

STATE OF MICHIGAN
IN THE 64A DISTRICT COURT FOR THE COUNTY OF IONIA

PEOPLE OF THE STATE
OF MICHIGAN,
Plaintiff,

ORDER

vs.

File No. 151272STA

ANTHONY MICHAEL OWEN,
Defendant.

At a session of said Court held on the 24th
day of November 2015 in the 64A District
Court in the County of Ionia, State of Michigan

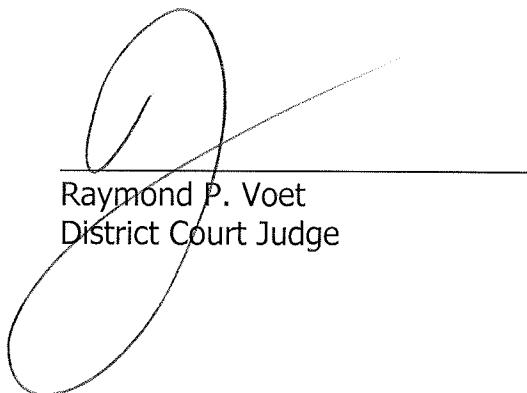
PRESENT: HONORABLE RAYMOND P. VOET, DISTRICT JUDGE

The Defendant's Motion to Suppress and Dismiss having been heard by
the Court, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that the Defendant's Motion is DENIED for the
reasons stated on the record. The Court, believing this to be a close call, certifies this
question for appeal.

Prepared by:
Adam M. Dreher (P79246)

Raymond P. Voet
District Court Judge

A handwritten signature in black ink, appearing to read "Raymond P. Voet", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized 'R' at the beginning.

Approved, SCAO

Original - Circuit court
1st copy - District court/agency

2nd copy - Appellee
3rd copy - Appellant

8th STATE OF MICHIGAN
IONIA JUDICIAL CIRCUIT
COUNTY

ORDER ON APPLICATION
FOR LEAVE TO APPEAL

CASE NO.

15-H-31675-AR

Court address
100 W. Main Street, Ionia, MI 48846

Court telephone no.
(616) 527-5336

Plaintiff's name, address, and telephone no. Appellant
 Appellee

Defendant's name, address, and telephone no. Appellant
 Appellee

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff's attorney, bar no., address, and telephone no.

RONALD SCHAFER

ANTHONY OWEN

Defendant's attorney, bar no., address, and telephone no.

EDWARD STERNISHA
448 Leonard St, NW
Grand Rapids, MI 49504

Date: 01/19/2016

Judge: David A Hoort

P28492

Bar no.

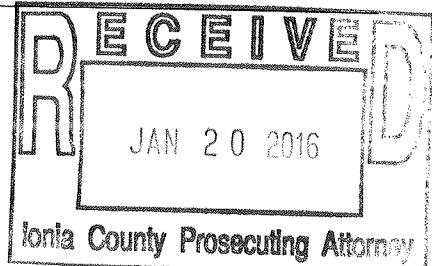
IT IS ORDERED:

1. The appellant's application for leave to appeal is granted. denied.
2. Other: In lieu of granting leave to appeal, the case is remanded to the trial court to conduct an evidentiary hearing to determine the speed limit for the area involved in the stop of the defendant's vehicle. This court retains jurisdiction, and upon conclusion of the evidentiary hearing, the case shall be re-scheduled before this court for oral argument on defendant's Application for leave to appeal.

01/19/2016

Date

Judge



CERTIFICATE OF MAILING

I certify that on this date I served a copy of this order on the parties or their attorneys and on the trial court or agency by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3).

Date

Court clerk

STATE OF MICHIGAN
IN THE 64-A DISTRICT COURT FOR THE COUNTY OF IONIA

STATE OF MICHIGAN,
Plaintiff,

Case No.: 15-1272-STA (1,2,3)
Charges: 1.) OWI-1st; 2.) Poss.
Firearm Under Influence,
3.) CPL Carry
Under Influence

v

Hon. Raymond P. Voet

ORDER DETERMINING
SPEED LIMIT

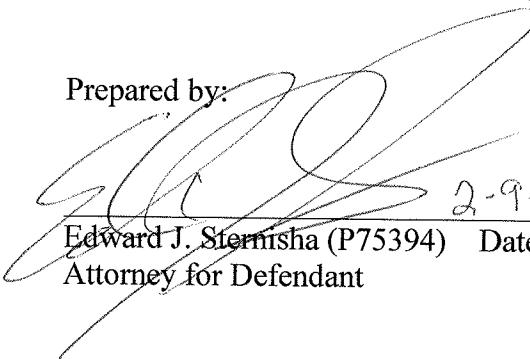
ANTHONY MICHAEL OWEN,
Defendant.

Adam M. Dreher (P79246)
Assistant Prosecuting Attorney
Attorney for Plaintiff
100 W. Main Street, 3rd Floor
Ionia, MI 48846
(616) 527-5302

Edward J. Sternisha (P75394)
Law Office of Edward J. Sternisha, PLLC
Attorney for Defendant
448 Leonard St NW
Grand Rapids, MI 49504
(616) 233-2255

At a session of court held on Monday, February 8, 2016, the Court, after hearing
testimony from witnesses, considering evidence, and hearing arguments from the parties,
HOLDS the speed limit on Parsonage Road in Saranac, Michigan **IS 55 MPH.**

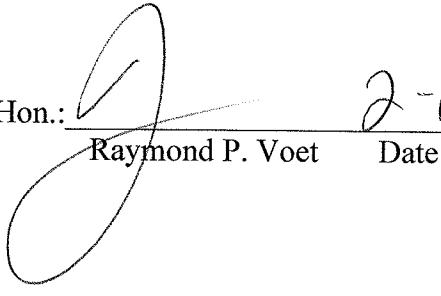
Prepared by:


Edward J. Sternisha (P75394) Date
Attorney for Defendant

Approved by:

PROSECUTOR REFUSED
Adam Dreher (P79246) Date
Attorney for Plaintiff

IT IS SO ORDERED:

Hon.: 
Raymond P. Voet Date

2-12-16

STATE OF MICHIGAN
IN THE 8TH CIRCUIT COURT FOR THE COUNTY OF IONIA

STATE OF MICHIGAN,
Plaintiff/Appellee,

Lower Ct Case No.: 15-1272-STA
Hon. Raymond P. Voet

Circuit Court Case #: 15-H-31675-AR

Honorable Robert S. Sykes, Jr.

v

ANTHONY MICHAEL OWEN,
Defendant/Appellant.

ORDER REMANDING TO TRIAL COURT COUNTY CLERK'S OFFICE
IONIA COUNTY, MICHIGAN
FILED

APR 14 2016

Adam Dreher (P79246)
Assistant Ionia County Prosecutor
Attorney for Plaintiff/Appellee
100 W. Main St., 3rd Floor
Ionia, MI 48846
(616) 527-5302

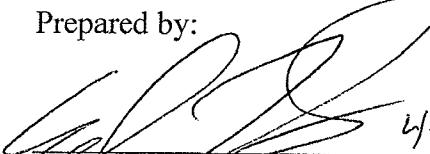
Edward J. Sternisha (P75394)
Law Office of Edward J. Sternisha, PLLC
Attorney for Defendant/Appellant
448 Leonard St NW
Grand Rapids, MI 49504
(616) 233-2255

TONDA RICH
COUNTY CLERK

ORDER REMANDING MATTER TO TRIAL COURT

At a session of said court held in the City of Ionia, Ionia County, Michigan on Friday April 1, 2016, after reviewing the case file, the Court hereby REMANDS the matter back to the 64-A District Court for rehearing (or reconsideration) of Defendant's Motion to Suppress & Dismiss. This Court does NOT retain jurisdiction.

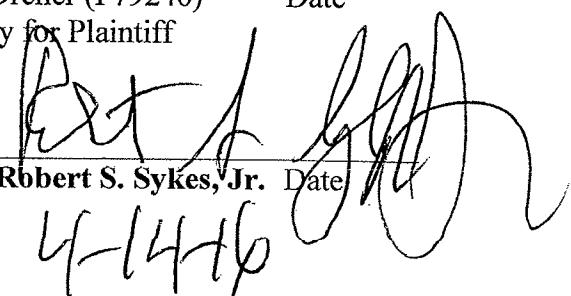
Prepared by:


Edward J. Sternisha (P75394) Date
Attorney for Defendant

Approved as to form by:

Adam Dreher (P79246) Date
Attorney for Plaintiff

Hon.:


Robert S. Sykes, Jr. Date

IT IS SO ORDERED:

STATE OF MICHIGAN
IN THE 64-A DISTRICT COURT FOR THE COUNTY OF IONIA

STATE OF MICHIGAN,
Plaintiff,

v

Case No.: 15-1272-STA

Hon. Raymond P. Voet

ORDER TO SUPPRESS &
DISMISS

ANTHONY MICHAEL OWEN,
Defendant.

Adam M. Dreher (P79246)
Assistant Prosecuting Attorney
Attorney for Plaintiff
100 W. Main Street, 3rd Floor
Ionia, MI 48846
(616) 527-5302

Edward J. Sternisha (P75394)
Law Office of Edward J. Sternisha, PLLC
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448 Leonard St NW
Grand Rapids, MI 49504
(616) 233-2255

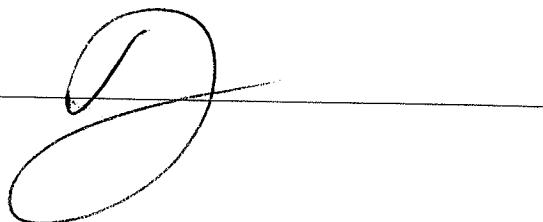
ORDER SUPPRESSING EVIDENCE & DISMISSING CASE

At a session of said court held in the City of Ionia, Ionia County, Michigan on Wednesday May 11, 2016, after hearing oral arguments, the Court hereby ORDERS all evidence obtained as a result of the traffic-stop conducted on Defendant's vehicle on September 5, 2015 SUPPRESSED, the case hereby DISMISSED, and the ~~return of Defendant's property that was seized at the time of arrest, including his Michigan Driver's License, his Michigan Concealed Pistol License, and his Glock 9mm semi-automatic handgun. The Ionia County Sheriff's Office~~ SHALL FORTHWITH return the listed property to Defendant.

IT IS SO ORDERED:

DATED: 5-11-16

Judge:



STATE OF MICHIGAN
IN THE 8th CIRCUIT COURT FOR THE COUNTY OF IONIA

STATE OF MICHIGAN,
Plaintiff/Appellant,

Lower Ct Case No.: 15-1272-STA
Hon. Raymond P. Voet

Circuit Court Case # 15H31675AR
Hon. Robert S. Sykes, Jr.

v

**NOTICE OF SUBMISSION &
PROOF OF SERVICE**

ANTHONY MICHAEL OWEN,
Defendant/Appellee.

AUG 23

Adam M. Dreher (P79246)
Assistant Prosecuting Attorney
Attorney for Plaintiff
100 W. Main Street, 3rd Floor
Ionia, MI 48846
(616) 527-5302

Edward J. Sternisha (P75394)
Law Office of Edward J. Sternisha, PLLC
Attorney for Defendant
448 Leonard St NW
Grand Rapids, MI 49504
(616) 233-2255

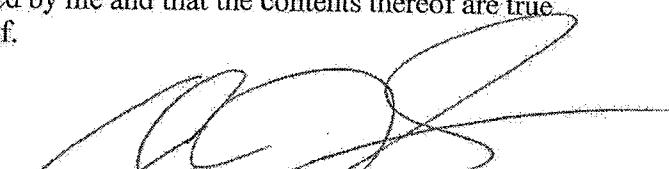
PLEASE TAKE NOTICE: that the enclosed proposed *Order Affirming District Court's Suppression of Evidence & Dismissal of Case* will be submitted to the Clerk of the Court under the 7-day rule (MCR 2.602(B)(3)). If no written objections are filed within 7 days, the clerk shall submit the order to the Court for entry.

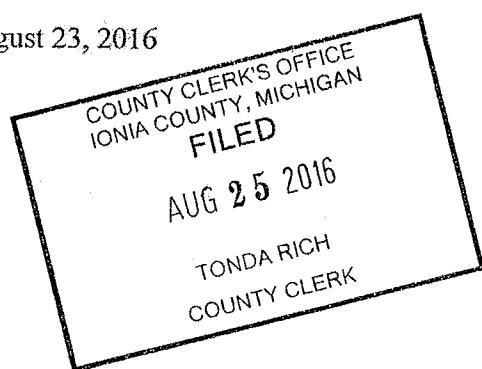
The undersigned certifies that on August 23, 2016, a copy of an *Order Affirming District Court's Suppression of Evidence & Dismissal of Case* was served via the following way(s):

Email to Prosecutor's Office at alundstrom@ioniacounty.org

I declare that this proof of service has been examined by me and that the contents thereof are true to the best of my information, knowledge, and belief.

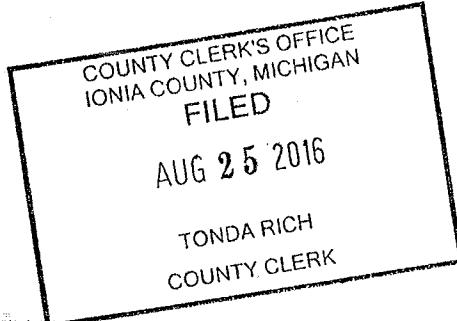
Dated: August 23, 2016


Edward J. Sternisha (P75394)
448 Leonard St NW
Grand Rapids, MI 49504



STATE OF MICHIGAN
IN THE 8th CIRCUIT COURT FOR THE COUNTY OF IONIA

STATE OF MICHIGAN,
Plaintiff,



ANTHONY MICHAEL OWEN,
Defendant.

Lower Ct. Case # 15-1272-STA
Hon. Raymond P. Voet

Circuit Ct. Case #15-H31675-AR
Hon. Robert S. Sykes, Jr.

**ORDER AFFIRMING
DISTRICT COURT'S
SUPPRESSION OF EVIDENCE
& DISMISSAL OF CASE**

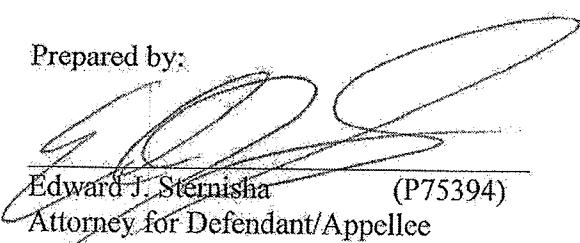
Adam M. Dreher (P79246)
Assistant Prosecuting Attorney
Attorney for Plaintiff
100 W. Main Street, 3rd Floor
Ionia, MI 48846
(616) 527-5302

Edward J. Sternisha (P75394)
Law Office of Edward J. Sternisha, PLLC
Attorney for Defendant
448 Leonard St NW
Grand Rapids, MI 49504
(616) 233-2255

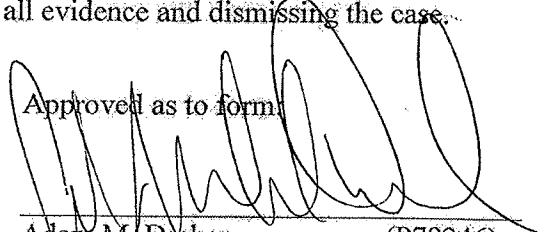
ORDER AFFIRMING LOWER COURT'S ORDER

At a session of said court held in the City of Ionia, Ionia County, Michigan on Monday, August 22, 2016, after hearing oral arguments and considering briefs the Court hereby
AFFIRMS the District Court's Order suppressing all evidence and dismissing the case.

Prepared by:

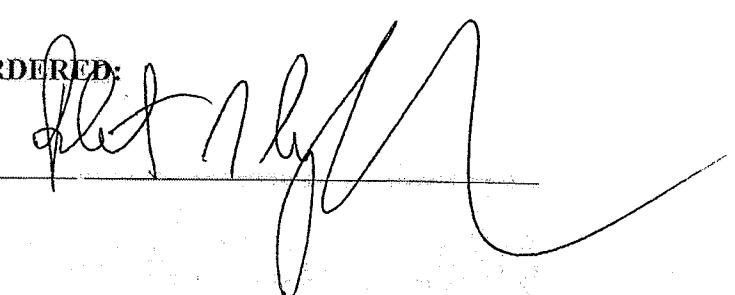

Edward J. Sternisha (P75394)
Attorney for Defendant/Appellee

Approved as to form:


Adam M. Dreher (P79246)
Attorney for Plaintiff/Appellant

IT IS SO ORDERED:

DATED: 8/25/16

Judge: 

STATE OF MICHIGAN
IN THE 8th CIRCUIT COURT FOR THE COUNTY OF IONIA COUNTY

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant, File No. 15H34675AR
-v- Honorable Robert S. Sykes, Jr.

ANTHONY MICHAEL OWEN, ORDER
Defendant-Appellee.

At a session of said court held
In the City of Ionia, in said County,
On the 20th day of OCTOBER, 2016 :

PRESENT: Honorable Robert S. Sykes, Jr.

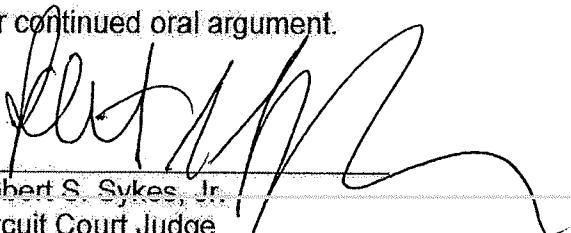
Upon directing, and hearing, oral argument on Plaintiff-Appellant's motion for reconsideration.

IT IS HEREBY ORDERED the case is **REMANDED** to the district court for an evidentiary hearing on the following questions:

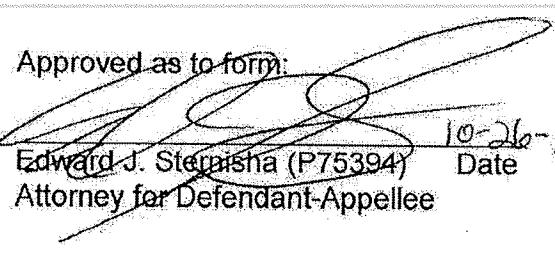
1. Did the Village of Saranac adopt the Motor Vehicle Code in 2004?
2. If so, what effect did that adoption have on Parsonage road?
3. Further, if a speed limit was established in 2004, what effect (if any) did 2006 PA 85 have on that speed limit?

This Court retains jurisdiction, and upon conclusion of the evidentiary hearing, the case shall be rescheduled before this Court for continued oral argument.

Dated: 10/26/16


Robert S. Sykes, Jr.
Circuit Court Judge

Approved as to form:


Edward J. Serniak (P75394)
Attorney for Defendant-Appellee

10-26-16
Date

STATE OF MICHIGAN

IN THE 8th CIRCUIT COURT FOR THE COUNTY OF IONIA COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant, File No. 15H3-675AR

-v-

Honorable Robert S. Sykes, Jr.

