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Order

Michigan Supreme Court
Lansing, Michigan

July 26, 2024

Elizabeth T. Clement,
Chief Justice

165806

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 165806
COA: 353646
Tuscola CC: 20-015154-AR

DAVID ALLAN LUCYNSKI,
Defendant-Appellant.
_____/

On April 17, 2024, the Court heard oral argument on the application for leave to appeal the April 27, 2023 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REMAND this case to the Tuscola Circuit Court for further proceedings consistent with this order.

This case appears before this Court for a second time. The pertinent facts are unchanged. We

previously ordered oral argument on the application, after which this Court issued an opinion. We held that: (1) defendant was seized by Deputy Ryan Robinson when Deputy Robinson parked behind defendant and blocked defendant's egress, *People v Lucynski*, 509 Mich 618, 657 (2022); (2) defendant did not violate MCL 257.676b(1) because defendant did not interrupt the natural flow of traffic, *id*. at 649-650; (3) Deputy Robinson's interpretation of MCL 257.676b(1) was an unreasonable mistake of law, *id*. at 656, and therefore; (4) because Deputy Robinson lacked reasonable suspicion, defendant was seized in violation of the Fourth Amendment, *id*.

Having determined that a Fourth Amendment violation in fact occurred, we remanded this case to the Court of Appeals to consider whether the exclusionary rule applied. *Id*. at 657-658. On remand, the Court of Appeals concluded that application of the exclusionary rule was not appropriate in this case. *People v Lucynski*, unpublished per curiam opinion of the Court of Appeals, issued April 27, 2023 (Docket No. 353646). The Court of Appeals, relying on *Herring v United States*, 555 US 135 (2009), concluded that, although this Court held that Deputy Robinson's mistake of law was objectively unreasonable, it was "also true that Deputy Robinson did not demonstrate any deliberate, reckless, or grossly negligent conduct." *Lucynski*, unpub op at 5. Further, the panel found no record evidence that "Deputy Robinson acted in bad faith when he effectuated a traffic stop of [defendant]. Nor was there any evidence this stop was part of a systemic effort to subvert [defendant's] constitutional rights." *Id*.

We disagree with the Court of Appeals and hold that the exclusionary rule applies in this case. "Application of the exclusionary rule to a constitutional violation is a question of law that is reviewed de novo." *People v Frazier*, 478 Mich 231, 240 (2007). "Generally, evidence obtained in violation of the Fourth Amendment is inadmissible as substantive evidence in criminal proceedings." *In re Forfeiture of $176,598*, 443 Mich 261, 265 (1993); see also *Mapp v Ohio*, 367 US 643 (1961). The exclusionary rule does not automatically apply once a court finds a Fourth Amendment violation. Instead, "[t]he suppression of evidence should be used only as a last resort." *Frazier*, 478 Mich at 247, citing *Hudson v Michigan*, 547 US 586 (2006). This is because " '[t]he exclusionary rule is "a harsh remedy designed to sanction and deter police misconduct where it has resulted in a violation of constitutional rights . . . ." ' " *Frazier*, 478 Mich at 247 (citations omitted). More specifically, the exclusionary rule "is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." *Id.* at 247-248 (quotation marks and citations omitted). " '[T]he proper focus is on the deterrent effect on law enforcement officers, if any.' " *Id.* at 248, quoting *People v Goldston*, 470 Mich 523, 539 (2004) (alteration in original).

Here, Deputy Robinson provided two reasons for the traffic stop: (1) the factually unsupported suspicion that a drug deal took place, which he communicated to defendant during the traffic stop; and (2) a suspected violation of MCL 257.676b(1), which he did not mention until the preliminary examination in this

case. The former reason unquestionably weighs in favor of application of the exclusionary rule. An officer who seizes a person based only on an unsupported, inchoate hunch has acted in clear violation of a defendant's Fourth Amendment rights and, thus, has committed misconduct. Exclusion is warranted in such a circumstance. See *People v Soulliere*, 509 Mich 950, 951 (2022) (explaining that a trial court did not err by granting the defendant's motion to suppress evidence where a deputy's observation that gave rise to a traffic stop amounted "to nothing more than an inchoate and unparticularized suspicion or hunch") (quotation marks and citations removed).

Similarly, Deputy Robinson's objectively unreasonable belief that defendant violated MCL 257.676b(1) also weighs in favor of exclusion. Although the Court of Appeals here relied on *Herring*, in which a police error was not found to warrant application of the exclusionary rule, that decision is distinguishable from this case. In *Herring*, an officer unknowingly relied on an invalid arrest warrant when arresting the defendant, due to a "bookkeeping" error beyond the arresting officer's knowledge or control. 555 US at 137-138. Under these facts, the United States Supreme Court explained that suppressing evidence "obtained in objectively reasonable reliance on a subsequently recalled warrant" produces a marginal or nonexistent deterrent effect on police misconduct. *Id*. at 146. It is easy to follow the logic of this decision. Suppression "turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct." *Id*. at 137. Therefore, excluding evidence that was obtained as a result of reasonable reliance on a mistake made by a third-party would not necessarily

deter police misconduct because there is no culpable or wrongful police conduct to deter.[1] In other words, where the police error "was the result of isolated negligence attenuated from the arrest," the exclusionary rule should not apply. *Id*. at 137.[2]

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[1] The Court of Appeals appeared to consider the instant case under the good-faith exception to the exclusionary rule. The prosecution, however, did not raise the good-faith exception before this Court. While there is some conceptual overlap between the good-faith exception and the mistake-of-law doctrine, we do not believe that the good-faith exception applies here. The good-faith exception typically applies in circumstances where the officer's conduct is the result of *another* individual's error. See generally *United States v Herrera*, 444 F3d 1238, 1249-1250 (CA 10, 2006) (explaining that the "good-faith exception applies only narrowly, and ordinarily only where an officer relies, in an objectively reasonable manner, on a mistake made by someone other than the officer" and that application of the good-faith exception to the exclusionary rule "turns to a great extent on whose mistake produces the Fourth Amendment violation. And because the purpose underlying this good-faith exception is to deter *police* conduct, logically [the] exception most frequently applies where the mistake was made by someone other than the officer executing the search that violated the Fourth Amendment").

[2] The dissent suggests that Deputy Robinson later engaged in lawful conduct during the seizure, such that Deputy Robinson's "supposed negligence [was] plainly offset, i.e., attenuated, by Robinson's otherwise lawful investigation." *Herring*'s discussion of attenuation does not support the dissent's assertion on this point. In *Herring*, the Supreme Court reasoned that, because an officer relied on a mistake *that was not his own*, the exclusionary rule's underlying purpose of deterrence could not be satisfied because an objective review of the record revealed that it was not the officer who had committed misconduct. *Herring* does not support the notion that Deputy Robinson's *own* misconduct can be excused by his later conduct in the investigation and arrest. Instead, the investigation could not be considered lawful at all, because the investigation resulted from an invalid seizure. See

Such is not the case here. Instead, we conclude that a seizure based on an officer's *unreasonable* interpretation of the law warrants application of the exclusionary rule. This Court has already held that Deputy Robinson's interpretation of MCL 257.676b(1) was an unreasonable mistake of law. We now conclude that the Fourth Amendment cannot excuse an unreasonable mistake of law. See *Heien v North Carolina*, 574 US 54, 66-67 (2014) ("The Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes— whether of fact or of law—must be *objectively* reasonable. . . . [A]n officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is dutybound to enforce."). Under these circumstances, application of the exclusionary rule is appropriate.[3]

Terry v Ohio, 392 US 1, 19-20 (1968) (noting that the reasonableness of a search or seizure depends on whether "the officer's action was justified at its inception").

[3] The dissent states that our decision to apply the exclusionary rule where an officer has made an unreasonable mistake as to law is "in contradiction to current Supreme Court caselaw," even though the United States Supreme Court has never ruled against exclusion where an unreasonable mistake of law has occurred. Nonetheless, our decision here is in accordance with how other jurisdictions have considered unreasonable mistakes and the exclusionary rule. Indeed, this Court has not found a case where evidence was gathered on the basis of an officer's unreasonable mistake of law and the exclusionary rule did not apply, and neither the prosecution nor its supporting amicus has directed this Court to such a case. We have, however, located numerous decisions from other jurisdictions that have concluded that evidence seized on the basis of an unreasonable mistake of law was excluded from use by the prosecution at trial. While some of these cases have not considered the deterrent impact of the exclusionary rule, as we do here, we find it persuasive that

In the dissent's view, exclusion is not appropriate in this case because, though Deputy Robinson may have made an unreasonable mistake of law, "there was no egregious law enforcement misconduct." The dissent relies heavily on *People v Salters*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2001 (Docket No. 215396), to suggest that Deputy Robinson's understanding of the statute was reasonable, as *Salters* was the only case to have previously interpreted MCL 257.676b(1). Indeed, the dissent "would not blame Robinson for having been trained to understand that impeding traffic does not require an actual impediment to traffic." The flaw in the dissent's reliance on *Salters* and references to officer training, however, is that at no point in the proceedings did Deputy Robinson assert knowledge of the *Salters* opinion, nor did Deputy Robinson allege that he was trained in accordance with the reasoning in *Salters*. The prosecution also has not introduced any evidence that *Salters* or other officer training was the basis of Deputy Robinson's seizure.[4] In short, to the

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overwhelming caselaw demonstrates that evidence obtained as a result of an unreasonable mistake of law favors exclusion. See, e.g., *State v Robertson*, 2023-Ohio- 2746 (Ohio App, 2023); *United States v Boatright*, 678 F Supp 3d 1014, 1046 (SD Ill, 2023); *People v Jackson*, 2022 IL App (3d) 190621 (2022); *People v Kaczkowski*, 2020 IL App (3d) 170764 (2020); *United States v Flores*, 798 F3d 645, 648-650 (CA 7, 2015); *United States v Alvardo-Zarza*, 782 F3d 246, 249-251 (CA 5, 2015).

[4] We, of course, do not expect officers to recall the various cases that support their understanding of certain statutes. We merely explain that, to the extent that the dissent turns to *Salters* or officer training in an attempt to explain why exclusion is not appropriate here, no record evidence supports the dissent's assertion. Throughout this litigation, the prosecution has always relied on *Salters* for the limited purpose of demonstrating that

extent that the dissent posits that Deputy Robinson's unreasonable mistake of law could have still been conducted in good-faith reliance on unpublished authority from the Court of Appeals, no factual support of any such reliance has been offered throughout the pendency of this extensive litigation.

We reiterate today that a touchstone principle of the exclusionary rule is the deterrence of future police misconduct. We believe that application of the exclusionary rule here properly achieves this deterrent effect. As we previously held, Deputy Robinson's unreasonably expansive interpretation of MCL 257.676b(1) conflicted with its unambiguous meaning. Using an unreasonable reading of the law to justify a traffic stop is the sort of misconduct that the exclusionary rule is designed to deter. Our decision, therefore, stands for the proposition that evidence gathered in clear violation of unambiguous law will not be admissible on the basis of explanations justified entirely by a subjective and erroneous misreading of the applicable law. See *Hooks v United States*, 208 A3d 741, 750 (DC, 2019) (explaining that, unlike in *Herring*, "here we have a patently unlawful seizure by officers unaware of the letter of the law they were trying to enforce. The circumstances of this case are precisely those we want to deter and amply justify the application of the exclusionary rule"). We believe that any

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Officer Robinson's actions could have been considered reasonable because a panel of the Court of Appeals had a similar interpretation. The prosecution has not once demonstrated that Deputy Robinson actually relied on that opinion as authority to conduct the stop. Nor has the prosecution offered this Court any evidence of Deputy Robinson's training regarding traffic stops under MCL 257.676b(1).

holding to the contrary would actually *incentivize* police misconduct. If even unreasonable and unjustifiable errors do not warrant exclusion of illegally obtained evidence, the Fourth Amendment would be stripped of its substance, and officers would have less incentive to abide by the Fourth Amendment's constitutional constraints.[5] For these reasons, we reverse the judgment of the Court of Appeals and remand this case to the trial court for further proceedings consistent with this order.

CLEMENT, C.J. (*concurring*).

I continue to believe that the deputy's mistake of law in seizing defendant pursuant to an alleged violation of MCL 257.676b(1) was reasonable, especially given the existence of a Court of Appeals opinion supporting the same statutory interpretation that the

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[5] We believe that the dissent characterizes the deterrent value of exclusion far too narrowly. The dissent believes that because this Court has now properly interpreted MCL 257.676b(1), see *Lucynski*, 509 Mich at 652-653, unjustified stops pursuant to a misreading of MCL 257.676b(1) will now be deterred.

To start, the dissent's assertion cannot be squared away with this Court's previous finding that the statute is unambiguous and that Deputy Robinson's misreading of an unambiguous statute was unreasonable. In other words, the officer's mistake should not have happened in the first instance because the statute itself clearly did not allow it. We fail to see how our prior holding in this case provides any more deterrent value than the clear and unambiguous statute itself provided.

