by the officer.” *Wilmot*, slip op, p 5; 2013 WL 951109, * 4 (Supp Appendix C).

Judge GLEICHER’s dissent in *Wilmot*, on the other hand, focused solely on the third sentence of MCL 257.225(2), interpreting it as “requir[ing] 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*.” *Wilmot*, slip op, p 4; 2013 WL 951109, * 9 (Appendix C) (GLEICHER, J., dissenting [emphasis by Judge GLEICHER]).

A year and a half later, the Court of Appeals decided this case, *People v Dunbar*, and notwithstanding the fact that each judge on the *Dunbar* panel took a different view of the statute, the case was published.

Judge SHAPIRO found that the deputies had no legal basis to stop Defendant's pickup truck because the hitch ball obstruction did not violate the statute: "There is no evidence that *the plate* on defendant's truck was not maintained free of foreign materials. There is similarly no evidence that defendant's plate was dirty, rusted, defaced, scratched, snow-covered, or otherwise not 'maintained' in legible condition." *Dunbar*, 306 Mich App at 566 (SHAPIRO, J., opinion; emphasis by Judge SHAPIRO). Thus, because "the officers did not have grounds to believe that defendant was in violation of MCL 257.225(2)," Judge SHAPIRO voted to "reverse the trial court's denial of defendant's motion to suppress the" marijuana, cocaine, and handgun "seized during an automobile search conducted in violation of the Fourth Amendment." *Id.*

Judge O'CONNELL, on the other hand, did not conclude that the deputies were wrong in their view of the statute, but rather, he found the third sentence of the statute was "ambiguous", justifying a limiting construction:

I concur with the result reached by the lead opinion. I write separately to state that MCL 257.225(2) is ambiguous. In fact, the statute casts a net so wide that it could be construed to make ordinary car equipment illegal, including equipment like bicycle carriers, trailers, and trailer hitches.... Accordingly, I would interpret MCL 257.225(2) to require only that the *license plate itself* be maintained free from materials that obscure the registration information and that the *plate itself* be in a clearly legible condition....

[Because] there is no evidence of any obstruction affixed to defendant's license plate[,] ... there is no evidence that defendant was in violation of MCL 257.225(2), and the circuit court decision must be reversed. [*Dunbar*, 306 Mich App at 566-567, 568 (O'CONNELL, J., concurring; emphasis by Judge O'CONNELL).]

Thus, it was only because of a finding of ambiguity and the limited construction Judge O'CONNELL placed on the third sentence of MCL 257.225(2) as a consequence that caused him to vote to reverse the trial court's order that had denied Defendant's motion to suppress the marijuana, cocaine, and handgun evidence. However, because Judge O'CONNELL agrees that the

statute could be interpreted as the deputies had understood it when they stopped Defendant's pickup truck, it is fair to say that if he were to apply the mistake-of-law analysis now established by *Heien v North Carolina*, he would agree that the deputies' view of the law in the field was objectively reasonable, and, therefore the stop was reasonable vis-à-vis the Fourth Amendment.

Finally, Judge METER in *Dunbar* dissented for the reason that the lead and concurring opinions of Judges SHAPIRO and O'CONNELL that "indicate that the pertinent phrase from MCL 257.225(2)—"[t]he plate shall be maintained free from foreign materials ... and in a clearly legible condition"—concerns only items that touch the plate itself" "is not a reasonable reading of the statute":

the lead and concurring opinions appear to indicate that the pertinent phrase from MCL 257.225(2)—"[t]he plate shall be maintained free from foreign materials ... and in a clearly legible condition"—concerns only items that touch the plate itself. 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 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 that cannot be read because of obstructing materials is not being "kept" in "a clearly legible condition." [*Dunbar*, 306 Mich App at 570 (METER, J., dissenting).]

Although the correct interpretation of MCL 257.225(2) is raised in Argument I, *supra*, even if this Court disagrees with that interpretation, the Court of Appeals should be reversed because the deputies' understanding of the statute was *objectively reasonable* when they decided to stop Defendant's pickup truck, rendering the stop valid under the Fourth Amendment.

RELIEF REQUESTED

For the foregoing reasons, the Court of Appeals should be reversed and the matter remanded for trial.

Respectfully submitted,
MUSKEGON COUNTY PROSECUTOR
Attorney for Plaintiff-Appellant

/s/ Charles F. Justian

Dated: May 18, 2015

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Court of Appeals of Michigan.
 PEOPLE
 v.
 DUNBAR.

Docket No. 314877.

Submitted April 1, 2014, at Grand Rapids.
 Decided Sept. 9, 2014, at 9:05 a.m. Leave
 to appeal sought.

Background: Defendant appealed from
 decision of the Muskegon Circuit, [Timothy
 G. Hicks](#), J., court denying his motion to
 suppress.

Holding: The Court of Appeals, [Shapiro](#), J.
 held that officers did not have grounds to
 believe that defendant was in violation of
 license plate statute, and thus, traffic stop
 was unlawful.

Reversed.

[O'Connell](#), J., filed concurring opinion.

[Meter](#), P.J., filed dissenting opinion.

West Headnotes

[1] Arrest 35 ↪60.3(1)**35 Arrest**

35II On Criminal Charges

35k60.3 Motor Vehicle Stops

35k60.3(1) k. In general. [Most](#)

Cited Cases

Automobile stop is subject to the con-
 stitutional imperative that it not be unrea-
 sonable under the circumstances.

[2] Automobiles 48A ↪349(2.1)**48A Automobiles**

48AVII Offenses

48AVII(B) Prosecution

**48Ak349 Arrest, Stop, or Inquiry;
 Bail or Deposit**

48Ak349(2) Grounds

**48Ak349(2.1) k. In gener-
 al. [Most Cited Cases](#)**

Decision to stop an automobile is rea-
 sonable where the police have probable
 cause to believe that a traffic violation has
 occurred.

[3] Automobiles 48A ↪349(5.1)**48A Automobiles**

48AVII Offenses

48AVII(B) Prosecution

**48Ak349 Arrest, Stop, or Inquiry;
 Bail or Deposit**

48Ak349(2) Grounds

**48Ak349(5.1) k. License
 plates and registration stickers, in general.**

[Most Cited Cases](#)

Officers did not have grounds to be-
 lieve that defendant was in violation of
 statute, providing that license plate shall be
 maintained free from foreign materials that
 obscure or partially obscure the registration
 information and in clearly legible condi-
 tion, due to the presence of trailer towing
 ball attached to the rear bumper, and thus,
 traffic stop was unlawful; when the officers
 initiated traffic stop they had no basis to
 believe that defendant was engaged in any
 criminal conduct, officers' sole basis for
 the stop was their conclusion that defend-
 ant was violating statute, statute made no
 reference to trailer hitches, towing balls, or
 other commonly used towing equipment
 that might partially obscure the view of an
 otherwise legible plate, and defendant's li-
 cense plate was well lit and in essentially
 pristine condition. [M.C.L.A. § 257.225\(2\)](#).

APPENDIX A

[4] **Automobiles 48A** 🔑 **326**

48A Automobiles

48AVII Offenses

48AVII(A) In General

48Ak326 k. License and registra-

tion. Most Cited Cases

Mere presence of a towing ball is not a violation of statute providing that license plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition; statute makes no reference to trailer hitches, towing balls, or other commonly used towing equipment that might partially obscure the view of an otherwise legible plate. [M.C.L.A. § 257.225\(2\)](#).

****281** [Bill Schuette](#), Attorney General, [Aaron D. Lindstrom](#), Solicitor General, [D.J. Hilson](#), Prosecuting Attorney, and [Charles F. Justian](#), Chief Appellate Attorney, for the people.

Michael L. Oakes, for defendant.

Before: [METER](#), P.J., and [O'CONNELL](#) and [SHAPIRO](#), JJ.

SHAPIRO, J.

***564** This case arises out of an October 12, 2012 traffic stop during which police officers discovered contraband in defendant's pickup truck. Defendant moved to suppress the evidence of the discovered contraband on the grounds that the traffic stop violated his rights under the Fourth Amendment of the United States Constitution and [Article 1, § 11 of the Michigan Constitution](#). The trial court denied the motion, and we granted defendant's application for leave to appeal. Because no traffic violation had occurred or was occurring, we reverse. ^{FN1}

FN1. We review de novo a trial court's ruling on a motion to suppress. [People v. Davis](#), 250 Mich.App. 357, 362, 649 N.W.2d 94 (2002).

[1][2] The Fourth Amendment guarantees “[t]he right of the people ... against unreasonable searches and seizures....” [U.S. Const., Am. IV](#). “An automobile stop is ... subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.... [T]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” [Whren v. United States](#), 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996); see also [People v. Kazmierczak](#), 461 Mich. 411, 420 n. 8, 605 N.W.2d 667 (2000); [People v. Davis](#), 250 Mich.App. 357, 363–364, 649 N.W.2d 94 (2002).

[3] The prosecution concedes that when the officers initiated the traffic stop they had no basis to believe ***565** that defendant ****282** was engaged in any criminal conduct. In addition, the officers testified that defendant was driving safely, they did not see him violate any traffic laws governing vehicle operation, and he did not engage in any suspicious behavior. They testified that the sole basis for the stop was their conclusion that defendant was violating a traffic law, [MCL 257.225\(2\)](#), which provides in pertinent part 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.” ^{FN2} We conclude that the circumstances observed by the officers did not constitute a violation of this statute.

FN2. As amended by 2014 PA 26. [MCL 257.225\(a\)](#) as amended by 1995 PA 129 was the version in ef-

fect at the time of the traffic stop, but it had only slight grammatical differences that do not affect the analysis.

As noted, the officers testified that defendant was driving safely and lawfully when they stopped him. They explained that when they have no other matters to attend to on patrol, as a matter of course they randomly enter the license plate numbers of cars they are following, a practice that sometimes reveals that the driver is subject to an outstanding warrant. According to the officers' testimony, they had difficulty reading one of the seven characters on the pickup's license plate due to the presence of a trailer towing ball attached to the rear bumper. One of the officers testified that he was able to determine, while driving behind defendant, that the license plate number was either CHS 6818 or CHS 5818. It was, in fact, CHS 6818.

[4] Common experience reveals that thousands of vehicles in Michigan are equipped with trailer hitches and towing balls. The prosecution argues, however, that the presence of that equipment behind a license plate is a violation of [MCL 257.225\(2\)](#) and, therefore, the officers *566 had proper grounds to conclude that a traffic law was being violated. However, the mere presence of a towing ball is not a violation of [MCL 257.225\(2\)](#). The statute 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.” (Emphasis added.) The statute makes no reference to trailer hitches, towing balls, or other commonly used towing equipment that might partially obscure the view of an otherwise legible plate. There is no evidence that *the plate* on defendant's truck was

not maintained free of foreign materials. There is similarly no evidence that defendant's plate was dirty, rusted, defaced, scratched, snow-covered, or otherwise not “maintained” in legible condition. The plate was well lit and in essentially pristine condition. Moreover, the officers agreed that the plate was legible, a fact confirmed by the photos taken at the scene.

In this case, the officers did not have grounds to believe that defendant was in violation of [MCL 257.225\(2\)](#) and they, as well as the prosecution, agree there was no other basis for the stop. Accordingly, we reverse the trial court's denial of defendant's motion to suppress the contraband seized during an automobile search conducted in violation of the Fourth Amendment. *Whren*, 517 U.S. at 809–810, 116 S.Ct. 1769.