ANTHONY MICHAEL OWEN,

ORDER

Defendant-Appellee.

/

At a session of said court held *Janae K. Cooper, County Clerk*
In the City of Ionia, in said County
On the 22nd day of FEBRUARY, 2017 :

PRESENT: Honorable Robert S. Sykes, Jr.

Upon directing, and hearing, oral argument on Plaintiff-Appellant's motion for reconsideration, review of the district court evidentiary hearing held on December 19, 2016, and further argument heard today:

IT IS HEREBY ORDERED this Court's order affirming the district court decision dated August 22, 2016 is **RECONSIDERED**.

IT IS FURTHER ORDERED the district court's original order suppressing evidence and dismissing the case dated May 11, 2016, for the reasons stated on the record, is hereby **VACATED**. The case is **REMANDED** to the district court for further proceedings.

Dated:

2-22-17

Robert S. Sykes, Jr.
Circuit Court Judge

Approved as to form:

Edward J. Sternisha (P75394) Date
2-22-17
Attorney for Defendant-Appellee

Court of Appeals, State of Michigan

ORDER

People of MI v Anthony Michael Owen

William B. Murphy
Presiding Judge

Docket No. 339668

Jane E. Markey

LC No. 2015-031675-AR

Jane M. Beckering
Judges

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JAN 30 2018

Date

Jerome W. Zimmer Jr.
Chief Clerk

Order

Michigan Supreme Court
Lansing, Michigan

September 12, 2018

157380

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

ANTHONY MICHAEL OWEN,
Defendant-Appellant.

Stephen J. Markman,
Chief Justice

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

SC: 157380
COA: 339668
Ionia CC: 2015-031675-AR

/

On order of the Court, the application for leave to appeal the January 30, 2018 order of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted.



t0905

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.

September 12, 2018


Clerk

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

July 23, 2019

Plaintiff-Appellee,

v

No. 339668

Ionia Circuit Court

LC No. 2015-031675-AR

ANTHONY MICHAEL OWEN,

Defendant-Appellant.

Before: SAWYER, P.J., and BORRELLO and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals by leave granted following his convictions for operating while visibly impaired, MCL 257.625(3); and being a concealed pistol licensee in possession of a firearm while intoxicated, MCL 28.425k(2). We reverse and remand.

This case arose from a deputy sheriff's traffic stop of defendant for allegedly driving 43 miles per hour in a 25-mile-per-hour zone in the Village of Saranac. The deputy required defendant to perform a series of field sobriety tests and gave him a preliminary breath test, which defendant failed. The deputy placed defendant under arrest. Defendant moved to suppress all evidence obtained during the traffic stop and for dismissal of the charges against him on the ground that his constitutional rights under Const 1963, art 1, § 11 and US Const, Am IV, were violated by the deputy who had no lawful basis for stopping defendant because the speed limit on the unposted road was 55 miles per hour pursuant to the statutory general speed limit under MCL 256.628(1). The district court initially denied defendant's motion, and he appealed to the circuit court, which remanded for an evidentiary hearing that resulted in the district court's grant of defendant's motion and plaintiff's appeal to the circuit court. The circuit court affirmed the district court's decision, and plaintiff moved for reconsideration, which led to the circuit court remanding for another evidentiary hearing that established certain facts. Upon reconsideration of its previous ruling, the circuit court reversed itself and vacated the district court's decision. Defendant entered a conditional guilty plea and sought leave to appeal the circuit court's decision. This Court denied defendant leave to appeal, and defendant sought leave to appeal to our Supreme Court, which in lieu of granting leave remanded the case to this Court for consideration as on leave granted. *People v Owen*, ___ Mich ___; 917 NW2d 79 (2018).

Defendant first argues that the circuit court erred by vacating the district court's suppression and dismissal ruling because the deputy unlawfully stopped defendant in violation of his constitutional rights and the circuit court incorrectly ruled that the deputy made a reasonable mistake of the law despite lacking an articulable and reasonable suspicion that defendant violated any law. We agree.

"A trial court's findings of fact on a motion to suppress are reviewed for clear error, while the ultimate decision on the motion is reviewed *de novo*." *People v Hrlic*, 277 Mich App 260, 262-263; 744 NW2d 221 (2007). "Clear error exists if the reviewing court is left with a definite and firm conviction that a mistake has been made." *People v Johnson*, 466 Mich 491, 497-498; 647 NW2d 480 (2002). This Court reviews *de novo* as a question of law matters of statutory interpretation. *People v Thomas*, 263 Mich App 70, 73; 687 NW2d 598 (2004).

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [US Const, Am IV.]

In *People v Jones*, 260 Mich App 424, 428-429; 678 NW2d 627 (2004), this Court explained:

The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures.

* * *

An investigatory stop, which is limited to a brief and nonintrusive detention, constitutes a Fourth Amendment seizure. 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. The reasonableness of an officer's suspicion is determined on a case-by-case basis in light of the totality of the facts and circumstances and specific reasonable inferences he is entitled to draw from the facts in light of his experience. [Quotation marks and citations omitted.]

In assessing the protections created by the Fourth Amendment, the United States Supreme Court has "long held that the 'touchstone of the Fourth Amendment is reasonableness.'" *Ohio v Robinette*, 519 US 33, 39; 117 S Ct 417; 136 L Ed 2d 347 (1996) (citation omitted). Reasonableness is measured by examining the totality of the circumstances. *Id.* Because of "'endless variations in the facts and circumstances'" implicating the Fourth Amendment, reasonableness is a fact-intensive inquiry that does not lend itself to resolution through the application of bright-line rules. *Id.*, quoting *Florida v Royer*, 460 US 491, 506; 103 S Ct 1319; 75 L Ed 2d 229 (1983). A defendant may not be detained unless reasonable, objective grounds exist for doing so. *Royer*, 460 US at 498. Under *Terry v Ohio*, 392 US 1, 20;

88 S Ct 1868; 20 L Ed 2d 889 (1968), a search or seizure's reasonableness depends on "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place."

"A traffic stop for a suspected violation of law is a 'seizure' of the occupants of the vehicle and therefore must be conducted in accordance with the Fourth Amendment." *Heien v North Carolina*, 574 US 54, ___; 135 S Ct 530, 536; 190 L Ed 2d 475 (2014) (quotation marks and citations omitted). To be a lawful search and seizure, law enforcement must exercise "reasonableness." *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001). The Fourth Amendment permits investigative stops "when a law enforcement officer has a particularized and objective basis for suspecting the particular person stopped" broke the law. *Navarette v California*, 572 US 393, 396; 134 S Ct 1683, 1687; 188 L Ed 2d 680 (2014) (quotation marks and citation omitted). This basis for making a stop is known as reasonable suspicion. See *id*.

In *Heien*, the United States Supreme Court explained that a "[r]easonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law." *Heien*, 574 US at ___; 135 S Ct at 536. A violation of the Fourth Amendment requires "suppression of the unlawfully obtained evidence." *People v Cartwright*, 454 Mich 550, 558; 563 NW2d 208 (1997). This is known as the exclusionary rule. See *Mapp v Ohio*, 367 US 643, 656; 81 S Ct 1684; 6 L Ed 2d 1081 (1961). "The goal of the exclusionary rule . . . is to deter police misconduct." *People v Goldston*, 470 Mich 523, 538; 682 NW2d 479 (2004). Therefore, "the exclusionary rule should be employed on a case-by-case basis and only where exclusion would further the purpose of deterring police misconduct." *Id.* at 531. This Court has held that courts must suppress evidence otherwise lawfully seized during a traffic stop if the law enforcement officer lacked a reasonable suspicion to justify the stop. *People v Dillon*, 296 Mich App 506, 509; 822 NW2d 611 (2012).

In Michigan, speed limits are statutorily defined under the Motor Vehicle Code, MCL 257.601 *et seq.* At times relevant to this case, MCL 257.627¹ provided in relevant part:

(2) Except in those instances where a lower speed is specified in this chapter or the speed is unsafe pursuant to subsection (1), it is *prima facie* lawful for the operator of a vehicle to operate that vehicle at a speed not exceeding the following, except when this speed would be unsafe:

(a) 25 miles per hour on all highways in a business district.

* * *

(d) 25 miles per hour on a highway segment with 60 or more vehicular access points within 1/2 mile.

¹ MCL 257.627 was amended in 2012 by Public Act 252 and again in 2016 by Public Act 445.

(e) 35 miles per hour on a highway segment with not less than 45 vehicular access points but no more than 59 vehicular access points within 1/2 mile.

(f) 45 miles per hour on a highway segment with not less than 30 vehicular access points but no more than 44 vehicular access points within 1/2 mile.

(3) It is *prima facie* unlawful for a person to exceed the speed limits prescribed in subsection (2), except as provided in section 629.

* * *

(11) Nothing in this section prevents the establishment of an absolute speed limit pursuant to section 628. Subject to subsection (1), an absolute speed limit established pursuant to section 628 supersedes a *prima facie* speed limit established pursuant to this section. [Footnote omitted.]

At times relevant to this case, MCL 257.628 provided in relevant part:

(1) . . . The maximum speed limit on all highways or parts of highways upon which a maximum speed limit is not otherwise fixed under this act is 55 miles per hour, which shall be known and may be referred to as the "general speed limit".

The Village of Saranac could adopt traffic regulations that the Motor Vehicle Code authorized, but before such became enforceable, the ordinances or regulations were required to be posted on signs that gave notice to ordinarily observant persons of the local traffic regulations. See former MCL 257.606(1)(l) and (3).² At times relevant to this case, effective November 9, 2006, MCL 257.629 provided in relevant part:³

(1) Local authorities may establish or increase the *prima facie* speed limits on highways under their jurisdiction subject to the following limitations:

* * *

(c) Local authorities may establish *prima facie* lawful speed limits on highways outside of business districts that are consistent with the limits established under section 627(2).

If Saranac desired to modify the statutorily defined speed limits required under MCL 257.627, it had to follow the procedures set forth in MCL 257.627 and MCL 257.628 for lawful

² MCL 257.606 was amended in 2016 by Public Act 448.

³ MCL 257.629 was repealed during 2016 by Public Act 445, and the repeal became effective January 5, 2017.

modification of speed limits. Any modification of the statutorily defined speed limits had to be a matter of public record under MCL 257.628(6), which required local authorities like villages to have a public record of traffic control orders that establish the legal and enforceable speed limit for the highway segment described in the document and any modification of the statutorily defined speed limits. MCL 257.628(5) and (6) generally required posting of speed limits that modified the statutorily defined speed limits.

In this case, witnesses' testimonies established that Saranac had no public record of any modification of the statutorily defined speed limits under MCL 257.627. The evidence also established that the road where the traffic stop occurred lacked any speed limit signage within and without Saranac's village boundary visible to drivers traveling southbound. Under MCL 257.628(1), the road's speed limit was 55 miles per hour at the time of the deputy's traffic stop of defendant. Testimony by a Michigan State Police lieutenant established that the enforceable speed limit on the road was and remained 55 miles per hour at times relevant to this case. Pursuant to MCL 257.627, the statutorily defined speed limit on the road, if properly posted, would have been 45 miles per hour, but because the village neglected to post the speed limit, the statutory general speed limit applied. The record indicates that defendant drove 43 miles per hour southbound on the road. Accordingly, defendant lawfully traveled on the road the night of the traffic stop. The deputy testified that he stopped defendant because he mistakenly believed that the speed limit on the road was 25 miles per hour.

This case requires determination whether, under the totality of the circumstances, the deputy had an articulable and reasonable suspicion that a vehicle or one of its occupants was subject to seizure for a violation of law. To determine the reasonableness of the deputy's action, we consider from what source of law he gained his purported reasonable-but-mistaken understanding. At the time of the stop, Michigan's Vehicle Code did not permit an officer to stop a vehicle on an unposted road for exceeding the speed limit based on a belief that the road had a 25-mile-per-hour speed limit. Nor could an officer reasonably infer from the Motor Vehicle Code that he could stop a vehicle on an unposted road for exceeding the speed limit based on such a belief. Under MCL 257.628(1), because the road had no posted speed limit sign, the speed limit was 55 miles per hour. A reasonably competent law enforcement officer should have known that.

The record reflects that the deputy in this case admitted that he knew that the speed limit was not posted on the road for vehicles traveling south. He admitted that no speed limit was posted where he stopped defendant and that he knew that at that location because it was not posted that the speed limit was 55 miles per hour. The deputy also admitted that no traffic control device or sign told motorists traveling southbound on the road the speed limit a motorist had to observe. The record indicates that the deputy merely believed that the speed limit on the road was 25 miles per hour because 25-mile-per-hour speed limits were posted on some streets entering Saranac. Evidence established that the village had no sign posted anywhere that provided that the village had a general village speed limit by ordinance or regulation. Since 2006, under the Motor Vehicle Code, villages could not have blanket village-wide 25-mile-per-hour speed limits within their boundaries.

Michigan's Supreme Court long ago opined that officers of the law must act within the law. *People v Halveksz*, 215 Mich 136, 138; 183 NW 752 (1921). Further, it is axiomatic that reasonably competent law enforcement officers should know the law governing their conduct.

See generally *Harlow v Fitzgerald*, 457 US 800, 818-819; 102 S Ct 2727; 73 L Ed 2d 396 (1982). Although the deputy in this case was not required to be perfect, his mistake of law still had to be one of a reasonable law enforcement officer. See *Heien*, 574 US ____; 135 S Ct at 536. Even the deputy in this case admitted that an officer enforcing a speed limit should know the speed limit. The record in this case, however, establishes that the deputy failed to know the basic Michigan law provided under the Motor Vehicle Code, the very law he was tasked to enforce.

The deputy in this case did not make a reasonable mistake of law because the Motor Vehicle Code since 2006 established the rule of law regarding speed limits throughout Michigan. Under the Motor Vehicle Code, unposted roads were 55 miles per hour. See MCL 257.628(1). The deputy's testimony does not reflect a reasonable interpretation of the Motor Vehicle Code or even a plausible understanding of the applicable law. The record indicates that he never considered the Motor Vehicle Code at all. We conclude that the deputy did not have an objectively reasonable belief that probable cause existed to stop defendant because the totality of the circumstances established that he made an unreasonable mistake of law merely based on an unsupported hunch that the speed limit was 25 miles per hour because other roads were posted elsewhere in the village with that speed limit. However, since 2006, nearly 10 years before the traffic stop, the Motor Vehicle Code repealed blanket village-wide speed limits. The circuit court erred because it essentially held that a law enforcement officer's unreasonable ignorance of the law was equivalent to a reasonable mistake of the law.

Therefore, we hold that the circuit court erred by vacating the district court's suppression and dismissal ruling because analysis of the totality of the circumstances in this case establishes that the deputy lacked an articulable and reasonable basis for making the traffic stop. The deputy's subjective mistaken belief that the speed limit was 25 miles per hour lacked objective reasonableness. Therefore, the traffic stop was not lawful and it violated defendant's constitutional rights requiring suppression of the evidence obtained by the unlawful stop.

Defendant also argues without citation to any authority that the circuit court erred by reconsidering its ruling without first making a finding that palpable error existed. We disagree.

We review for an abuse of discretion a lower court's decision on a motion for reconsideration. *Woods v SLB Property Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008). We review de novo the proper interpretation and application of statutes and court rules. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008).

In *People v Walters*, 266 Mich App 341, 351-352; 700 NW2d 424 (2005), this Court explained that a circuit court sitting as an appellate court had no obligation to make a palpable error finding before granting a motion for reconsideration. Therefore, under *Walters*, the circuit court in this case had no obligation to make a palpable error finding before granting plaintiff's motion for reconsideration.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Stephen L. Borrello
/s/ Douglas B. Shapiro

Order

Michigan Supreme Court
Lansing, Michigan

December 30, 2020

Bridget M. McCormack,
Chief Justice

160150

David F. Viviano,
Chief Justice Pro Tem

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 160150
COA: 339668
Ionia CC: 2015-031675-AR

ANTHONY MICHAEL OWEN,
Defendant-Appellee.

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

On November 12, 2020, the Court heard oral argument on the application for leave to appeal the July 23, 2019 judgment of the Court of Appeals. On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

ZAHRA, J. (*dissenting*).

I dissent from the Court's denial of leave. In my view, the Court of Appeals clearly erred by concluding that the arresting deputy sheriff made an unreasonable mistake of law regarding the applicable speed limit that justified the traffic stop of the defendant's vehicle. The Court of Appeals failed to assess this case from the objective perspective of the deputy. I would reverse the judgment of the Court of Appeals and reinstate the judgment of the circuit court, which ruled that the deputy's actions were objectively reasonable and highlighted the absence of any indicia of bad faith on the deputy's part.

In 2015, defendant was stopped by a deputy of the Ionia County Sheriff's Department for speeding on southbound Parsonage Road while driving at 43 miles per hour; evidence obtained as a result of the stop resulted in his arrest for operating a vehicle while visibly impaired, MCL 257.625(3), and being a concealed pistol licensee in the possession of a firearm while intoxicated, MCL 28.425k(2).

At that time, the vicinity of the road at which defendant was stopped displayed no southbound-posted speed limit, but there was a northbound-posted speed limit of 25 miles per hour. The 25-miles-per-hour sign was not legally posted, according to the circuit court. The Court of Appeals affirmed, and I accept the premise that the legal speed limit—both northbound and southbound—was 55 miles per hour, and that defendant was driving slower than 55 miles per hour when he was stopped. The sole issue here, accepting the above premise, is whether the traffic stop violated the Fourth Amendment.

“A traffic stop for a suspected violation of law is a ‘seizure’ of the occupants of the vehicle and therefore must be conducted in accordance with the Fourth Amendment.”¹ Such a “seizure[] based on mistakes of fact can be reasonable.”² Similarly, such a seizure “can rest on a mistaken understanding of the scope of a legal prohibition.”³ However, “the Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable.”⁴ In my view, it was objectively reasonable for an officer in the deputy sheriff’s position to believe that: (a) the applicable speed limit was 25 miles per hour on northbound Parsonage Road by the explicit posting of such a limit; (b) there was no distinctive traffic, safety, or other signage of southbound Parsonage Road compared to northbound Parsonage Road; and (c) the applicable speed limit statutes in effect at the time, MCL 257.627, MCL 257.628, and MCL 257.629,⁵ reflect a single speed limit for a particular “highway segment[]” or “highway[],” as those terms may reasonably be understood as contemplating that lanes of travel on a single highway extend in both directions of the highway, and if not otherwise signaled, the speed limit would be the same in both directions. Accordingly, although he was mistaken, it was objectively reasonable for the deputy sheriff to have surmised that the applicable speed limit was 25 miles per hour on southbound Parsonage Road and to therefore stop defendant on the basis of that understanding. For these reasons, I respectfully dissent from our order denying leave to appeal. I would instead reverse the judgment of the Court of Appeals and reinstate defendant’s convictions and sentences.