Moreover, the deterrent impact of the exclusionary rule encompasses more than just future misapplications of the statute in question. The imposition of the exclusionary rule also broadcasts that unreasonable readings of the law cannot justify an illegal seizure and that the fruit of such unlawful seizures will not be admissible at trial.

deputy employed. See *People v Lucynski*, 509 Mich 618, 658 (2022) (*Lucynski III*) (CLEMENT, J., concurring in part and dissenting in part). However, I recognize that a majority of this Court considered and rejected this argument in *Lucynski III*, and I accept this conclusion as the law of the case moving forward. See *Grievance Administrator v Lopatin*, 462 Mich 235, 259 (2000). Accordingly, I now concur with the majority's general rule that where a law enforcement officer acts pursuant to an unreasonable mistake of law, the exclusionary rule should apply to suppress the resultant evidence. Because the exclusionary rule is designed to "deter[] official misconduct by removing incentives to engage in unreasonable searches and seizures," rather than to cure the constitutional violation itself, *People v Goldston*, 470 Mich 523, 529-530 (2004), suppression is appropriate only where "it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment," *Illinois v Krull*, 480 US 340, 348 (1987) (quotation marks and citation omitted). Where an officer executes a search or seizure pursuant to an objectively unreasonable mistake of law, it is true that the officer knew or should have known that the search was unconstitutional yet performed it anyway. Under those circumstances, application of the exclusionary rule deters such behavior, emphasizing the importance of officer education and minimizing the potential for malevolent abuse of authority. See *United States v Lopez-Valdez*, 178 F3d 282, 289 (CA 5, 1999) (noting that if officers are allowed to stop vehicles when drivers have not broken the law, "the potential for abuse of traffic infractions as pretext for effecting stops seems

boundless and the costs to privacy rights excessive").[6] Accordingly, I concur.

ZAHRA, J. (*dissenting*).

The last time this case was here I disagreed with a majority of the Court that Tuscola County Sheriff's Deputy Ryan Robinson had seized defendant under the meaning of the Fourth Amendment.[7] I further disagreed that Robinson had committed an "unreasonable" mistake of law by concluding that defendant had violated the civil obstructing-traffic statute.[8] Indeed, Robinson's interpretation of this statute was consistent with an unpublished opinion of the Michigan Court of Appeals, the only relevant judicial decision in Michigan expounding on this statute at the time defendant was stopped.[9] Nonetheless, this Court remanded the case to Court of Appeals "to determine whether application of the exclusionary rule was the

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[6] I am sympathetic to many of the concerns articulated by Justice ZAHRA in his dissenting statement, including that application of the exclusionary rule here may operate to discourage reliance on existing caselaw from our lower courts. However, for me these concerns are due in large part to my disagreement with the *Lucynski III* majority regarding whether the police officer's mistake of law was reasonable rather than a fundamental disagreement with the majority in the present case regarding the application of the exclusionary rule when a police officer makes an unreasonable mistake of law.

[7] *People v Lucynski*, 509 Mich 618, 658-666 (2022) (ZAHRA, J., dissenting).

[8] *Id*. at 667-672, discussing MCL 257.676b(1).

[9] *Id*. at 669, citing *People v Salters*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2001 (Docket No. 215396).

appropriate remedy."[10] On remand, the Court of Appeals held that application of the exclusionary rule was not a proper remedy.[11] A majority of the Court now again reverses the panel's unanimous decision by abstractly focusing only on its prior determination that Robinson's mistake was "unreasonable" and broadly holds "that a seizure based on an officer's *unreasonable* interpretation of the law warrants application of the exclusionary rule."

In reaching this holding, the majority glosses over the case-specific, fact-intensive inquiry necessary to determine whether suppression of evidence is appropriate. This approach conflicts with guidance from the Supreme Court of the United States for applying the exclusionary rule. Applying the correct test, I conclude that Deputy Robinson committed no deliberate, reckless, or grossly negligent violations of the Fourth Amendment. Nor can it be said that Robinson's overbroad understanding of MCL 257.676b(1) justifies a prophylactic rule "that a seizure based on an officer's *unreasonable* interpretation of the law warrants application of the exclusionary rule" regardless of whether Robinson conducted himself in good faith. That which a majority of this Court believes to be an unreasonable interpretation does not equate to insolent or flagrant misconduct by a law enforcement official of the magnitude that the exclusionary rule is solely intended to deter. There is no indication that any state or local law enforcement agency routinely or

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[10] *Lucynski*, 509 Mich at 658 (opinion of the Court).

[11] *People v Lucynski (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued April 27, 2023 (Docket No. 353646), pp 4-5.

systematically relied on an overbroad understanding of MCL 257.676b(1) to violate the constitutional rights of Michigan residents. Nor is it plausible to suggest that law enforcement officers will continue to rely on an overbroad understanding of MCL 257.676b(1) after this Court has published an opinion holding that the understanding of MCL 257.676b(1) embraced by a prior panel of the Michigan Court of Appeals and Robinson conflicted with its meaning. This Court's decision already provides significant deterrence such that if any Michigan law enforcement officer relies on this overbroad understanding of MCL 257.676b(1) in the future, that reliance may rise to the level of insolent and flagrant behavior that would justify application of the exclusionary rule. Because the Court of Appeals reached the correct result for the proper reasons, I would deny defendant's application for leave to appeal in this Court.[12]

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[12] A fundamental flaw in the majority order and Chief Justice CLEMENT's concurring statement is that it equates all unreasonable mistakes of law with police misconduct that is "deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Herring v United States*, 555 US 135, 144 (2009). Not all unreasonable mistakes of law require the exclusion of evidence. And not all determinations by a court that law enforcement has committed an unreasonable mistake of law align with the exclusionary rule's elevated purpose to deter "deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Id*. This is why the application of the exclusionary rule is a "fact-intensive inquiry." *United States v Duenas*, 691 F3d 1070, 1082 (CA 9, 2012). But under today's order, when a court concludes law enforcement has made an unreasonable mistake of law, application of the exclusionary rule is a foregone conclusion. The majority's new rule operates as an "indiscriminate blunderbuss" instead of "a carefully controlled scalpel." *State v Klingenstein*, 92 Md App 325, 342

But the Court bootstraps its way to a categorical application of the exclusionary rule for conduct that does not warrant that remedy, in contradiction to current Supreme Court caselaw. Further, the majority's approach perversely encourages police to ignore the construction of statutes by our own Court of Appeals. By the majority's reasoning, police officers should now disregard instruction or persuasive authority from Michigan's lower courts and instead divine how this Court will someday read a pertinent statute. Because the majority order doubles down on the Court's prior erroneous conclusions, fails to consider and properly apply governing precedent from the Supreme Court of the United States, and fosters uncertain application of the law for both the public and law enforcement, all without a scintilla of deterrence value, I dissent.

I. FACTS AND PROCEDURAL HISTORY

Because application of the exclusionary rule is a "fact-intensive inquiry,"[13] Deputy Robinson's alleged misconduct must be understood in context of the following facts:

> On a brisk January morning, Tuscola County Sheriff's Deputy Ryan Robinson was traveling westbound on Old State Road in rural Wisner Township when he observed two

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(1992), aff'd in part and rev'd in part on other grounds 330 Md 402 (1993).

[13] *Duenas*, 691 F3d at 1082. The Supreme Court has made clear that application of the exclusionary rule to a Fourth Amendment violation hinges on the culpability of police conduct and the degree to which exclusion will deter future police misconduct. Herring, 555 US at 141-144 (2009). These factors necessarily vary based on the facts of a case.

cars stopped in the middle of the road from some distance away.[1] At the preliminary-examination hearing, Robinson testified that the vehicles were facing opposite directions with the drivers' windows next to one another and that the drivers appeared to be talking to one another with their windows down. One of the vehicles, a red Chevrolet Cobalt, was defendant's car. Robinson did not observe any narcotics activity and did not hear what the drivers said, but he testified that he thought a drug transaction might have occurred. Even though there were no other vehicles on Old State Road at the time, Robinson testified at the preliminary-examination hearing that he believed the vehicles were impeding traffic in violation of MCL 257.676b. Robinson also testified that he saw both cars begin moving when he was approximately 800 feet away, he did not have to slow down or avoid either vehicle, and he did not observe any erratic driving.

Robinson testified that he followed defendant's car "with the intention to stop the red Cobalt for impeding traffic." Robinson followed defendant in a marked patrol vehicle and turned onto the same one-lane driveway that defendant had entered, parking a few feet behind defendant's car and blocking the only path of egress. While a single lane was cleared within the driveway, the surrounding area was covered with several inches of snow. Neither the siren nor the emergency lights on

Robinson's vehicle were activated by the officer.

Body-camera footage of the encounter that followed was introduced at the preliminary-examination hearing.

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[1] Old State Road is a two-mile stretch of rural road, which Deputy Robinson described as "dirt" or unpaved. Old State Road is approximately 10 miles east of Bay City, Michigan, and appears to provide access to a handful of farms and residential homes before reconnecting to Michigan Highway 25.[14]

At this point, elaboration on the body-camera footage is required. The video begins while Deputy Robinson is driving on Old State Road and approaching the driveway entered by defendant. After about eight seconds, Robinson comes to a complete stop on Old State Road near the driveway. According to Robison's testimony, at this point he "ran the plate" and learned that the registered owner of red Cobalt resided in Reese, Michigan, some 11 miles away. Over 10 seconds then elapsed before Robinson pulled his marked vehicle into the driveway behind the red Cobalt.

Deputy Robinson did not activate the vehicle's siren or emergency lights. The red Cobalt was parked with its engine turned off, and defendant is first seen standing about three to four feet outside of his car, next to the driver-side fender and facing Robinson.

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[14] *Lucynski*, 509 Mich at 627-628 (opinion of the Court).

> [Deputy] Robinson immediately asked whether defendant lived there, and defendant responded that it was a friend's house as he walked toward the deputy. Robinson asked what defendant was doing on the road, to which defendant replied, "Just talking about fishing." During this period, defendant had moved to put his hands in his pockets, and Robinson ordered him not to do so; defendant complied with the directive. Robinson then said, "I didn't know if maybe there was a drug deal going on, and that when I ran the plate it [came] back to" an address in Reese, Michigan. Defendant denied any drug transaction and said that Reese was where he lived and that he worked just up the road. After confirming the name of the homeowner, Robinson asked defendant if defendant had his driver's license, to which defendant replied in the negative . . . .[15]

After defendant admitted he did not have a driver's license, Deputy Robinson questioned, "So that's why you pulled in here then—'cause you saw me, and you said: *nope, I don't have a license and I need to visit my buddy quick*, right?" And defendant nodded along. Robinson smelled the odor of marijuana. Defendant admitted that he had recently smoked marijuana and later admitted he earlier consumed "a can" of beer. Defendant then consented to a search of

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15 *Lucynski*, 509 Mich at 628-629 (opinion of the Court) (alteration in original).

his vehicle, and Robinson found both marijuana and an open container of alcohol inside.

Defendant was charged, as a third habitual offender, with operating a motor vehicle while intoxicated, operating a motor vehicle with a suspended license, and possession of an open container of alcohol in a vehicle. Ultimately, the case reached this Court,[16] and a majority of this Court held that defendant was "seized under the Fourth Amendment when the officer blocked the driveway and defendant's path of egress with a marked patrol car because, under the totality of the circumstances, a reasonable person would not have felt free to leave or to terminate the interaction."[17] The majority remanded this case to the Court of Appeals to determine whether application of the exclusionary rule was the appropriate remedy.[18] On remand, the Court of Appeals, relying on precedent established by the Supreme Court of the United States, held that "Deputy Robinson did not demonstrate any deliberate, reckless, or grossly negligent conduct, and "[t]here is no evidence in the record showing that Deputy Robinson acted in bad faith when he effectuated a traffic stop of [defendant]. Nor was there any evidence this stop was part of a systemic effort to subvert defendant's constitutional rights."[19] Defendant again

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[16] The lower court proceedings are detailed at *Lucynski*, 509 Mich at 629-632 (opinion of the Court).

[17] *Id*. at 626.

[18] *Id*. at 657-658.

[19] *Lucynski (On Remand)*, unpub op at 3-4, citing *Herring*, 555 US 135. I disagree with the Court of Appeals' characterization of Deputy Robinson effectuating a traffic stop of defendant. I

sought relief from this Court and an argument on the application was ordered to consider:

> whether application of the exclusionary rule is proper where the deputy sheriff had no reasonable suspicion to believe that the defendant violated the law, given that there was no evidence to support the deputy's hunch that an illegal drug transaction had taken place and the deputy did not make a reasonable mistake of law to the extent that he stopped the defendant for a suspected violation of MCL 257.676b(1).[20]

II. THE EXCLUSIONARY RULE

"The Fourth Amendment protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,' but 'contains no provision expressly precluding the use of evidence obtained in violation of its commands.' "[21] Nonetheless, the Supreme Court of the United States established "an exclusionary rule that, when applicable, forbids the use of improperly obtained evidence at trial."[22] The Supreme Court has observed "that this judicially created rule is 'designed to

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believe that the videorecording shows that Robinson approached defendant as he was standing outside his vehicle.

[20] *People v Lucynski*, 512 Mich 958 (2023).

[21] *Herring*, 555 US at 139, quoting *Arizona v Evans*, 514 US 1, 10 (1995).

[22] *Herring*, 555 US at 139.

safeguard Fourth Amendment rights generally through its deterrent effect.' "[23]

Exclusion of evidence is not a necessary consequence of a Fourth Amendment violation. "The fact that a Fourth Amendment violation occurred—*i.e.*, that a search or arrest was unreasonable—does not necessarily mean that the exclusionary rule applies."[24] The Supreme Court of the United States has cautioned that "exclusion 'has always been our last resort, not our first impulse,' and our precedents establish important principles that constrain application of the exclusionary rule."[25] Significantly, "the exclusionary rule is not an individual right and applies only where it result[s] in appreciable deterrence. . . . Instead we have focused on the efficacy of the rule in deterring Fourth Amendment violations *in the future*."[26]

"The extent to which the exclusionary rule is justified by these deterrence principles varies with the culpability of the law enforcement conduct."[27] " '[A]n assessment of the flagrancy of the police misconduct constitutes an important step in the calculus' of

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[23] *Id*. at 139-140, quoting *United States v Calandra*, 414 US 338, 348 (1974).