Reversed. We do not retain jurisdiction.

O'CONNELL, J. (concurring).

I concur with the result reached by the lead opinion. I write separately to state that [MCL 257.225\(2\)](#) is ambiguous. In fact, the statute casts a net so wide that it **283 could be construed to make ordinary car equipment illegal, including equipment like bicycle carriers, trailers, and trailer hitches. This broad construction would render the statute unconstitutionally*567 vague for failure to provide fair notice of the conduct the statute purports to proscribe. See *People v. Hrlic*, 277 Mich.App. 260, 263, 744 N.W.2d 221 (2007). However, this Court must construe statutes as constitutional if possible and must examine statutes in light of the particular facts at issue. *People v. Harris*, 495 Mich. 120, 134, 845 N.W.2d 477 (2014). Accordingly, I would interpret [MCL 257.225\(2\)](#) to require only that the *license plate itself* be maintained free from materials that obscure the regis-

tration information and that the *plate itself* be in a clearly legible condition.

This interpretation is consistent with the fair and natural import of the provisions in [MCL 257.225\(2\)](#) in view of the statute's subject matter. See *People v. McGraw*, 484 Mich. 120, 124, 771 N.W.2d 655 (2009) (stating that provisions should be construed by considering the subject matter of the statute). The subject matter of [MCL 257.225](#) is the physical location and condition of license plates: Subsection (1) addresses the license plate's location on a vehicle, Subsection (3) addresses the colors used on license plates and expiration tabs, and Subsections (4) and (5) address name plates, insignias, and advertising devices that could obscure the registration information on license plates. [MCL 257.225\(1\), \(3\), \(4\), and \(5\)](#).^{FN1} The statute does not address trailer hitches or other types of car equipment. Given the limited subject matter of the statute, this Court should interpret Subsection (2) of the statute to prohibit physical obstructions affixed to license plates. *568 See *People v. Gaytan*, 2013 IL App (4th) 120217, ¶¶ 38–40, 372 Ill.Dec. 478, 992 N.E.2d 17 (2013), lv. granted 374 Ill.Dec. 571, 996 N.E.2d 18 (Ill.2013).

FN1. After defendant's arrest in this case, the Legislature amended [MCL 257.225](#) to add a subsection addressing license plates on historic military vehicles. [MCL 257.225\(6\)](#), as amended by 2014 PA 26. The amendment also made minor punctuation and grammatical changes in Subsection (2). [MCL 257.225\(2\)](#), as amended by 2014 PA 26. The changes are not relevant to the analysis in this case.

In this case, there is no evidence of any obstruction affixed to defendant's license

plate. Consequently, there is no evidence that defendant was in violation of [MCL 257.225\(2\)](#), and the circuit court decision must be reversed.

METER, P.J. (dissenting).

For the reasons set forth below, I respectfully dissent. I would affirm the denial of defendant's motion to suppress the evidence.

This case arises out of a traffic stop of defendant's vehicle. On October 12, 2012, at approximately 1:00 a.m., deputies of the Muskegon County Sheriff's Department stopped defendant's truck on the basis of an obstructed license plate. After stopping defendant's vehicle, deputies found cocaine, marijuana, and a handgun.

Defendant argues that the deputies did not have a lawful basis for stopping his truck and that his motion to suppress should have been granted. "A trial court's ruling on a motion to suppress evidence is reviewed for clear error, but its conclusions of law are reviewed de novo." *People v. Unger*, 278 Mich.App. 210, 243, 749 N.W.2d 272 (2008). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *People v. Malone*, 287 Mich.App. 648, 663, 792 N.W.2d 7 (2010) (citation and quotation marks omitted). If the trial court was in a superior **284 position to assess the evidence, we will give deference to the trial court's resolution of factual issues, especially when it involved the credibility of witnesses. [MCR 2.613\(C\)](#); *People v. Farrow*, 461 Mich. 202, 209, 600 N.W.2d 634 (1999).

*569 The lawfulness of a search or seizure depends upon its reasonableness. See *Virginia v. Moore*, 553 U.S. 164, 171,

128 S.Ct. 1598, 170 L.Ed.2d 559 (2008). “In order to effectuate a valid traffic stop, a police officer must have an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law.” *People v. Hyde*, 285 Mich.App. 428, 436, 775 N.W.2d 833 (2009) (citation and quotation marks omitted). MCL 257.225(2) 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.”^{FN1} A violation of MCL 257.225(2) constitutes a civil infraction. MCL 257.225(7). “A police officer who witnesses a civil infraction may stop and temporarily detain the offender...” *People v. Chapo*, 283 Mich.App. 360, 366, 770 N.W.2d 68 (2009).

FN1. MCL 257.225 was amended by 2014 PA 26 after the incident in this case, but the changes to the pertinent subsections are immaterial for purposes of this appeal.

The record shows that the trial court did not clearly err by concluding that defendant's license plate was obstructed by a trailer hitch. At the hearing, the deputies testified that they could not see the entire license plate number because it was obstructed by a trailer hitch. The trial court determined that the deputies were credible, which is a determination that we will not disturb. See MCR 2.613(C) and *Farrow*, 461 Mich. at 209, 600 N.W.2d 634. Additionally, the trial court's finding is supported by pictures taken at the scene, which show that defendant's license plate was obstructed.

Further, because police officers may stop and detain an individual who commits a civil infraction, *Chapo*, 283 Mich.App. at 366, 770 N.W.2d 68, the trial court cor-

rectly determined that the obstruction of defendant's license plate number*570 provided a lawful basis for the traffic stop pursuant to MCL 257.225(2) and that suppression of the drugs and handgun seized during the traffic stop was not required.

It is simply unreasonable to expect police officers to essentially “weave” within a lane in order to view the entire license plate of a vehicle.^{FN2} Moreover, the lead and concurring opinions appear to indicate that the pertinent phrase from MCL 257.225(2) — “[t]he plate shall be maintained free from foreign materials ... and in a clearly legible condition” — concerns only items that touch the plate itself. 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 cannot be read because of obstructing materials is not being “kept” in “a clearly legible condition.”^{FN3}

FN2. Nor should officers be required to enter multiple possible numbers into their computers to try to ascertain the correct license plate number for a vehicle.

FN3. Because it is not in issue here, I do not reach the question regarding whether a properly licensed, attached trailer that obscures a vehicle's license plate would be grounds for a traffic stop. As noted in the concurring opinion, this Court must find a statute constitutional unless its unconstitutionality

is clearly apparent and, as long as First Amendment concerns are not present in conjunction with a vagueness issue, this Court must examine a statute in light of the particular facts at issue. *People v. Harris*, 495 Mich. 120, 134, 845 N.W.2d 477 (2014); *People v. Williams*, 142 Mich.App. 611, 613, 370 N.W.2d 7 (1985). I conclude that MCL 257.225(2) is constitutional as applied to the present facts and also conclude that it provided a valid basis for the traffic stop.

I would affirm.

Mich.App.,2014.
People v. Dunbar
306 Mich.App. 562, 857 N.W.2d 280

END OF DOCUMENT

STATE OF MICHIGAN
IN THE 14TH CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

HON. TIMOTHY G. HICKS

v

File No. 12-62736-FH

CHARLES ALMANDO-MAURICE DUNBAR,
Defendant.

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OPINION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

INTRODUCTION

Defendant filed a motion to suppress evidence obtained through a traffic stop. The court conducted an evidentiary hearing on January 24, and this opinion follows.

FACTS

Muskegon County Sheriff Deputies James "Jamie" Ottinger and Jason Van Andel were the only witnesses. The exhibits, plaintiff's 1 through 5 and defendant's A and B, were admitted by stipulation.

Ottinger and Van Andel were on routine patrol, in a car, at about 1:00 A.M. on October 12. Ottinger was driving. They were southbound on a city street in Muskegon Heights, stopped at an intersection.

Defendant's Ford Ranger pick-up passed before them, eastbound on Hackley

Street. Ottinger turned left and started following him. The deputies offered no testimony about the driver's race, age, or sex.

The deputies agreed that Dunbar was not breaking any laws in the way in which he was driving. They were simply doing random, suspicionless checks on license plates. They both testified the "tow ball" on defendant's bumper obscured their view of the middle character on the plate. Exhibits 1 and 2, particularly, support this conclusion. The other characters were visible.

Van Andel testified plausibly that he could not determine whether the plate read "CHS 6818" (the correct number) or "CHS 5818." He punched the latter—the wrong one—into his computer. It must be noted that he meant to punch "5818"; i.e., he entered the number that he intended to enter.

The number came back registered to a 2007 Chevrolet Equinox in Lansing, not a Ford Ranger. At that point, the deputies activated their spotlight and overhead lights, and defendant promptly and legally pulled over.

As the deputies walked toward the vehicle, they saw that the correct number was CHS 6818. However, they spoke with the defendant anyway, and apparently smelled marijuana, which led to the chain of events resulting in this prosecution. Defendant has not challenged the "smell-search" elements of the case.

ANALYSIS AND DECISION

Caucasian police officers stopping African-Americans for purported pretextual reasons is one of our society's flash points. However, defendant does not present this as an equal protection argument.¹ The court concludes that this was a lawful stop and search

¹ "We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment." *Whren v*

under the Fourth Amendment, and denies the motion, under any one of several analyses.

First, the prosecutor argues that the obstructed plate, in and of itself, validates all the actions which followed. He says the court's analysis can end there—nothing else need be demonstrated.

Defendant argues that this makes any trailer hitch or tow ball "fair game" for a stop and search. He presents exhibits A and B in support. There is some support for this view in exhibit 5, the cruiser video. The cruiser video shows that, when the officers "lit up" defendant's truck, no detail on the plate—state, color, numbers—is visible. How, then, can the deputies claim they stopped the defendant because of an obstructed plate?

However, plaintiff's exhibits 1 and 3 demonstrate that the view of the plate was obstructed. When questioned about exhibit 5, the deputies said that their "live" view of the plate was better than the video camera perspective on exhibit 5. This is plausible.

Once there is a valid, objective basis for making a stop, the officers' subjective motives² are irrelevant. *Whren v United States*, 517 US 806; 116 S Ct 1769; 135 L Ed 2d 89 (1996). An obstructed plate is a valid basis. MCL 257.225. It is not unusual for individuals to conceal or alter their plates for various, usually untoward, reasons.

Second. The deputies' random check of license plates violates no rights of the defendant. *People v Jones*, 260 Mich App 424, 427–28; 678 NW2d 627 (2004). When the number entered into the computer did not match the vehicle before them, they *would be shirking their duties* if they did not check to verify whether the vehicle was involved in

United States, 517 US 806, 813; 116 S Ct 1769; 135 L Ed 2d 89 (1996).

² This in no way suggests that these deputies had impure motives. In fact, their testimony suggests the opposite. They did not stop defendant simply because of the obstructed plate. They took the additional step of waiting until they had "run" the plate and seen the (ostensible) discrepancy in numbers. If they had mixed motives, they would not have waited. They would have stopped defendant as soon as they saw the plate.

nefarious activity. There is no violation there.