MARKMAN and VIVIANO, JJ., join the statement of ZAHRA, J.

¹ *Heien v North Carolina*, 574 US 54, 60 (2014).

² *Id.* at 61.

³ *Id.* at 60.

⁴ *Id.* at 66.

⁵ This section has since been repealed. See 2016 PA 445.



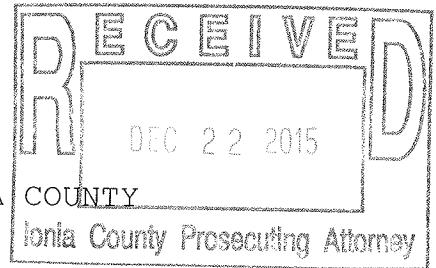
I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 30, 2020

t1229

A handwritten signature of Larry S. Royster in black ink.

Clerk



STATE OF MICHIGAN
64A DISTRICT COURT, IONIA COUNTY
THE STATE OF MICHIGAN,

Plaintiff,

v

File No. 15-1272-STA

ANTHONY MICHAEL OWEN,

Defendant.

/

MOTION TO SUPPRESS AND DISMISS

BEFORE THE HONORABLE RAYMOND P. VOET, DISTRICT JUDGE

Ionia, Michigan - Wednesday, October 21, 2015

APPEARANCES:

For the People:

MR. ADAM DREHER - P79246
Assistant Prosecuting Attorney
100 West Main Street
Ionia, Michigan 48846
616/527-5302

For the Defendant:

MR. EDWARD J. STERNISHA - P75394
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Recorded and
Transcribed by:

Ms. Deborah Coon - CER 5040
Certified Electronic Recorder
616/527-5354

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Ionia, Michigan

Wednesday, October 21, 2015 - 1:40 p.m.

MR. DREHER: People v Owen, 15-1272-STA,
defendant's motion to suppress and dismiss.

THE COURT: Do we need testimony?

MR. DREHER: Yes, Your Honor. The People are prepared with Deputy Madsen.

THE COURT: All right, call your first witness.

THE COURT: Defendant or defense attorney?

MR. DREHER: Defense attorney.

THE COURT: Okay, Mr. Sternisha?

MR. STERNISHA: Your Honor, that's true, but since this is the defense motion, I believe that we would proceed first?

THE COURT: Usually the Prosecutor presents the evidence, 'cause they have the burden of persuasion. You get to argue first.

MR. STERNISHA: But in a defense motion, I believe that burden shifts.

THE COURT: Never done it that way in 26 years.
I mean if--I'll change for you guys if you guys all agree

1 and get along.

2 MR. DREHER: I have no objection, Your Honor.

3 THE COURT: But that's not how I usually--

4 MR. STERNISHA: I--I--

5 THE COURT: That's not how I've seen it done for
6 26 years.

7 MR. STERNISHA: I've been on a few times in
8 other Courts. It's usually the Judge that has shifted it
9 to--to me when it's my motion, so--

10 THE COURT: If you want to go first, that's fine
11 with me, as long as we get it done.

12 MR. STERNISHA: Okay, thank you, Your Honor.

13 THE COURT: So go head and call your first
14 witness.

15 MR. STERNISHA: I would call Deputy Madsen.

16 THE COURT: Raise your right hand please. Do
17 you solemnly swear or affirm to tell the truth, so help
18 you God?

19 DEPUTY MADSEN: I do.

20 THE COURT: Please be seated.

21 DEPUTY DERRICK MADSEN

22 called as a witness at 1:42 p.m., testified as follows:

23 DIRECT EXAMINATION

24 BY MR. STERNISHA:

25 Q Would you please state your full name and spell it for the

1 record please?

2 A Derrick Raymond Madsen D-E-R-R-I-C-K R-A-Y-M-O-N-D M-A-D-

3 S-E-N.

4 Q S-E-N?

5 A Correct.

6 Q Okay, thank you, just wanted to make sure I heard you

7 correctly. And um--you're in uniform, so I'm gonna assume

8 you're a deputy with the--is that true?

9 A Correct.

10 Q Okay, could you tell us what uh--where you work?

11 A I work for the Ionia County Sheriff's Department as a full

12 time road deputy.

13 Q Okay and how long have you been in that position?

14 A I've been with deputy--with Ionia County since May, of

15 2015.

16 Q Okay, for a few months now then; correct?

17 A Correct.

18 Q Okay and have you testified in Court before?

19 A I've not.

20 Q Okay, what I'm going to do is I'm going to ask you some

21 questions, and I'm gonna ask--I'm simply going to need a

22 yes or no or I don't know answer. If I feel that I need

23 more of that, I will let you know. Does that seem fair

24 enough?

25 A Correct.

1 Q Yes?

2 A Yes.

3 Q Okay, the Prosecutor will also have an opportunity to ask
4 you questions, and then if the Judge has some questions
5 for you, the Judge will ask you questions. Fair enough?

6 A Fair enough.

7 Q Okay, thank you. Were you working as a road patrol
8 officer on September 5th of 2015?

9 A I was.

10 Q Okay, were you--did you--as part of your job as a road
11 patrol officer, would you agree that you are sent to calls
12 by dispatch at times?

13 A Yes.

14 Q And other times you initiate your own calls if you will?

15 A Yes.

16 Q So just a traffic stop; correct?

17 A Correct.

18 Q Okay and when you do that, if it's a--I guess what I'm
19 asking is are you required, if there's an incident such as
20 an arrest, to write a report based on what happened?

21 A In that situation, yes.

22 Q So when you write a report, it's important to be accurate;
23 correct?

24 A Correct.

25 Q And it's important to be--to put information in there

1 that's important to the case; correct?

2 A Correct.

3 Q Okay and you already stated you're working on September

4 5th, did you have an opportunity that evening to come

5 across the defendant, my client, Mr. Owen?

6 A Yes.

7 Q Did that turn into an arrest?

8 A Yes.

9 Q And did you write a report on that?

10 A Yes.

11 Q And was that report complete and honest?

12 A Yes.

13 Q Okay, do you have a copy of your report with you today?

14 A I do not.

15 Q If I provided you a copy for your review, because I'm

16 gonna ask you some yes or no questions, would it help?

17 A It would.

18 MR. STERNISHA: Would the Prosecutor have any

19 objection to that?

20 MR. DREHER: Just as long as I see the report

21 first and make sure it's not marked or anything.

22 MR. STERNISHA: Well, there are some highlights.

23 MR. DREHER: Oh, okay. Yeah, that's all right.

24 MR. STERNISHA: Your Honor, may I approach the

25 witness?

THE COURT: You may.

MR. STERNISHA: Thank you.

BY MR. STERNISHA:

Q Deputy, aside from the things that I highlighted, does that appear to be the report that you had submitted to sheriff's department for the arrest of Mr. Owen?

A It does.

Q Does it appear, other than the highlighted marks, that anything has been altered or--other than what you would've put in there?

A Would you like me to read the entire report?

Q No, I would not. I'm just asking you if you believe that it's your report?

A Yes, it is.

Q Okay, did you write in that report the following: on September 5, 2015, Deputy Brinks and I stopped the vehicle for speeding?

A I did.

Q Did you further write that Deputy Brinks and I saw a pickup--saw a truck doing 43 miles per hour in a 25 mile per hour zone?

A I did.

Q A short distance below that in the date, time venue section, did you write the incident occurred on September 5, 2015, at approximately 21:13 hours on Parsonage Road

1 near Glenmoore Drive, Boston Township, County of Ionia and
2 State of Michigan?

3 A Correct.

4 Q And is 21:13 hours 9:13 p.m.?

5 A Yes, it is.

6 Q Did you further write, under a section titled contact with
7 Mr. Owen: I advised I was Deputy Madsen with the Ionia
8 County Sheriff's Department and I was stopping Mr. Owen
9 for speeding?

10 A Yes.

11 Q In the next paragraph down, did you state--did you write
12 Mr. Owen was asked if he had been drinking while he was
13 driving his truck that afternoon?

14 A I did.

15 Q Did you write he state he had never drank while driving;
16 only having a beer earlier in the afternoon?

17 A Yes.

18 Q Did you write Mr. Owen was--stated he was on his way to
19 his friend's house and had just left his residence?

20 A I did.

21 Q And further, did you state--did you write Mr. Owen was
22 asked if he felt like he was intoxicated or could feel the
23 effects of alcohol?

24 A I did.

25 Q Mr. Owen stated he did not feel the effects of alcohol; is

1 that what you wrote?

2 A I did.

3 Q Okay. Deputy Madsen, was Mr. Owen traveling southbound on

4 Parsonage when you--when you and your partner got him on

5 radar, going 43 miles per hour?

6 A I need a map to take a look, just to verify my course.

7 Q Would it help to know that M-21 runs east and west, would

8 you agree with me on that?

9 A Yes. Then he was traveling south.

10 Q He'd be traveling south. Was there any speed limit sign

11 on Parsonage Road for vehicles traveling south?

12 A Traveling southbound? No.

13 Q Okay, was there--and did you--did you see him on any other

14 street that evening?

15 A I saw him on Summit Street and then I saw him on Parsonage

16 Street.

17 Q Okay, was there any speed limit sign for either direction

18 of travel on Summit Street, in the area that you saw him

19 driving?

20 A I'm not aware.

21 Q Not that you're aware? Okay. Deputy Madsen, do you

22 believe that it would--that it should be reasonable for an

23 officer enforcing a speed limit, to know the speed limit?

24 A Yes.

25 Q When you--when you had an opportunity to talk to Mr. Owen

1 and look at him--look at his face, did you noted--notice
2 anything unusual about him?

3 A He has a eye that he said was blind.

4 Q He said his was blind--he's blind in one eye?

5 A Correct.

6 Q If you looked at him today, would you see the same thing?

7 A From this distance, no.

8 Q Was there any reason that night for you not to believe
9 that he was blind in one eye?

10 A No.

11 Q Well, let me ask you this: under the next section of your
12 report where it's titled standard field sobriety test, did
13 you write I asked Mr. Owen if he had any eye issues, and
14 he stated he was completely blind in his left eye?

15 MR. DREHER: Objection, Your Honor, relevance?

16 THE COURT: Counsel?

17 MR. STERNISHA: Your Honor, this is--the motion
18 is to suppress and dismiss based on the stop and the field
19 sobriety test, as I put in the motion. This has to do
20 with the field sobriety test and the reasonable cause or
21 probable cause to arrest Mr. Owen.

22 THE COURT: I haven't seen a motion where it's
23 contesting the field sobriety test.

24 MR. DREHER: Your Honor, I'm under the
25 impression that defendant was merely challenging the stop.

THE COURT: Based upon the speed limit issue.

MR. DREHER: Correct.

MR. STERNISHA: On section four--number four of the motion--during the stop the deputy required Mr. Owen to submit to a variety of so called field sobriety tests and a preliminary breath test, and the Prosecutor admitted that section in his response.

THE COURT: Then he did go through the tests?

So what's this got to do with the speed limit? C'mon, I got a busy docket here. What's it got to do with the--

MR. STERNISHA: Your Honor, it has nothing to do with the speed limit, but--

THE COURT: Then let's stick to the speed limit.

MR. STERNISHA: Very well, Your Honor. My only concern is I don't want to be precluded from raising this issue later. But if we can stick to the speed limit--

THE COURT: Yeah, that's the motion that I'm hearing.

MR. STERNISHA: Very well.

THE COURT: All right.

MR. STERNISHA: Your Honor, I believe that's all I have for this witness at this time.

THE COURT: Counsel?

MR. DREHER: Yes, Your Honor.

CROSS-EXAMINATION

1 BY MR. DREHER:

2 Q Deputy Madsen, what is--what is the speed limit on
3 Parsonage Road?

4 A 25 miles per hour.

5 Q Thank you.

6 MR. DREHER: No further questions, Your Honor.

7 THE COURT: Was the defendant in the area that
8 was 25?

9 THE WITNESS: (No verbal response).

10 THE COURT: Where did you observe him speeding?

11 THE WITNESS: I was coming down Summit Street,
12 Your Honor and the subject was at the stop sign on Summit
13 and Parsonage. He took a left onto--

14 THE COURT: Can you draw a diagram up on the
15 grease board for me?

16 THE WITNESS: Okay.

17 THE COURT: I still--I'm not seeing it.

18 MR. DREHER: Your Honor, I'm not sure if the
19 Court will allow this. I did attach a map with our
20 response motion. I believe it's marked--

21 THE COURT: Well, you didn't introduce it though
22 and I haven't seen if counsel objects or disagrees or
23 cross-examines. I just want facts right now.

24 MR. STERNISHA: Your Honor, I don't have any
25 objections to the deputy drawing on the board or

1 testifying to his--how he appeared it. He already
2 testified he understands that Parsonage was a north and
3 south street. So I think it'd be fairly easy to--

4 THE COURT: Well, I want a visual. If I can't
5 get a map, I'm gonna have him draw one on the board. So
6 what do you guys want to do? I want a visual.

7 MR. STERNISHA: I--can I--I can redirect?

8 THE COURT: He's my witness now.

9 MR. STERNISHA: Okay.

10 THE COURT: Do you object to a map or do you
11 want him to draw it on the board?

12 MR. STERNISHA: I would rather--I object to the
13 map, Your Honor. I--

14 THE COURT: Deputy, could you please step up to
15 the grease board and draw a map--

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: --an visually show me what happened.

18 THE WITNESS: All right, Your Honor, the subject
19 is red, turning onto Summit Street. I'm green, I
20 followed--immediately upon getting onto Summit Street I
21 saw the subject stopped at a four way stop, right here
22 (indicating). The subject used his blinker, turned onto
23 Parsonage. I immediately stopped--turned left as well.
24 Upon stopped--upon getting behind the vehicle, the vehicle
25 was in front of me, Deputy Brinks initiated our radar

1 system, which showed him doing 43 miles per hour. We were
2 still on Parsonage Road. We continued to follow the
3 driver, just to see how his driving was and we ended up
4 making the stop, once I got onto Parsonage up here
5 (indicating) a sign of the village limits. But
6 everything--our visual of his speed took place in the
7 Village of Saranac, sir.

8 THE COURT: So what's the speed limit right
9 there?

10 THE WITNESS: 25 miles per hour.

11 THE COURT: Is it posted?

12 THE WITNESS: It is posted right here
13 (indicating) in a drive--in a private residence, sir.

14 THE COURT: Counsel--you may be seated.
15 Counsel, I'll let you both ask more questions.

16 MR. STERNISHA: Thank you, Your Honor.

17 THE COURT: Mr. Sternisha, you can go first.

18 MR. STERNISHA: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. STERNISHA:

21 Q Just for the record the Parsonage that you drew up there
22 runs north and south; correct?

23 A Correct.

24 Q Okay and because you--you mentioned this--I want to bring
25 you back to your report. Did you, under traffic stop, did

1 write--about the second line, last word starting--Deputy
2 Brinks and I turned onto Bridge Street and were unable to
3 locate the vehicle?

4 A I did.

5 Q And at that, you were looking for an unknown vehicle;
6 correct?

7 A I believe Deputy Brinks knew it was a pickup truck. I did
8 not see that at that time, no. I was driving. He was in
9 the passenger seat.

10 Q Well, then let me--let me um--let me further ask then--you
11 were unable to locate the vehicle. Is it not on Summit at
12 Bridge a very wide turn, and you cannot see Parsonage from
13 Bridge Street?

14 A Correct.

15 Q It's impossible to see directly down there; correct?

16 A As far as impossible, I'm not sure it's impossible, but I
17 would say it's very difficult to.

18 Q And so what you testified a minute ago that you saw him
19 from Bridge Street at Parsonage, that couldn't have
20 happened, could it?

21 A I'm sorry, can you restate that?

22 Q You could not have seen him from Bridge Street all the way
23 up to Parsonage, because of the wide bend in the road?

24 A Correct.

25 Q Okay, so you saw him only--you saw this vehicle only at

1 the intersection of Summit and Parsonage, making a left
2 turn onto southbound Parsonage; correct?
3 A Correct.
4 Q And the speed limit sign that you described does not face
5 for southbound traffic, does it?
6 A It does not.
7 Q So there is absolutely no speed limit signs facing for
8 southbound traffic?
9 A Correct.
10 Q And if you continue on Parsonage, as you stated you did,
11 there's no speed limit signs there either, is there, where
12 you stopped him?
13 A No.
14 Q There's still no speed limit signs; correct?
15 A Correct.
16 Q Okay, in that area, would you agree with me, is 55 miles
17 an hour?
18 A I would.
19 Q Is there anywhere, during the area where you saw Mr. Owen
20 driving, any indication to the average motorist what the
21 speed limit is, any speed limit sign?
22 A It's within the village limits and that's very
23 residential, sir.
24 Q That's not what I asked you. I'll be clearer. Is there
25 anywhere, any distinction, is there any sign, any traffic

1 control device that tells the average motorist traveling
2 southbound on Parsonage, that the speed limit is one and
3 changes to another?

4 A No.

5 Q But you admitted that somewhere on Parsonage it's 55?

6 A Correct.

7 Q Thank you.

8 THE COURT: Further questions?

9 MR. DREHER: Yes, Your Honor.

10 RECROSS-EXAMINATION

11 BY MR. DREHER:

12 Q Deputy Madsen, you testified there's a speed limit sign
13 coming into the village?

14 A Correct.

15 Q Is Parsonage Road the only way to get with--to the Village
16 of Saranac?

17 A There's not--it is not. There's other ways to get into
18 the village.

19 Q Do you know how many ways there are to get within the
20 village?

21 A Five or six.

22 Q Have you been to each of these locations?

23 A I'm sure at some point in time, but as far as going back,
24 no.

25 Q Are you aware if there's any speed limit signs as you're

1 entering the Village of Saranac?

2 A There are.

3 Q At each of these locations?

4 A Each that I can remember, yes.

5 Q And do you recall what the speed limit is on those signs?

6 A 25 miles per hour.

7 Q So in other words, as you're entering the Village of

8 Saranac, you put on notice that the speed limit was 25

9 miles an hour?

10 A Yes.

11 Q So what is your thoughts on what the speed limit is within

12 the Village of Saranac?

13 A 25 miles per hour.

14 Q Thank you.

15 MR. DREHER: Your Honor, I have no further

16 questions.

17 THE COURT: You may step down.

18 THE WITNESS: Thank you.

19 (At 1:59 p.m. - witness steps down)

20 THE COURT: Other witnesses?

21 MR. STERNISHA: I do, Your Honor. I have

22 Michelle Luponoff.

23 THE COURT: Step forward please. Raise your

24 right hand. Do you solemnly swear or affirm to tell the

25 truth, so help you God?