[24] *Herring*, 555 US at 140, citing *Illinois v Gates*, 462 US 213, 223 (1983).

[25] *Herring*, 555 US at 140, quoting *Hudson v Michigan*, 547 US 586, 591 (2006).

[26] *Herring*, 555 US at 141 (quotation marks and citations omitted; emphasis added).

[27] *Id*. at 143.

applying the exclusionary rule."[28] "[E]vidence should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment."[29] " '[T]he beneficent aim of the exclusionary rule to deter police misconduct can be sufficiently accomplished by a practice . . . outlawing evidence obtained by flagrant or deliberate violation[s] of rights.' "[30]

In sum, "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. . . . [T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence."[31]

III. APPLICATION

A brief perusal of the majority's cursory and impetuous order in this case reveals that a majority of the Court in this case has simply disregarded the United States Supreme Court's precedent regarding the exclusionary rule. The majority does not at all attempt to apply the exclusionary rule as a last resort but rather acts on impulse to broadly hold "that a seizure based on an officer's unreasonable interpretation

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[28] *Id.*, quoting *United States v Leon*, 468 US 897, 911 (1984).

[29] *Herring*, 555 US at 143 (quotation marks and citations omitted).

[30] *Id.*, quoting Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 Calif L Rev 929, 953 (1965) (footnotes omitted).

[31] *Herring*, 555 US at 144.

of the law warrants application of the exclusionary rule."[32] This holding is not at all reflective of a case-specific, fact-intensive inquiry that is necessary to determine whether suppression of evidence is appropriate.

The majority's order fails to address Deputy Robinson's degree of culpability. For the reasons below, I conclude that Robinson's actions were not culpable, much less "deliberate, reckless, or grossly negligent."[33] Recall that the majority's previous holding in this case set two new precedents. The first precedent established that a violation of MCL 257.676b(1) "require[s] some evidence that the accused's conduct *actually affected* the usual smooth, uninterrupted movement or progress of the *normal flow* of traffic on the roadway, which requires an assessment of traffic at the time of the alleged offense."[34] Before that opinion

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[32] Emphasis omitted.

[33] *Herring*, 555 US at 144.

[34] *Lucynski*, 509 Mich at 648 (opinion of the Court). And the majority's interpretation of MCL 257.676b(1) is not nearly as clear-cut as it suggests. The statute discusses the normal flow of vehicular or pedestrian traffic, and then excepts "persons maintaining, rearranging, or constructing public utility or streetcar facilities in *or adjacent to a street or highway*." MCL 257.676b(1) (emphasis added). While I do not quibble with the majority's application of the statute in this case, it seems that MCL 257.676b(1) contemplates that it may be applied in some cases where there is a potential effect on traffic. Moreover, the majority's interpretation of MCL 257.676b(1) may itself be ambiguous. Taking the instant case, as Deputy Robinson approached the stopped vehicles that were blocking the road, there must be some point at which the stopped vehicles must have moved to avoid impeding Robinson's approaching vehicle. Had the stopped vehicles not moved so soon, there would be a cloudy factual question relating to when the stopped vehicle actually impeded Robinson's

was issued, the only relevant authority addressing the statute was an unpublished decision from our Court of Appeals,[35] which is, admittedly, not a precedential statement of law.[36] Had this decision been published, there would be no discussion of the exclusionary rule in this case. It simply would not apply.[37] Yet the majority faults Robinson for interpreting MCL 257.676b(1) consistently with the only relevant judicial interpretation of that law at the time he acted. I would not blame Robinson for having been trained to understand that impeding traffic does not require an actual impediment to traffic.[38] Indeed, every lawyer in

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approach. Another common situation is when a motorist sees vehicles blocking the road ahead and chooses to take another route, regardless of whether those vehicles would have moved had the motorist continued along the originally intended route. In that situation, I would argue that the presence of the parked vehicles alone actually impeded traffic.

[35] *Salters*, unpub op. Notably, this Court denied the defendant's application for leave to appeal in *Salters*, 465 Mich 920 (2001), and a federal district court denied the defendant's habeas petition, *Salters v Palmer*, 271 F Supp 2d 980, 989 (ED Mich, 2003), noting the Michigan "courts addressed the merits of the claim and determined that police had reasonable suspicion to effectuate the traffic stop and to search his vehicle."

[36] MCR 7.215(C)(1). "Although unpublished opinions of [the Court of Appeals] are not binding precedent, . . . they may . . . be considered *instructive* or persuasive." *Paris Meadows, LLC v Kentwood*, 287 Mich App 136, 145 n 3 (2010) (emphasis added). See also *Redmond v Heller*, 332 Mich App 415, 431 n 7 (2020).

[37] *Davis v United States*, 564 US 229, 238 (2011).

[38] The majority order criticizes my dissenting statement because "at no point in the proceedings did [Deputy] Robinson assert knowledge of the *Salters* opinion, nor did [he] allege that he was trained in accordance with" the reasoning in *Salters*. This is beside the point. Regardless of whether Robinson could cite *Salters* and demonstrate that he was specifically trained based on

the state would acknowledge that, while not binding and subject to debate, unpublished opinions of the Michigan Court of Appeals are instructive and potentially persuasive authority in Michigan Courts.[39] So too should the unpublished Court of Appeals opinion justify Robinson's understanding at least with regard to whether Robinson's conduct was so insolent and flagrant that the evidence obtained in his encounter with defendant should be subject to exclusion. The majority order perversely encourages law enforcement officers to ignore their training. By the majority's reasoning, law enforcement officers should from now on disregard instruction or persuasive authority from the judiciary and instead rely on their own lay readings of statutes with the hope that such a lay reading of the statute will someday conform to this Court's subsequent interpretation of law. This places law enforcement officers in an untenable position of having to predict how a bare majority of this Court may later determine whether their training is supported by a "reasonable" interpretation of law.[40]

Salters, that decision shows that his mistake was not egregious even if it was unreasonable.

[39] See note 36 of this statement.

[40] As Chief Justice CLEMENT points out in her concurrence, she previously held that Deputy Robinson's mistake of law in seizing defendant pursuant to an alleged violation of MCL 257.676b(1) was reasonable. Yet, she now dismisses her previous holding because this Court's prior decision is now "the law of the case moving forward." To be clear, this dissent is not premised on the notion that the majority was wrong in its assessment that Deputy Robinson's conduct amounted to an unreasonable mistake of law. I agree with Chief Justice CLEMENT that this issue has been resolved by this Court. This dissent argues that the majority is wrong when it concludes "that a seizure based on an officer's

The second new rule set by the majority's previous holding in this case is even more remarkable. The majority held that "using a marked police vehicle to block a civilian vehicle's ability to exit a single-lane driveway to facilitate questioning or an investigation *is a show of force on behalf of the police* that can give rise to a seizure within the meaning of the Fourth Amendment."[41] The civilian in question, defendant, was no longer in the vehicle, and based on information gathered from running the license plate of defendant's car, Deputy Robinson was not without justification to inquire whether defendant was trespassing on private property to evade him. No decision from the Supreme Court of the United States or this Court supported this radical understanding of the Fourth Amendment. Indeed, as pointed out in my prior dissent, the majority's reliance on federal circuit court caselaw was highly suspect as well.[42]

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unreasonable interpretation of the law warrants application of the exclusionary rule." Robinson's *culpability* cannot be evaluated based on "the law of the case moving forward." Rather, it must be evaluated upon the law at the time of his conduct. No facts cited in the majority order support the conclusion that Deputy Robinson acted deliberately, recklessly, in a grossly negligent manner, or in a pattern of recurring or systemic negligence. See *Herring*, 555 US at 144. Hence, the law of the case moving forward does not assign to Robinson the culpability necessary to satisfy the exclusionary rule's purpose of deterrence.

[41] *Lucynski*, 509 Mich at 643 (opinion of the Court) (emphasis added).

[42] *Lucynski*, 509 Mich at 660-665 (ZAHRA, J., dissenting). More remarkable is that in the ensuing term a majority of this Court relied on this poorly reasoned decision as a platform to continue its "recent trend of recharacterizing routine police-citizen interactions as constitutional violations." *People v Duff*, ___ Mich ___ (VIVIANO, J., dissenting) (2024); slip op at 1; see also *People v*

Viewed against in this backdrop, I find it impossible to ascribe culpability to Deputy Robinson's actions. I certainly agree with the Court of Appeals that "Deputy Robinson did not demonstrate any deliberate, reckless, or grossly negligent conduct"[43] Even assuming that Robinson's misunderstanding of law was negligent, when his actions are viewed objectively at the time of defendant's arrest, there simply was no egregious law enforcement misconduct.

Deputy Robinson observed two vehicles stopped in the middle of a single-lane road. He suspected a drug deal and believed that the vehicles were potentially impeding traffic. As he approached the stopped vehicles, they resumed driving. Robinson followed the vehicle in his lane of travel, which abruptly turned into

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Hicks, ___ Mich ___ (2024). In doing so, the majority continues to presuppose that a police officer's presence alone is coercive to a reasonable person while at the same time failing to acknowledge that the "reasonable person" test presupposes an innocent person. See *Florida v Bostick*, 501 US 429, 438 (1991). For instance, the majority in this case previously asserted that "[i]f a reasonable person in defendant's place did not have an independent desire to leave, but nevertheless did not want to interact with [the officer], the other options available to them would have been to attempt to enter a home that they did not own (and without knowledge whether the owner was home) or wander off into a frozen field some distance from town in a rural area." *Lucynski*, 509 Mich at 645 (opinion of the Court). Of course, an innocent person would not have tried to evade the officer by furtively turning into a private driveway and place themselves in this situation. Moreover, these are not the only options that an innocent person would have under the circumstances. An innocent person could ignore the officer, knock on the door, and maybe then wait for his friend to return home or ask the officer to move the police vehicle so he could leave.

[43] *Lucynski (On Remand)*, unpub op at 5.

the driveway of a private residence. But Robinson did not then continue to follow the vehicle. Rather, Robinson confirmed that the vehicle was not registered to the residence. Accordingly, Robinson was justified in believing that the vehicle he had been following was attempting to evade him. Certainly, further investigation of the vehicle's unknown occupant was warranted.

At this point, Deputy Robinson had not engaged in any misconduct. However, according to the majority, this all changed when Robinson continued to follow the vehicle onto private property. While the majority is not clear when Robinson engaged in misconduct, there are two potential points at which the misconduct occurred. The first is that by turning onto a single-lane driveway, Robinson blocked the vehicle's egress and therefore committed misconduct because he had "seized" perhaps the lone occupant of the car, defendant. Still, it would be difficult to say Robinson committed misconduct at this point because his vision of the long driveway was obscured by foliage, and he could not have known there were no other means of vehicular egress. The second is that Robinson blocked the defendant's egress when he parked his marked vehicle directly behind the vehicle defendant had been driving. At this point, however, defendant had already alighted from the vehicle. So, taking a page from the majority's interpretation of the civil obstructing-traffic statute, Robinson's vehicle was "potentially" but not "actually" blocking defendant's egress.

The fact remains that this Court's previous decision in this case established two new precedents from which a majority of the Court is only now able to deem

that Deputy Robinson committed misconduct. Robinson simply cannot be faulted for conduct which was sanctioned before a majority of this Court established two new precedents that retroactively prohibited Robinson's behavior. If his conduct is viewed objectively, as we must, Robinson did not engage in any misconduct. Even if Robinson misunderstood that the civil obstructing-traffic statute applied only to persons "actually" impeding traffic and not to persons "potentially" impeding traffic, he nonetheless conducted a lawful investigation that did not run afoul of the Fourth Amendment.

The majority does not claim Deputy Robinson engaged in any deliberate, reckless, or grossly negligent conduct. Rather, the majority order hides this analytical shortcoming by ignoring all details and leaning on its prior declaration that Robinson made an "unreasonable mistake of law."[44] The majority's focus on Robinson's "unreasonable mistake of law" obscures the significance of its previous dubious holding that Robinson seized defendant by pulling into the driveway and parking his vehicle directly behind defendant. There was no precedent from this Court, our Court of Appeals, or the Supreme Court of the United States from which Robinson, let alone legal scholars in this state, could have been made aware that his conduct would have resulted in an unconstitutional seizure. Had Robinson been aware that this Court's

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[44] In a footnote, the majority order faults the prosecution for not arguing "the good-faith exception" to the exclusionary rule. It is strange that the majority keys in on this exception—dating from the Supreme Court's 1984 *Leon* decision—but ignores the general test for applying the exclusionary rule that the Supreme Court has developed in more recent cases like *Herring* and *Davis*.

overbroad understanding of a seizure under the Fourth Amendment, perhaps he would have approached the situation differently. At best, Robinson inadvertently committed a seizure by pulling into the driveway and parking directly behind the vehicle defendant had been driving.