Third, defense counsel argues that the deputies violated defendant's rights in this way: realizing there was ambiguity about the first number (5 or 6?), they should have either moved their car so they could make out the missing number, or entered **both** numbers into the computer even before they turned on their "overheads." They could have done that, but the law does not require this. "The reasonableness of the officer's decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques." *United States v Sokolow*, 490 US 1, 11; 109 S Ct 1581; 104 L Ed 2d 1 (1989).

This court also cites, as persuasive authority, *In re Raymond C*, 45 Cal 4th 303; 196 P3d 810; 86 Cal Rptr 3d 110 (2008). In that case, the defendant was driving lawfully with a temporary permit affixed to the front windshield. The officer, driving behind defendant, saw that there was no license plate and no temporary permit in the rear window, and he could not see the permit on the front windshield. The California Supreme Court held that the officer could pull the defendant over without first maneuvering his car to get a better view of the front windshield.

There is a fourth and final aspect which merits mention. The court asked defense counsel about this, in some detail, during oral argument. He essentially declined to argue this point to focus on others. However, to be complete, the court will address it.

The deputies testified that they recognized the inaccuracy when they walked up to the vehicle. In other words, they could see that the correct plate number was 6818, not 5818, before they actually reached the car. Did their legal basis for stopping Dunbar thus "expire," requiring them to return to their car and enter the new number or otherwise evaluate the situation?

The answer is no. This judge had a very similar situation in *People v Aaron Stuckey*,

unpublished opinion per curiam of the Court of Appeals, issued September 21, 1999 (Docket No. 214551).

A veteran Muskegon Township officer stopped a vehicle he believed was driven by Annette Stuckey, who he knew had outstanding warrants. As he approached, he could clearly identify that a male was driving the vehicle. Nonetheless, he approached the driver, triggering a series of events leading to a cocaine conviction. Defendant unsuccessfully argued that any lawful rationale for the stop had "expired" when the officer realized that Annette Stuckey was not driving the car.

This case is like *Stuckey*. Because the deputies' stop was lawful in the first instance, they were entitled to conduct additional inquires. The legal basis for the stop did not evaporate when they realized they had entered the incorrect license number.

This court concludes that, for all of the preceding reasons, the officers' stop of defendant was valid under the Fourth Amendment. Defendant's motion to suppress is respectfully DENIED.

IT IS SO ORDERED.

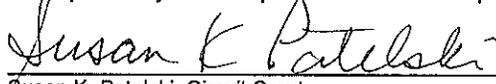
Date: January 30, 2013



Timothy G. Hicks, P35198
Circuit Judge

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of January, 2013, I personally mailed copies of this order to the parties above named at their respective addresses, by ordinary mail.



Susan K. Patelski, Circuit Court
Legal & Scheduling Secretary

Not Reported in N.W.2d, 2013 WL 951109 (Mich.App.)
(Cite as: 2013 WL 951109 (Mich.App.))

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.
PEOPLE OF CANTON TOWNSHIP,
Plaintiff–Appellant,
v.
Jamie Michael WILMOT, Defendant–Appellee.

Docket No. 305308.
March 7, 2013.

Wayne Circuit Court; LC No. 11–002563–AR.

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

PER CURIAM.

*1 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

APPENDIX C

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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.

*2 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 N.W.2d 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 N.W.2d 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, 696 N.W.2d 636. 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 N.W.2d 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, 696 N.W.2d 636.

*3 “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 U.S. 806, 809–810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). A traffic stop of a motor vehicle

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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 N.W.2d 94 (2002); *People v. Williams*, 236 Mich.App. 610, 612, 601 N.W.2d 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.^{FN1} However, for the reasons discussed below, we ultimately find it unnecessary to resolve the dispute regarding the proper construction of § 225(2).

FN1. 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 n4. 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.

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*4 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. ^{FN2}

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 N.W.2d 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 suspicion to believe that the license plate was not clearly visible because of an obstruction caused by the hitch ball. ^{FN3}

^{FN2}. 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.

^{FN3}. 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.

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 U.S. 340, 347, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987). In *Herring v. United States*, 555 U.S. 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:

*5 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.

...

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.^{FN4} 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), slip op at 4–9; see also *Krull*, 480 U.S. 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 U.S. 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 F.3d 767, 770 (C.A.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. Ham-mang*, 249 Ga.App. 811, 811, 549 S.E.2d 440 (2001)(an officer's actions are not rendered improper by a later legal determination that a statute was not violated by the defendant 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 So.2d 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 S.W.2d 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 S.E.2d 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”).^{FN5}

FN4. 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*.

FN5. 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** 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.^{FN6} Moreover, assuming a lack of probable cause or 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.

FN6. 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.

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.

*7 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, 696 N.W.2d 636. 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 inaccur-

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ate 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.

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 testi-

mony, "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.

*8 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.^{FN1} 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."

FN1. 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.”

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?

[*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.

* * *

*9 *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, commenting:

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.” ^{FN2} 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.

FN2. An “ambiguous” statute must be strictly construed under the rule of lenity. [People v. Gilbert](#), 414 Mich. 191, 211, 324 N.W.2d 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 U.S. 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.

***10** 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 N.W.2d 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 N.W.2d 307 (2000); see also [Pasha](#), 466 Mich. at 382, 645 N.W.2d 275 (“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 N.W.2d 219 (2002) (quotation marks and citations omitted).] 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 N.W.2d 849 (2008). We endeavor to avoid interpreting a statute in a manner that renders any statutory language nugatory or surplusage. *Id.*

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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 N.W.2d 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.^{FN3}

FN3. 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.

*11 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” 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 N.W.2d 114 (2009); *People v. Cummings*, 139 Mich.App. 286, 293–294, 362 N.W.2d 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 N.W.2d 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.^{FN4}

FN4. 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.

C. THE OFFICER'S GOOD FAITH

*12 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.

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 U.S. 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 U.S. 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 U.S. 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 U.S. 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 U.S. 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 U.S. 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?

*13 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 F.3d 421, 423 (C.A.5, 2002), superseded in part by statute on other grounds as noted in *United States v. Contreras–Trevino*, 448 F.3d 821, 823 (C.A.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 F.3d 1092 (C.A.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

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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 F.3d 958, 961 (C.A.7, 2006) (holding that "a police officer's mistake of law cannot support probable cause to conduct a stop"); *United States v. Tibbetts*, 396 F.3d 1132, 1138 (C.A.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 F.3d 1139, 1144 (C.A.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 F.3d 1271, 1279 (C.A.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").

*14 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 U.S. 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 U.S. 340, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987); reliance on clerical errors made by court employees, *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995); and objectively reasonable reliance on binding appellate precedent. *Davis v. United States*, —U.S.—, 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.^{FN5}

FN5. 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.

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 F.3d 282, 289 (C.A.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

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hitch. Respectfully, I dissent.

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United States District Court, E.D. Tennessee.

UNITED STATES of America

v.

Stacey Oliver RATCLIFF.

No. 1:06-cr-55.

Sept. 25, 2006.

[Steven S. Neff](#), U.S. Department of Justice, Chattanooga, TN, for United States of America.

[Jes Beard](#), Chattanooga, TN, for Stacey Oliver Ratcliff.

MEMORANDUM AND ORDER

[HARRY S. MATTICE, JR.](#), District Judge.

*1 Before the Court is Defendant Stacey Ratcliff's Motion to Suppress Because of Stop [Court Doc. No. 9]. In that motion, Defendant Ratcliff seeks to suppress the evidence obtained during a stop of his vehicle on November 5, 2005, on the grounds that: (1) the arresting officer lacked a reasonably articulable suspicion justifying the stop under [Terry v. Ohio](#), 392 U.S. 1, 27, 88 S.Ct. 1868, 1883 (1968) and (2) the arresting officer lacked probable cause for the arrest. *Id.* After considering the evidence offered at the evidentiary hearing, the arguments of counsel and other materials submitted in connection with Defendant Ratcliff's Motion, and for the reasons set forth herein, the Court has determined that said Motion will be **DENIED**.

I. RELEVANT FACTS

An evidentiary hearing was held before

the undersigned on Monday, August 14, 2006. Defendant was represented by Attorney Jes Beard. Assistant United States Attorney Steven Neff represented the Government. The only witness testifying at the hearing was Patrolman Larry Posey of the Hamilton County Sheriff's Department. Officer Posey testified as follows.

On the evening of November 5, 2005, at about 8:00 p.m., Officer Posey was driving northbound in the 10900 block of Highway 58 in Hamilton County, Tennessee. At about that time a black 1988 Chevy S-10 pick-up truck passed Officer Posey going north; he immediately fell in behind and began following it. Officer Posey tried to read the registration tag on the truck in order to run a routine check on the status of the tag and the owner. The running of such a routine check is a normal part of Officer Posey's duties.

Due to the interposition of a trailer hitch attached to the rear bumper of the pick-up truck between the tag and Officer Posey's line of vision, Officer Posey was unable to read the first numeral of the tag. As a result, he was unable to provide the necessary information to the radio dispatcher to permit the dispatcher to run a computer check of the tag.

Eventually, by maneuvering slightly to his left and thereby changing his line of sight, Officer Posey was able to make out the entire sequence of letters and numerals on the license tag and was able to run the number through his radio dispatch system. Officer Posey then learned that the license tag was registered to one Stacey Ratcliff. Another Sheriff's deputy who had been listening to the radio traffic, Officer Giennapp, radioed in that Stacey Ratcliff's

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driver's license might be revoked. At that point, the dispatcher notified Officer Posey via radio that Stacey Ratcliff's driver's license was valid but expired.

In the course of the radio traffic occurring before Officer Posey stopped the Chevy pick-up truck, there was discussion to the effect that there were two Stacey Ratcliffs known to the Hamilton County Sheriff's Department, a father and son. The son was born in 1969, but Officer Posey believed the driver of the Chevy pick-up truck was the father, who was born in 1946. It was the father's license that the dispatcher had indicated was expired.

*2 At this point Officer Posey decided to pull over the Chevy pick-up truck in the 12800 block of Highway 58 (somewhere between approximately one and one half and two miles beyond where Officer Posey had initially sighted Defendant's vehicle) based on probable cause for two separate traffic violations. The first violation related to the fact that a portion of the pick-up truck's license tag had been obscured by the trailer hitch attached to the rear bumper of the truck, thus rendering the tag not clearly visible as required by statute. The second violation was based on the information that the driver's license had expired.

Once the pick-up truck was stopped on the side of Highway 58, Officer Posey walked to the vehicle and asked the driver if he knew that his driver's license was expired. The driver advised that his license was not expired and handed Officer Posey a valid, current license. Officer Posey also asked the Defendant to provide him with evidence of financial responsibility for operation of a motor vehicle as required by Tennessee law, but the Defendant was unable to do so. While standing at the driver's side window of Defendant's vehicle, Of-

ficer Posey observed in plain view an open 12-ounce can of Busch beer sitting in the floor board, also a violation of Tennessee law.

Officer Posey then returned to his patrol car and ran through the dispatch check system the driver's license which had been handed to him by Defendant Ratcliff. He also radioed for another patrolman from the Meigs County, Tennessee Sheriff's Department to come to the scene to back him up. Shortly thereafter, Officer Posey learned that the license which the Defendant had handed him was indeed valid, but indicated a different residence address from the license which the dispatcher had previously informed him was expired. It was later determined that there were duplicate records for two different driver's licenses in Defendant's name in the computer records system accessible by the Hamilton County Sheriff's Department, listing two different residence addresses. This duplication and difference accounted for the earlier mistaken indication regarding the expired status of the Defendant's driver's license.