1 MS. LUPANOFF: Yes, I do.

2 THE COURT: Please be seated.

3 MICHELLE LUPANOFF

4 called as a witness at 2:00 p.m., testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STERNISHA:

7 Q State--

8 THE COURT: Can you pull the microphone back
9 please?

10 BY MR. STERNISHA:

11 Q Please state and spell your full name for the record.

12 A Michelle Marie Luponoff M-I-C-H-E-L-L-E M-A-R-I-E L-U-P-A-
13 N-O-F-F.

14 Q Okay and Ms. Luponoff, what is your occupation?

15 A I'm an attorney.

16 Q Do you work for my office?

17 A No, I do not.

18 Q You have your own--your separate office--your own office?

19 A Correct.

20 Q Okay, are you familiar with the area of Saranac?

21 A Yes, I am.

22 Q And how is it that you're familiar with Saranac?

23 A Um--I lived there. I have worked there. My father lived
24 and worked there for probably 15 to 20 years. My mother
25 still lives there for about the past 13 years.

1 Q Did, at some point in time, I asked you to conduct an
2 investigation in Saranac?

3 A Yes, you did.

4 Q And what is it that I asked you to investigate?

5 A To check out some of the signage around the area.

6 Q In relevance to what kind of signage?

7 A Speed limit--what the speed limit was.

8 Q And did you have an opportunity to do that?

9 A Yes, I did.

10 Q While you were there, did you have an opportunity to take
11 photographs?

12 A Yes, I did.

13 MR. STERNISHA: Your Honor, I'd like to have
14 these photos marked as defense proposed exhibits--well, A
15 through however many are here.

16 (DXA, B, C, D, E, F, G, H, J, K, L marked at 2:01 p.m.)

17 Thank you. Your Honor, may I (in audible) to the witness?

18 THE COURT: You may.

19 MR. STERNISHA: Thank you.

20 BY MR. STERNISHA:

21 Q I'd like you to take a look at those photographs and tell
22 me if you recognize those photographs?

23 A Yes, I do.

24 Q How do you recognize those photographs?

25 A I took these photographs.

1 Q When did you take those?

2 A Tuesday, October 6th.

3 Q Okay and do those photographs look as if they've been

4 altered in any way?

5 A No, they do not.

6 Q An accurate representation of the image you were looking

7 at when you took the photographs?

8 A Yes.

9 Q I'd like to have the photographs for a moment so I can

10 look at them as I hand them back to you, one by one.

11 They've been marked--in backwards order. Not that she did

12 it backwards, I think I handed 'em to her upside down.

13 What I'd like to do is hand you--well, we'll start with

14 defense exhibit--proposed exhibit L. Do you recognize

15 that photo?

16 A Yes, I do.

17 Q And what is that photo depicting?

18 A It's as you come into Saranac, off of 21.

19 Q M-21?

20 A Correct.

21 Q So you would be heading--

22 A Southbound.

23 Q --southbound. Okay and what do you see in that

24 photograph?

25 A Speed limit 40.

1 Q Speed limit 40. Is there anything else that you see in
2 that photograph?

3 A There's also the um--it's hard to make out in the picture,
4 but it's the welcome to Saranac--Village of Saranac sign.

5 MR. STERNISHA: Your Honor, at this time I'd
6 like to have the photograph that the witness just looked
7 at admitted.

8 MR. DREHER: Your Honor, just a quick voir dire.

9 BY MR. DREHER:

10 Q You said this was southbound M-21?

11 A No. As you're going on M-21 you turn right, you go
12 southbound. I think that might be Morrison--

13 Q On Morrison?

14 A --Road and as you're entering into Saranac--

15 Q And how far--how far after the turn from M-21 is this
16 photograph?

17 A I would guess a tenth of a mile. I didn't clock that.

18 Q Now during your investigation, did you proceed further?

19 A Yes, I did.

20 MR. DREHER: Your Honor, I have no objection to
21 the admission of defense L.

22 THE COURT: L is received.

23 (DXL received at 2:06 p.m.)

24 BY MR. STERNISHA:

25 Q Did you happen to take--happen to take any other photos as

1 the Prosecutor just asked, as you got closer?

2 A Yes, I did.

3 Q I believe that one shows K--it's a--defense exhibit K--

4 proposed exhibit, and a closer view of the--what would--

5 what did we see in that picture?

6 A It's a closer view of the speed limit 40 sign, and then

7 down a little ways welcome to the Village of Saranac.

8 Q Okay and I'm gonna hand you one more or defense exhibit--

9 proposed exhibit J, and between those two photos, is that--

10 --does that give the um--a better picture of what you're

11 trying to display in those photos?

12 A Yep, it--this is where you actually reach the sign welcome

13 to Saranac.

14 Q Okay and at that point, is there any other speed limit

15 sign?

16 A No. It's 40 miles an hour for another two tenths of a

17 mile.

18 Q Okay, well, just based on what you see there, are there

19 any other signs there?

20 A Oh, yes, there is. There's the stop for school bus

21 unloading and--loading and unloading, and that's the local

22 ordinance, and then there's also another no parking on any

23 street between certain times, and that's also a local

24 ordinance.

25 Q So both of those are local ordinances that cover all the

1 streets in the village?

2 A Correct.

3 Q Okay.

4 MR. STERNISHA: Your Honor, I'd like ask the
5 Court admit these as defense exhibit J and K.

6 MR. DREHER: No objection to J and K.

7 THE COURT: Received.

8 (DXJ and DXK received at 2:07 p.m.)

9 MR. STERNISHA: Thank you.

10 BY MR. STERNISHA:

11 Q And simply I is closer. Does that show the two signs that
12 you described of the village ordinances that cover all the
13 streets?

14 A Correct.

15 Q Okay.

16 MR. STERNISHA: Your Honor, I'd also (in
17 audible) down as defense exhibit I.

18 MR. DREHER: No objection to I.

19 THE COURT: Received.

20 (DXI received at 2:08 p.m.)

21 MR. STERNISHA: Thank you.

22 BY MR. STERNISHA:

23 Q Ms. Lopianoff, I have one here that's a defendant's
24 proposed exhibit H. Do you recognize that photograph?

25 A Yes. This is after he passed the welcome to the Village

1 of Saranac sign and then you get up to the bridge and then
2 there's a speed limit 25.

3 Q So prior to that sign, the speed limit was 40?

4 A Correct.

5 Q And between--did you have an opportunity to measure the
6 distance between the Village of Saranac sign and that
7 speed limit sign?

8 A Yes. There's two tenths of a mile where it's 40 miles per
9 hour. The entire village is not 25 miles per hour.

10 MR. STERNISHA: Your Honor, I'd like to ask that
11 this be admitted as defense exhibit H.

12 MR. DREHER: Just a quick voir dire, Your Honor.

13 BY MR. DREHER:

14 Q Was there any other speed limit signs between the Village
15 of Saranac, as well as the 25 mile an hour sign?

16 A Any other speed limit signs between those?

17 Q Right.

18 A Village of Saranac to the 25? No.

19 Q Okay.

20 MR. DREHER: No objection to H.

21 THE COURT: Received

22 (DXH received at 2:09 p.m.)

23 MR. STERNISHA: Thank you.

24 BY MR. STEPHEN SHAFFER.

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1 investigation to travel throughout the Village of Saranac?

2 A Yes, I did.

3 Q Did you see any other speed limit signs?

4 A Yes, I did.

5 Q There were other speed limit signs? Were they on all the

6 streets?

7 A No, not on all the streets, but as you like drive through

8 downtown there's one, and then if you're going out of

9 town, staying on Morrison Lake Road there's one.

10 Q Were there any on side streets or inside streets?

11 A Yes. I think I observed one on Main Street. I did not

12 observe any on Summit Street, going either way, and I did

13 not observe any on Parsonage, going southbound.

14 Q Okay, so some of the streets are marked with signs and

15 some are not?

16 A Correct.

17 Q And at least some portion of the village is 40 miles an

18 hour?

19 A Correct.

20 Q So your testimony today is from your investigation, not

21 all the streets in the Village of Saranac are 25 miles an

22 hour?

23 A Correct.

24 Q Is there--I'm gonna ask that you look at this photograph.

25 This is marked as proposed exhibit E. Do you recognize

1 that photo?

2 A Uh--yes, I do.

3 Q Oh, I'm sorry, that photograph--is there a sign in that

4 photograph?

5 A Yes, there is.

6 Q And what does that photograph--what is it of?

7 A This is on Parsonage Road, going southbound and the sign

8 indicates that trucking's prohibited and then Boston

9 Township ordinance.

10 Q So I wanna make sure I'm correct. This is on Parsonage

11 southbound?

12 A Correct.

13 Q Is it--is it south of Summit?

14 A Yes.

15 Q Okay and this is before the curve or after the curve that

16 the officer drew on the map?

17 A This is before the curve.

18 Q So on the southbound side of the road, it talks about a

19 Boston Township ordinance; is that correct?

20 A Well, if you're going south, wouldn't that be--

21 Q I'm sorry.

22 A --the west side of the road.

23 Q I'm sorry, it's on the west side of the road. Thank you

24 for correcting me, but it's--it's on the west side of the

25 road, and it's for southbound travel and it talks about a

1 Boston Township ordinance?

2 A Correct.

3 Q Okay, did you also have an opportunity to--during your

4 investigation to determine the geographical size of

5 Saranac?

6 A Yes, I did.

7 Q And what did you find?

8 A One point two or one point three square miles.

9 Q Okay, one point two or one point three square miles, and

10 the distance that you testified earlier to of two tenths

11 of a mile that you know of, at least that area that is 40

12 miles an hour, I would say a significant size of Saranac--

13 A Okay.

14 Q --based on the total overall size?

15 A Correct.

16 Q All right, thank you.

17 MR. STERNISHA: I'm sorry, I don't know if I had

18 that admitted, Your Honor. If I could have defense

19 exhibit--proposed exhibit E admitted as evidence.

20 THE COURT: Any objection?

21 MR. DREHER: No objection, Your Honor.

22 THE COURT: E is received.

23 (DXE received at 2:12 p.m.)

24 MR. STERNISHA: Thank you, Your Honor. I have

25 no further questions for this witness.

3 MR. DREHER: Yes, Your Honor.

CROSS-EXAMINATION

5 BY MR. DREHER:

6 Q Ms. Lupanoff, you investigated the Village of Saranac you
7 stated?

8 A Yes, I did.

9 Q Did you travel both inside and outside the Village of
10 Saranac?

11 A Yes, I did.

12 Q Are you aware of how many points of access there are to
13 the Village of Saranac?

14 A Let's see, one, two, three, four, five, six that I can
15 think of

16 Q If you were to see a map of the Village of Saranac, would
17 you be able to identify them?

18 A Yes

19 MR. DREHER: Your Honor, I'm showing the witness
20 a map of Saranac.

21 BY MR. DREHER:

22 Q What have I just handed you?

23 A It looks--it appears to be a map of Saranac

24 Q Is this an accurate depiction of Saranac--Saranac as you
25 remember it?

1 A Yes.

2 Q And does it illustrate how many points of entry there are
3 to the Village of Saranac?

4 A Yes. It says that there are--I don't see one. You have
5 eight on here, but I don't see number one.

6 MR. DREHER: Your Honor, I would ask for--

7 THE WITNESS: I only see seven.

8 MR. DREHER: Your Honor, I would ask for the
9 Court to take judicial notice that this is a map of
10 Saranac, and admit it as evidence.

11 (PX1 marked at 2:14 p.m.)

12 THE COURT: Any objection?

13 MR. STERNISHA: I have no objection, Your Honor.

14 THE COURT: Received.

15 (PX1 received at 2:14 p.m.)

16 BY MR. DREHER:

17 Q Now during your investigation, you showed photographs of
18 you traveling southbound on Morrison Lake Road, entering
19 the Village of Saranac?

20 A Correct.

21 Q And you testified that after turning onto Morrison Lake
22 Road, there was a 40 mile an hour sign?

23 A Correct.

24 Q And then a little further down, you would pass a welcome
25 to the Village of Saranac sign--

1 A Correct.

2 Q --and then two tenths of a mile after that it was 25 miles
3 an hour?

4 A Correct.

5 Q Now in between the Village of Saranac and--sign and the 25
6 mile an hour sign, you also have photographs of parking
7 ordinance, as well as some other ordinance that was--I
8 guess--providing notice to the motorists coming to the
9 Village of Saranac?

10 A Yes.

11 Q So this speed limit sign wasn't the only sign in between
12 the Village of Saranac sign and then the speed limit sign?

13 A I would have to look at my pictures again. I don't
14 remember if the local ordinances come before or after.

15 MR. DREHER: Your Honor, I'm showing the witness
16 defense J.

17 THE COURT: Which I believe was received.

18 MR. DREHER: Yes, Your Honor.

19 BY MR. DREHER:

20 A Okay, so yeah, where they indicate this--the local
21 ordinance comes after the welcome to Saranac sign.

22 Q Now it's these ordinance signs--there's--what's--what's to
23 be two or three before the speed limit sign, right?

24 A Correct.

25 Q Are you aware of how much distance is required in between

1 signs for motorists to be properly notified of different
2 ordinances?

3 A No, I'm not.

4 Q Now did you also travel westbound on Main Street entering
5 the Village of Saranac?

6 A Let's see, north--westbound Main Street?

7 Q Correct. It would--would it help if I showed the map
8 again?

9 A Yeah. I think I'm--I think I went eastbound on Main
10 Street, but I just want to double check here. Okay, west-
11 -no, I did not travel westbound on Main Street.

12 Q So you did not enter the Village of Saranac from that
13 location?

14 A There's not an entrance, if you look here (indicating).

15 Q So uh--

16 A Main Street--

17 Q I'd like to draw your attention what's previously been
18 marked as three.

19 A Okay, so if I were traveling westbound, coming into
20 Saranac--

21 Q Correct.

22 A --on Main Street? Uh--yes, I did.

23 Q And did you observe a speed limit sign on that location?

24 A Um--I don't remember.

25 Q You don't remember seeing the speed limit sign on that

1 location?

2 A I don't recall. I didn't take pictures of that one err--

3 Q During your investigation, did you travel into the Village

4 of Saranac along David Highway? In other words,

5 westbound--it should be location number four on that map.

6 A Yes, I believe I did.

7 Q And did you observe a speed limit sign entering the

8 village from that location?

9 A Yes, I did.

10 Q And what was the posted speed limit of that location?

11 A Uh--25.

12 Q And did you enter westbound--well, I should say north

13 westbound on Weeks Road into the Village of Saranac?

14 A No, I did not.

15 Q So you did not observe that entrance into the Village of

16 Saranac?

17 A No, I did not.

18 Q Did you travel northbound onto--excuse me--on Morrison

19 Lake Road entering the Village of Saranac?

20 A What's indicated as South Bridge Street here?

21 Q Correct.

22 A Uh--yes, I did.

23 Q And did you observe a speed limit sign on that location?

24 A Actually, I correct myself. I did not, but I'm just

25 familiar with that 'cause I travel in that way quite

1 often, so--

2 Q So you're familiar with whether or not there'd be a speed

3 limit sign entering the Village of Saranac, at that

4 location?

5 A There is a speed limit sign of 25 at some point, but I'm

6 not sure exactly what point.

7 Q And have you ever entered into the Village of Saranac from

8 Parsonage Road? It should be northbound at that point.

9 A Yes, I have.

10 Q And are you familiar with whether or not there's a speed

11 limit at that location?

12 A Yes, there is.

13 Q And what is that posted speed limit?

14 A 25.

15 Q And have you ever traveled eastbound Riverside Drive, into

16 the Village of Saranac?

17 A So that would be Summit, 'cause (in audible) called--

18 Q Right.

19 A --it says Summit on the map?

20 Q Yes.

21 A Uh--no, I have not.

22 Q So you--you're not familiar with whether there's a speed

23 limit sign at that location?

24 A No, I'm not.

25 Q Now referring back to that map that I handed you

1 previously, are those all the points of entry into the
2 Village of Saranac?

3 A Uh--yes and there's seven. I forgot about the Weeks Road.
4 I'm not sure what your number one is.

5 Q Now you conducted your investigation on October 6th?

6 A Correct.

7 Q And this would be about a month after defendant was pulled
8 over?

9 A I'm not sure when exactly defendant was pulled over.

10 Q What sort of law do you practice?

11 A I do criminal defense and estate planning.

12 Q What percentage of your practice is criminal defense?

13 A Probably about 60 percent.

14 MR. DREHER: Your Honor, I have no further
15 questions.

16 THE COURT: Redirect?

17 MR. STERNISHA: No, Your Honor, thank you.

18 THE COURT: You may step down.

19 THE WITNESS: Thank you.

20 (At 2:19 p.m. - witness steps down)

21 THE COURT: Other witnesses?

22 MR. STERNISHA: I have no further witnesses,
23 Your Honor.

24 THE COURT: Witnesses?

25 MR. DREHER: No rebuttal witnesses, Your Honor.

THE COURT: All right, argument Mr. Sternisha?

MR. STERNISHA: Thank you, Your Honor. Your Honor, actually, I think the law's very clear on this, and it's much simpler than we try to put out here today.

MCL257.628(1) states the maximum speed limit on all highways or parts of the highways, in which a maximum speed limit is not otherwise fixed under this act is 55 miles per hour, which shall be known and may be referred to as the general speed limit. Further, section 257.606(3) states an ordinance or regulation enacted under these subsections, shall not be enforceable until signs giving notice of the local traffic regulations are posted upon, or at the entrance to the highway or street or part of the highway or street effected, as may be most appropriate, and are sufficiently legible as to be seen by an ordinary observant person. The officer testified here today that there was no speed limit signs for in the direction of travel, that he observed Mr. Owen traveling. The officer further testified that he believes that it would be reasonable for an officer to know the speed limit in the area. Even if parts entering this--the Village of Saranac most of the parts--even though not all of 'em--even if most of the parts are designated as 25 miles per hour, there's other streets of travel in which go throughout the village, and the only two streets that the

1 deputy observed Mr. Owen traveling neither had a speed
2 limit sign, and yet, the deputy testified that at some
3 point--at some point, Parsonage is 55. No one can tell us
4 where, and I believe that's what would get us back to the
5 unambiguous traffic code that I just cited, that the
6 ordinary observant person could see. Your Honor, in this
7 case, there was no reason for them to continue to travel
8 or follow behind Mr. Owen. They clocked him at 43 miles
9 an hour. We didn't dispute that. We're only disputing
10 Your Honor, that the speed limit is not sufficiently
11 posted for the average person to be able to know what it
12 is. Frankly Your Honor, I asked police officers and
13 attorneys, and everyone gave me a different answer when I
14 asked them what the general speed limit is. If us trained
15 in the law are confused, how do we expect the average
16 person? Your Honor, because there was no speed limit sign
17 posted, I ask that--I submit that this stop was not
18 lawful, and I ask that the motion be granted, and the
19 evidence obtained be suppressed and the case dismissed.