Yet, the majority sullies Deputy Robinson's inadvertent seizure by asserting all his conduct stemmed from his "unreasonable mistake of law." The majority acknowledges that where a law enforcement error "was the result of isolated negligence attenuated from the arrest," the exclusionary rule should not apply.[45] Yet, Robinson's "unreasonable mistake of law" only brought him to the brink of his inadvertent seizure. While stopped on Old State Road in front of the driveway, he then ran the plate of the vehicle he was following and discovered the vehicle was not registered to that address. This additional information prompted Robinson to pull into the driveway and investigate. Robinson's "unreasonable mistake of law" became attenuated when he developed additional information that prompted him, at least in part, to investigate the vehicle and its driver. And at the time, Robinson could not have had any culpability ascribed to him for conducting a basic investigation and pulling his vehicle into the driveway and parking behind the vehicle defendant had been driving. Here, Robinson's so-called "unreasonable interpretation of the law" was at most negligent. But this supposed negligence is plainly offset, i.e., attenuated, by Robinson's otherwise lawful investigation.

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[45] Quotation marks and citation omitted.

Remarkably, the majority order engages with neither the relevant facts nor the governing law. This leaves a neutral observer bemused as to the basis for the majority's conclusion. A review of the facts uncovers little in the way of law enforcement conduct that should or could be deterred by excluding evidence of defendant's criminal activity. Certainly, it is difficult to see how any deterrence value could " 'pay its way' " and justify excluding relevant evidence from the truth-finding process.[46] Nor is it plausible to suggest that officers will continue to rely on an overbroad understanding of MCL 257.676b(1) after this Court published an opinion holding that Robinson's understanding of MCL 257.676b(1) conflicted with its meaning.[47] This Court's decision already provides significant deterrence such that if a police officer now relies on this overbroad understanding of MCL 257.676b(1), that conduct may rise to the level of insolent and flagrant behavior that may justify application of the exclusionary rule.

For these reasons, I dissent. I would affirm the Court of Appeals' opinion on the above basis or deny the application.

VIVIANO, J., joins the statement of ZAHRA, J.

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.

July 26, 2024 *Larry S. Royster*, Clerk

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[46] *Davis*, 564 US at 238, quoting *Leon*, 468 US at 919.

[47] See *Lucynski*, 509 Mich 619.

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

UNPUBLISHED
April 27, 2023

No. 353646
Tuscola Circuit Court
LC No. 20-015154-AR

DAVID ALLAN LUCYNSKI,

Defendant-Appellee.

ON REMAND

Before: LETICA, P.J., and RIORDAN and CAMERON, JJ.

PER CURIAM.

This case returns to this Court on remand from our Supreme Court. Once more, we reverse the district court's order denying the motion for bindover and suppressing the evidence against defendant, David Allan Lucynski.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

Lucynski was charged with operating a vehicle while intoxicated ("OWI"), third offense, MCL 257.625(9)(c); operating a motor vehicle while license suspended or revoked ("DWLS"), second offense, MCL 257.904(3)(b); and possession or transportation of an open alcoholic container in a vehicle, MCL 257.624a(1). In *People v Lucynski*, unpublished per curiam opinion of the Court of Appeals, issued December 17, 2020 (Docket No. 353646) (*Lucynski I*), we described the relevant case history:

> On January 20, 2020, Tuscola County Sheriff Deputy Ryan Robinson was on duty when he observed "two vehicles stopped in the middle of the roadway, facing opposite directions[.]" Deputy Robinson noted that the vehicles were positioned so that the driver's side windows were facing each other. According to Deputy Robinson, the vehicles were impeding traffic even though there was no other traffic in the area at that time. As Deputy Robinson approached the vehicles, one of the vehicles traveled westbound and the other vehicle traveled eastbound. Lucynski was driving the vehicle that traveled westbound. Deputy Robinson followed Lucynski for 300 to 400 feet before Lucynski pulled into a driveway. Thereafter, Deputy Robinson parked his police cruiser behind Lucynski's vehicle and exited the cruiser. Lucynski was already out of his vehicle.

Deputy Robinson approached Lucynski, who smelled like marijuana and "intoxicating beverages[.]" Deputy Robinson noted that Lucynski had bloodshot eyes and that his demeanor was "pretty laid back." Lucynski admitted that he had consumed alcohol about 20 minutes before. Lucynski also admitted that he had marijuana in his vehicle and that he did not have a driver's license because it was suspended. Lucynski submitted to field sobriety tests, which supported Deputy Robinson's suspicion that Lucynski was intoxicated. After Lucynski refused to submit to a preliminary breath test, Deputy Robinson placed Lucynski under arrest. Thereafter, Lucynski submitted to a preliminary breath test, which revealed that Lucynski had a blood alcohol content of .035. Later, Lucynski's blood was drawn to test for intoxicants, and the sample reflected the presence of THC.

Lucynski was charged with OWI, third offense; DWLS, second offense; and possession or transportation of an open alcoholic container in a vehicle.[ ] The preliminary examination was held on March 4, 2020. In relevant part, the People presented the testimony of Deputy Robinson, and Deputy Robinson's body camera footage was admitted into evidence. At the close of proofs, the People argued that bindover of the OWI charge was appropriate because there was sufficient cause for Deputy Robinson to conduct the traffic stop under MCL 257.676b(1).[ ] Lucynski opposed bindover on the OWI charge, arguing that

there was "an issue in regards to the actual stop." The district court took the matter under advisement and permitted the parties to file written briefs on the issue of whether Lucynski's Fourth Amendment rights were violated.

In a March 27, 2020 opinion and order, the district court concluded that Deputy Robinson lacked both probable cause and the requisite articulable, reasonable suspicion to conduct a traffic stop. In relevant part, the district court analyzed the plain language of MCL 257.626b(1) and concluded that Deputy Robinson could not have had an articulable, reasonable suspicion that Lucynski was "actually impeding or obstructing actual traffic" because Deputy Robinson testified that "Lucynski's vehicle was not actually impeding or obstructing any actual traffic[.]" Based on the district court's conclusion that the stop was unconstitutional, the district court held that "the evidence obtained after the Traffic stop [w]ould be excluded from evidence" for purposes of the preliminary examination. The district court then found that probable cause did not exist to bind Lucynski over on the OWI charge and dismissed it. The district court indicated that it would set the remaining misdemeanor counts for trial. In doing so, the district court held that "the evidence found as a result of th[e] stop is not admissible in any subsequent hearing o[r] trial on those two misdemeanor counts." [*Id*. at 1-2 (footnotes omitted).]

As noted, this Court concluded that a Fourth Amendment violation did not occur and therefore "the district court erred by excluding evidence from the preliminary examination proceeding and by holding that the evidence produced by investigatory stop and arrest would be excluded from future proceedings concerning Lucynski's DWLS and open intoxicant charges." *Id*. at 7. We also determined "the district court abused its discretion by denying the People's motion for bindover on the OWI charge and by dismissing the OWI charge." *Id*. We therefore reversed the district court's denial of the motion for bindover, and its decision to suppress the evidence against Lucynski. *Id*.

Lucynski appealed to our Supreme Court. The Court granted leave to appeal as to three limited questions:

> (1) whether [Lucynski] impeded traffic, in violation of MCL 257.676b(1), where there was no actual traffic to impede at that time; (2) if not, whether [Deputy Robinson] made a reasonable mistake of law by effectuating a traffic stop of [Lucynski] for violating MCL 257.676b(1), see *Heien v. North Carolina*, 574 U.S. 54, 135 S Ct 530, 190 L Ed 2d 475 (2014); and (3) whether [Deputy Robinson] seized [Lucynski] when he pulled his patrol vehicle behind [Lucynski's] vehicle in a driveway. [*People v Lucynski*, 508 Mich 947 (2021) (*Lucynski II*).]

Our Supreme Court answered the first question in the negative, concluding "there is no evidence in the record to sustain the accusation that defendant"

impeded traffic in violation of MCL 257.676b(1). *People v Lucynski*, 509 Mich 618, 650; ___ NW2d ___ (2022) (*Lucynski III*). Similarly, the Court determined Deputy Robinson did not make a reasonable mistake of law in effectuating the traffic stop because "one cannot be guilty of violating MCL 257.676b(1) without evidence that the 'normal flow' of actual traffic was disrupted, and [Deputy] Robinson admitted that no disruption occurred." *Id.* at 652-653. As to the third question, the Court decided Lucynski was seized for purposes of the Fourth Amendment because a reasonable person in Lucynski's place would not feel free to terminate the encounter and leave—indeed, his only options "would have been to attempt to enter a home that [he] did not own (and without knowledge whether the owner was home) or wander off into a frozen field some distance from town in a rural area." *Id.* at 645-646.

On the basis of these conclusions, our Supreme Court resolved:

> [T]hat [Lucynski] was seized the moment [Deputy] Robinson blocked the driveway and prevented egress, [Lucynski's] incriminating statements and [Deputy Robinson's] visual and olfactory observations that the Court of Appeals relied upon to justify further inquiry and an eventual arrest were obtained in violation of [Lucynski's] Fourth Amendment rights. Prior to [Deputy] Robinson blocking [Lucynski] in, [Lucynski] had not made any incriminating statements, and thus such statements could not have justified a seizure. A seizure could have been justified if [Deputy]

> Robinson had reasonable suspicion to believe that [Lucynski] had violated the law, but as the district court previously held, there was no evidence to support [Deputy] Robinson's hunch that an illegal drug transaction had taken place on the road, and that ruling was not appealed. A suspected violation of MCL 257.676b(1) also could not serve as reasonable suspicion given our previous conclusions. Accordingly, we have not been presented with any lawful justification for the seizure, and the district court did not err by holding that the seizure violated [Lucynski's] constitutional rights. [*Id*. at 656-657.]

Therefore, the question for this Court is whether, in light of the Fourth Amendment violations against Lucynski, "application of the exclusionary rule was the appropriate remedy." *Id*. at 658.

II. STANDARD OF REVIEW

This Court reviews a trial court's factual findings for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). Clear error exists where "we are left with a definite and firm conviction that a mistake has been made." *People v Muro*, 197 Mich App 745, 747; 496 NW2d 401 (1993). "But the application of constitutional standards regarding searches and seizures to essentially uncontested facts is entitled to less deference; for this reason, we review de novo the trial court's ultimate ruling on the motion to suppress." *Williams*, 472 Mich at 313.

III. LAW AND ANALYSIS

The Fourth Amendment to the United States constitution states, in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." US Const, Am IV; see also Const 1963, art 1, § 11. In line with these principles, the exclusionary rule prohibits "[t]he introduction into evidence of materials seized and observations made during an unlawful search." *People v Stevens*, 460 Mich 626, 633; 597 NW2d 53 (1999). The exclusionary rule also bars "the introduction into evidence of materials and testimony that are the products or indirect results of an illegal search, the so-called 'fruit of the poisonous tree' doctrine." *Id.* at 633-634, citing *Wong Sun v United States*, 371 US 471; 83 S Ct 407; 9 L Ed 2d 441 (1963).

However, the exclusionary rule is a remedy of last resort. *Herring v United States*, 555 US 135, 140; 129 S Ct 695; 172 L Ed 2d 496 (2009). Even when evidence is the product of an illegal search, it does not follow that the evidence is necessarily subject to the exclusionary rule. *Stevens*, 460 Mich at 635; see also *United States v Calandra*, 414 US 338, 348; 94 S Ct 613; 38 L Ed 2d 561 (1974) ("Despite its broad deterrent purpose, the exclusionary rule has never been interpreted to proscribe the use of illegally seized evidence in all proceedings or against all persons."). In determining whether the exclusionary rule applies, a court must "evaluate the circumstances of th[e] case in the light of the policy served by the exclusionary rule." *Brown v Illinois*, 422 US 590, 604; 95 S Ct 2254; 45 L Ed 2d 416 (1975). "The rule is calculated to prevent, not to

repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." *Id.* at 599-600.

In *Herring*, 555 US 144-145, the United States Supreme Court considered a circumstance where evidence was discovered as the result of a faulty warrant. In determining whether the exclusionary rule provided a sufficient deterrent effect, the Supreme Court stated:

> To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence. The error in this case does not rise to that level.
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> * * *
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> If the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified under our cases should such misconduct cause a Fourth Amendment violation . . . .
>
> * * *
>
> Petitioner's claim that police negligence automatically triggers suppression cannot be

> squared with the principles underlying the exclusionary rule, as they have been explained in our cases. In light of our repeated holdings that the deterrent effect of suppression must be substantial and outweigh any harm to the justice system, we conclude that when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not "pay its way." In such a case, the criminal should not "go free because the constable has blundered." [*Id.* at 144-148 (footnote and citations omitted).]

Here, Deputy Robinson testified that he initiated a traffic stop of Lucynski's vehicle because he thought Lucynski was impeding traffic in contravention of MCL 257.626b(1). *Lucynski I*, unpub op at 1. Although our Supreme Court later concluded that this belief was not objectively reasonable because there was no traffic on the road, *Lucynski III*, 509 Mich at 652, it is also true that Deputy Robinson did not demonstrate any deliberate, reckless, or grossly negligent conduct. There is no evidence in the record showing that Deputy Robinson acted in bad faith when he effectuated a traffic stop of Lucynski. Nor was there any evidence this stop was part of a systemic effort to subvert Lucynski's constitutional rights.

Moreover, Deputy Robinson's decision to stop the vehicle aligned with this Court's reasoning in *People v Salters*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2001 (Docket No. 215396), p 2. Although *Lucynski III* clarifies *Salters* to

the extent that "some evidence of actual interference with the normal flow of traffic is required," *Lucynski III*, 509 Mich at 654, that does not mean suppression is mandated in this case. Deputy Robinson could not have predicted the outcome in *Lucynski III* and to suppress the evidence would impermissibly hold law enforcement officers to a higher standard than the judiciary. Therefore, there is simply not enough evidence in this case showing how suppression of the evidence would deter any future misconduct by police officers. Thus, application of the exclusionary rule was not the appropriate remedy and the district court erred when it concluded otherwise.