Once the back-up officer from the Meigs County Sheriff's Department arrived on the scene, Officer Posey walked back to the Defendant's vehicle and asked if he (Officer Posey) could search the vehicle, and the Defendant gave his oral consent. Upon receiving such consent, Officer Posey asked the Defendant to step out of his car and go stand by the Sheriff's patrol car.

Officer Posey then proceeded to search the Defendant's vehicle. In the course of the search he found a loaded Francadia POR .45 caliber pistol under the driver's seat. The gun was in a holster which also held two additional loaded magazines. Officer Posey testified that he had prior

knowledge that the Defendant was a convicted felon and therefore that his possession of a firearm and ammunition would be a violation of state and federal law. More specifically, Officer Posey testified that he had had at least one earlier encounter with the Defendant, and knew that he had been engaged in drug trafficking, and had been previously convicted of murder, although such conviction had been overturned on appeal. At that point, Officer Posey arrested the defendant and placed him in custody.

*3 Officer Posey eventually charged the Defendant with the criminal offenses of unlawful possession and/or carrying of a weapon and violation of the Tennessee open container law. In addition, Officer Posey cited the Defendant with the traffic offenses of improper display of a vehicle license tag and violation of Tennessee's financial responsibility law.

On cross examination, and based on a photograph taken of the rear of the Chevy pick-up truck in question subsequent to the events of November 5, 2005, defense counsel attempted to demonstrate that the trailer hitch could not have obscured a numeral on the Defendant's license tag in the manner described by Officer Posey. Notwithstanding such cross examination, Officer Posey persisted in his claim that at the time the events took place, he was unable to ascertain the first numeral on the license tag due to the interposition of the trailer hitch between his line of sight and that numeral. Officer Posey insisted that the photograph depicted a different angle of view from that which had been available to him on the evening in question.

Defense counsel also attempted to suggest that Officer Posey could not have known, based on the information available to him at the time that he made the stop,

that it was the Defendant-the individual with respect to which he had received information regarding an expired driver's license-who was actually driving the vehicle on the evening in question. In response, Officer Posey stated that since the vehicle in question was registered to the Defendant, he logically surmised that it was the Defendant who was driving.

The Court found Officer Posey to be a credible witness.

II. ANALYSIS

In his instant motion, Defendant Ratcliff contends that Officer Posey lacked a reasonably articulable suspicion justifying the stop of Defendant's vehicle and lacked probable cause for Defendant's arrest. In essence, Defendant argues that the reasons given by Officer Posey for both the stop and his arrest were pretextual. Defendant argues that the real reason for both the stop and the arrest was Officer Posey's knowledge that the Defendant had been previously convicted of certain crimes and that Officer Posey was looking for any reason to stop the Defendant "even if he had to make it up."

The Government, on the other hand, contends that Officer Posey had at least reasonable suspicion, and most likely probable cause, to stop the Defendant's vehicle on the evening in question, based on Officer Posey's inability to clearly discern all numerals on the Defendant's license tag, as well as upon Officer Posey's good faith belief, at the time of making the stop, that the Defendant was driving on an expired driver's license, albeit it was later shown that Officer Posey's belief in this respect was incorrect. The Court will address in turn each of the proffered grounds for Officer Posey's stop.

Before doing so, however, the Court will determine the appropriate standard against which it will judge Officer Posey's determinations. The U.S. Court of Appeals for the Sixth Circuit announced the test for determining when a traffic stop should be deemed unlawfully pretextual in *United States v. Ferguson*, 8 F.3d 385 (6th Cir.1993). In that case, as in the one at bar, one of the issues was whether the police officer had probable cause to stop the subject vehicle due to the invisibility of the license plate. In *Ferguson*, the Sixth Circuit, in upholding the search in question, announced that “[w]e hold that so long as the officer has probable cause to believe that a traffic violation has occurred or was occurring, the resulting stop is not unlawful and does not violate the Fourth Amendment.” *Id.* at 391. In determining whether probable cause exists to effectuate a traffic stop, we only examine “whether this particular officer in fact had probable cause to believe that a traffic offense had occurred” and not whether a reasonable police officer would have actually stopped the vehicle. *Id.*

*4 To establish probable cause, the Government must show “reasonable grounds for belief, supported by less than prima facie proof but more than mere suspicion” that there is a “probability or substantial chance of criminal activity.” *Id.* at 392. When analyzing whether a traffic stop is reasonable, the Court must undertake “an objective assessment of [the] officer's actions in light of the facts and circumstances then known to him.” *Id.* at 388 (quoting *Scott v. United States*, 436 U.S. 128, 137, 98 S.Ct. 1717, 1723 (1978)). “[T]his probable cause determination, like all probable cause determinations, is fact-dependent and will turn on what the officer knew *at the time he made the stop.*” *Id.* at 391.

This, then, is the test the Court will employ in analyzing whether Officer Posey had probable cause to believe: (1) that the registration tag on Defendant's vehicle on the evening in question was not clearly visible in violation of [Tenn.Code Ann. § 55-4-110\(b\)](#), and (2) that the Defendant, on the evening in question, was driving on an expired license in violation of [Tenn.Code Ann. § 55-50-351](#).

A. Registration Tag Not Clearly Visible

[Tennessee Code Annotated § 55-4-110\(b\)](#) provides, in pertinent part, that “[e]very registration plate shall at all times be ... in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.”

In the case of *Tennessee v. Matthews*, No. M200100754CCAR3DC, 2002 WL 31014842 (*Tenn.Crim.App. Sept. 10, 2002*), the Tennessee Court of Criminal Appeals had occasion to interpret this statute in the context of a review of the trial court's denial of a motion to suppress on the grounds that an officer's stop of the subject vehicle occurring at approximately 7:07 p.m. on September 18, 1999, was unreasonable where the officer complained that the stopped vehicle had no light over the license tag and as a result the officer was unable to see whether the car had a license plate. The parties stipulated that the vehicle in question had a light over the license plate which came on when the headlights were turned on, but that at the time of the stop the lights were not on. *Id.* at *1.

The court in *Matthews* concluded that, while Tennessee law did not require headlights to be on at the time of the stop in question, [Tenn.Code Ann. § 55-4-110\(b\)](#) required that a vehicle's license plate be *clearly visible at all times.* *Id.* at *3. The

court observed:

Even if the legislature intended as a general rule not to require the display of headlights until a half hour following sunset, it also intended that vehicle license plates be clearly visible at all times. By failing to keep his license plates visible during the half hour following sunset the appellant gave Officer Placone more than sufficient reason to effectuate a stop of the appellant's vehicle. As stipulated by the parties, in an American automobile the license plate light is activated by turning on the headlights. This unfortunate design feature in the appellant's vehicle does not excuse his failure to keep his license plate illuminated so as to keep it clearly visible.

*5 *Id.*

The *Matthews* case was recently cited by the United States Court of Appeals for the Sixth Circuit in its decision in *United States v. Dycus*, 151 F. App'x 457 (6th Cir.2005). In that case, the court had another opportunity to determine whether a police officer had probable cause to stop a vehicle based on violation of [Tenn.Code Ann. § 55-4-110\(b\)](#). In *Dycus*, the Court upheld the validity of the traffic stop because the officers had probable cause to believe that the defendant had violated [§ 55-4-110\(b\)](#) where the police officer testified that upon the commencement of their pursuit of defendant's vehicle they could not make out the registration plate due to darkness, although they conceded that they could see the tag as illuminated by the emergency blue lights on their patrol car once they pulled within fifteen to twenty yards of defendant's vehicle. *Id.* at 461.

Taken together, the Court concludes that the teaching of *Matthews* and *Dycus* is

that [§ 55-4-110\(b\)](#) imposes on the driver of a vehicle on Tennessee roads an obligation to ensure that the registration tag on the vehicle is clearly visible at *all* times, and that *any* invisibility or obstruction to visibility of any portion of the tag could constitute a violation of the statute, even if such invisibility or obstruction to visibility is temporary-or even momentary-and may be easily cured, as by the turning on of headlights or by a slight change in distance or the position of the vehicle in relation to the observer.

Under this standard, it is clear that the placement of the trailer hitch on the rear of Defendant Ratcliff's vehicle, albeit legal, and the interposition of that trailer hitch between a numeral on the registration plate and Officer Posey's line of sight on the evening in question, however momentary, was enough to permit Officer Posey to conclude that the Defendant was violating, or had violated, [Tenn.Code Ann. § 55-4-110\(b\)](#). The Court concludes, therefore, that Officer Posey possessed the requisite probable cause to stop Defendant's vehicle on this basis.

B. Driving on Expired License

Officer Posey also testified that after he began following the Defendant's vehicle on the evening in question, but before he initiated the traffic stop, he received information from the dispatcher at the Hamilton County Sheriff's Department that Defendant's driver's license had expired. After making the stop and having received and checked the Defendant's actual license, Officer Posey was able to determine that, due to a change in Defendant's address and duplicative inconsistent entries relating to Defendant's license in the computer files accessible by the Sheriff's Department, his initial information regarding the expired

status of Defendant's driver's license was incorrect.

Nevertheless, and as noted above, the appropriate test for evaluating whether Officer Posey's determination that Defendant was driving on an expired license in violation of [Tenn.Code Ann. § 55-50-351](#) was objectively reasonable is what Officer Posey knew at the time he made the stop. [Ferguson](#), 8 F.3d at 391. In doing so, the Court must make “an objective assessment of [the] officer's actions in light of the facts and circumstances then known to him.” [Id.](#) at 388.

*6 In [Arizona v. Evans](#), 514 U.S. 1, 115 S.Ct. 1185 (1995), the U.S. Supreme Court made clear that the exclusionary rule does not require the suppression of evidence seized incident to an arrest pursuant to a traffic stop resulting from an inaccurate computer record utilized by the law enforcement officer or agency. In addition, the U.S. Court of Appeals for the Sixth Circuit has held that “[t]he establishment of probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” [United States v. Moncivais](#), 401 F.3d 751, 756 (6th Cir.2005) (internal quotation marks and citation omitted).

In the case at bar, the fact that the information regarding the status of Defendant's driver's license on which Officer Posey relied in good faith in making the stop was ultimately shown to be erroneous in no way vitiates the probable cause for, or the validity of, the stop. Accordingly, the Court concludes that Officer Posey also possessed the requisite probable cause to stop the Defendant's vehicle on the evening in question on this basis.

C. The Search and Seizure

Having determined that Officer Posey possessed the requisite probable cause to stop Defendant Ratcliff's on the evening in question on two separate and independent grounds, the Court will next consider whether the ensuing search of Defendant's vehicle, the seizure of a firearm from such vehicle, and Defendant's resulting arrest were lawful.

Officer Posey testified that when he approached Defendant's vehicle after making the stop, and while standing at the open driver's side window while asking to see Defendant's driver's license, he observed an open, 12-ounce can of Busch beer sitting on the floor board of the vehicle in plain view. [Tennessee Code Annotated § 55-10-416](#) makes it unlawful to possess an open container of alcoholic beverage or beer while operating a motor vehicle in Tennessee. Violation of the open container law is a class C misdemeanor.