20 THE COURT: Are you saying there has to be a
21 speed limit sign visible all the time, at any point on a
22 highway?

23 MR. STERNISHA: No, Your Honor, just simply what
24 the--what the statute says that it must be somewhere at an
25 entrance point, or some point on that road. There is no

1 speed limit signs at all.

2 THE COURT: Okay, but I'm just saying how many
3 do there have to be for the law to be complied with?

4 MR. STERNISHA: I do not know, but at least one,
5 I would argue. In this--in this area, I would say--I
6 don't know the answer to that, Your Honor, but the statute
7 clearly says there should've--at least be one.

8 THE COURT: So if there'd been on somewhere
9 else, he doesn't drive by it--

10 MR. STERNISHA: Well--

11 THE COURT: --has the law been complied with?

12 MR. STERNISHA: If there was one, I would argue
13 yes, Your Honor, that if there was one somewhere. There
14 was none anywhere on Parsons Road, anywhere.

15 THE COURT: Parsons Road--you're saying the
16 facts as established to any Parsons Road--Parsonage Road
17 has no speed limit?

18 MR. STERNISHA: There's no speed limit signs
19 from one end of Parsonage for southbound travel to as
20 several miles into the country, that I traveled and
21 looked.

22 THE COURT: Okay.

23 MR. STERNISHA: And the officer testified he
24 didn't see any.

25 THE COURT: Right. I--and I'm--I don't know the

1 answer to this question either. I'm just asking--
2 particularly in cities and villages where you have tons of
3 side streets and tons--blocks and blocks and blocks of
4 neighborhoods, does there need to be a speed--speed limit
5 sign on every block?

6 MR. STERNISHA: Your Honor, if the government is
7 going to enforce it, and I think the law--

8 THE COURT: Well, let me rephrase it.

9 MR. STERNISHA: Yeah.

10 THE COURT: Does the law require that there be a
11 sign on every block?

12 MR. STERNISHA: No. Based on what I read--

13 THE COURT: What does the law require?

14 MR. STERNISHA: --to the Court, it states that
15 it must be at the entrance to the highway or street, or
16 part of the highway or street effected, as made be most
17 appropriate and are sufficiently legible to be seen, by an
18 ordinarily observant person. So it doesn't specify the
19 number, but it specifies there should be some kind of way
20 for the person to know what they're driving. And if not,
21 we resort back to the general speed limit law. The
22 village is--they're put on notice, because this is known
23 as the general speed limit law.

24 THE COURT: So it goes to 55?

25 MR. STERNISHA: It's 55 if it's not posted, and

1 if the village wants it different, they--they can put one
2 up.

3 THE COURT: So if I decide that downtown Main
4 Street doesn't have enough signs up, you can go 55
5 downtown?

6 MR. STERNISHA: Your Honor, this wasn't in
7 downtown Main Street, and--

8 THE COURT: I'm just trying to understand the
9 boundaries of your argument. The legal--

10 MR. STERNISHA: Well, all I can go by is what
11 the statute says the maximum speed limit on all highways
12 or parts of highways, on which a maximum speed limit is
13 not otherwise fixed under the statute, is 55 miles per
14 hour. So it--the--I would say it would behoove the
15 municipalities if they want it enforced, to put some kind
16 of notice. In--as they did with the school bus loading
17 and unloading, as they did with no parking between certain
18 hours. They notified the public that there's a blanket
19 coverage. They did not do that with speed limits. They
20 chose not to.

21 THE COURT: Okay. Mr. Dreher?

22 MR. STERNISHA: Thank you.

23 THE COURT: Your Honor, I believe defendant
24 makes an excellent argument, if this were a formal
25 hearing, and the People were charging him with speeding

1 within the Village of Saranac. This however--

2 THE COURT: But isn't really this about then, a
3 speeding ticket? I mean isn't this really the legality of
4 the stop, the speeding ticket now?

5 MR. DREHER: Uh--no, Your Honor.

6 THE COURT: If I determine that the--that--not
7 that he wasn't speeding, but that he didn't have
8 sufficient notice, and therefore, there was no legal
9 reason to make the stop?

10 MR. DREHER: Your Honor, I believe defendant's
11 argument hit the nail right on the head, when he stated
12 that us trained in the law are confused as to this issue.
13 And the US Supreme Court in Heien v North Carolina the
14 case cited by the People's reply brief, does indicate that
15 although there is some sort of issue as to whether or not
16 defendant was speeding. The true question in today's
17 hearing--the motion to suppress--is whether it was
18 reasonable for the officer to believe that the defendant
19 was violating the speed limit. Now the speed limit,
20 within the State of Michigan is covered by 627, 628 and
21 629 of the motor vehicle code. It would be unreasonable
22 to expect an officer to know exactly which statute a speed
23 limit has been enforced, whether that be through the
24 Village of Saranac or whether that be for the State of
25 Michigan. What the people have shown today is that Deputy

1 Madsen believed that the speed limit was 25 mile an hour.
2 And it was a reasonable assumption for him to make that
3 the speed limit was 25, as each of the roads entering into
4 the village are marked 25 miles an hour. An Your Honor,
5 you did make an excellent--

6 THE COURT: This was a road leading out of the
7 village though.

8 MR. DREHER: That's correct, Your Honor, it was.

9 THE COURT: And so was the speed limit there 25
10 or not?

11 MR. DREHER: Your Honor, it was, and the reason
12 I am fully confident being able to say that, is because
13 there's absolutely no way that the defendant was under a
14 rock, within the Village of Saranac his entire life. In
15 other words, he would at some point, have to have entered
16 the Village of Saranac. And when he did that, he would be
17 put on notice that the speed within the Village of Saranac
18 was 25 miles an hour. But, that side steps the point. In
19 other words, this Court need not decide what the speed
20 limit within the Village of Saranac is. This Court need
21 only decide whether or not it was reasonable for the
22 officer to pull defendant over for traveling 43 miles an
23 hour on Parsonage Road, even though the defendant was
24 traveling southbound. We would ask that the Court in fact
25 deny defendant's motion, as it was fully reasonable for

1 the officer to believe that the speed limit was 25, and
2 the stop complied with the--excuse me--the stop was a
3 reasonable seizure of defendant, as he was traveling out
4 of the Village of Saranac. Thank you.

5 THE COURT: So you think there was adequate
6 signage?

7 MR. DREHER: Yes, Your Honor, I do. At each
8 point of entry into the Village of Saranac is marked 25
9 miles an hour.

10 THE COURT: Nothing at the exits?

11 MR. DREHER: Correct.

12 THE COURT: So would you agree, when you pass
13 that 25 mile per hour sign that it's 55?

14 MR. DREHER: Your Honor, as--as--

15 THE COURT: What is it when you pass the 25--
16 even though the 25 mile per hour sign is facing the other
17 way, only the people entering the city can see it--err
18 village rather. If it's going the other way, what--when
19 he--the minute he passes that line--that magic line and
20 he's outside the village now, what's the speed limit?

21 MR. DREHER: I would argue at that point, once
22 outside the Village of Saranac, it would revert back to
23 the state standard speed limit. Now I believe, because
24 it's a dirt road, that speed limit would be 45 as opposed
25 to the 55, but it is that magic line.

1 THE COURT: And he was going 43 anyway that we
2 know.

3 MR. DREHER: Uh--the--

4 THE COURT: Really the question in my mind is is
5 there adequate signage?

6 MR. DREHER: Yes, Your Honor.

7 THE COURT: Mr. Sternisha?

8 MR. STERNISHA: Absolutely not, Your Honor and
9 if I may--

10 THE COURT: Okay, then I'm gonna let you guys
11 right briefs on that, 'cause that's an unusual interesting
12 question.

13 MR. DREHER: Your Honor, if I may just clarify.
14 You want briefs on--

15 THE COURT: Signage. How much signage does
16 there have to be, if any at all?

17 MR. DREHER: Yes, Your Honor. As there--

18 THE COURT: How much notice has a citizen need
19 to have to know what the speed limit is?

20 MR. STERNISHA: Thank you for the challenge,
21 Your Honor.

22 THE COURT: Yeah, right, I'll take it under
23 advisement. Let's have briefs--let's say--do you need to
24 see each other's briefs first? Perhaps you write one
25 within 14 days and you reply within 14 days after that.

1 MR. DREHER: Your Honor, is--is the Court
2 completely throwing out the idea that it's reasonable for
3 the officer to have stopped the defendant?

4 THE COURT: Well, you can still write that in
5 the brief. I'm--haven't shut the door on that, but to me,
6 as I look at the case, it really boils down to whether the
7 citizen's had adequate notice of what the speed limit is.

8 MR. DREHER: Yes, Your Honor.

9 MR. STERNISHA: Thank you.

10 THE COURT: That's my view of the case, but I--
11 if there's anything else that you think that I should look
12 at, I'm not gonna stop you from doing that.

13 MR. STERNISHA: Thank you, Your Honor.

14 THE COURT: All right, thank you.

15 (At 2:31 p.m. - proceeding concluded)

16

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STATE OF MICHIGAN)
COUNTY OF IONIA)

I certify that this transcript, consisting of 47 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Wednesday, October 21, 2015.

December 16, 2015

Deborah Coon
Deborah Coon - CER 5040

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| Attorney, bar no., address, and telephone no. MR. RONALD J. SCHAFER - P56466 100 W. Main St. Ionia, MI 48846 | Attorney, bar no., address, and telephone no. MR. EDWARD J. STERNISHA - P75394 448 Leonard St., NW Grand Rapids, MI 49504 | | |
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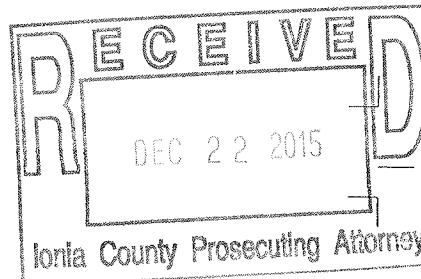
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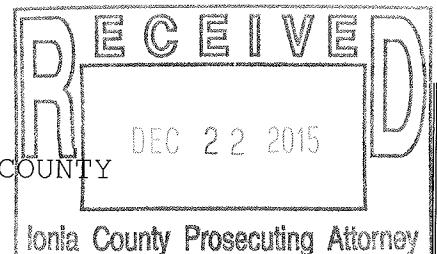
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STATE OF MICHIGAN
64A DISTRICT COURT, IONIA COUNTY

THE STATE OF MICHIGAN,

Plaintiff,

V

File No. 15-1272-STA

ANTHONY OWEN,

Defendant.

/

CONTINUATION OF MOTION

BEFORE THE HONORABLE RAYMOND P. VOET, DISTRICT JUDGE

Ionia, Michigan - Tuesday, November 24, 2015

APPEARANCES:

For the People: MR. ADAM DREHER - P79246
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100 West Main Street
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616/527-5302

For the Defendant: MR. EDWARD J. STERNISHA - P75394
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Recorded and
Transcribed by: Ms. Deborah Coon - CER 5040
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| None | | |
| <u>EXHIBITS:</u> | | IDENTIFIED RECEIVED |
| None | | |

Ionia, Michigan

Tuesday, November 24, 2015 - 1:44 p.m.

THE COURT: Okay, we're back on the record in State versus Anthony Michael Owen, and I think we're here for pretrial today, and I've received both supplemental briefs from both counsel. Thank you for doing that. I appreciate it. It's unusual and rare that I order that. Um--do you want to add any oral argument to that which you put in writing, either counsel?

MR. STERNISHA: I would like to just briefly, since--

THE COURT: Go head. You may.

MR. STERNISHA: Your Honor, I think--as I was telling the Prosecutor--I think within a day or two of us filing our briefs, Channel 13 did a segment basically on that speed limit law, talking about how most of the (in audible) in Grand Rapids were talking about how speed limits are--that they have posted aren't even effective. I just wanna just reinforce that section of what we discussed at the 2006 law that established the new speed limits. Not only do they--does it say that there must be signs, but it says there must be something backing those signs up, like the dollar bill's supposed to. There's--there must be the study. And so in this case, when we look at Mr. Owen, we're talking about someone who believes

1 that the government has violated his Constitutional
2 Rights. The government in a couple different capacities:
3 the government as the sheriff's department, but also the
4 Government of Saranac. They have an obligation that--
5 Saranac's been on notice for ten years--a decade--about
6 the speed limit law and they simply haven't complied with
7 it, and so not only aren't they notifying, but they're
8 simply--but um--if they were to put signs up, they have to
9 be backed by something, and I think you hit it right on
10 the--the nail right on the head when you said this all
11 boils down to speeding. If this was simply a speeding
12 ticket, I believe that the Court would have dismissed it,
13 because it's a speeding ticket and there simply isn't
14 notice or anything to back that up. And so I just wanna
15 add that to it, Your Honor.

16 THE COURT: All right, thank you.

17 MR. STERNISHA: Thank you.

18 THE COURT: Mr. Dreher?

19 MR. DREHER: Yes, Your Honor. I just would like
20 to clarify that the People's position has been clear
21 throughout that this isn't just a speeding ticket. This
22 is a question as to whether or not the officer violated
23 the defendant's Fourth Amendment Rights when the officer
24 had reasonable grounds to believe that the defendant was
25 violating this speed limit law. Now the information

1 provided in the supplemental briefs did outline--sort of--
2 the manuals by which local authorities must follow, in
3 posting these signs. And the Village of Saranac (in
4 audible) maybe not have followed the state statute for the
5 speed limit, it does in fact follow this manual for the
6 guidelines on where signs should be posted, and that is on
7 the entrance of its jurisdiction. At the hearing, we did
8 hear from defendant's expert who did in fact investigate
9 where those speed limit signs were posted, and although
10 she did not travel to each entryway into the village
11 itself, on each entryway that she did travel to, she
12 noticed a 25 mile an hour speed limit sign. Now this
13 would provide the officer with reasonable belief that the
14 speed limit within the Village of Saranac was 25 miles an
15 hour throughout. And it was this reasonable belief that
16 allowed the officer to pull the defendant over for
17 violating that speed limit. At that point, the
18 defendant's Fourth Amendment Rights have not been
19 violated, and we would ask that the Court dismiss the
20 defendant's motion. Thank you.

21 THE COURT: All right, thank you. This is an
22 interesting case. As I indicated, just in the beginning
23 in thanking counsel for writing supplemental briefs--
24 which is rare for me to do--this case is rare in a sense
25 that I don't often take cases under advisement, and I

1 think there's other aspects of the case that are rare too.
2 It's an unusual case. I've wrestled with the concept and
3 I know there's other concepts that play as far as the
4 legalities here. Both counsel have articulated and drawn
5 out your positions in that regard. But as far as what to
6 me the case hinges upon, is whether there's fair notice of
7 the speed limit, at this location. And fair notice is
8 important to me. I've dismissed cases before. I
9 dismissed a DNR case where a person was off road, on state
10 land and there was no way that person could've known that
11 they weren't allowed to be there, under anyway, but they
12 couldn't have known that they weren't supposed to be
13 there. And I also dismissed a case in the City of Ionia
14 where an individual used the center lane of a three lane
15 road here, in the City of Ionia to pass where there was
16 no--not no--there was one sign; one sign on the entire
17 road to serve both directions, and I felt that that was
18 not adequate signage. So I've wrestled with that and I
19 recall some of the questioning that I posed to defense
20 counsel as to regard to how many signs are enough? Does
21 there need to be a sign in view all the time? Well, after
22 I've reflected on that and had a chance to look at briefs
23 and look at the law, I don't think that's the case. But I
24 do believe that there still needs to be fair notice. And
25 just for the record, I've just--I will disclose to counsel

1 that I looked at the area in question on Google Earth. I
2 did not actually drive out there and look at it, but the
3 most recent images that are available at the ground at
4 street level on Google Earth; I went up and down the
5 street on my computer basically. So I've given this a lot
6 of attention. And that actually to a degree weighs in
7 favor of the defendant, because at that point, the Village
8 of Saranac does start to transition from a rural--I mean
9 from a village--from a residential area into a rural area.
10 So I could see how someone in that area might think that
11 the speed limit is more than what it is. But at the end
12 of the day, coming--boiling down to that question about
13 how many signs are enough, I find that signs at the entry
14 into the village are enough. To get out of the village,
15 you gotta come into the village, and at that point, there
16 is some responsibility on a driver to be aware as they
17 come into a community--a residential area, as to what the
18 speed limit is as they enter, and the village has posted
19 them at the entry. So there's where I'm going to hang my
20 hat. I find that there is adequate signage in that
21 regard. Mr. Sternisha, I'm going to deny your motion.
22 However, I will do also something that's unusual. I will
23 allow or certify the matter for appeal, if you want to
24 place that in the order. I'll let you guys take this up.
25 It is a close call, and this is not a one in a hundred

1 case. This is case 1272, which is--means it's the one
2 thousand two hundred and seventy second criminal case
3 filed this year, and I don't think I've certified anything
4 in the last year. Mr.--

5 MR. DREHER: I--I have no experience--

6 THE COURT: --Dreher, do you--

7 MR. DREHER: --of you doing that, Your Honor.

8 THE COURT: Yeah and how long have you been
9 here, a couple years now or a year and a half?

10 MR. DREHER: It's been a year, Your Honor--

11 THE COURT: Okay.

12 MR. DREHER: --less than.

13 THE COURT: Okay, so I don't certify things very
14 often and this is a razor close call. Frankly, it's the
15 kind of case I know and I don't take it personal no matter
16 how I rule. The other--one side or the other is likely to
17 appeal. So there's where I stand.

18 MR. DREHER: Yes, Your Honor.

19 THE COURT: So if you'll uh--if you want to
20 prepare the order, you may. If you want to appeal, go
21 head and prepare an order certifying it for appeal.

22 MR. STERNISHA: I appreciate that, Your Honor.

23 THE COURT: You can talk to your client.

24 MR. STERNISHA: Thank you.

25 THE COURT: Um--where are we set as far as

1 timing?

2 MR. STERNISHA: I--

3 THE COURT: --timing? Let's talk about when a
4 decision should be made. Today's just a pretrial. Can
5 you decide by status conference if you're going to appeal
6 or not?

7 MR. STERNISHA: When is the status conference?

8 THE COURT: December 11th.

9 MR. STERNISHA: Uh--I--

10 MR. DREHER: Your Honor, respectfully, I believe
11 that the appellate timeframe has already been set out. In
12 the court rules under 7.1 has 21 days from the issue of
13 the order.

14 THE COURT: Well--yeah, but that's to appeal by
15 leave--

16 MR. DREHER: This wouldn't necessary--

17 THE COURT: --or by right even, I suppose. I
18 was gonna certify it for appeal. I'm not sure if this
19 would be a final order or not.

20 MR. DREHER: I don't believe it would be, Your
21 Honor.

22 THE COURT: Yeah, I'm not sure about that.

23 MR. STERNISHA: Because--yeah, because it's
24 still--

25 THE COURT: Yeah, so it'd be by leave, wouldn't

1 it?