Reversed and remanded to the district court for an opinion consistent with this analysis. We do not retain jurisdiction.

/s/ Anica Letica
/s/ Michael J. Riordan
/s/ Thomas C. Cameron

Michigan Supreme Court
Lansing, Michigan

OPINION

Chief Justice:
Bridget M. McCormack

Justices:
Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch

FILED July 26, 2022

S T A T E O F M I C H I G A N

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,
v
No. 162833
DAVID ALLAN LUCYNSKI,
Defendant-Appellant.

BEFORE THE ENTIRE BENCH
WELCH, J.

The Fourth Amendment protects individuals from being subjected to unreasonable searches and

seizures. While police officers generally need a warrant to search or seize someone, there are recognized exceptions to this general rule. If an officer has at least a reasonable suspicion of criminal activity, based on articulable facts, then a temporary warrantless seizure is constitutional. *Terry v Ohio*, 392 US 1, 20-27; 88 S Ct 1868; 20 L Ed 2d 889 (1968). Reasonable suspicion can be based on a mistaken belief that someone violated the law, so long as that mistake is objectively reasonable. *Heien v North Carolina*, 574 US 54, 60-63, 66; 135 S Ct 530; 190 L Ed 2d 475 (2014).

When a defendant challenges the constitutionality of an alleged seizure, there are two questions that must be answered. First, when was the defendant seized by the officer, if at all? And second, at that moment, was the seizure constitutional? In this case, to determine whether a seizure was constitutional, we also must determine whether the officer's interpretation of the applicable statute, MCL 257.676b(1), was correct, and if not, whether the mistake was objectively reasonable.

The officer in this case claimed that he followed defendant because he believed that defendant committed a traffic violation that would have justified the subsequent seizure, questioning, search, and arrest of defendant. The district court held that there was no traffic violation, that the seizure was unconstitutional, that defendant would not be bound over for operating while intoxicated (OWI), and that the unlawfully obtained evidence must be suppressed. The prosecution argued that a "reasonable mistake" occurred as to the traffic violation, that suppression of the evidence was not required, and that the bindover

decision was incorrect. The Court of Appeals agreed and further held that defendant had not been seized until after he made incriminating statements, and thus the district court erred.

Accordingly, we must decide when defendant was seized and if, at that moment, the officer had reasonable suspicion that defendant had committed a crime or, if not, whether the officer's mistaken belief was objectively reasonable. First, we hold that defendant was seized under the Fourth Amendment when the officer blocked the driveway and defendant's path of egress with a marked patrol car because, under the totality of the circumstances, a reasonable person would not have felt free to leave or to terminate the interaction. Second, the "impeding traffic" statute at issue, MCL 257.676b(1), is only violated if the normal flow of traffic is actually disrupted. Third, the officer's mistaken reading of this unambiguous statute was not objectively reasonable, and thus no reasonable mistake of law occurred.

Accordingly, we reverse the judgment of the Court of Appeals and remand this case to that Court to determine whether application of the exclusionary rule was the appropriate remedy for the violation of defendant's Fourth Amendment rights.

I. BACKGROUND

On a brisk January morning, Tuscola County Sheriff's Deputy Ryan Robinson was traveling westbound on Old State Road in rural Wisner Township when he observed two cars stopped in the middle of

the road from some distance away.[1] At the preliminary-examination hearing, Robinson testified that the vehicles were facing opposite directions with the drivers' windows next to one another and that the drivers appeared to be talking to one another with their windows down. One of the vehicles, a red Chevrolet Cobalt, was defendant's car. Robinson did not observe any narcotics activity and did not hear what the drivers said, but he testified that he thought a drug transaction might have occurred. Even though there were no other vehicles on Old State Road at the time, Robinson testified at the preliminary-examination hearing that he believed the vehicles were impeding traffic in violation of MCL 257.676b. Robinson also testified that he saw both cars begin moving when he was approximately 800 feet away, he did not have to slow down or avoid either vehicle, and he did not observe any erratic driving.

Robinson testified that he followed defendant's car "with the intention to stop the red Cobalt for impeding traffic." Robinson followed defendant in a marked patrol vehicle and turned onto the same one-lane driveway that defendant had entered, parking a few feet behind defendant's car and blocking the only path of egress. While a single lane was cleared within the driveway, the surrounding area was covered with several inches of snow. Neither the siren nor the

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[1] Old State Road is a two-mile stretch of rural road, which Deputy Robinson described as "dirt" or unpaved. Old State Road is approximately 10 miles east of Bay City, Michigan, and appears to provide access to a handful of farms and residential homes before reconnecting to Michigan Highway 25.

emergency lights on Robinson's vehicle were activated by the officer.

Body-camera footage of the encounter that followed was introduced at the preliminary-examination hearing. Robinson, upon pulling into the driveway behind defendant, started to exit his car prior to putting the car in the parked position. When Robinson exited his patrol car, defendant was standing next to the driver's side door of the Cobalt facing Robinson. Robinson immediately asked whether defendant lived there, and defendant responded that it was a friend's house as he walked toward the deputy. Robinson asked what defendant was doing on the road, to which defendant replied, "Just talking about fishing." During this period, defendant had moved to put his hands in his pockets, and Robinson ordered him not to do so; defendant complied with the directive. Robinson then said, "I didn't know if maybe there was a drug deal going on, and that when I ran the plate it [came] back to" an address in Reese, Michigan. Defendant denied any drug transaction and said that Reese was where he lived and that he worked just up the road. After confirming the name of the homeowner, Robinson asked defendant if defendant had his driver's license, to which defendant replied in the negative; upon Robinson's further questioning, defendant responded that he did not have a valid driver's license. This all occurred within the first two minutes of Robinson pulling into the driveway.

The possibility of a citation for impeding traffic was never mentioned during Robinson's encounter with defendant. However, Robinson testified that because he smelled the odor of marijuana and alcohol

emanating from defendant and noticed that defendant's eyes were bloodshot, he proceeded to investigate whether defendant was intoxicated. Defendant admitted to smoking marijuana about 20 minutes earlier and to consuming alcohol during the day. Defendant then consented to a search of his vehicle, and Robinson found both marijuana and an open container of alcohol inside. Robinson performed several field-sobriety tests, and based upon those tests, defendant was arrested.[2] No "impeding traffic" citation was issued, but defendant was charged with operating while intoxicated (OWI), driving with a suspended license, and having an open container of alcohol in the vehicle.

A. THE DISTRICT AND CIRCUIT COURT PROCEEDINGS

Robinson testified at defendant's preliminary-examination hearing to the facts outlined earlier. However, Robinson conceded on redirect examination that his "initial thought was that there, there may have been a drug deal or something going on, because it was a rural area and no one was around." While the deputy knew of drug exchanges in rural areas, he knew of none on Old State Road. He also acknowledged that it is not uncommon for people to stop their vehicle, roll down their window, and talk with acquaintances on rural roads.

Defendant's attorney asked to submit briefing to challenge the validity of the stop under MCL 257.676b and to argue that the evidence obtained by the police

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[2] Defendant also consented to a breath test and a blood draw, and after making the arrest, Robinson took defendant to a hospital for the blood draw.

should be excluded. The prosecution countered that the evidence was sufficient and that, based on the facts and the statute at issue, the officer had sufficient probable cause to initiate the stop. Additionally, the prosecution argued that a reasonable mistake of law or fact does not mandate the suppression of evidence under United States Supreme Court precedent.

The district court allowed briefing and later held that the prosecution failed to prove that Robinson had sufficient cause to initiate the stop. The court held that the prosecution had presented nothing more than "an inchoate or unparticularized suspicion or hunch" that was legally insufficient to believe that a drug transaction had transpired. As to the alleged impeding-traffic violation under MCL 257.676b(1), the court held that the statute could not be violated without a showing that "real, not imagined, traffic was actually impeded or obstructed in some way by a person or a vehicle." No evidence of such impediment was presented by the prosecution, and thus the court determined that the traffic stop was invalid. Accordingly, the court held that all evidence obtained from the stop would be inadmissible in any proceeding moving forward, and it dismissed the OWI charge. The court did not address the prosecution's reasonable-mistake-of-law argument.

The prosecution sought leave to appeal in the Tuscola Circuit Court, which was denied. The prosecution then sought leave to appeal in the Court of Appeals.

B. COURT OF APPEALS PROCEEDINGS

The Court of Appeals granted the prosecution's application, limiting the issues to those raised in the application. *People v Lucynski*, unpublished order of the Court of Appeals, entered July 21, 2020 (Docket No. 353646). Despite this, the Court of Appeals resolved the appeal based on a legal theory that was not raised by the parties in the trial court or on appeal. Specifically, the panel focused on whether defendant was seized at all, a point that neither party contested in the lower courts.[3]

The Court acknowledged the constitutional right to be free from unreasonable searches and seizures and that "[a] person is seized if, 'in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.' " *People v Lucynski*, unpublished per curiam opinion of the Court of Appeals, issued December 17, 2020 (Docket No. 353646), pp 3-4 (citation omitted). The panel relied on *People v Jenkins*, 472 Mich 26, 33; 691 NW2d 759 (2005), for the proposition that " '[w]hen an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized.' " *Lucynski*, unpub op at 4. The Court also acknowledged that a temporary detention for questioning is constitutionally reasonable when

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[3] Both in the district court and in its application to the Court of Appeals, the prosecution argued that Robinson had intended to initiate and did initiate a traffic stop when he pulled into the driveway behind defendant. The question whether defendant was seized at all was first raised by the Court of Appeals during oral argument.

based on reasonable suspicion of criminal activity under *Terry*. *Id*.

The panel noted that while Robinson had followed defendant, Robinson did not turn on his lights or signal for defendant to pull over. Rather, defendant voluntarily pulled into a driveway, and Robinson pulled in and parked behind defendant's car. "Lucynski then approached Deputy Robinson and began voluntarily answering Deputy Robinson's questions, which included what Lucynski had been doing on the roadway with the driver of the other vehicle and whether the homeowner was home." *Id*. at 5. The Court of Appeals held that based on the totality of the circumstances, the earliest point at which the encounter with Robinson could have become a seizure implicating the Fourth Amendment was when defendant admitted to not having a valid driver's license, because that was the earliest point at which a reasonable person would not have felt free to leave.[4] Subsequent investigation into and arrest for suspicion of OWI was deemed justifiable because defendant had been seen driving and the deputy observed signs of possible intoxication.

In a footnote, the Court held that even if MCL 257.676b(1) requires actual impediment of traffic, in light of unpublished authority holding to the contrary, i.e., *People v Salters*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2001 (Docket No. 215396), "the evidence should not have been suppressed because the traffic stop was based on

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[4] Stated differently, the panel concluded that Robinson did not seize defendant merely by following him into the driveway and blocking defendant's car. Rather, the encounter became a seizure a little less than two minutes later.

Deputy Robinson's reasonable mistake of law or fact." *Lucynski*, unpub op at 6 n 5, citing *Heien*, 574 US at 60-68.

The panel concluded by holding that the district court abused its discretion when it held that the Fourth Amendment was violated and thus that the district court erred by excluding evidence from the seizure and by dismissing the OWI charge. Accordingly, the circuit court abused its discretion by denying leave to appeal. Defendant then sought leave to appeal in this Court. We granted defendant's application for leave to appeal, limited to three issues:

> (1) whether the defendant impeded traffic, in violation of MCL 257.676b(1), where there was no actual traffic to impede at that time; (2) if not, whether the deputy sheriff made a reasonable mistake of law by effectuating a traffic stop of the defendant for violating MCL 257.676b(1), see *Heien v North Carolina*, 574 US 54 (2014); and (3) whether the deputy sheriff seized the defendant when he pulled his patrol vehicle behind the defendant's vehicle in a driveway. [*People v Lucynski*, 508 Mich 947, 947 (2021).]

II. ANALYSIS

We are tasked with determining whether the district court erred by refusing to bind defendant over for trial on the OWI charge. To bind a criminal defendant over for trial, the district court must find probable cause to believe that the defendant committed a felony. *People v Magnant*, 508 Mich 151, 161; 973 NW2d 60 (2021). "This requires evidence as to each element

of the charged offense that would 'cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt.' " *Id.*, quoting *People v Shami*, 501 Mich 243, 250-251; 912 NW2d 526 (2018).[5]

Defendant does not dispute that if all relevant evidence presented by the prosecution at the preliminary-examination hearing is considered, probable cause existed to support his bindover on the OWI charge. However, defendant argues that the evidence supporting his bindover—i.e., his admissions to the officer, the field-sobriety tests, and the blood-draw results—must be suppressed because it was obtained in violation of his constitutional rights against unreasonable search and seizure and thus constitutes fruit of the poisonous tree. See *People v Stevens (After Remand)*, 460 Mich 626, 633-634; 597 NW2d 53 (1999). Without the admission of this evidence, probable cause does not exist supporting the OWI charge. Accordingly, we must first determine whether defendant was unconstitutionally seized.

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[5] A district court's bindover decision is reviewed "for an abuse of discretion, which occurs when the district court's decision falls outside the range of principled outcomes." *Magnant*, 508 Mich at 161. A trial court abuses its discretion when it bases its ruling on an error of law. *People v Rajput*, 505 Mich 7, 11; 949 NW2d 32 (2020). Questions of statutory interpretation and questions of constitutional law are reviewed de novo. *Magnant*, 508 Mich at 161; *People v Lockridge*, 498 Mich 358, 373; 870 NW2d 502 (2015). The district court's factual determinations are reviewed for clear error. *People v Vaughn*, 491 Mich 642, 650; 821 NW2d 288 (2012).