There is no indication in the record that Officer Posey informed the Defendant of his observation of the open beer can at that point. Instead, Officer Posey testified that he next asked the Defendant for permission to search his vehicle, and that Defendant gave his oral consent to the search. Officer Posey testified that in conducting his search he found a loaded handgun and spare ammunition under the driver's seat. Possessing prior knowledge that the Defendant was a convicted felon, Officer Posey then placed Defendant under arrest for violation of [Tenn.Code Ann. § 39-17-1307](#), a Class E felony.^{FN1}

^{FN1}. Defendant's alleged possession of a firearm also exposed him to liability under [18 U.S.C. § 922\(g\)\(1\)](#), the statute under which he is charged in the case at bar.

Not Reported in F.Supp.2d, 2006 WL 2771014 (E.D.Tenn.)
(Cite as: 2006 WL 2771014 (E.D.Tenn.))

Defendant apparently does not contest either his consent to the search of his vehicle or the scope thereof. Accordingly, the Court will not dwell on this aspect of the encounter other than to observe that under the doctrine announced by the U.S. Supreme Court in *Schneekloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041 (1973), a vehicle search performed after a voluntary consent of the Defendant does not implicate Fourth Amendment concerns. Accordingly, the Court concludes that Officer Posey's search of Defendant's vehicle and the resulting seizure of the discovered handgun and ammunition were reasonable within the meaning of the Fourth Amendment.

III. CONCLUSION

*7 Considering all the evidence presented in connection with Defendant's instant motion as a whole, and based on the totality of the circumstances, the Court concludes that the subject stop of Defendant's vehicle on the evening of November 5, 2005, was supported by probable cause, that the ensuing search of Defendant's vehicle and the seizure of the subject evidence therefrom were reasonable within the meaning of the Fourth Amendment to the United States Constitution, and that Defendant's resulting arrest was similarly supported by probable cause. Accordingly, and for the reasons set forth herein, Defendant's Motion to Suppress Because of Stop [Court Doc. No. 9] is **DENIED**.

SO ORDERED this 25th day of September, 2006.

E.D.Tenn.,2006.
U.S. v. Ratcliff
Not Reported in F.Supp.2d, 2006 WL 2771014 (E.D.Tenn.)

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(Cite as: 2003 WL 21667166 (D.Kan.))

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Only the Westlaw citation is currently available.

United States District Court,
D. Kansas.
UNITED STATES of America, Plaintiff,
v.
Jacob UNRAU, Defendant.

No. 03-40009-01-SAC.
June 16, 2003.

Melanie S. Morgan, Kansas City, KS, for Defendant.

Randy M. Hendershot, Office of United States Attorney, Topeka, KS, for Plaintiff.

MEMORANDUM AND ORDER
SAM A. CROW, U.S. District Senior Judge.

*1 The case comes before the court on the defendant's pretrial motion to suppress all evidence seized during a traffic stop on Interstate Highway 35. (Dk.14). The government has filed a response opposing the defendant's motion. (Dk.19). The court heard the parties' arguments and evidence on May 6, 2003. After reviewing all matters submitted and researching the relevant law, the court issues the following as its ruling on these motions.

INDICTMENT

Jacob Unrau is the sole defendant named in a single count indictment charging him with possessing with the intent to distribute approximately 400 pounds or 181 kilograms of marijuana on January 3, 2003, in violation of 21 U.S.C. § 841(a)(1).

FACTS

Shortly before 6:00 p.m. on January 3,

2003, Jim Brockman, a Master Trooper with twenty-one years of experience with the Kansas Highway Patrol, observed a red GMC pickup and decided to run a registration check on the license plate. The license plate was filthy, and a ball hitch on the pickup obscured the officer's vision of the fourth number on the license plate. Based on his observations from following a reasonable distance behind the pickup and from driving along side the pickup, Trooper Brockman radioed dispatch with two possible guesses at the license plate number, but dispatch did not report any valid information on either number. Trooper Brockman testified that the validity of a Texas license plate can only be determined by running a computer check on its number. Consequently, Trooper Brockman pulled over the pickup which was occupied only by the driver.

At 5:53 p.m., Trooper Brockman approached the pickup and asked to see a driver's license and registration. The driver's license was from Canada and identified the driver as Jacob Unrau. When asked where he was headed, Unrau responded he was driving to Canada. Trooper Brockman then explained the reason for the stop and said he had been unable to read the pickup's license plate until he was very close behind it. The trooper did not have any other reason for conducting the stop, and he noted nothing unusual about Unrau's demeanor during the stop.

Waiting for a response from dispatch on his license plate inquiry and with the defendant's paperwork in hand, the trooper began walking around the pickup and shining his flashlight inside the pickup's bed and underneath its frame. At 5:54 p.m., as the trooper had just started walking along

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the passenger side, dispatch radioed with the information that the plate was for a pickup registered in Texas. During the next minute, Brockman continued to look over the pickup bed, between the bed and the cab, and underneath the bed. He tapped his flashlight twice on the fuel tank sitting inside the pickup bed. Brockman noticed that the interior of pickup bed was “extremely filthy” and covered with dirt and grime, but the rest of pickup was relatively clean.

At 5:55 p.m., Trooper Brockman approached the driver and asked why the pickup was registered in Texas when the defendant had a Canadian driver's license. The defendant said he had purchased the pickup in Texas, and the trooper followed up with a question about when it was purchased. The defendant told the officer the pickup had been purchased in November, but the registration papers indicated the purchase occurred in October. At this point, Trooper Brockman returned the defendant's license and paperwork and requested permission to ask some additional questions. With the driver's consent, the trooper asked where he was coming from and why he had no luggage. The defendant driver told the officer he was coming from Mexico and had received a phone call at El Paso about his mother being ill so he left quickly without luggage. The defendant next denied that he was transporting anything unlawful from Mexico. When asked about the tank in the back, the defendant said it was a diesel fuel tank.

*2 Trooper Brockman then asked whether he could search the tool box and fuel tank for false compartments, as well as, the pickup itself. The defendant's response cannot be heard on the videotape, but the trooper testified that the defendant said something like, “fine,” in response. As

the defendant climbed out of the pickup at the trooper's request, Brockman asked the defendant if he understood what the trooper was doing. The defendant gave a positive response, and the trooper patted him down for weapons.

Trooper Brockman searched the pickup alongside the road for the next thirty or more minutes. He focused on the tool box and fuel tank because of its unusual construction. Using a fiberoptic scope, he looked into the interior of the fuel tank and observed very little fuel. He also saw a solid horizontal wall without any holes for fuel to pass into the bottom compartment or to be removed from it either. Unable to access the bottom compartment and to determine its contents, Trooper Brockman directed the defendant to drive his pickup and follow another trooper into town where they would access the false compartment. Brockman twice asked the defendant what was inside the compartment, and the defendant denied knowledge.

At the automobile shop, the trooper drilled into the bottom compartment of the tank and detected the smell of raw marijuana. The tank was removed from the pickup bed and was found to contain four metal containers holding approximately 400 pounds of marijuana.

LAW AND ANALYSIS

A traffic stop is a seizure within the meaning of the Fourth Amendment. *United States v. Zubia-Melendez*, 263 F.3d 1155, 1160 (10th Cir.2001). For the stop to be constitutionally reasonable, the officer must have either “ (1) probable cause to believe a traffic violation has occurred, or (2) a reasonable articulable suspicion that this particular motorist violated any one of the multitude of applicable traffic and equipment regulations of the jurisdiction.’

“ *Id.* (quoting *United States v. Ozborn*, 189 F.3d 1194, 1197 (10th Cir.1999)). The constitutional reasonableness of a traffic stop does not depend on the officer's actual motive in conducting the stop. *Whren v. United States*, 517 U.S. 806, 812–13 (1996). The reasonableness of an investigative detention is a dual inquiry: (1) “whether the officer's action was justified at its inception,” and (2) whether the officer's action “was reasonably related in scope to the circumstances that first justified the interference.” *United States v. Burch*, 153 F.3d 1140, 1141 (10th Cir.1998) (quotation omitted); see *Terry v. Ohio*, 392 U.S. 1, 20 (1968).

The defendant contends that Trooper Brockman conducted the stop without a reasonable, articulable suspicion that a traffic violation had occurred. The defendant insists there is no traffic law in Kansas that is violated simply because an officer's vantage point, an officer's vision or other circumstances outside of the defendant's control preclude the officer from seeing a license plate. The evidence introduced at the hearing establishes that Trooper Brockman's inability to read the defendant's license plate until he was immediately behind the pickup was not caused by anything unreasonable or even questionable about the trooper's vantage point or other circumstances uncontrollable by the defendant. Rather, someone following at a reasonable distance could not read all of the defendant's license plate, because the plate was filthy and because the ball hitch blocked the fourth number. As the government points out, Kansas law requires a license plate to be secured on a vehicle “in a place and position to be clearly visible.” *K.S.A. 8–133*.

*3 The Kansas Court of Appeals has in-

terpreted *K.S.A. 8–133* as meaning “that all of the tag must be legible” and, therefore, it follows that the all of the tag also must be “visible.” *State v. Hayes*, 8 Kan.App.2d 531, 532, 660 P.2d 1387 (1983). This statute applies to license plates issued by other states and secured to cars being operated in Kansas. *Id.* at 533. The violation of this statute is a misdemeanor under *K.S.A. 8–149*. *Id.* A tag is not positioned to be plainly visible when it is behind a ball hitch that blocks an officer from reading the entire plate while following at a reasonably safe distance. Trooper Brockman had reasonable articulable suspicion to believe that the defendant had violated these Kansas traffic laws. The first prong of a reasonable traffic stop is met here.

Going to the second prong of the *Terry* test, the court looks first at “whether the officer's actions during the detention were reasonably related in scope to the circumstances which justified the interference in the first place.” *United States v. West*, 219 F.3d 1171, 1176 (10th Cir.2000). “Generally, an investigative detention must ‘last no longer than is necessary to effectuate the purpose of the stop.’” *United States v. Patten*, 183 F.3d 1190, 1193 (10th Cir.1999) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). Its scope must be carefully tailored to its underlying justification. *United States v. Gutierrez–Daniez*, 131 F.3d 939, 942 (10th Cir.1997), cert. denied, 523 U.S. 1035 (1998); *United States v. Wood*, 106 F.3d 942, 945 (10th Cir.1997). Upon issuing a citation or warning and determining the validity of the driver's license and right to operate the vehicle, the officer usually must allow the driver to proceed without further delay. *Patten*, 183 F.3d at 1193; *United States v. Anderson*, 114 F.3d 1059, 1064 (10th

Cir.1997). A longer detention for additional questioning is permissible if the officer has an objectively reasonable and articulable suspicion that illegal activity has occurred or is occurring, or the initial detention changes to a consensual encounter. *United States v. Hunnicutt*, 135 F.3d 1345, 1349 (10th Cir.1998).

The defendant argues that Trooper Brockman exceeded the lawful scope of the traffic stop when he walked around the pickup inspecting its exterior and bed, got down on his hands and knees to look at the pickup's undercarriage, and then tapped on the fuel tank sitting in the pickup's bed. The defendant also complains that once he produced a valid Texas registration the trooper should have permitted him to leave and not asked him questions unrelated to the registration, not conducted a search of the vehicle's exterior, and not tapped on the fuel tank. The defendant insists this conduct exceeded the permissible scope of any lawful stop and rendered the detention illegal and tainted any subsequent consent. The government counters that the trooper asked only routine questions during the traffic stop and detained the defendant a very brief time before returning the license and paperwork, receiving permission to ask additional questions, and obtaining valid consent to search the pickup.