2 MR. DREHER: Yes, Your Honor.

3 MR. STERNISHA: Would--I believe it would be.

4 THE COURT: So--but I'm granting you appeal.

5 I'm certifying it for appeal. Please decide by December

6 8. That's status conference. Jury trial's December--

7 MR. STERNISHA: Sounds good.

8 MR. DREHER: Yes, Your Honor, thank you.

9 THE COURT: All right, thank you.

10 MR. STERNISHA: Thank you, Your Honor.

11 (At 1:52 p.m. - proceeding concluded)

STATE OF MICHIGAN)
COUNTY OF IONIA)

I certify that this transcript, consisting of 11 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Tuesday, November 24, 2015.

December 17, 2015

Deborah Coon
Deborah Coon - CER 5040

STATE OF MICHIGAN
64A DISTRICT COURT, IONIA COUNTY
THE STATE OF MICHIGAN,
Plaintiff,
v
ANTHONY OWEN,
Defendant.
/

EVIDENTIARY HEARING

RECEIVED
File No 15-222-STA1
FEB 18 2016
Ionia County Prosecuting Attorney

BEFORE THE HONORABLE RAYMOND P. VOET, DISTRICT JUDGE

Ionia, Michigan - Monday, February 8, 2016

APPEARANCES:

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Ionia, Michigan 48846
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1 Ionia, Michigan
2

3 Monday, February 8, 2016 - 10:56 a.m.
4

5 THE COURT: We're on the record in 15-1272-ST1,
6 State versus Anthony Owen. The matter's been remanded I
7 believe, from appeal; correct Counsel?
8

9 MR. DREHER: Yes--yes, Your Honor. The Circuit
10 Court wished this Court to make a determination as to what
11 the speed limit was, on southbound Parsonage Road within
12 the Village of Saranac.
13

14 THE COURT: Counsel, do you agree with that
15 assessment?
16

17 MR. STERNISHA: I do, Your Honor. That's--that
18 would be exactly how I would put it.
19

20 THE COURT: So we need to take testimony. Who
21 would like to go first?
22

23 MR. DREHER: Your Honor, the People will go
24 first.
25

26 THE COURT: All right, call your next witness.
27

28 MR. DREHER: Your Honor, the People would call
29 Dennis--err excuse me--Tim Simmons.
30

31 THE COURT: Step forward please. Raise your
32 right hand. Do you solemnly swear or affirm to tell the
33 truth, so help you God?
34

35 MR. SIMMONS: Yes.
36

37 THE COURT: Please be seated.
38

TIMOTHY SIMMONS

called as a witness at 10:57 a.m., testified as follows:

DIRECT EXAMINATION

BY MR. DREHER:

Q Could you please introduce--

THE COURT: Microphone please.

THE WITNESS: I'm sorry, what?

MR. DREHER: Pull the microphone close to your mouth.

THE WITNESS: Okay.

MR. DREHER: Probably a little closer

12 BY MR. DREHER.

13 Q Would you please introduce yourself and spell your name
14 for the Court?

15 A Timothy Simmons S-T-M M. O. N. S.

16 | Q And are you currently employed?

17 A Yes

18 Q In what capacity?

19 A DPW Director for the Village of a

20 Q And how long have you been employed in this office?

21 A Oh just over two years

22 Q What exactly is it that you do?

23 A Everything from snow plowing parks, streets, tree
24 trimming

25 | Q So you're sort of the go-to guy of your school, I guess.

1 A Yes.

2 Q And what are those markings?

3 A Uh, speed limit signs in my handwriting.

4 Q And did--do these--err excuse me--does this map fairly and

5 accurately depict where the speed limit signs are,

6 throughout the Village of Saranac?

7 A Yes.

8 MR. DREHER: Your Honor, the People would move

9 for the admission of People's proposed exhibit one.

10 THE COURT: Any objection?

11 MR. STERNISHA: No, Your Honor.

12 THE COURT: One's received.

13 (PX1 received at 10:59 a.m.)

14 BY MR. DREHER:

15 Q Now Mr. Simmons, approximately how many speed limit signs

16 are throughout the Village of Saranac?

17 A Oh I'd say approximately 25.

18 Q And are they--do they all reference the same speed limit?

19 A No.

20 Q What speed limits--what--what various speed limits do they

21 represent?

22 A Uh, 25 and 40 miles an hour.

23 Q So are--if I could draw your attention to Parsonage Road;

24 are there any speed limit signs on Parsonage Road itself?

25 A Yes.

1 Q What is that speed limit sign?

2 A There's a 25 coming in to town and a 20 curb ahead going

3 out of town.

4 Q So in other words southbound would have this curb ahead

5 speed limit sign?

6 A Correct.

7 Q And you indicated that was a 20--20 mile an hour?

8 A 20 mile an hour.

9 Q And those--that's a recommended speed; correct?

10 A I do not know that.

11 Q Okay.

12 MR. DREHER: Your Honor, permission to tender?

13 THE COURT: Sure.

14 BY MR. DREHER:

15 Q Uh, Mr. Simmons, are you aware of any entrance point into

16 the Village of Saranac that would not be 25 miles an hour?

17 A Uh, Bridge Street.

18 Q And what is that?

19 A That's 40.

20 Q Is it 40 all the way into town?

21 A Negative. It's 40 to the bridge.

22 Q And what happens after the bridge?

23 A It turns to 25.

24 Q Are you familiar with any other location that's not 25?

25 A No, sir, I'm not.

MR. DREHER: Your Honor, I have no further questions.

THE COURT: Mr. Sternisha?

MR. STERNISHA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. STERNISHA:

Q Morning, Mr. Simmons.

8 A Morning.

Q You've been a DPW Director for two years?

10 A Yes. Just over two years

11 Q And did you work for Saranac before that?

12 A Yes sir

13 Q In what capacity?

14 | Page

15. Geometrical optics

16 | Page

17 | Page

10. *What do you do that*

10 I believe it was just under four years before that.

2 Friday, 50

23 A I do not know that sir

24 0 Does the Village of Sonoma have a right to

25 A YOS

1 Q On the village website, are there links or references to
2 the laws or the ordinances of Saranac?
3 A I do not know that.
4 Q Don't know? If I told you that I looked on there and
5 found a link for village ordinances, would you--you think
6 that would be possible?
7 A Sure.
8 Q Okay, so you don't know if any of these speed limits that
9 you testified to earlier, have any--any law backing them?
10 A No, I do not.
11 Q They're just signs that are there?
12 A Correct. This is before my time.
13 Q Okay, um, okay, I think I--I don't have any other
14 questions for you, thank you.
15 THE COURT: Any redirect?
16 MR. DREHER: No, Your Honor, thank you.
17 THE COURT: You may step down.
18 (At 11:02 a.m. - witness steps down)
19 MR. DREHER: People call Dennis Bowen.
20 THE COURT: Please step forward. Raise your
21 right hand. Do you solemnly swear or affirm to tell the
22 truth, so help you God?
23 MR. BOWEN: Yes, I do.
24 THE COURT: Please be seated.
25 DENNIS BOWEN

called as a witness at 11:02 a.m., testified as follows:

DIRECT EXAMINATION

BY MR. DREHER:

Q Would you please introduce yourself and spell your name for the Court?

A My name is Dennis Bowen. B-O-W-E-N

Q Are you currently employed?

A I am retired at this time

Q And where did you retire from?

A The Village of Saranac

Q What position did you have when you worked for the Village of Saranac?

I was director of public works.

Q And what does that entail?

A Taking care of the water, sewers, streets, parks, buildings

2 Were any of your duties specifically to maintain speed
limits given to you?

The main job is uh, if there were any issues or concerns regarding--and uh, when I started to work for the village in 1982, they were in the middle of a program grant from the Department of Transportation, to update traffic control signs, and at that time, we did replace all the

1 current speed limit signs.

2 Q Are you familiar--err excuse me--are you aware of what the

3 signs were before?

4 A The signs--we just replaced the old signs and they were 25

5 mile an hour signs at that time.

6 Q So it was 25 mile an hour before and what are they

7 currently--err--

8 A 25--majority of 25.

9 Q You said this happened in 1982?

10 A 1982, yes, sir.

11 Q Where are you from?

12 A Village of Saranac.

13 Q Have you lived there your whole life?

14 A I have, yes.

15 Q And how old are you?

16 A 66.

17 Q Do you remember a time when the--these speed limit signs

18 were not up in the Village of Saranac?

19 A I do not.

20 MR. DREHER: Your Honor, I have no further

21 questions.

22 THE COURT: Cross-exam?

23 MR. STERNISHA: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. STERNISHA:

1 Q Good morning, Mr. Bowen.

2 A Good morning.

3 Q You um--are you aware of any--if Saranac has their own

4 laws or ordinances?

5 A They have some of their own ordinances.

6 Q Okay and would one of them be the uniform traffic code for

7 Michigan Cities, Townships and Villages?

8 A My understanding is that they did adopt that--

9 Q They did--

10 A --code, yes.

11 Q --they did adopt that?

12 A That's my understanding.

13 Q Okay and if I told you that on the village's website

14 there's a link to that, would that sound reasonable that

15 they would put a link--

16 A I'm not familiar with a website, but that does sound

17 reasonable.

18 Q Okay, it's--it would sound reasonable that they would post

19 that on the internet for people to know that that's the--

20 the laws that they've adopted?

21 A I--like I say, I'm not familiar with the--with the

22 website.

23 Q Okay, but they did adopt the uniform traffic code for

24 cities, townships and villages. In your position as DPW

25 Director, did you--did you sit on the--on the board--the

13

THE COURT: Any objection?

MR. DREHER: No objection, Your Honor.

THE COURT: Okay.

MR. STERNISHA: Thank you, Your Honor.

BY MR. STERNISHA:

6 Q What I'm showing you is something that I located on the
7 village's website under a link for municipal codes, and
8 you referred to that a few minutes ago, where you said
9 that the village adopted the uniform traffic code for
10 cities, townships and villages. Do you see in there where
11 it's highlighted orange?

12 A Yes, I do.

13 Q Okay and does that say that the village does hereby adopt
14 by reference as an ordinance, the Michigan Vehicle Code
15 being Public Act 300 of 1949?

16 A It does.

17 Q Okay and below that does it also say uniform traffic code
18 adopted?

19 A Yes.

20 Q Okay and the--in the highlighted part, the last question I
21 have on there is does it say the uniform traffic code for
22 cities, townships and villages, promulgated by the
23 commissioner of the state police and published in Michigan
24 Administrative Code MR20 of 2002, in accordance with
25 Public Act number 62 of 1956, being MCL257.951 (in

1 audible) is hereby adopted as reference?

2 A Yes, it does.

3 Q Okay, so that would tell us that the village adopted the
4 Michigan Vehicle Code and Uniform Traffic Code for cities,
5 townships and villages; correct?

6 A Yes.

7 Q Okay.

8 MR. STERNISHA: Your Honor, I don't have any
9 other questions.

10 THE COURT: Redirect?

11 MR. DREHER: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. DREHER:

14 Q Uh, with the document that you currently have sir, if you
15 could please read under section 26(1), that references a
16 specific Public Act, doesn't it?

17 A Yes, it does.

18 Q So in other words, the village adopted Public Act number
19 300 of 1949?

20 A Correct.

21 Q And under 26(2), there--it also references a specific
22 Public Act, doesn't it?

23 A Yes.

24 Q And what Public Act does it reference in that one?

25 A Number 62, 1956.

1 Q All right, thank you.

2 MR. DREHER: I have no further questions, Your
3 Honor.

4 THE COURT: You may step down.

5 (At 11:10 a.m. - witness steps down)

6 THE COURT: Next witness?

7 MR. DREHER: Becky Straubel.

8 THE COURT: Step forward please. Do you
9 solemnly swear or affirm to the truth, so help you God?

10 MS. STRAUBEL: Yes.

11 THE COURT: Please be seated.

12 BECKY STRAUBEL

13 called as a witness at 11:10 a.m., testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DREHER:

16 Q Would you please introduce yourself and spell your name
17 for the record?

18 A Becky Straubel, S-T-R-A-U-B-E-L.

19 Q Are you currently employed?

20 A I am.

21 Q What do you do?

22 A I'm the Treasurer for the Village of Saranac.

23 Q What sort of duties do you have with the Village of
24 Saranac?

25 A Um, maintain the accounting records, the office records,

1 water and sewer billing, property taxes, day in and day
2 out public.

3 Q Uh, when--when--with maintaining the records, are those
4 specifically only to the financial records?

5 A No.

6 Q How far back does the Village of Saranac records go to?

7 A Um, boy, specifically, I don't know, but I would say
8 probably the 1980's?

9 Q Now did you have an opportunity to look through those
10 records, in an attempt to find when the village first
11 established these speed limits throughout the village?

12 A I did.

13 Q And were you able to find any records?

14 A T was not

15 Q And you said these records go back to 1980?

16 A Some records do. I don't specifically know which records
17 go back that far--which records

18 Q And so in other words there's absolutely nothing within
19 the villages records, indicating when this was first
20 established?

21 A Correct

24 THE COURT: Counsel 3

25 MR. STERNISHA: Your Honor, I don't have any

1 questions, thank you.

2 THE COURT: Okay, you may step down.

3 (At 11:13 a.m. - witness steps down)

4 THE COURT: Next witness?

5 MR. DREHER: Your Honor, the People have no
6 further witnesses.

7 THE COURT: Witnesses?

8 MR. STERNISHA: I do, Your Honor. I'm waiting
9 for one. So I think at this time I'll call Mr. Lonnie
10 Finch.

11 THE COURT: Please step forward. Do you
12 solemnly swear or affirm to tell the truth, so help you
13 God?

14 MR. FINCH: I do.

15 THE COURT: Please be seated.

16 LONNIE FINCH

17 called as a witness at 11:31 a.m., testified as follows:

18 DIRECT EXAMINATION

19 BY MR. STERNISHA:

20 Q Would you please state and spell your name for the record?

21 A Lonnie Ray Finch, L-O-N-N-I-E F-I-N-C-H.

22 Q I think I spelled it wrong on the subpoena, didn't I? I
23 spelled it Fitch.

24 A Okay.

25 Q I apologize. Mr. Finch, what is uh--are you employed?

1 A I am.

2 Q In what capacity are you employed?

3 A I am with the Ionia County Road Commission. I'm the
4 operation's director.

5 Q How long have you had that position?

6 A Uh, the operation's director, about three years.

7 Q Okay and what did you do before that?

8 A I was in the engineering department.

9 Q The engineering department?

10 A Yes.

11 Q And how long have you worked for the road commission?

12 A Over 31 years.

13 Q And in--in that capacity, in any of your capacity really
14 with the road commission, have you been responsible for
15 traffic control orders, such as setting speed limits,
16 putting signs up, things like that?

17 A Yes.

18 Q Were you asked recently about the speed limit on Parsonage
19 Road in Saranac?

20 A Yes.

21 Q Who asked you that?

22 A You did.

23 Q And were you asked to look up any records regarding the
24 speed limit on Parsonage Road in Saranac?

25 A Yes.

1 Q Did you do that?

2 A I did.

3 Q And what did you come up with?

4 A We do not have any records.

5 Q There's no records for--

6 A To my knowledge.

7 Q Okay, you were unable to locate any records?

8 A That is correct.

9 Q Okay and earlier there was testimony that there is--I
10 believe the only speed limit type sign for southbound
11 traffic is a 20 mile cautionary sign. Would you agree
12 with that?

13 A A yellow advisory speed? Yes.

14 Q Okay and that's not an actual speed limit. That's an
15 advisory speed advising someone of uh--I think at that
16 location occur; correct?

17 A That is correct.

18 Q Okay and other than that sign, there's no other signs
19 there?

20 A Southbound? Yeah, that is correct.

21 Q Okay, at any time in the past, has anyone from the Village
22 of Saranac asked the road commission for help in setting
23 speed limits there?

24 A Not to my knowledge.

25 Q So if I told you that the law that we're dealing with,

1 Public Act 85 of 2006, I believe I gave you a copy of that
2 with a subpoena. Do you remember that?

3 A Yes, sir.

4 Q Okay and in that I highlighted a section that I'm
5 referring to that said in setting the speed limits, the
6 entities to be involved are the road commission, the state
7 police and the township, or in this case, the village. Do
8 you remember reading that?

9 A I do.

10 Q Had anything of that nature occurred, to your knowledge,
11 with regard to Parsonage Road in Saranac?

12 A No.

13 Q Okay, thank you.

14 THE COURT: Cross

CROSS-EXAMINATION

16 BY MR. DREHER.

17 Q Mr. Finch, you testified you have no records of any sort
18 of speed limits within the Village of Saranac?

19 A That is correct.

20 Q Does the county ever maintain records for township or
21 village roads?

22 A Not in the Village of Saranac, but some villages up the

23 Q But have you ever maintained records at any point for the
24 Village of Saranac?

25 A Not that I know of. Not for speed limit signs

1 Q Now you testified there was a 25--err excuse me--a 20 mile
2 an hour advisory speed limit southbound Parsonage Road
3 that you're aware of?

4 A Yes.

5 Q What is an advisory speed limit sign?

6 A It is exactly what it says. It's advising you this is--
7 this is the recommended speed that we recommend to take
8 this curve or whatever the situation may be.

9 Q So who is it that's recommending that speed?

10 A Well, in the village, it would have to be the village, and
11 one of the roads--err under the jurisdiction of Ionia
12 County Road Commission it would be our engineering
13 department.

14 Q Are there any rules that--that under the county commission
15 would have to follow for setting a recommended speed?

16 A We do.

17 Q What are those rules?

18 A Well, they're--we have what we call a um--there's a meter
19 in the car. There has to be two people in the car, has to
20 be a certain type of car, and we go out and we make
21 multiple passes and the meter has to stay within a certain
22 parameter. And once that is set, that's how we set the
23 advisory speed.

24 Q Is this meter measuring sort of tilt of the vehicle or--
25 A Yes.

1 Q Okay, so would the outside speed limit have anything to do
2 with the advisory speed limit?

3 A I guess I'm not understanding it.

4 Q So if--if hypothetically speaking, if a speed limit was
5 45, would that have any impact on what the advisory speed
6 limit may be?

7 A None.

8 Q Now it was mentioned on direct examination that you were
9 provided a copy of the Public Act 85 of 2006--

10 A Yes.

11 Q --and you were referred to a specific section of that
12 Public Act, are you familiar which statute you were
13 referencing?

14 A I--not off the top of my head, no.

15 Q Okay, are you familiar with how many statutes or actually
16 established speed limits, throughout the State of
17 Michigan?

18 A No.

19 MR. DREHER: Your Honor, I have no further
20 questions.

21 MR. STERNISHA: Just briefly, thank you, Your
22 Honor.

23 REDIRECT EXAMINATION

24 BY MR. STERNISHA:

25 Q Mr. Finch, I'm gonna get it right from this time on. So

1 if the--if the speed limit is 55 before you get to that
2 advisory speed limit--as the Prosecutor mentioned--it has
3 nothing to do--the--the speed limit before has nothing to
4 do with what that advisory is?