A. DEFENDANT WAS SEIZED WHEN THE POLICE BLOCKED THE ONLY PATH OF EGRESS FROM A DRIVEWAY USING A MARKED POLICE VEHICLE

The United States Constitution guarantees an individual's right to be free from unreasonable searches and seizures. US Const, Am IV.[6] As Justice Stewart explained in *United States v Mendenhall*, 446 US 544, 553-555; 100 S Ct 1870; 64 L Ed 2d 497 (1980) (opinion of Stewart, J.):

> [A] person is "seized" only when, *by means of physical force or a show of authority*, his freedom of movement is restrained. Only when such restraint is imposed is there any foundation whatever for invoking constitutional safeguards. . . . As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized and objective justification.

* * *

[6] Const 1963, art 1, § 11 has historically been interpreted coextensively with the Fourth Amendment, "absent compelling reason to impose a different interpretation." *People v Slaughter*, 489 Mich 302, 311; 803 NW2d 171 (2011) (quotation marks and citation omitted). See also *Sitz v Dep't of State Police*, 443 Mich 744, 764-779; 506 NW2d 209 (1993). No party has presented an argument under the Michigan Constitution, and therefore, we do not reach the issue whether a compelling reason warrants a different interpretation.

> We conclude that a person has been "seized" within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. [Emphasis added.]

The United States Supreme Court eventually adopted Justice Stewart's *Mendenhall* test,[7] with the added caveat that if "a person 'has no desire to leave' for reasons unrelated to the police presence, the 'coercive effect of the encounter' can be measured better by asking whether '*a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter*.' " *Brendlin v California*, 551 US 249, 255; 127 S Ct 2400; 168 L Ed 2d 132 (2007) (emphasis added), quoting *Florida v Bostick*, 501 US 429, 435-436; 111 S Ct 2382; 115 L Ed 2d 389 (1991). Hence, there are arguably two separate standards to apply—one when a person has an independent desire to leave and another if the person does not—even if they are effectively two sides of the same coin. The "test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole,

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[7] See *Immigration & Naturalization Serv v Delgado*, 466 US 210, 215; 104 S Ct 1758; 80 L Ed 2d 247 (1984).

rather than to focus on particular details of that conduct in isolation." *Michigan v Chesternut*, 486 US 567, 573; 108 S Ct 1975; 100 L Ed 2d 565 (1988). "Moreover, what constitutes a restraint on liberty prompting a person to conclude that he is not free to 'leave' will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurs." *Id*.

This Court has adopted the same general principles, as recognized in *Jenkins*, 472 Mich at 32-33:

> A "seizure" within the meaning of the Fourth Amendment occurs only if, in view of all the circumstances, a reasonable person would have believed that he was not free to leave. *People v Mamon*, 435 Mich 1, 11; 457 NW2d 623 (1990). When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized. *Florida v Royer*, 460 US 491, 497-498, 103 S Ct 1319; 75 L Ed 2d 229 (1983) (plurality opinion).

Some interactions with the police do not rise to the level of a "seizure" under the Fourth Amendment. As noted in *Jenkins*, when there is no show of force and an officer approaches an individual in a public place and asks for "voluntary cooperation through noncoercive questioning," there will generally be no seizure. *Jenkins*, 472 Mich at 33. See also *Royer*, 460 US at 497. When exactly an interaction crosses the line and becomes a seizure, thus triggering the protections of the Fourth Amendment, is a difficult question that often sparks disagreement.

A warrantless search or seizure is presumed unconstitutional unless shown to be within one of several established exceptions. See *Illinois v Gates*, 462 US 213, 236; 103 S Ct 2317; 76 L Ed 2d 527 (1983); *People v Hughes*, 506 Mich 512, 524-525; 958 NW2d 98 (2020); *People v Reed*, 393 Mich 342, 362; 224 NW2d 867 (1975). One frequently implicated exception to the prohibition on warrantless seizures that is relevant in this case is the investigatory stop. A brief seizure for investigative purposes does not violate the Fourth Amendment if the officer has a reasonably articulable suspicion that criminal activity is afoot. *Terry*, 392 US at 22, 30-31; *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001). Like an investigatory stop, a traffic stop is " 'more analogous to a so-called "*Terry* stop" . . . than to a formal arrest.' " *Rodriguez v United States*, 575 US 348, 354; 135 S Ct 1609; 191 L Ed 2d 492 (2015), quoting *Knowles v Iowa*, 525 US 113, 117; 119 S Ct 484; 142 L Ed 2d 492 (1998), in turn quoting *Berkemer v McCarty*, 468 US 420, 439; 104 S Ct 3138; 82 L Ed 2d 317 (1984).

As previously stated, Robinson did not initiate a formal traffic stop for a violation of MCL 257.676b(1),[8]

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[8] "[T]he Fourth Amendment permits an officer to initiate a brief investigative traffic stop when he has a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Kansas v Glover*, 589 US ___, ___; 140 S Ct 1183, 1187; 206 L Ed 2d 412 (2020) (quotation marks and citation omitted). See also *Whren v United States*, 517 US 806, 810; 116 S Ct 1769; 135 L Ed 2d 89 (1996) ("[T]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."). We have recognized the same principle under state law. See *People v Dunbar*, 499 Mich 60, 66; 879 NW2d 229 (2016) (" 'A police officer who witnesses a person violating [the Michigan Vehicle Code, MCL 257.1 through

despite his testimony that this was his intention when he began following defendant.[9] Pulling defendant over on the side of the road would have been a seizure. Instead, Robinson pulled onto the driveway behind defendant, parked a few feet behind defendant, and blocked the exit. Robinson did not turn his lights on, sound his siren, or direct defendant to pull over on the side of the road. Because Robinson did not outwardly communicate his subjective intentions to defendant, they are not relevant in determining when defendant's encounter with Robinson became a seizure.

We must therefore decide when a reasonable person in defendant's shoes would either (1) have not felt free to leave or (2) have ceased to feel free to decline Robinson's requests or otherwise terminate the encounter. *Brendlin*, 551 US at 255. Was it when defendant admitted to lacking a valid driver's license, as the Court of Appeals held, or was it sooner? In this regard, three decisions from the United States Court of Appeals for the Sixth Circuit are particularly relevant because each involves similar constitutional questions and relatively similar facts.[10]

MCL 257.923] . . . , which violation is a civil infraction, may stop [and temporarily] detain the person . . . .' "), quoting MCL 257.742(1) (alterations in original).

[9] That a police officer intended to stop or seize an individual does not mean that a seizure has occurred for Fourth Amendment purposes, because the constitutional question focuses on the objective manifestations of intent, see *Brendlin*, 551 US at 260, although subjective intentions might be relevant when they are conveyed to the person confronted, see *Michigan v Chesternut*, 486 US 567, 576; 108 S Ct 1975; 100 L Ed 2d 565 (1988).

[10] The decisions of intermediate federal courts are not binding on this Court, although they may be considered for their persuasive

In *United States v See*, 574 F3d 309, 311 (CA 6, 2009), a police officer saw the defendant and two other men in an unlit car parked in the lot of a public-housing complex in a high-crime neighborhood at about 4:30 a.m. The officer parked his patrol car in front of the defendant's vehicle in a manner that prevented the defendant from driving away. *Id*. The subsequent encounter led to a search of the defendant's vehicle, during which a firearm was found. *Id*. at 312. The defendant sought to suppress the evidence obtained from the search. The Sixth Circuit affirmed the district court's holding that blocking the defendant's vehicle " 'to determine the identity of the occupants and maintain the status quo while obtaining this information was a warrantless *Terry* seizure.' " *Id*. at 313. As the panel noted, "Given the fact that [the officer] blocked See's car with his marked patrol car, a reasonable person in See's position would not have felt free to leave." *Id*. Because the Sixth Circuit also held that reasonable suspicion did not support the seizure, it further held that the seizure was unlawful and that suppression of the evidence resulting from the seizure was appropriate. *Id*. at 313-315.

In *United States v Gross*, 662 F3d 393, 396 (CA 6, 2011), during an early morning patrol, an officer noticed a vehicle legally parked in a parking lot of a public-housing complex with its engine running but with no apparent driver. The officer "noticed a barely-visible passenger" who was slumped over in the front passenger seat. *Id*. The officer "parked his police vehicle directly behind the [car] and turned on his vehicle

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value. See *Abela v Gen Motors Corp*, 469 Mich 603, 606-607; 677 NW2d 325 (2004).

spotlights." *Id.* The officer then approached the vehicle on foot, identified himself through the closed window, and questioned the defendant. *Id.* at 397. After noticing a partially consumed bottle of liquor in the car, the officer asked for identification or identifying information, which the occupant provided after several repeated questions. *Id.* The officer ran a warrant check and discovered that the defendant had an outstanding felony warrant, which led to the defendant's arrest and the discovery of incriminating evidence. *Id.*

Relying on *See*, the court held that the officer's act of parking his vehicle behind the defendant's legally parked car in a manner that prevented the car from leaving was a warrantless seizure and thus required reasonable suspicion of misconduct, which was lacking.[11] *Id.* at 399-400. Additionally, the panel emphasized that the officer in *Gross* had the right to engage in a consensual encounter if done in a manner that did not amount to a *Terry* stop, such as parking alongside the vehicle. *Id.* at 401.

The decision in *O'Malley v Flint*, 652 F3d 662 (CA 6, 2011), illustrates how slightly different facts can lead to the opposite conclusion.[12] In *O'Malley*, a police

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[11] The panel rejected the government's argument that the officer was merely engaged in a community-caretaker function under *United States v Koger*, 152 F Appx 429, 430-431 (CA 6, 2005). *Gross*, 662 F3d at 400-401. In *Koger*, the officers had approached an illegally stopped vehicle that was blocking a local highway and had a sleeping or unconscious driver. *Koger*, 152 F Appx at 430. The court found that the illegality of that situation justified a brief seizure, and the community-caretaker function was merely an alternative rationale. *Gross*, 662 F3d at 400-401.

[12] *O'Malley* was a civil action filed under 42 USC 1983 seeking damages for the alleged unlawful search, seizure, and detention

officer in the city of Flint "was driving an *unmarked police vehicle* and noticed a blue Chevrolet Tahoe that looked like a Michigan State Police vehicle." *Id.* at 665 (emphasis added). The officer began following the vehicle because he suspected that it was being used to impersonate a law-enforcement officer. *Id.*

> Eventually, the Tahoe was driven into a residential driveway and parked. After its driver, plaintiff O'Malley, exited the Tahoe and began walking toward the back of the house, [Officer] Hagler parked his police vehicle in the driveway behind the Tahoe. Thereafter, Hagler approached O'Malley, identified himself as a police officer, and said that he would like to speak with him. According to O'Malley, Hagler asked about the vehicle before identifying himself. [*Id.*]

The communications and interactions that followed led to O'Malley being detained at a nearby police station. *Id.* at 666. O'Malley was never charged, and he was eventually released. *Id.*

On the seizure question, the court distinguished *Gross* and *See*, holding that O'Malley was not seized for constitutional purposes at the time of the initial encounter and questioning. The panel emphasized several factual differences. First, O'Malley was out of his vehicle and walking toward the home when the

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of O'Malley. Thus, rather than deciding whether evidence should be suppressed as in *See*, the *O'Malley* court was determining whether the officer was entitled to qualified immunity under federal law, which required an assessment of the constitutionality of the police encounter. *O'Malley*, 652 F3d at 665, 668-671.

officer parked behind the Tahoe. *Id*. at 669. The panel opined that "parking behind a vehicle in a driveway does not inherently send a message of seizure because it is how driveways are routinely used." *Id*. Second, the officer's tone, identification of himself as a police officer, and initial statement of " 'Hey! Whose truck is that?' " were not threatening and merely indicated a desire to "talk to O'Malley about the Tahoe." *Id*. Third, that "O'Malley stopped walking to respond to [Officer] Hagler's inquiry also does not, by itself, transform this encounter into a seizure for purposes of the Fourth Amendment." *Id*., citing 4 LaFave, Search & Seizure (4th ed), § 9.4, and *United States v Thomas*, 430 F3d 274, 277, 280 (CA 6, 2005).

Returning to the facts of this case, while Robinson did not activate his lights or siren, he parked a few feet behind defendant's car in the single-lane driveway. Defendant described his vehicle as being blocked in, and the prosecution has not disputed this characterization. Robinson testified that his vehicle was not "offset very much because essentially it's just a one lane driveway. I can't say if it was offset or not, but it was behind his vehicle." Our review of the body-camera footage also supports defendant's characterization of being blocked in. The presence of several inches of snow on the ground and the apparent lack of an alternative path for exiting the driveway further supports this conclusion. The body-camera footage shows defendant standing next to the driver's side door of the Cobalt facing Robinson the moment defendant came into view as Robinson emerged from his patrol car. At the preliminary examination, Robinson also described defendant as "standing out of the vehicle" when Robinson arrived.

Beyond the positioning of defendant and Robinson's patrol car, other facts concerning the setting of this police–citizen encounter are also important. See *Chesternut*, 486 US at 573. The encounter at issue occurred on a cold January morning in rural Michigan in one of a handful of residential driveways off a dirt road. Robinson testified that he followed defendant's car for a short period before following defendant onto the driveway. The body-camera footage shows that Robinson quickly began exiting his car before the car even came to a full stop.