*4 The trooper's routine questions about travel plans, the Canadian driver's license and the Texas registration did not violate any Fourth Amendment rights of the defendant. The Tenth Circuit has held in several cases that an officer conducting a routine traffic stop may inquire about "identity and travel plans," *United States v. Rivera*, 867 F.2d 1261, 1263 (10th Cir.1989), and may request a driver's license and vehicle registration, run a com-

puter check, and issue a citation. See *United States v. Soto*, 988 F.2d 1548, 1554 (10th Cir.1993). In *United States v. Holt*, 264 F.3d 1215, 1230 (10th Cir.2001) (referred to by the Tenth Circuit as *Holt II*), the Tenth Circuit does state that an officer conducting a routine traffic stop may not ask questions unrelated to the purpose of the stop, even if the questioning does not extend the normal length of the stop, unless the officer has reasonable suspicion of illegal activity. As the Tenth Circuit has clarified, however, *Holt II* does not mean that officers cannot ask about travel plans, because such questions typically fall within the scope of a traffic stop:

Holt II stands for the proposition that a "traffic stop based on probable cause must be judged by examining both the length of the detention and the manner in which it is carried out." *Holt II*, 264 F.3d at 1230. Mr. Williams does not argue that the questioning in this case increased the duration of the stop, but claims that questions related to his travel plans were beyond the scope of the stop and thus unreasonable even after *Holt II*. We are not persuaded, however, that in this case the questioning was outside the scope of the stop. When directly confronted with the issue, we have repeatedly held (as have other circuits) that questions relating to a driver's travel plans ordinarily fall within the scope of a traffic stop. (citations omitted). Though such questions do typically fall within the scope of a traffic stop, citizens' legitimate privacy interests are protected in that they are not legally obligated to answer such questions, nor can an officer compel an answer to these routine questions. (citations omitted).

United States v. Williams, 271 F.3d 1262, 1267 (10th Cir.2001), cert. denied,

535 U.S. 1019 (2002).

The trooper's walk around the stopped vehicle and visual inspection of its exterior “does not transform the seizure into a search.” *City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000). “[A]n examination of the exterior of a car does not constitute a search as it is ‘thrust into the public eye.’ [*New York v. Class*, 475 U.S. [106] at 114 [(1986)]. Likewise, there is no legitimate expectation of privacy in a car's interior if an officer looks through the car's window and observes contraband in plain view. *Texas v. Brown*, 460 U.S. 730, 739–40 (1983).” *United States v. Rascon–Ortiz*, 994 F.2d 749, 754 (10th Cir.1993). That the officer kneels down to look under a vehicle does not change his conduct into a search. *Id.* “An officer may shift his position to obtain a better vantage point without transforming a visual inspection into a search, even though the agent's purpose is to look for contraband.” *Id.* (citations omitted). Nor does the use of a flashlight to illuminate a darkened area constitute a search. *Id.* at 755. If the officer, however, moves or disturbs parts of the car in order to make his observation, then such conduct may constitute a search. *Id.* at 755 (citing *Arizona v. Hicks*, 480 U.S. 321, 322, 107 S.Ct. 1149, 1150, 94 L.Ed.2d 347 (1987) (“A truly cursory inspection—one that involves merely looking at what is already exposed to view, without disturbing it—is not a ‘search’ for Fourth Amendment purposes.”)). For that matter, tapping on the outside of a tank located in a truck bed is not a search. *United States v. Muniz–Melchor*, 894 F.2d 1430, 1433–36 (5th Cir.), *cert. denied*, 495 U.S. 923 (1990); *see also* 1 Wayne R. LaFave, *Search and Seizure*, § 2.5(c) (1996) (indicating that examinations by natural senses of vehicular exteriors and vehicular

contents do not constitute searches absent a physical intrusion into the vehicle). Thus, Trooper Brockman's actions in using the flashlight to look about the pickup's bed and its undercarriage and to tap on the fuel tank were not searches for Fourth Amendment purposes.

*5 The issue that remains is whether an officer during a traffic stop for a license plate violation exceeds the authorized scope of this lawful detention by walking around the stopped vehicle and looking over its exterior and tapping upon a mounted fuel tank. The case law indicates that Trooper Brockman's conduct did not exceed the lawful scope of the traffic stop. In *United States v. Villa–Chaparro*, 115 F.3d 797 (10th Cir.), *cert. denied*, 522 U.S. 926 (1997), the officer stopped a vehicle for a seatbelt violation, and the driver produced a valid license but the driver's name did not appear on the vehicle's registration. The officer wanted to confirm that the vehicle's VIN matched the registration. On his way to his patrol car for a rag, the officer tapped on the truck's fender to determine if there was something packed behind it. The Tenth Circuit found the investigative detention reasonably related to the circumstances evolving during the stop. 115 F.3d at 801–802. In *Glover v. Casale*, 2000 WL 33667082 (D.N.H. Apr. 18, 2000), the court upheld an officer's “360 degree inspection” of the car's exterior during a traffic stop for speeding for the purpose of noting any other obvious defective equipment on the car after the officer had learned the car was not properly registered and had a defective muffler. Finally, in *United States v. Ramirez*, 213 F.Supp.2d 722 (S.D.Tex.2002), *aff'd*, — F.3d —, (5th Cir. April 9, 2003) (Table, No. 02–40702), the defendant was pulled over for weaving and told the officer that he was

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(Cite as: 2003 WL 21667166 (D.Kan.))

headed to a nearby town for fuel for his pickup. The trooper noted that there was a large diesel fuel tank in the pickup bed. The trooper conducted a "safety sweep" of the truck during which he observed the pickup's fuel gauge was indicating half full and he tapped on the tank and the sound suggested it was full. The district court held that this safety sweep "was authorized because officers may take steps necessary to protect their personal safety during an investigative detention." 213 F.Supp.2d at 727 (citing *United States v. Campbell*, 178 F.3d 345, 348–49 (5th Cir.1999)).

In the instant case, Trooper Brockman was making a lawful visual sweep of the pickup's exterior while waiting for dispatch to respond to his license check. In the middle of the sweep, the trooper received dispatch's transmission and completed his visual sweep within a minute. The court does not find that trooper's actions exceeded the lawful scope of the traffic stop. The trooper observed no luggage in a pickup apparently being driven from Texas to Canada. The pickup's interior bed was filthy and covered with a thick grime while the rest of the truck appeared relatively clean. The trooper suspected that the grime was intended to cover up inside the bed or deter someone from wanting to look around in it. Finally, the fuel tank was unusually shaped with a tool box mounted on top of it. Based on the trooper's evolving suspicion, Trooper Brockman was justified in completing his brief sweep of vehicle's exterior following dispatch's response.

*6 The evidence at the hearing fully establishes that a consensual encounter existed after Trooper Brockman returned the license and registration to the defendant, that Trooper Brockman asked additional questions only after receiving the defendant's

consent, and that the defendant voluntarily and knowingly consented to the search of the pickup. Finding a hidden false compartment in the bottom of the fuel tank, Trooper Brockman had probable cause to complete his search of the fuel tank and to seize the illegal drugs stored there.

IT IS THEREFORE ORDERED that the defendant's motion to suppress all evidence (Dk.14) is denied.

D.Kan.,2003.
U.S. v. Unrau
Not Reported in F.Supp.2d, 2003 WL 21667166 (D.Kan.)

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Slip Copy, 2012 WL 5209828 (Ohio App. 5 Dist.), 2012 -Ohio- 4899
(Cite as: 2012 WL 5209828 (Ohio App. 5 Dist.))



CHECK OHIO SUPREME COURT
RULES FOR REPORTING OF OPIN-
IONS AND WEIGHT OF LEGAL AU-
THORITY.

Court of Appeals of Ohio,
Fifth District, Perry County.
STATE of Ohio, Plaintiff–Appellee
v.
Joshua REEDY, Defendant–Appellant.

No. 12–CA–1.
Decided Oct. 17, 2012.

Appeal from the Perry County Court of
Common Pleas, Case No. 11–CR–0055.
Steven P. Schnittke, New Lexington, OH,
for appellant.

Joseph A. Flautt, Perry County Prosecutor,
New Lexington, OH, for appellee.

DELANEY, J.

*1 ¶ 1 Appellant Joshua A. Reedy
appeals from the September 23, 2011 judg-
ment entry of the Perry County Court of
Common Pleas overruling his motion to
suppress and the December 22, 2011 judg-
ment entry sentencing appellant upon his
pleas of no contest. Appellee is the state of
Ohio.

FACTS AND PROCEDURAL HISTORY

¶ 2 This case arose on December 23,
2010 when Ptl. Robison of the New Lex-
ington Police Department was on patrol in
the private parking lot of a CVS drugstore.
He observed appellant exit a parking lot on
the opposite side of the road, at “Circle K,”
and turn left onto the roadway without us-
ing a turn signal.

¶ 3 Robison performed a traffic stop
of appellant's vehicle and made contact
with appellant. Upon further investigation
appellant was found to be in possession of
several pills including oxycodone and al-
prazolam.

¶ 4 At the subsequent suppression
hearing Robison was appellee's only wit-
ness and testified the sole reason for the
traffic stop was appellant's failure to signal
upon leaving the parking lot. ^{FN1}

^{FN1}. Appellant asserts Robison did
not cite him for failure to use a turn
signal. Whether or not a citation
was issued was not addressed at the
suppression hearing, and there is no
uniform traffic citation in the re-
cord.

¶ 5 Appellant was charged by indict-
ment with one count of aggravated drug
possession [oxycodone] pursuant to R.C.
2925.11(A) and (C)(1)(a), a felony of the
fifth degree, and one count of drug posses-
sion [alprazolam] pursuant to R.C.
2925.11(A) and (C)(2)(a), a misdemeanor
of the first degree.

¶ 6 Appellant entered pleas of not
guilty and filed a Motion to Suppress Evid-
ence/Motion to Dismiss on June 27, 2011,
asserting the investigating officer had no
probable cause to perform a traffic stop of
his vehicle.

¶ 7 A suppression hearing was held
on August 8, 2011, and the trial court
ordered the parties to submit Findings of
Fact and Conclusions of Law. Both parties
complied. On September 23, 2011, the trial
court overruled appellant's motion to sup-
press, finding the patrolman properly initi-

APPENDIX F

ated a traffic stop upon appellant's failure to use his turn signal when turning left from private property onto a roadway.

{¶ 8} Appellant withdrew his pleas of not guilty and entered pleas of no contest. The trial court accepted appellant's change of plea, found him guilty as charged, and ordered a presentence investigation. Appellant was ultimately sentenced to a term of five years on community control on Count One, aggravated drug possession, and a jail term of 90 days, to be served as 30 days of actual incarceration and 60 days of house arrest, on Count Two, drug possession. Appellant's driver's license was suspended for six months and he was fined \$1000.00.

{¶ 9} Appellant now appeals from the trial court's judgment entry overruling his motion to suppress.