5 A That is correct.

6 Q And frankly, if a car were to go around that curve at 40
7 miles an hour, twice the speed limit, to your knowledge,
8 could they get a ticket for it?

9 A Not that I'm aware of.

10 Q Okay, thank you.

11 THE COURT: You may step down.

12 (At 11:20 p.m. - witness steps down)

13 THE COURT: Witness?

14 MR. STERNISHA: Your Honor, I'd like to call Ms.
15 Tonda Rich.

16 THE COURT: C'mon up. Do you solemnly swear or
17 affirm to tell the truth, so help you God?

18 MS. RICH: Yes.

19 THE COURT: Please be seated.

20 TONDA RICH

21 called as a witness at 11:20 p.m., testified as follows:

22 DIRECT EXAMINATION

23 BY MR. STERNISHA:

24 Q Good morning, could you please state and spell your name
25 for the record?

1 A Tonda Rich, T-O-N-D-A R-I-C-H.

2 Q Good morning, Ms. Rich.

3 A Good morning.

4 Q Are you employed?

5 A I am.

6 Q In what capacity?

7 A I am the Ionia County Clerk.

8 Q And how long have you been a Ionia County Clerk?

9 A Since March of 2004.

10 Q You--that's an elected position; correct?

11 A Correct.

12 Q And you won in the last election?

13 A I did.

14 Q Even though I might've written a letter on behalf of

15 someone else supporting them, you're not gonna hold that

16 against me, are you?

17 A I will not.

18 Q Thank you, I just want to clear the air. Um, Ms. Rich, in

19 your capacity as the Ionia County Clerk, you're

20 responsible for the storage of documents throughout the--

21 for the county; correct?

22 A Correct.

23 Q Court records, marriage records, death certificates,

24 things like that?

25 A Correct.

1 Q Okay and were you asked in a recent past to do an
2 investigation in your office, to locate any records of
3 speed limits on Parsonage Road in Saranac?

4 A Yes.

5 Q Who asked you to do that?

6 A You did.

7 Q Did anyone else?

8 A No.

9 Q Okay, um, did you do that investigation?

10 A I did.

11 Q And what were you able to locate?

12 A I was able to locate many traffic control orders from--
13 dated way back to 1935. I looked through each and every
14 traffic control order in my office. I did not find
15 anything relating to Parsonage Road in Boston Township and
16 or the Village of Saranac.

17 Q No--no records at all for speed limits there?

18 A No.

19 Q Certainly nothing since 2006?

20 A Nothing.

21 Q Thank you, so you have nothing to bring us today on that.
22 Um, Ms. Rich, um, as you were being called up to the
23 witness stand, you handed me a map; is that correct?

24 A Correct.

25 MR. STERNISHA: And I'm gonna show this to the

Prosecutor--

MR. DREHER: The entire state?

MR. STERNISHA: Yes.

MR. DREHER: Okay.

MR. STERNISHA: Any objections?

MR. DREHER: No.

MR. STERNISHA: Your Honor, um, may I present this to the witness?

THE COURT: There's no objection.

BY MR. STERNTHASH:

11 Q Ms. Rich, I'd like you to look at that map and tell me
12 what that is a map of?

13 A The State of Michigan

14 | O And who's that produced by?

15 A MDOT

16 | 0 Okay, the State of Michigan

17 A Mm. 1-mm.

18 | 0 Is there somebody in the room?

19 A $S + t$ B α β γ δ

20 Q And is that how you found that map with his picture on
21 it?

22 n 11

23 | P a g e Unit 6 Lesson 1 Page 1

24 T T

25 0 Yes, as a state you can't do that.

1 come from before you brought it here?

2 A Third floor of the courthouse.

3 Q Third floor of the courthouse. If I were to guess would

4 it be maybe a couple of my arms reach from the

5 Prosecutor's desk?

6 A Yes.

7 Q So those are given out free to the public?

8 A Yes.

9 Q Okay.

10 MR. STERNISHA: Your Honor, may I just approach

11 for a moment?

12 THE COURT: (No verbal response).

13 BY MR. STERNISHA:

14 Q Ms. Rich, I'm gonna open this map.

15 MR. STERNISHA: I'm gonna ask the Court if we

16 can have this marked as defense proposed exhibit one I

17 believe it to be.

18 THE COURT RECORDER: A.

19 THE COURT: A.

20 (DXA marked at 11:25 a.m.)

21 THE COURT: Counsel?

22 MR. DREHER: Your Honor, I was just gonna add is

23 it the county--is it the county map or the map of the

24 state?

25 MR. STERNISHA: It's this map (indicating). The

1 entire paper.

2 MR. DREHER: So the map of the entire state?

3 MR. STERNISHA: Entire state, yes.

4 MR. DREHER: Your Honor, I'm not sure what the
5 relevance of the map of the State of Michigan would be, at
6 this point. I would be willing to stipulate that the
7 Village of Saranac is within the village--excuse me--the
8 County of Ionia, if that's what defense attorney is hoping
9 to--

10 THE COURT: What--yeah, what's it for?

11 MR. STERNISHA: Your Honor, I'd like the--well,
12 if I can hand it back to the witness for one more
13 question, I think we can resolve it.

14 THE COURT: Yeah, okay. Let's find out what
15 it's for.

16 BY MR. STERNISHA:

17 Q Right where I'm pointing, what is that a logo of?

18 A Michigan State Police.

19 Q That's a state police logo?

20 A Yes.

21 Q And what does it say under that logo?

22 A Michigan laws.

23 Q Michigan laws and what's the first one?

24 A Speed limits.

25 Q What does that say? What's the first speed limit it

1 || references?

2 A 55 miles per hour.

3 Q Where?

4 A Non freeway statewide speed limit unless otherwise posted

5 Q And you found this free map, given out by the state within
6 arm's reach of the Prosecutor's desk?

7 A Correct.

8 Q Thank you.

MR. DREHER: No objection.

12 THE COURT: Exhibit A is received.

13 (DXA received at 11:26 a.m.)

17 THE COURT: I've received it as exhibit 7.

18 Maybe you didn't hear me

19 MR. STERNISHA: I'm sorry. I didn't

20 THE COURT: Okay.

21 MR. STERNISHA: Thank you, Your Honor. Your
22 Honor, I have no further questions for this witness.

23 THE COURT: Counsel?

24 | **CROSS-EXAMINATION**

25 BY MR. DREHER:

1 Q Ms. Rich, you describe your duties as maintaining the
2 records for the county?

3 A Correct.

4 Q Now when you performed your investigation, did you find
5 any traffic control orders within the Village of Saranac?

6 A I did not.

7 Q So in other words are you aware if your office maintains
8 the records for the village itself?

9 A When I was reviewing--going through the traffic control
10 orders, they were sporadic. They--I came across one I
11 think that had the Village of Saranac listed on it. But
12 other than that, I hadn't.

13 Q What does it mean when it's listed?

14 A In an index there's a traffic control ordinance index.

15 Q I--I'm sorry, I'm still not following. So the index then,
16 points you to where the traffic control order is?

17 A Yes.

18 Q And that--

19 A Like a (in audible) number.

20 Q --that specific order was within the Village of Saranac?

21 A Yes.

22 Q Are you familiar with what the traffic order was
23 for?

24 A You have to bear with me--no parking, no standing order.

25 Q And that was the only order that you found inside the

1 || Village of Saranac?

2 A Correct.

3 Q And what year was that from?

4 A I do not remember

5 | g You didn't bring it with you?

6 A I did not

7 Q Does the county also maintain records for any of the other
8 villages or cities within the County of Ionia?

9 A I do have some that we refer to the Village of Lake
10 Odessa.

11 Q Is that the only one?

12 A That's the only one I can recall

13 Q How many--I suppose going back to the traffic control
14 orders, could you approximate how many traffic control
15 orders there are throughout the county?

16 A I would say in my office, I went through approximately
17 100.

18 Q 100 separate orders?

19 A Yes.

20 Q Are you familiar with how many roads there are throughout
21 the county?

22 A T am not

25 THE COURT: Anonymous?

1 MR. STERNISHA: Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. STERNISHA:

4 Q Ms. Rich, when you were provided your subpoena in request
5 to do an investigation, were you also provided with a
6 document that said Public Act 85 of 2006?

7 A Yes.

8 Q And there was a section highlighted or several sections
9 highlighted?

10 A Yes.

11 Q I'm gonna read you something briefly and I'm gonna ask you
12 if you received anything regarding that. Section six: a
13 public record of all speed control signs, signals or
14 devices authorized under this section shall be filed in
15 the office of the county clerk, in the county in which the
16 highway is located and a certified copy shall be prima
17 facie evidence in all Courts, of the issuance of the--of
18 this--of the authorization. Do you recall reading that?

19 A I do.

20 Q Okay, so even if Saranac had never provided documents
21 before, if in 2006 a law mandated that they do it, your
22 testimony is still--you've never received any documents,
23 traffic control orders for Parsonage Road in Saranac?

24 A Correct.

25 Q Thank you.

THE COURT: Any other questions?

MR. DREHER: No, Your Honor, thank you.

THE COURT: You may step down.

(At 11:31 a.m. - witness steps down)

MR. STERNISHA: Your Honor, I'd like to call
Gary Megge as a witness.

THE COURT: Do you solemnly swear or affirm to tell the truth, so help you God?

LIEUTENANT MEGGE: I do.

GARY MEGGE

called as a witness at 11:31 a.m., testified as follows:

DIRECT EXAMINATION

BY MR. STERNISHA:

Q Good morning.

A Morning.

Q Would you please state and spell your name for the record.

A Yes, Gary Megee. Last name is Megee in Maine, E. G. S. E.

Q And are you employed?

A Yes

Q In what capacity?

A I'm a Lieutenant with the Michigan State Police.

So can I call you Lieutenant?

A. Sure

Q You had me scared there a little bit not seeing you here, but thank you for showing up today.

1 A I was actually in the back here. They directed me up the
2 back way and then I went around the front, so sorry about
3 that.

4 Q Okay, you're here. I'm okay with that, thank you.
5 Lieutenant, how long have you been employed with the state
6 police?

7 A Uh, 20--just shy of 23 years.

8 Q And what is your--what kind of education do you have?
9 What's your highest level of education?

10 A I have a bachelor's from Central.

11 Q Okay, what was that in?

12 A Natural resource biology.

13 Q Okay, when you graduated from Central, was that the end of
14 your education?

15 A Uh, not as far as my current job goes, no.

16 Q Okay, explain that to me if you could?

17 A Um, I'm a traffic crash reconstructionist is kind of my
18 forte with the state police. So I have thousands of hours
19 of crash specific training to be certified as a traffic
20 crash reconstructionist.

21 Q Thousands of hours? Are--were they all with the state
22 police?

23 A No, from all over the--Northwestern, Institute of Police
24 and Technology in Florida. I've been to Texas,
25 California, Oregon, all over the place.

1 Q So you've had training all over the country?

2 A Yes.

3 Q And uh, you talked that you're a accident

4 reconstructionist. Would I be correct in guessing that

5 you had to have some kind of training in speed limits?

6 A Um, that's--it's part of it. Another part of my job deals

7 more with the speed limits. I kinda wear two hats with

8 the state police. I've been working for the traffic

9 services section, so part of that is crash reconstruction

10 and the other part is statewide administration of speed

11 limits, and no parking issues mainly with MDOT and the

12 road commissions.

13 Q So you're a go to guy with regards to the speed limit

14 questions?

15 A Yes.

16 Q Have you been asked to testify regarding speed limits

17 before?

18 A Not exactly like this, no.

19 Q Okay, have you been--you said you--you--you're the go to

20 guy with questions. Who else would ask you questions?

21 A Uh, you name it, legislators, MDOT, road commissions,

22 police officers, um, citizens.

23 Q The media?

24 A The media.

25 Q Because I believe I've seen you on--on the news--

1 A You have.

2 Q --about this very issue?

3 A Yes, my phone rings literally every day.

4 Q And you're asked--are you asked questions about what an

5 actual speed limit is on a road?

6 A Yes.

7 Q Okay and you wear two hats. Um, and I asked you about

8 your education, do you do any teaching yourself?

9 A Yes.

10 Q What kind of teaching do you do?

11 A Mainly traffic crash investigation. I do some I guess

12 unofficial if you will, with the speed limit process and

13 the traffic engineering process. Again, road commissions,

14 MDOT, police officers.

15 Q New troopers?

16 A Uh, yes, they are given a couple hours on how and why we

17 establish speed limits.

18 Q Okay, have you ever been called as an expert witness in

19 Court?

20 A Many times.

21 Q Many times? Have you ever been called in Ionia County?

22 A Potentially, I'd have to check my CD and make sure.

23 Q Okay, that's all right. Many times--more than ten?

24 A Yeah, at least--I would say at least ten, somewhere in

25 there.

1 Q Okay, um, if I looked at the curriculum vitae that you
2 gave me, and I said there were--I counted 21, would that
3 sound accurate?

4 A That's reasonable, yes.

5 Q Okay, I'm not gonna ask that you be really classified as
6 an expert witness today. I think you've established your-
7 --your own credibility here. You teach on speed limits.
8 Were you asked to do an investigation regarding what the
9 speed limit is, on Parsonage Road in Saranac?

10 A Yes.

11 Q And who asked you that?

12 A Um, actually three people contacted me. You were one of
13 them.

14 Q Okay, who were the others?

15 A The Prosecutor and the Attorney for the Village of Saranac
16 I believe.

17 Q Okay.

18 A I forget his name. I don't have the names on me but--

19 Q Did you give us all the same information?

20 A Yeah. Basically, over the phone calls, it was kinda
21 talking about what the law says. At that point, I hadn't
22 been to Saranac yet. So yeah, just some basic
23 understanding of speed limits; how they're set, what
24 sections of law, where to find it in the vehicle code (in
25 audible).

1 Q And did--you said that that was before you visited. Did
2 you have a chance to visit the Village of Saranac?
3 A I did.
4 Q And when was that?
5 A I believe on February 1st.
6 Q Just recently?
7 A A week or so ago.
8 Q Okay and did you look at the area of southbound Parsonage
9 Road between Summit and the south village limits?
10 A Yes.
11 Q Is there any speed limit signs there?
12 A I believe there's one as you come into the village, I
13 guess that'd be from the south.
14 Q Is there any for southbound traffic?
15 A Um, not in that direct area. I'm not sure if there was.
16 There may have been one way to the north where the road
17 kind of terminates into the water treatment plant, or
18 there's a trail there.
19 Q Okay, but none--none within the area of--
20 A No.
21 Q --Summit and the end of the south village limits?
22 A Not that I saw.
23 Q With that being said Lieutenant, what's the speed limit
24 there?
25 A 55.

1 Q Are you confident of that?

2 A Yes.

3 Q And why do you say that the speed limit there is 55?

4 A Thee--the fact that there is or isn't a sign doesn't
5 really mean anything to me. Um, when I look at the
6 Michigan Vehicle Code section 627, 628 and 629 are the
7 three sections in the vehicle code that establish speed
8 limits, whether you're in a city, a county or a state
9 trunk line or freeway. There are--there's mainly--there's
10 three types of speed limits. One is a legislatively set,
11 which is the 70 on the freeways, the 55 general speed
12 limit. The other ones are modified speed limits. That's
13 where I work with the road commissions and MDOT to
14 establish something other than the statutory 50 or 70, and
15 we do an engineering study. We do a speed study. We
16 establish a traffic control order and we file that with
17 the County Clerk and that gives that speed limit
18 enforceability. The other way is what we call prima
19 facie. They can be business districts, mobile home parks,
20 subdivisions, access points, in or close to a park. Those
21 can be set without really a traffic control order as I
22 speak of them with MSP and MDOT or MSP and road
23 commissions. But they are based--they're valid on their
24 face essentially, because the vehicle code authorizes
25 them. So in this section on Parsonage, the road itself is

1 a half a mile long. I believe there are about 37 access
2 points. So if you were to establish a speed limit based
3 on 627, that speed limit would be 45. However, since
4 those signs weren't posted and the 25's are not correct,
5 the enforceable speed limit then falls back to 55 or the
6 general speed limit.

7 Q So if you had a class of new trooper recruits, and you
8 were using that as an example, you would teach those state
9 trooper recruits that the speed limit there currently, is
10 55 miles an hour?

11 A The enforceable speed limit, yes.

12 Q Okay and you mentioned there were some other kinds of speed
13 limits; *prima facie* speed limits. That didn't apply in
14 this stretch of road, did it?

15 A Uh--

16 Q I mean there's no--it's not a mobile home park--

17 A Correct.

18 Q --it's not a city park or anything that would--and there
19 was no signs?

20 A Correct.

21 Q Does the fact that--well, let me ask you this: I--does--I
22 been referring to Public Act 85 of 2006 quite a bit here,
23 and I believe that section encompasses several of the
24 statutes, as you mentioned 627, 28 and 29?

25 A Yes.

1 Q Okay, so what--what that law did in 2006 was talk about
2 what the speed limits--how they're to be set and it
3 changed it for those sections of the law?

4 A Uh, basically Public Act 85 amended those three sections
5 in the vehicle code. Much of it stayed the same, but
6 there were some changes. Mainly to 627 in 2006, so Public
7 Act 85 amended those three sections of the vehicle code
8 that I referred to.

9 Q And when it--when you say amended, I told you I looked at
10 the legislative analysis before they passed the law, when
11 there were--when they were discussing it in Lansing, the
12 House Fiscal Agency. If I said this section in the Act
13 that currently defines residential district would be
14 repealed, references in the code to residential district
15 and various speed limit provisions would be struck. The
16 concept of districts is replaced with the use of access
17 points, is that what you mean by "amended it?"

18 A Yes. That was probably the biggest change.

19 Q So there's no more residential speed limits?

20 A Correct.

21 Q So are you testifying here today that the Village of
22 Saranac cannot have its own 25 mile an hour speed limit
23 for the whole village?

24 A Not exactly.

25 Q What do you mean by not exactly?

1 A Each road should be or must be looked at individually to
2 see what sections of the vehicle code, if any, it meets.
3 Is it a business district? Is it a mobile home park? Is
4 it a subdivision as defined in the Land Division Act in
5 1967? Is it--does it have adequate access points for
6 either a 25, a 35 or a 45 mile per hour speed limit? So
7 there really is no provision in the vehicle code for a
8 blanket speed limit in a city or a village, or a county
9 for that matter. I mean it has to meet one of those
10 subsections to have a valid enforceable speed limit.
11 Q So hypothetically, it's possible they could if all the
12 streets--one was in a mobile home park, one was by a park,
13 one was a business district. It's possible?
14 A Absolutely.
15 Q But you looked at Saranac; correct?
16 A Mm-hmm.
17 Q Based on your knowledge of the village, is it actually
18 possible that the entire village could be 25 mile an hour?
19 A Not from what I saw, no.
20 Q We've had testimony today from--I really want to say the
21 village people--but the people from the village--I'm
22 sorry--people who work for the Village of Saranac, who
23 have testified that it's always been that way. Would it
24 be true to say that since 2006, even if it's always been
25 that way, that doesn't matter anymore?