What is not clear under the facts of this case, as in many seizure cases, is whether defendant had an independent desire to keep moving. The driveway and home belonged to his friend. The record is silent on whether defendant was planning to visit with his friend before Robinson began following defendant or if defendant was planning to keep driving. Under either of these hypothetical scenarios, we conclude that defendant was seized under the standards that the United States Supreme Court has set forth.

Under the totality of the circumstances, we hold that defendant was seized at the moment Robinson, in his marked police vehicle, blocked defendant's car, resulting in no means for defendant to exit the single-lane driveway. As aptly stated by Professor Wayne LaFave, "boxing the car in," among other things, "will likely convert the event into a Fourth Amendment seizure." 4 LaFave, Search and Seizure (6th ed), § 9.4(a), pp 596-599. Applying similar logic, using a marked police vehicle to block a civilian vehicle's ability to exit a single-lane driveway to facilitate questioning or an investigation is a show of force on behalf of the police

that can give rise to a seizure within the meaning of the Fourth Amendment. Under the circumstances of this case, including the rural setting, the way the encounter was initiated by the officer swiftly following defendant down a private driveway, and the fact that the officer's police vehicle blocked defendant's car in the driveway, a reasonable person would not have felt free to leave the scene, even though the police officer did not activate emergency lights or a siren. The same facts would cause a reasonable person to feel compelled to answer questions posed by the officer who had followed him and blocked his path of egress from the driveway of a home he did not own. This is consistent with the Sixth Circuit's holding that blocking someone's parked car to " 'determine the identity of the occupants and maintain the status quo while obtaining this information was a warrantless *Terry* seizure . . . .' " *Gross*, 662 F3d at 400, quoting *See*, 574 F3d at 313. *Gross* and *See* are not anomalous decisions. Many other courts have reached the same conclusion under a variety of similar factual circumstances.[13]

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[13] See, e.g., *State v Rosario*, 229 NJ 263, 273; 162 A3d 249 (2017) (holding that "[a] person sitting in a lawfully parked car outside her home who suddenly finds herself blocked in by a patrol car that shines a flood light into the vehicle, only to have the officer exit his marked car and approach the driver's side of the vehicle, would not reasonably feel free to leave"); *Robinson v State*, 407 SC 169, 177, 183; 754 SE2d 862 (2014) (holding that an investigatory stop occurred when an officer blocked a vehicle in a parking lot with the officer's patrol car); *United States v Jones*, 678 F3d 293, 297, 305 (CA 4, 2012) (holding that the defendant was seized when officers followed him from a public street onto private property, blocked his car from leaving without activating lights, and then quickly approached the defendant, who was near

the car, to initiate questioning); *State v Garcia- Cantu*, 253 SW3d 236, 246 & n 44 (Tex Crim App, 2008) (holding that a seizure occurred when the officer "parked his patrol car" such that it " 'boxed in' [the defendant's] parked truck, preventing him from voluntarily leaving" and noting that "[m]ost courts have held that when an officer 'boxes in' a car to prevent its voluntary departure, this conduct constitutes a Fourth Amendment seizure"); *United States v Burton*, 441 F3d 509, 511 (CA 7, 2006) (holding that officers on bicycles seized a vehicle stopped in a roadway by placing their bicycles so that the driver could not drive away); *State v Jestice*, 177 Vt 513, 515; 2004 VT 65; 861 A2d 1060 (2004) (holding that "when a police cruiser completely blocks a motorist's car from leaving, courts generally find a seizure. . . . [T]he fact that it was possible for the couple to back up and maneuver their car past the patrol car and out of the trailhead parking lot does not convince us that this was a consensual encounter"); *State v Roberts*, 293 Mont 476, 483; 1999 MT 59; 977 P2d 974 (1999) (holding that a seizure occurred when an officer, "armed and in uniform," followed the defendant's car without activating lights or sirens, blocked the car from backing out of a driveway, and made an additional "show of authority in immediately exiting his patrol car and approaching" the defendant, who had exited his car simultaneously and was standing by the car door); *McChesney v State*, 988 P2d 1071, 1075 (Wy, 1999) (noting that an officer having "blocked in" a defendant's car was "sufficient to constitute a seizure"); *United States v Tuley*, 161 F3d 513, 515 (CA 8, 1998) (holding that "[b]locking a vehicle so its occupant is unable to leave during the course of an investigatory stop is reasonable to maintain the status quo while completing the purpose of the stop"); *Commonwealth v Helme*, 399 Mass 298, 300; 503 NE2d 1287 (1987) (holding that an investigatory stop occurred when an officer "parked the police cruiser so as to block the defendant's [parked] automobile and prevent it from leaving the parking lot"); *United States v Kerr*, 817 F2d 1384, 1386-1387 (CA 9, 1987) (holding that when a uniformed officer approached a car after blocking the one-lane driveway as the defendant was backing out, a seizure occurred, leaving the defendant with "no reasonable alternative except an encounter with the police"); *People v Wilkins*, 186 Cal App 3d 804, 809; 231 Cal Rptr 1 (1986) (holding that a seizure occurred when the officer "stopped his marked patrol vehicle behind the parked station wagon in such a way

We also note that, unlike in *O'Malley*, Robinson was not driving an unmarked police vehicle and did not wait until after the civilian vehicle had parked and its occupant had already begun walking around the home before pulling into the driveway and blocking the path of egress. Rather, when Robinson emerged from his vehicle, defendant was by the side of his vehicle and facing the patrol car, as if either defendant had just exited and was waiting for the police officer who had followed him into the driveway or defendant was already walking toward the police officer who had just blocked his car into the driveway. This is precisely what one would expect of a reasonable person under the circumstances.[14]

If a reasonable person in defendant's place did not have an independent desire to leave, but nevertheless did not want to interact with Robinson, the other options available to them would have been to attempt to enter a home that they did not own (and without knowledge whether the owner was home) or wander off into a frozen field some distance from town in a rural area. Neither would be a viable option from the perspective of a reasonable person after having been followed and then blocked in by a police officer.

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that the exit of the parked vehicle was prevented"); *People v Jennings*, 45 NY2d 998, 999; 385 NE2d 1045 (1978) (holding that a seizure occurred when officers blocked the defendant's vehicle in a parking lot with a patrol car).

[14] While the dissent relies heavily on *O'Malley*, we find that decision to be distinguishable for the reasons previously explained, and thus it carries less persuasive value for purposes of determining when a seizure occurred under the facts of this case. See *Abela*, 469 Mich at 607 ("Although lower federal court decisions may be persuasive, they are not binding on state courts.").

Accordingly, the Court of Appeals erred by holding that defendant was not seized until after he had made incriminating statements about not having a valid driver's license. Rather, under the facts of this case, defendant was seized at the moment the officer blocked defendant's car in the driveway with a marked police vehicle. The next question is whether there was legally sufficient suspicion of criminal activity at that moment.

B. MCL 257.676b(1) REQUIRES ACTUAL INTERFERENCE WITH THE NORMAL FLOW OF TRAFFIC

The warrantless seizure of a person generally must be supported by constitutionally sufficient suspicion that the individual has engaged in criminal conduct. As previously recognized in note 8 of this opinion, " '[a] police officer who witnesses a person violating [the Michigan Vehicle Code, MCL 257.1 through MCL 257.923] . . . , which violation is a civil infraction, may stop [and temporarily] detain the person . . . .' " *People v Dunbar*, 499 Mich 60, 66; 879 NW2d 229 (2016), quoting MCL 257.742(1) (alterations in original). This aligns with United States Supreme Court precedent stating that "the Fourth Amendment permits an officer to initiate a brief investigative traffic stop when he has a particularized and objective basis for suspecting the particular person stopped of criminal activity," *Kansas v Glover*, 589 US ___, ___; 140 S Ct 1183, 1187; 206 L Ed 2d 412 (2020) (quotation marks and citation omitted), and that a traffic stop is more similar to a temporary seizure under *Terry* than a formal arrest, *Rodriguez*, 575 US at 354. A brief seizure for investigative purposes

does not violate the Fourth Amendment if the officer has a reasonably articulable suspicion[15] that criminal activity is afoot. *Terry*, 392 US at 22, 30- 31; *Oliver*, 464 Mich at 192.

The stated justification for Robinson's encounter with defendant was an alleged violation of MCL 257.676b(1). The parties do not dispute that if Robinson observed defendant violate MCL 257.676b(1), then Robinson would have had constitutionally sufficient suspicion to temporarily seize defendant. The statute provides, in relevant part:

> Subject to subsection (2), a person, without authority, *shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular*, streetcar, or pedestrian *traffic upon a public street or highway in this state, by means of a barricade, object, or device*, or with his or her person. This section does not apply to persons maintaining, rearranging, or constructing public utility or streetcar facilities in or adjacent to a street or highway. [MCL 257.676b(1) (emphasis added).]

Our primary goal when interpreting a statute is to give effect to the Legislature's intent. *Magnant*, 508 Mich at 162. We begin with the plain and ordinary meaning of the statute, and if the text is clear and unambiguous, then it will be enforced as written. *People*

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[15] "Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause." *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996).

v Sharpe, 502 Mich 313, 326-327; 918 NW2d 504 (2018).

Given that the parties do not dispute that defendant could be a "person" and his vehicle an "object" under MCL 257.676b(1), we will assume without deciding that the statute applies to a person operating a vehicle on a roadway.[16] In light of that assumption, the focal issue is whether MCL 257.676b(1) requires evidence that the accused's conduct actually affected the normal flow of traffic or whether the mere possibility of it affecting traffic is sufficient.[17]

The prohibited conduct is to "block, obstruct, impede, or otherwise interfere with the normal flow of vehicular, streetcar, or pedestrian traffic upon a public street or highway . . . ." MCL 257.676b(1). The statute's clear terms thus require some evidence that the

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[16] MCL 257.676b focuses on the conduct of a person in relationship to the "normal flow of vehicular, streetcar, or pedestrian traffic . . . ." MCL 257.676b(2) refers specifically to a person standing in a roadway and carves out exceptions for construction, maintenance, and utility work, as well as the solicitation of contributions for a charitable or civic organization under certain circumstances.

[17] The Court of Appeals has taken conflicting positions on this question in at least two unpublished opinions. Prior to the genesis of this case, the Court of Appeals had held without analysis that MCL 257.676b(1) does "not require a showing of an actual impediment to the smooth flow of traffic . . . ." *People v Salters*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2001 (Docket No. 215396), p 2. But after the Court of Appeals issued its opinion in this case, a different panel held that MCL 257.676b(1) was not violated when there was no evidence of any actual impediment of the flow of traffic. See *People v Estelle*, unpublished per curiam opinion of the Court of Appeals, issued September 16, 2021 (Docket No. 356656), p 3.

accused's conduct *actually affected* the usual smooth, uninterrupted movement or progress of the *normal flow* of traffic on the roadway, which requires an assessment of traffic at the time of the alleged offense. Interference with a police officer's ability to travel on a road could sustain a violation of MCL 257.676b(1) just as easily as interference with other vehicles traveling on a road. However, the statute is not violated if the normal flow of traffic was never impeded, blocked, or interfered with. In short, in order to interfere with the normal flow of traffic, some traffic must have actually been disrupted or blocked.

We reject the prosecution's argument that the potential interference with hypothetical or nonexistent traffic is sufficient. This argument ignores the phrase "normal flow of . . . traffic" as used in MCL 257.676b(1). Such an interpretation would also lead to the untenable situation in which every person crossing a street and every vehicle attempting to park along the side of a road would potentially be guilty of a civil infraction even if no other vehicles or pedestrians are present on the roadway.[18]

In this case, the prosecution has not introduced evidence sufficient to establish even reasonable suspicion to believe that defendant violated MCL

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[18] While "statutes must be construed to prevent absurd results, injustice, or prejudice to the public interest," *Rafferty v Markovitz*, 461 Mich 265, 270; 602 NW2d 367 (1999), we need not rely on this doctrine today because no reasonable reading of MCL 257.676b(1) supports the prosecution's argument. Moreover, MCL 257.672 appears to address the prosecution's concerns about people abandoning their vehicles in the middle of a road without fear of consequence or the effect on other drivers.

257.676b(1). Old State Road has been described as a rural stretch of unpaved road. While the record is silent as to typical traffic volume on Old State Road, it is undisputed that no vehicles other than Robinson's, defendant's, and a third unidentified driver's were on the road during the relevant time period. Robinson observed defendant's car and another car stopped side by side in the road from some distance away, but both cars began moving again when Robinson was still about 800 feet away. Robinson admitted that he did not have to slow his car down or go around either vehicle. Stated differently, the normal flow of vehicular traffic on the road was not impeded or disrupted. Under these facts, and in keeping with the district court's ruling, there is no evidence in the record to sustain the accusation that defendant violated MCL 257.676b(1).

C. ROBINSON'S MISTAKE OF LAW WAS NOT REASONABLE

In the absence of a warrant, constitutionally sufficient suspicion of a crime, or another recognized exception, the seizure of an individual is presumed unconstitutional. See *Gates*, 462 US at 236; *Hughes*, 506 Mich at 524-525. However, drawing on the notion that the "touchstone of the Fourth Amendment is 'reasonableness,' " the United States Supreme Court has held that "reasonable suspicion" or "probable cause" sufficient to seize an individual without a warrant can arise from a police officer's "reasonable mistake" of fact or law. *Heien*, 574 US at 60-61 (quotation marks and citation omitted). Stated differently, the Fourth Amendment is not violated if a police officer's suspicion that the defendant's conduct was illegal is based

on a "reasonable mistake" about what the law required. *Id.* at 66.