{¶ 10} Appellant raises one Assignment of Error:

{¶ 11} "I. THE COURT COMMITTED ERROR IN DENYING THE MOTION OF DEFENDANT/APPELLANT TO SUPPRESS THE SEARCH OF THE VEHICLE OF DEFENDANT/APPELLANT IN VIOLATION OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION."

I.

*2 {¶ 12} Appellant argues the trial court erred in overruling his motion to suppress because the police officer's stop of his vehicle was premised upon a mistake of law. We disagree.

{¶ 13} Appellate review of a trial court's decision to deny a motion to suppress involves a mixed question of law and fact. *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist. 1998). During

a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. *State v. Brooks*, 75 Ohio St.3d 148, 154, 661 N.E.2d 1030 (1996). A reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Medcalf*, 111 Ohio App.3d 142, 145, 675 N.E.2d 1268 (4th Dist.1996). Accepting these facts as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the trial court's decision meets the applicable legal standard. *State v. Williams*, 86 Ohio App.3d 37, 42, 619 N.E.2d 1141 (4th Dist.1993), overruled on other grounds.

{¶ 14} There are three methods of challenging a trial court's ruling on a motion to suppress on appeal. First, an appellant may challenge the trial court's finding of fact. In reviewing a challenge of this nature, an appellate court must determine whether the trial court's findings of fact are against the manifest weight of the evidence. See, *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982); *State v. Klein*, 73 Ohio App.3d 486, 597 N.E.2d 1141 (4th Dist.1991). Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See, *Williams*, supra. Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issues raised in a motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry*, 95 Ohio

App.3d 93, 96,620 N.E.2d 906 (8th Dist.1994).

{¶ 15} In the instant case, the facts are not in dispute. Instead, appellant challenges the trial court's application of the legal standard to those facts. Appellant argues the issue before us is whether appellant's failure to signal upon turning left from a private parking lot is a violation of the law. We find, though, that answering this question is not central to the analysis. Instead, the issue we must resolve is whether a police officer may stop an individual when the officer reasonably but mistakenly believes the conduct is a violation of the law; the answer to this question is "yes." *State v. Garnett*, 10th Dist. No. 09AP-1149, 2010-Ohio-5865, ¶ 13, appeal not allowed, 128 Ohio St.3d 1447, 2011-Ohio-1618, 944 N.E.2d 696, reconsideration denied, 128 Ohio St.3d 1504, 2011-Ohio-2420, 947 N.E.2d 685, citing *State v. Gunzenhauser*, 5th Dist. No. 09-CA-21, 2010-Ohio-761, ¶ 16.

*3 {¶ 16} The Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, rendering them per se unreasonable unless an exception applies. *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507 19 L.Ed.2d 576 (1967). An investigative stop, or *Terry* stop, is a common exception to the Fourth Amendment warrant requirement. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1503, 20 L.Ed.2d 889 (1968). Because the "balance between the public interest and the individual's right to personal security" tilts in favor of a standard less than probable cause in such cases, the Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity "may be afoot." *United States v. Brignoni-Ponce*, 422 U.S. 873,

878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975); *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). In *Terry*, the Supreme Court held that a police officer may stop an individual if the officer has a reasonable suspicion based upon specific and articulable facts that criminal behavior has occurred or is imminent. See, *State v. Chatton*, 11 Ohio St.3d 59, 61, 463 N.E.2d 1237 (1984).

{¶ 17} The propriety of an investigative stop must be viewed in light of the totality of the circumstances surrounding the stop "as viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." *State v. Andrews*, 57 Ohio St.3d 86, 87-88, 565 N.E.2d 1271 (1991); *State v. Bobo*, 37 Ohio St.3d 177, 178, 524 N.E.2d 489 (1988). The Supreme Court of the United States has re-emphasized the importance of reviewing the totality of the circumstances in making a reasonable suspicion determination:

When discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the "totality of the circumstances" of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that "might well elude an untrained person." Although an officer's reliance on a mere "hunch" is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a prepon-

derance of the evidence standard. *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct.744, 151 L.Ed.2d 740 (2002), citing *United States v. Cortez*, 449 U.S. 411, 417–418 (1981).

{¶ 18} Traffic stops based upon observation of a traffic violation are constitutionally permissible. *Dayton v. Erickson*, 76 Ohio St.3d 3, 11–12, 1996–Ohio–431, 665 N.E.2d 1091. An issue arises, however, when the traffic violation underlying the stop is questionably a violation of the law. We have previously noted “[u]nder limited circumstances, courts have held that the exclusionary rule may be avoided with respect to evidence obtained in a stop based on conduct that a police officer reasonably, but mistakenly, believes is a violation of the law.” *State v. Gunzenhauser*, supra, 2010–Ohio–761, ¶ 16, citing *City of Wilmington v. Conner*, 144 Ohio App.3d 735, 740, 761 N.E.2d 663 (12th Dist.2001); *State v. Greer*, 114 Ohio App.3d 299, 300–301, 683 N.E.2d 82 (2nd Dist.1996). Such cases necessarily involve a mistake of law rather than a mistake of fact. “Because courts must be cautious in overlooking a police officer’s mistakes of law, the mistake must be objectively reasonable.” *Id.*

*4 {¶ 19} As in *Gunzenhauser*, the statute at issue in the instant case “is not free from ambiguity.” Where a statute is vague or ambiguous, or requires judicial construction to determine its scope of meaning, exceptional circumstances exist which permit courts to extend the good faith exception to the exclusionary rule to not only mistakes of fact but also mistakes of law. *Greer*, supra, 114 Ohio App.3d at 303. The trial court found appellant violated R.C. 4511.39(A), which states in pertinent part:

No person shall turn a vehicle or track-

less trolley or move right or left upon a highway unless and until such person has exercised due care to ascertain that the movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided. When required, a signal of intention to turn or move right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle or trackless trolley before turning * * *.

Ptl. Robison cited New Lexington 331.14, the relevant portion of which effectively mirrors R.C. 4511.39(A).

{¶ 20} The parties have framed the issue in this appeal as whether “upon a highway,” pursuant to R.C. 4511.39(A), refers to a driver who is turning out of a private parking lot onto a roadway. “Highway” is defined in R.C. 4511.01(B)(B) as “the entire width between boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel.” Appellant contends this is inapplicable to private property and points to other sections of the traffic code which pertain to yielding the right-of-way from private property but do not require use of a turn signal. R.C. 4511.44(A). Appellee and the trial court looked to the common definition of “upon,” which means “movement in a given position or toward a specified object” to support the position that movement toward the highway required appellant to use his turn signal. This ambiguity in the statute constitutes the “exceptional circumstances” described in *Greer*, allowing us to conclude the officer’s mistake of law was reasonable and does not require application of the exclusionary rule. Moreover, a number of courts have addressed this issue, in similar contexts.

{¶ 21} In *State v. Garnett*, the appellant contested the traffic stop of his motor vehicle premised upon a Columbus City Ordinance which is substantially similar to [R.C. 4511.39\(A\)](#) and New Lexington Traffic Code 331.14. In that case, the Tenth District Court of Appeals cited our decision in *Gunzenhauser*, supra, in finding the exclusionary rule did not apply to the stop because the officer reasonably but mistakenly believed he observed a violation:

Whether or not appellant's failure to use his turn signal constituted an actual violation is not essential to our analysis. [The officer] testified that he observed appellant turn onto Shanley Drive without using his turn signal, which he believed was a violation of Columbus City Code section 2131.14. *State v. Garnett*, 10th Dist. No. 09AP-1149, [2010-Ohio-5865](#), ¶ 13, appeal not allowed, [128 Ohio St.3d 1447](#), [2011-Ohio-1618](#), [944 N.E.2d 696](#), reconsideration denied, [128 Ohio St.3d 1504](#), [2011-Ohio-2420](#), [947 N.E. 2d 685](#), citing *State v. Gunzenhauser*, 5th Dist. No. 09-CA-21, [2010-Ohio-761](#), ¶ 16.

*5 The Court found the officer could reasonably have believed appellant violated the applicable code section. Similarly, we find Ptl. Robison could reasonably have believed appellant in the instant case violated New Lexington Traffic Code section 331.4.

{¶ 22} In *State v. Perkins*, the appellant turned onto a public roadway from a private parking lot without using his turn signal, was traffic stopped, and ultimately charged with O.M.V.I. The appellant moved to suppress evidence from the stop on the basis of no reasonable and articulable suspicion to stop; the trial court over-

ruled the motion to suppress.

{¶ 23} In affirming the trial court's decision, the Second District Court of Appeals found the officer saw the appellant turn left without signaling and driving erratically, and "believed both acts violated traffic laws." In a footnote, the Court stated:

Never raised is whether [appellant's] failure to use his turn signal was actually a traffic offense. * * * *. The [trial] court never cited either a traffic code or a particular offense. Likely, the court is referring to [R.C. 4511.39](#) or the substantially similar provision in [the local traffic code] both of which prohibit a person from turning onto a highway without signaling. We question whether those provisions apply to turns from private property. Ultimately, whether they apply in this case does not really change the conclusion. We have said that evidence obtained from a stop for what the officer thought was a traffic offense need not be suppressed if the officer's mistake of law was reasonable. *State v. Greer*, [114 Ohio App.3d 299](#), [305](#), [683 N.E.2d 82](#) (2nd Dist.1996). * * * *. *State v. Perkins*, 2nd Dist. No.2011-CA-24, [2012-Ohio-2544](#), fn.6.

{¶ 24} In applying these analyses to the facts of the instant case, we find Ptl. Robison could reasonably believe appellant violated the New Lexington traffic code by failing to signal when he turned onto the roadway from a private parking lot. Based upon substantial precedent from this Court and others, determining whether appellant committed an actual violation is not essential to our analysis. The evidence from the traffic stop need not be suppressed because the officer's mistake of law was reasonable.

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(Cite as: 2012 WL 5209828 (Ohio App. 5 Dist.))

{¶ 25} We therefore overrule appellant's sole assignment of error and affirm the judgment of the Perry County Court of Common Pleas.

DELANEY, P.J. FARMER, J. and WISE,
J., concur.

Ohio App. 5 Dist.,2012.
State v. Reedy
Slip Copy, 2012 WL 5209828 (Ohio App.
5 Dist.), 2012 -Ohio- 4899

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Order

Michigan Supreme Court
Lansing, Michigan

March 25, 2015

Robert P. Young, Jr.,
Chief Justice

150371

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 150371
COA: 314877
Muskegon CC: 12-062736-FH

CHARLES ALMANDO-MAURICE DUNBAR,
Defendant-Appellee.

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On order of the Court, the application for leave to appeal the September 9, 2014 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on whether to grant the application or take other action. MCR 7.302(H)(1). We ORDER the Muskegon Circuit Court, in accordance with Administrative Order 2003-03, to determine whether the defendant is indigent and, if so, to appoint attorney Michael L. Oakes, if feasible, to represent the defendant in this Court. If this appointment is not feasible, the trial court shall, within the same time frame, appoint other counsel to represent the defendant in this Court. If the defendant is not indigent, he must retain his own counsel.

The parties shall file supplemental briefs within 42 days of the date of the order appointing counsel, or of the ruling that the defendant is not entitled to appointed counsel, addressing whether the license plate affixed to the defendant's vehicle violated MCL 257.225(2) where it was obstructed by a towing ball, thereby permitting law enforcement officers to conduct a traffic stop of the defendant's vehicle. The parties should not submit mere restatements of their application papers.