1 A I would agree with that, yes.

2 Q Okay, um, would you also agree that um--well, I want to go
3 back to that. I forgot my question. Um, so even if--even
4 if there were--my question I guess would be this: the
5 speed limit signs have to have something backing them;
6 correct?

7 A Correct.

8 Q Like a dollar bill has to have something backing it. The
9 speed limit sign--the village can't just put up signs and
10 say that's it?

11 A Correct.

12 Q So you have no doubt that as it stands today, southbound
13 Parsonage Road in the Village of Saranac, between Summit
14 and the south village limits is 55 miles an hour?

15 A The enforceable speed limit there currently is 55.

16 Q So if running radar--we're not talking about pedestrians
17 or a lot of congested traffic or icy roads, just sitting
18 there on a nice day running radar, no other traffic, if
19 someone was going 43 miles an hour, would it be fair to
20 pull that person over, solely for that reason?

21 A The situation you described, I would say no.

22 Q Thank you.

23 THE COURT: Cross.

24 MR. DREHER: Yes, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. DREHER:

2 Q Lieutenant Megge, who's your boss?

3 A Um, Lieutenant--First Lieutenant Jim Flegal.

4 Q And who's his boss?

5 A Um, a captain at the training academy and then it goes--

6 Q Let me--let me go straight to the point. Who's at the top
7 of your chain of command?

8 A Uh, Lieutenant Colonel--err I'm sorry--Colonel Etue.

9 Q And who does he or she work for?

10 A She works for the Governor--

11 Q So directly for the--

12 A --appointed by the Governor.

13 Q --state?

14 A Yes.

15 Q Now the defense attorney asked you to review Public Act 85
16 of 2006--

17 A Right.

18 Q --and you've done that?

19 A Yep.

20 Q And you've indicated to the Court that it's amended both
21 627, 628 and 629?

22 A It involved all of those, yes.

23 Q Are you familiar with the law prior to 2006?

24 A Yes.

25 Q Are you familiar with 629 specifically?

1 A Yes.

2 Q And in 629, were there any indications of a village or
3 city or townships ability to regulate speeds outside of
4 business, and or residential districts?

5 A Yes. They are responsible for establishing their own
6 speed limits.

7 Q So that was the law prior to 2006?

8 A And now.

9 Q And now, outside of business and residential districts,
10 they still control the speed limits?

11 A Well, any--any roadway that falls under the jurisdiction
12 of the city or the village, they are responsible for
13 establishing all the traffic control devices, on their
14 roads, yes.

15 Q So in other words, in order to establish it, they now need
16 to comply with the state's intersection limit and things
17 like that?

18 A Yeah, I think I--I mean they have to follow the rules in
19 the vehicle code?

20 Q Correct.

21 A Yes.

22 Q However, prior to 2006, are you aware those--if the
23 reference to 627 was present and 629, prior to 2006?

24 A I don't know that specific. I mean I deal with it every
25 day, but I'd have to verify that.

1 Q So is it your testimony today that in 2006, when the
2 legislature passed this Public Act, it then changed every
3 single speed limit throughout the state, that the--
4 A Oh, absolutely not--absolutely not.
5 Q What did that do then?
6 A The biggest change was um, the elimination of the
7 residence district 25. Prior to 2006, there was a
8 residence district 25 speed limit, and it was defined
9 something continuous residential frontage, with lots less
10 than 300 feet in size. It was kind of a--in my opinion--
11 sort of a vague over reaching residence district
12 definition. That was eliminated in 2006 and this access
13 point count was--replaced it. So in order to have a true
14 residential 25 mile per hour speed limit, you had to have
15 60 access points within a half a mile.
16 Q So does--is that enforceable when it's established, or at
17 standing when this bill was passed?
18 A I don't know.
19 Q So then you do not believe that Public Act 85 of 2006
20 altered the road in any way?
21 A (No verbal response).
22 Q In other words, if there was an enforceable speed limit on
23 Parsonage Road prior to 2006, did Public Act 85 of 2006
24 alter that speed limit?
25 A Uh, in this case, I think absolutely.

1 Q Why's that?

2 A Um, in the vast majority of cities and villages, the
3 cities are blanketed--for lack of a better term--with a 25
4 mile per hour speed limit signs. Um, I've talked with
5 hundreds of representatives from cities and townships and
6 villages, and mainly the same answer, I get it every time,
7 because they've always been. And I think that was based
8 on that pre 2006 residence district 25. Again, like I
9 mentioned earlier, it was kind of a gray and it was
10 arguable, whether it was a residence district or not, but
11 those were blanketed (in audible) and they still are in
12 many cases. Um, since 2006, again, that was eliminated
13 and I believe it's quite clear in 627 now, how and when 25
14 or 15's or 35's are permissible--

15 Q Now--

16 A --and I think in this case it just was never changed.

17 Q So in 627 is when it's described the certain steps that
18 you must follow, but it's 629 that provides the local
19 government with authority to establish speed limits;
20 correct?

21 A I got--I'd have to look and then bounce back and forth on
22 those.

23 Q Are you familiar with any of the state constitutional
24 provisions, or anything along those lines?

25 A I--

1 Q So are you aware of any limitations on what the
2 legislature is able to do, as it relates to local roads?
3 A I'm kinda missing it. I don't know.
4 Q You're not familiar with any sort of provisions of the
5 constitution as it relates to local governments?
6 A No.
7 Q So in your mind, through the state's view--in other words
8 the Governor's view, the speed limit on that road is 55?
9 A I don't know about the Governor, but when I look at the
10 vehicle code, absolutely.
11 Q So according to the Michigan Legislature, they established
12 a 55 mile an hour speed limit when they passed Public Act
13 85 2006?
14 A No, I don't--I don't--that wasn't the intent for that
15 road--I don't believe so. I--I guess I'm a little
16 confused at where you're going?
17 Q Okay, well, if you were on patrol in the Village of
18 Saranac--
19 A Mm-hmm.
20 Q --as a police officer, do you have experience working the
21 road?
22 A Oh, absolutely, yes.
23 Q And you saw a speed limit sign, would there be any way for
24 you to know what the speed limit is?
25 A Well, I think as a police officer, we--we--we assume that

1 that sign is correct. We see hundreds and thousands of
2 signs every time we go out to work. They're everywhere as
3 you know. Um, our--our assumption I would hope would be
4 based on the fact that the road authority, whoever it may
5 be; the village, the road commission or MDOT. I would
6 hope that they would be trusted enough to place the right
7 sign there. Because my job interacting with public
8 directs--you know--it affects them directly. So yeah,
9 under some, we have to have a certain degree of trust with
10 that road authority.

11 Q So if you saw a vehicle that was do--going 43 miles an
12 hour and prior to that you observed a speed limit sign of
13 25 miles an hour, would you have reason to believe that
14 that vehicle is traveling faster than the posted speed
15 limit?

16 A Um, I guess I--I really--I'm not comfortable answering
17 that unless I can explain a little bit.

18 Q Feel free.

19 A Um, all police officers are given instruction on the
20 vehicle code. What's in it, how to I guess interpret it
21 and take appropriate enforcement action. You know, I hope
22 that is if law has changed, which in this case it
23 definitely has ten years ago, that a police officer either
24 through their own initiative or through some training from
25 the department, or whoever off--you know--offers that

1 training--would be familiar with the fact that a law's
2 changed ten years ago. So um, on one hand, yes, we as
3 police officers blindly trust the sign, we--we really do,
4 but on the other hand I think after this amount of time,
5 the number of people that are involved in establishing
6 that speed limit--you know--we just--as police officers,
7 we just--we can't afford to just blindly enforce, just
8 based on a sign. We should--we should and we do have a
9 pretty good idea of what goes on out there in our
10 counties, or wherever we work. So again, that's kind of a
11 tough question. Just because the sign is there, I don't
12 believe and know that a police officer should just put the
13 blinders on and enforce it. There's much more to it.

14 Q I understand. So as--when you were working the road--I'm
15 assuming you no longer work the road?

16 A No.

17 Q But when you were, would any county you were assigned to,
18 would you visit the County Clerk's office to determine the
19 traffic control orders around?

20 A No, not necessarily.

21 Q Would you visit any local village or city or township to
22 see if they had any traffic control orders on file?

23 A Most police officers don't have any idea where traffic
24 controller is, to be honest. It's not their job. It's my
25 job, but the patrol officer, any sheriff's department, any

1 local police officer; they have absolutely nothing to do
2 with establishing the speed limit. We simply enforce
3 that. But in my position and my eight sergeants, we are
4 absolutely charged--628 mandates that we work with road
5 authorities, road commission and MDOT to establish speed
6 limits.

7 Q To establish modified speed limits or prima facie speed
8 limits?

9 A Modified speed limits. That's why we're mandated

10 Q So then you don't have any--any authority in *prima facie*
11 speed limits?

12 A No direct authority over a city or a local road authority.
13 They are responsible to do their own. It doesn't mean
14 they can do whatever they want, but they are responsible
15 to establish safe and realistic and enforceable speed
16 limit.

17 Q And you also have no authority in establishing a general
18 speed limit?

19 A Um, that's just there. The 55 and the 70, those are
20 legislatively set maximum speed limits.

23 THE COURT: Any more questions?

24 MR. STERNISHA: I do, Your Honor, thank you.

25 || REDIRECT EXAMINATION

1 BY MR. STERNISHA;

2 Q Lieutenant, earlier today, someone from the village
3 testified that the Village of Saranac has adopted the
4 Michigan Vehicle Code and the Uniform Traffic Code for
5 cities, townships and villages. Would you agree that
6 these traffic laws that we're talking about today are
7 contained in the Michigan Vehicle Code, and the Michigan
8 Uniform Traffic Code for cities, townships and villages?

9 A Yes, on the vehicle code, absolutely.

10 Q So if the Village of Saranac adopted it, they're bound by
11 it?

12 A I would believe that to be true, yes.

13 Q Thank you.

14 MR. STERNISHA: No more questions, Your Honor.

15 THE COURT: You may step down.

16 THE WITNESS: Thank you.

17 (At 11:56 a.m. - witness steps down)

18 THE COURT: Any more witnesses?

19 MR. STERNISHA: Your Honor, I do not.

20 THE COURT: More witnesses?

21 MR. DREHER: No, Your Honor.

22 THE COURT: Who wants to go first?

23 MR. DREHER: Your Honor, I did have the
24 opportunity to file an additional memorandum of law with
25 the Court. In that, I did outline sort of what the

1 People's position was going to be today, and that position
2 really is quite clear. We--luckily, we're able to
3 provide--excuse me--the defense attorney was able to
4 provide the testimony from Lieutenant Megge, with the
5 Michigan State Police. And what he testified to was that
6 the legislature in 2006 altered the speed limit. Now as
7 this Court I'm sure is aware, several provisions of the
8 Michigan Constitution do prevent a legislature from doing
9 exactly that thing. Section 31 and section 34 of article
10 7 of the Michigan Constitution--to paraphrase, if I may--
11 relates specifically to local government and how roads
12 are--are to be controlled by local governments. And what
13 section 31 reads is that--it says the legislature shall
14 not vacate or alter any road, street, alley or public
15 place under the jurisdiction of any county, township, city
16 or village. I believe it's quite clear from today's
17 evidentiary hearing that Parsonage Road--

18 THE COURT: So you disagree with the--there's a
19 Public Act 85 in 2006 changing things?

20 MR. DREHER: I don't, Your Honor. In fact, the
21 People's position is that Public Act 85 of 2006 relates
22 merely to roads that are being established after 2006. In
23 other words, the only way to read the statute in a
24 constitutional setting--in other words, to read it in a
25 way to where the statute's not unconstitutional, would be

1 to give the word "established" that specific meaning. In
2 other words, any speed limit that was established prior to
3 2006 would be constitutional, because prior to 2006, local
4 governments had the authority to establish speed limits
5 that were not under 25 outside of any business or
6 residential district. And at this hearing, we did hear
7 testimony that the section of the road was not within a
8 residential, and it was not within a business district.
9 So in other words, the village was re--were relying on
10 MCL257.629 a prima facie speed limit provision. Now prior
11 to this Public Act 85 of 2006 this statute read that the
12 village may establish prima facie lawful speed limits on
13 highways outside of business district, that are
14 consistent--err excuse me--that's what the law currently
15 reads. The prior--prior to the amendment, the 2006 85
16 Public Act, the language read: local authorities may
17 establish prima facie lawful speed limits on highways
18 outside of business, or residential districts, which shall
19 not be less than 25 miles per hour, except as provided in
20 subsection 4. Now this is the specific language that was
21 adopted by the Village of Saranac, as was provided by the
22 defense attorney reference to their website. It's this
23 Public Act 300 of 1949, the original Motor Vehicle Code,
24 as well as the Public Act 62 of 1956, when this--this
25 section four, which just relates to parks being no less

1 than 15 miles an hour, that language. But I think the
2 most important provision of the Michigan Constitution that
3 the People did reference within their memorandum of law
4 was this section 34 of article seven. And that is that
5 the provisions of this constitution and law concerning
6 counties, townships, cities and villages shall be
7 liberally construed in their favor. Meaning that when
8 this Court looks at the law as it's established, as well
9 as the law prior to in what specifically Public Act 85 of
10 2006 did, this Court must construe the law liberally in
11 the favor of the village. And that's precisely what the
12 People are asking this Court to do now. The prior to
13 2006--we heard the testimony from the public works, as
14 well as the county record holder that prior to 2006, these
15 signs were there. The village had established this speed
16 limit of 25 throughout the entire village, and that the
17 speed limit within the village is still 25. We would ask
18 this Court to find that the speed limit on southbound
19 Parsonage Road is in fact 25 miles an hour, thank you.
20

21 THE COURT: Mr. Sternisha?

22 MR. STERNISHA: Thank you, Your Honor. Your
23 Honor, Prosecutor's constitutional argument fails. And it
24 fails simply because the Village of Saranac adopted the
25 law as it is. They can't go back and say well, we don't
want that. We don't want the way the law changed in 2006.

1 They--they adopted it. They adopted the Motor Vehicle
2 Code. They adopted the Uniform Traffic Code for cities,
3 townships and villages, which contained in that, it says
4 for purpose of this section vehicle code means the
5 Michigan Vehicle Code 1949 Public Act 300 MCL257.1 to
6 257.923. That includes everything we've been talking
7 about today. The village adopted that. They put it out
8 on their website. The State of Michigan hands out free
9 maps. The legislators do. If I were to guess, there's
10 probably some of these free maps down at the village
11 office. There's certainly one in the Prosecutor's office.
12 Your Honor, we're asked here today to have the Court
13 determine the speed limit on Parsonage Road southbound
14 traffic, between Summit and the end of the village. Now
15 nothing that the Prosecutor presented with its village
16 witnesses, established any records of them ever
17 establishing a speed limit, not only on that stretch of
18 the road, but that there even was a village wide speed
19 limit. They have absolutely no records. There's no
20 records of anything. But the one thing is clear, the
21 State of Michigan, through the State Police testified that
22 the speed limit is 55. Lieutenant Megge was certain the
23 speed limit--the enforceable speed limit is 55. There's
24 simply no constitutional argument that the village can say
25 we didn't know. We want something different, because they

1 adopted the vehicle code as it is, Your Honor. So I--I
2 think the only speed limit that the Court can come to for
3 that section, until the village takes the proper steps to
4 change it, is that the speed limit is and has been 55
5 miles an hour.

6 THE COURT: Any other argument?

7 MR. DREHER: Yes, Your Honor. The only reason--
8 err excuse me--the only way that the village would have to
9 change the speed limit, is if they wanted to increase the
10 speed limit or change it in some other way, unless the
11 legislature actually did not actually change the speed
12 limit. Which is what the People are arguing is that in
13 2006, the legislature did not change the speed limit that
14 was already established, because the Michigan Constitution
15 provides that the legislature cannot do that. Instead, if
16 the village were to establish a different speed limit,
17 then they would have to go through the new process of
18 asking Lieutenant Megge to do his studies, in determining
19 the intersections on the road and things of that nature.
20 But prior to that, it wasn't needed. The village adopted
21 the prior law and that's precisely why the village speed
22 limit at this point, is 25 miles an hour, thank you.

23 THE COURT: All right, thank you. This case is
24 somewhat unusual. It gets stranger and stranger all the
25 time. I recall it being unusual to begin with, when both

1 sides were here before. Now we've had the case remanded
2 by Judge Hoort to take further testimony and have this
3 Court make a determination, based upon the testimony as to
4 what the speed limit is on Parsonage Road, in this
5 location. We know that it's posted 25, going into town,
6 not going out. And we wrangled around quite a bit the
7 last time we were here about whether posting going in was
8 enough to adequately mark the area. Well, the argument
9 has shifted onto new ground now, new turf and that being
10 what is the actual enforceable speed limit? The defense
11 position supported by the Michigan State Police and that
12 in it of itself makes this case somewhat of a man bites
13 dog kind of case. Does that--when you go through the
14 rational--go through the formula--for a lack of better
15 words--you arrive at 55, based upon the law as it
16 currently stands. The Prosecutor's position is is wait a
17 minute, nope; the old law is still applied. The
18 legislature meant to change things prospectively, as
19 opposed to retroactively, which is an interesting argument
20 in it of itself and creates yet another legal issue
21 frankly, in the case. But that having been said, the
22 Court is of the opinion, having listened to both sides,
23 and looked at the law myself that this is a problem, and
24 that it was not just prospective; that that was
25 retroactive too. And even if it were to be just

1 prospective only, the village still has that problem of
2 there being no records. So even if you were to say yeah,
3 okay, all the old laws are still in effect. There's no
4 record of what the old laws were and how they got there.
5 That in it of itself is a huge problem, which I think
6 undermines the Prosecutor's persuasiveness in that regard.
7 So I find that the uniform traffic code applies here, and
8 that by default, the speed limit is 55. The exhibits will
9 be maintained and transmitted to the Circuit Court and the
10 Circuit Court can take further proceedings from here.
11 Anything else to talk about?

12 MR. DREHER: Nothing from the People.

13 MR. STERNISHA: Thank you.

14 THE COURT: You're welcome.

15 (At 12:07 p.m. - proceeding concluded)

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STATE OF MICHIGAN)
COUNTY OF IONIA)

I certify that this transcript, consisting of 61 pages, is a complete, true and accurate transcript, to the best of my ability, of the proceedings and testimony taken in this case on Monday, February 8, 2016.

February 17, 2016

Deborah Coon
Deborah Coon - CER 5040