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae.



s0318

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 25, 2015


Clerk

APPENDIX G

Not Reported in P.3d, 119 Wash.App. 1039, 2003 WL 22847338 (Wash.App. Div. 2)
(Cite as: 2003 WL 22847338 (Wash.App. Div. 2))

C

NOTE: UNPUBLISHED OPINION, SEE
WA R GEN GR 14.1

Court of Appeals of Washington,
Division 2.
STATE of Washington, Respondent,
v.
Wayne William McCUE, Appellant.
No. 29554-7-II.
Dec. 2, 2003.

Appeal from Superior Court of Kitsap
County.

Eric Michael Fong, Rovang Fong & Asso-
ciates, Port Orchard, WA, for Appellant.

Randall Avery Sutton, Kitsap Co Prosec-
utor's Office, Port Orchard, WA, for Re-
spondent.

UNPUBLISHED OPINION
BRIDGEWATER, J.

*1 Wayne William McCue appeals the denial of his **CrR 3.6** motion to suppress evidence obtained after an officer pulled him over for having an obstructed license plate and then arrested him for driving on a suspended license. He argues that the trial court erred when it found that (1) the initial stop was justified; and (2) the traffic stop was not pretextual. We affirm.

Facts

The State charged McCue by amended information with possession of methamphetamine, alleging by special allegation that he committed the offense in a county jail and/or state correctional facility. McCue moved to suppress the drug evidence, arguing that the traffic stop that

led to its discovery was pretextual.

After hearing testimony from the arresting officer, Officer Beth Deatherage, and McCue, ^{FN1} the trial court entered findings of fact and conclusions of law that read in part:

FN1. At this same hearing, the trial court also considered the admissibility of McCue's custodial statements. McCue does not challenge the trial court's rulings pertaining to these statements.

Findings of Fact

I.

That on May 4, 2002, Port Orchard Officer Beth Deatherage was on routine patrol. Enforcing traffic laws is a normal part of Deatherage's duties when she is on patrol. Riding with Deatherage was 'Charlie' her K9 partner who is a drug detection dog. Deatherage's duties as a K9 officer are in addition to her normal patrol duties. Deatherage is often requested by fellow officers or officers from neighboring jurisdiction {sic} to apply Charlie to locations where they suspect illegal drugs are located. Charlie rides with Deatherage in order to reduce response time when she receives such a request. Deatherage enforces traffic laws when Charlie is riding with her.

II.

That Deatherage observed a pickup truck on Mile Hill Drive. She found that she could not read the middle character on the rear license plate of the vehicle. She was following the vehicle at a distance of two to two and a half car lengths. A trailer hitch obscured the middle character from

APPENDIX H

her view. After following the car for a short distance they came to a stop and Deatherage was able to read the character, an '8,' as the vehicle made a turn. She entered the license plate into the computer in her patrol car. That computer is connected with databases that contain information on vehicle registrations. The license plate belonged on the vehicle it was attached to. Deatherage initiated a traffic stop of the vehicle and the vehicle pulled over.

III.

That Deatherage identified the driver as William McCue, the defendant. McCue testified that the first question Deatherage asked was 'where are the drugs?' Deatherage testified that she asked for his driver's license, registration, and insurance, the standard questions she asks after making a stop for a traffic infraction. The Court credits Deatherage's testimony. Deatherage ran McCue's driver's license and learned that it was suspended in the third degree. She placed him under arrest. During a search of the vehicle incident to arrest Deatherage found syringes and a scale. Based on her training and experience Deatherage found these consistent with items used to inject and weigh illegal drugs. She applied Charlie to the vehicle. Charlie alerted, but did not find any illegal drugs. McCue testified that after he was handcuffed, but before the syringes and scale were found that Deatherage asked him where the dope was. Deatherage testified that she asked him if there was anything in the car she should be concerned about, a question she routinely asks before searching a person or a vehicle incident to arrest. The Court credits Deatherage's testimony.

IV.

*2 That Deatherage transported McCue

to the Kitsap County Jail. While she was there a corrections officer contacted her and told her that they had found a baggie of white powder while searching McCue....

V.

That Exhibits 1, 2, and 3, ^{FN2} offered by McCue depict the license plate of the vehicle. McCue took these at a parking lot at Bethel Towing. All three are taken from the same perspective. McCue testified that all were taken from a distance of 20 to 25 feet. The Court finds that it is not possible to determine what distance the photos were taken from and that there is no depth perception to the photographs to determine the distance. The photographs show that the character '8' on the plate could be obstructed by the trailer ball if the left to right perspective was different than as depicted in exhibits 1, 2, and 3.

^{FN2}. These exhibits were not made part of the record on appeal.

Conclusions of Law

....

II.

That Deatherage had an objective reason for stopping McCue as an obstructed license plate violates [RCW 46.16.240](#). Deatherage's subjective intent was to conduct a traffic stop, not to conduct an unrelated criminal investigation. Under the totality of the circumstances, this was not a pretextual stop. The stop was lawful.

III.

That McCue's motion to suppress evidence is DENIED. Clerk's Papers (CP) at 26–28 (emphasis added).

Following a bench trial, the trial court found McCue guilty on the possession charge but dismissed the special allega-

tions. McCue appeals the denial of his motion to suppress, primarily challenging the italicized portions of the above Findings of Fact and Conclusions of Law.

Analysis

I. Standard of Review

We review the denial of a suppression motion by determining whether substantial evidence supports the findings of fact and then whether the findings support the trial court's conclusions of law. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999). Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise. *In re Welfare of Snyder*, 85 Wn.2d 182, 185–86, 532 P.2d 278 (1975). We review questions of law de novo, *Mendez*, 137 Wn.2d at 214, and consider any unchallenged findings of fact verities on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

II. Finding of Fact II

McCue contends that the evidence does not support the portion of Finding II that states that Deatherage ‘could not read the middle character on the rear license plate of the vehicle.’ Br. of Appellant at 11 (citing CP at 27). We disagree.

Although the trial court found that Deatherage was able to read the entire license plate once McCue turned the corner, taken in context, it also found that she was not able to read the middle character when she was following directly behind McCue truck. Deatherage's testimony supports this finding.

III. RCW 46.16.240 Violation

Arguing that he did not violate RCW 46.16.240 because Deatherage was able to

read his truck's license plate when he turned the corner, McCue contends that the trial court erred when it found that the initial stop was justified. The State contends that McCue's argument contradicts the plain meaning of the statute.

***3** This issue involves the interpretation of a statute, which is a question of law that we review de novo. *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001), cert. denied, 534 U.S. 1130 (2002). In interpreting statutory provisions, our primary objective is to ascertain and give effect to the intent and purpose of the legislature in creating the statute. *State v. Sullivan*, 143 Wn.2d 162, 174–75, 19 P.3d 1012 (2001). To determine the legislature's intent, we look first to the language of the statute. *State v. McDougal*, 120 Wn.2d 334, 350, 841 P.2d 1232 (1992). And if the statute is clear on its face, we must derive its meaning from the plain language of the statute alone. *Keller*, 143 Wn.2d at 276.

RCW 46.16.240 provides that unless the ‘body construction of the vehicle is such that compliance with this section is impossible’ and the State Patrol grants the vehicle owner permission to deviate from the statute's requirements, ‘{t}he vehicle license number plates shall be attached conspicuously at the front and rear of each vehicle for which the same are issued and in such a manner that they can be plainly seen and read at all times.’ Finding no ambiguities here, we employ a simple and straightforward analysis based upon the plain language of the statute.

The trial court found that although Deatherage was able to discern the entire plate number when McCue turned the corner, she was unable to view the entire plate number from directly behind McCue's truck because the trailer hitch obscured a

portion of the plate. And, as discussed above, Deatherage's testimony supports this finding. A partially obscured license plate that is fully visible only at certain angles is not 'plainly seen and read at all times.' [RCW 46.16.240](#). Thus, the trial court properly found that Deatherage was justified in stopping McCue for violating [RCW 46.16.240](#).^{FN3}

FN3. *McCue's reliance on State v. Martin*, 106 Wn.App. 850, 25 P.3d 488 (2001), aff'd sub nom. *State v. McKinney*, 148 Wn.2d 20, 60 P.3d 46 (2002), is misplaced. The issue in *Martin* was whether the police violated the defendants' privacy rights when they ran openly displayed license plate numbers through a Department of Licensing database; *Martin* did not address when or how a violation of [RCW 46.16.240](#) occurs.

III. Decriminalized Traffic Code

McCue next appears to argue that Deatherage was not justified in stopping him because [RCW 46.16.240](#) is a decriminalized traffic infraction. But although an officer cannot arrest someone for violation of a decriminalized traffic infraction, [RCW 46.63.020](#), or stop a person using a traffic infraction as pretext to search the person for evidence of another offense, *State v. Ladson*, 138 Wn.2d 343, 353–56, 979 P.2d 833 (1999), the law clearly allows officers to stop and cite individuals for traffic infractions. See [RCW 46.61.021\(2\)](#).^{FN4} Accordingly, this argument fails.

FN4. [RCW 46.61.021\(2\)](#) provides: Whenever any person is stopped for a traffic infraction, the officer may detain that person for a reasonable period of time necessary to identify the person, check for outstanding

warrants, check the status of the person's license, insurance identification card, and the vehicle's registration, and complete and issue a notice of traffic infraction.

IV. Pretext

Finally, reiterating his argument that a partially obscured license plate that is fully visible from certain angles does not amount to a [RCW 46.16.240](#) violation, McCue contends that because he did not violate the statute, his obscured license plate could not have been the "true reason" Deatherage stopped him. Br. of Appellant at 10. Citing to his trial memorandum, he argues that because the traffic violation did not exist, the only "viable reason" Deatherage pulled him over was to investigate other suspected criminal activity. Br. of Appellant at 10 (citing CP at 13).

*4 An officer engages in a pretextual traffic stop when she stops a citizen, not to enforce the traffic code, but, rather, to circumvent the warrant requirement and to facilitate investigation of some other matter. *Ladson*, 138 Wn.2d at 349. To determine whether an arrest is a pretext for accomplishing a search, 'the court should consider the totality of the circumstances, including both the subjective intent of the officer as well as the objective reasonableness of the officer's behavior.' *Ladson*, 138 Wn.2d at 359.

In effect, McCue is arguing that Deatherage's behavior was not objectively reasonable. As we reject McCue's assertion that Deatherage was not entitled to stop him for violating [RCW 46.16.240](#), and the trial court's unchallenged findings support its conclusion that Deatherage was acting in accordance with her regular duties and there was no indication that she was acting under pretext, this argument fails.^{FN5}

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FN5. We recognize that McCue's testimony contradicted Deatherage's testimony and suggested that Deatherage exhibited an interest in finding drugs immediately upon contacting McCue. But the trial court clearly found Deatherage's version of the events more credible, and we defer to the court's credibility determinations on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn.App. 410, 415–16, 824 P.2d 533, review denied, 119 Wn.2d 1011 (1992) (on appeal, we defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to [RCW 2.06.040](#), it is so ordered.

We concur: [HOUGHTON, J.](#), and [HUNT, C.J.](#)

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