A review of the facts and analysis in *Heien* provides insight into what kinds of mistakes of law are "reasonable." In *Heien*, a police officer saw the defendant driving down a highway with only one working brake light. *Id.* at 57. The officer pulled the defendant over, believing it was unlawful to have a single working brake light. *Id.* at 57-58. A subsequent search of the car revealed cocaine. *Id.* at 58.

Heien required the United States Supreme Court to decide whether the officer's belief that it was a traffic violation to have only one working brake light was a reasonable mistake of law. Under the state's vehicle code, a car needed to have "a stop lamp on the rear of the vehicle" that could be "incorporated into a unit with one or more other rear lamps." *Id.* at 59 (quotation marks and citation omitted). In concluding that the mistake was reasonable, the Court noted the internal inconsistency in the vehicle code's language. *Id.* at 67. While the code stated that a driver must have "a stop lamp," suggesting that just one was enough, it later stated that the lamp "may be incorporated into a unit with one or more other rear lamps." *Id.* at 67-68. The word "other" suggested that a "stop lamp" is a kind of "rear lamp," and a different section of the vehicle code required "all originally equipped rear lamps" to be in "good working order." *Id.* (quotation marks and citation omitted). Put together, the code sections were unclear as to whether one faulty brake light alone would violate the law. Given the ambiguity in the code's language, which had also led to

disagreement within the state courts, the Court concluded that the officer's mistaken belief was reasonable.

The Court's holding in *Heien* is not carte blanche authority to ignore or remain ignorant of the law, nor are reasonable mistakes easily established. "The Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable. We do not examine the subjective understanding of the particular officer involved." *Id*. *Heien* further held that this "inquiry *is not as forgiving as the one employed in the distinct context of deciding whether an officer is entitled to qualified immunity* for a constitutional or statutory violation. Thus, an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce." *Id*. at 67 (emphasis added).

We also find persuasive the guidance provided by Justice Kagan's concurring opinion in *Heien* about what constitutes an objectively reasonable mistake. As she noted, reasonable mistakes of law should be "exceedingly rare." *Id*. at 70 (Kagan, J., concurring) (quotation marks and citation omitted). "If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not." *Id*. Stated differently, the misunderstanding of an unambiguous statute is not an objectively reasonable mistake of law.

Taken together, *Heien* tells us that objectively reasonable mistakes of law occur in exceedingly rare circumstances in which an officer must interpret an ambiguous statute. Other courts have reached the

same conclusion. See, e.g., *United States v Stanbridge*, 813 F3d 1032, 1037 (CA 7, 2016) (holding that statutory ambiguity is a prerequisite to a determination that an officer's mistake of law was objectively reasonable); *United States v Alvarado-Zarza*, 782 F3d 246, 250 (CA 5, 2015) (holding that an officer's mistaken reading of an unambiguous statute was not objectively reasonable). Under our precedent, "[a] statute is ambiguous if two provisions irreconcilably conflict or if the text is equally susceptible to more than one meaning." *People v Hall*, 499 Mich 446, 454; 884 NW2d 561 (2016). While qualified immunity applies to officers so long as they have not violated a clearly established statutory right, the mistake-of-law doctrine announced in *Heien* is "not as forgiving." *Heien*, 574 US at 67.

We hold that to the extent Robinson's seizure of defendant was based on a belief that MCL 257.676b(1) was violated, his mistake of law was not objectively reasonable. Of critical importance is our prior conclusion that MCL 257.676b(1) is not ambiguous. One cannot be guilty of violating MCL 257.676b(1) without evidence that the "normal flow" of actual traffic was disrupted, and Robinson admitted that no disruption occurred. Unlike the convoluted statute at issue in *Heien*, discerning the meaning of MCL 257.676b(1) does not require "hard interpretive work." *Heien*, 574 US at 70 (Kagan, J., concurring). See also *People v Maggit*, 319 Mich App 675, 690-691; 903 NW2d 868 (2017) (holding that a mistaken reading of an unambiguous ordinance was not a reasonable mistake of law); *United States v Stanbridge*, 813 F3d 1032, 1037 (CA 7, 2016) ("The statute isn't ambiguous, and *Heien* does not support the proposition that a police officer

acts in an objectively reasonable manner by misinterpreting an *unambiguous* statute.").

We do not find the prosecution's or the Court of Appeals' reliance on the *Salters* decision to be persuasive. *Salters* was an unpublished decision; therefore, it is not a precedential statement of law. MCR 7.215(C)(1); *Cedroni Assoc, Inc v Tomblinson, Harburn Assoc, Architects & Planners, Inc*, 492 Mich 40, 51; 821 NW2d 1 (2012).[19] The more critical flaw with *Salters*, however, was the Court's decision to base its holding entirely on the perceived purpose of the statute instead of also engaging with the text of MCL 257.676b(1).[20] The Court of Appeals in this case committed the same error by failing to independently analyze MCL 257.676b(1). Additionally, the 2001 *Salters* decision does not appear to have been cited or relied on for its conclusory interpretation of MCL 257.676b in any appellate decision in Michigan until the Court of Appeals' decision in this case. Moreover, in *People v Estelle*, unpublished per curiam opinion of the Court

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[19] See *Davis v United States*, 564 US 229, 241; 131 S Ct 2419; 180 L Ed 2d 285 (2011) ("[W]hen *binding* appellate precedent specifically authorizes a particular police practice, well-trained officers will and should use that tool to fulfill their . . . responsibilities.") (emphasis altered).

[20] The entirety of the statutory analysis in *Salters* encompassed three conclusory sentences:

> The intent of the statute was clearly to prohibit a vehicle from impeding vehicular or pedestrian traffic in order to promote public safety. Consistent with this purpose, we conclude that the statute did not require a showing of an actual impediment to the smooth flow of traffic in order to establish a violation of the statute. The trial court did not err in finding that the stop was proper. [*Salters*, unpub op at 2.]

of Appeals, issued September 16, 2021 (Docket No. 356656), p 3, the Court of Appeals engaged with the text of MCL 257.676b(1) for the first time in 20 years and concluded, like we do today, that some evidence of actual interference with the normal flow of traffic is required. While *Estelle* was decided after the Court of Appeals issued its opinion in this case, the Court held that MCL 257.676b(1) was clear on its face as to requiring actual disruption or interference with the normal flow of traffic.

Simply put, a single unpublished decision coming out the other way does not transform an unambiguous statute into an ambiguous one. Nothing in the *Heien* majority opinion suggests that a single appellate decision incorrectly interpreting an unambiguous statute makes a mistaken understanding of such a statute automatically reasonable. This is not to say that favorable caselaw is irrelevant to whether a mistaken interpretation is reasonable. Nonprecedential, unpublished authority that has not been relied on in subsequent appellate decisions, like the *Salters* opinion, is simply less persuasive and less likely to be dispositive than published precedent. Objectively reasonable mistakes should be confined to the exceedingly rare instances of truly ambiguous statutes.[21]

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[21] While at least one federal court has held, in the qualified-immunity context, that "[f]avorable case law goes a long way to showing that an interpretation is reasonable," *Barrera v Mount Pleasant*, 12 F4th 617, 621 (CA 6, 2021), that principle is not controlling here. We do not find the principle articulated in *Barrera*, a decision about qualified immunity, to be applicable to the situation before this Court.

The dissent's reliance on *Michigan v DeFillippo*, 443 US 31; 99 S Ct 2627; 61 L Ed 2d 343 (1979), is not persuasive. That case concerned the validity of an arrest made under an ordinance requiring individuals to identify themselves to a police officer upon request, and the statute was declared unconstitutional after the arrest. *Id*. at 33. The United States Supreme Court upheld the arrest as valid at the time because there was "no controlling precedent that [the] ordinance was or was not constitutional, and hence the *conduct observed violated a presumptively valid ordinance*," *id*. at 37 (emphasis added), although the "outcome might have been different had the ordinance been 'grossly and flagrantly unconstitutional,' " *Heien*, 574 US at 64, quoting *DeFillippo*, 443 US at 38. The presumption that an ordinance or statute is valid until declared otherwise is very different from determining what the text of a statute or ordinance allows or requires. *Heien* recognized this point by emphasizing that despite the subsequent ruling that the statute was unconstitutional, this ruling did "not change the fact that DeFillippo's conduct was lawful [sic] when the officers observed it." *Heien*, 574 US at 64. No one disputed whether the facts supported a violation of the ordinance, and because the ordinance was considered lawful at the time of the arrest, the officers had ample probable cause to arrest DeFillippo. *Id*. at 64-65.

The same is not true in this case because the text of MCL 257.676b(1) is unambiguous and defendant's conduct, as observed by Robinson, did not violate the statute. This is contrary to *DeFillippo*, which involved conduct falling under an unambiguous ordinance that was later declared unconstitutional. Accordingly,

Robinson's mistaken understanding of MCL 257.676b(1) was not a reasonable mistake of law under *Heien*, and we reverse the Court of Appeals' holding to the contrary.[22]

D. SUMMARY AND UNRESOLVED QUESTIONS

Given our conclusion that defendant was seized the moment Robinson blocked the driveway and prevented egress, defendant's incriminating statements and the officer's visual and olfactory observations that the Court of Appeals relied upon to justify further inquiry and an eventual arrest were obtained in violation of defendant's Fourth Amendment rights. Prior to Robinson blocking defendant in, defendant had not made any incriminating statements, and thus such statements could not have justified a seizure. A seizure could have been justified if Robinson had reasonable suspicion to believe that defendant had violated the law, but as the district court previously held, there was no evidence to support Robinson's hunch that an illegal drug transaction had taken place on the road, and that ruling was not appealed. A suspected violation of MCL 257.676b(1) also could not serve as

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[22] While *Heien* instructs us not to "examine the subjective understanding of the particular officer involved," *Heien*, 574 US at 66, it is noteworthy that Robinson did not mention impeding or interfering with traffic during his recorded interactions with defendant. This is contrary to the facts in *Heien*, in which the officer clearly informed the occupants that he stopped their vehicle because of a faulty rear brake light. *Id.* at 57-58. While we need not decide the issue today, we question whether an explanation for a warrantless stop or seizure of an individual that was never conveyed to the individual and was not raised until after prosecution of the individual commenced is entitled to deference as a reasonable mistake of law.

reasonable suspicion given our previous conclusions. Accordingly, we have not been presented with any lawful justification for the seizure, and the district court did not err by holding that the seizure violated defendant's constitutional rights.

We reverse the Court of Appeals' holding that defendant's initial interactions with Robinson were consensual and that the earliest defendant was seized was when he admitted that he lacked a valid driver's license. Instead, we hold that defendant was seized when his egress was blocked by a marked police vehicle, and this seizure violated defendant's Fourth Amendment rights. However, the existence of a Fourth Amendment violation does not always mandate application of the exclusionary rule to evidence gathered as a result of the unlawful seizure. See *Gates*, 462 US at 223; *People v Hawkins*, 468 Mich 488, 499; 668 NW2d 602 (2003). The Court of Appeals did not determine whether exclusion of the evidence was the appropriate remedy because of its holding that no Fourth Amendment violation occurred. We leave the resolution of this question to the Court of Appeals on remand.

III. CONCLUSION

For the reasons previously discussed, we hold that defendant was seized at the moment his car was blocked in the driveway by a marked police vehicle, MCL 257.676b(1) is not violated unless the normal flow of traffic has actually been disrupted, and the officer's misunderstanding of the statute was not a reasonable mistake of law under *Heien*. We reverse the judgment of the Court of Appeals and remand this

case to that Court to determine whether application of the exclusionary rule was the appropriate remedy.

Elizabeth M. Welch
Bridget M. McCormack
Richard H. Bernstein
Elizabeth T. Clement (as to Parts I, II(A), and II(B))
Megan K. Cavanagh

STATE OF MICHIGAN

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,
v No. 162833

DAVID ALLAN LUCYNSKI,
Defendant-Appellant.

CLEMENT, J. (*concurring in part and dissenting in part*).

I join the majority opinion as to Parts I, II(A), and II(B) because I agree that the stop in question constituted a seizure under the Fourth Amendment and that this seizure was not justified by reasonable suspicion of criminal wrongdoing. However, I join the dissent as to its Part II because I believe that, pursuant to *Heien v North Carolina*, 574 US 54; 135 S Ct 530; 190 L Ed 2d 475 (2014), the evidence should not have been excluded given that the unconstitutional seizure was a result of a police officer's reasonable mistake of law.

Elizabeth T. Clement

STATE OF MICHIGAN

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,
V No. 162833
DAVID ALLAN LUCYNSKI,
Defendant-Appellant.

ZAHRA, J. (dissenting).

Deputy Robinson did not stop or in any way seize defendant when he pulled his patrol car into the driveway behind defendant's parked car. As expressed in *O'Malley v Flint*,[1] parking cars one after another is typically the way a driveway functions; there is nothing inherently coercive about a police officer parking behind another car in a driveway. Further, Deputy Robinson approached defendant in a courteous, nonthreatening fashion and engaged defendant in conversation. On these undisputed facts, no seizure occurred as a matter of law until after defendant incriminated himself.[2]

Because there was no seizure, this case does not require interpretation of MCL 257.676b(1), the impeding-traffic statute. Nonetheless, a majority of this

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[1] *O'Malley v Flint*, 652 F3d 662, 669 (CA 6, 2011).

[2] Defendant admitted to driving without a license and to drinking and smoking marijuana before driving; in addition, marijuana and an open container of alcohol were found in defendant's car.

Court reaches the opposite conclusion. Accordingly, I further conclude that the Fourth Amendment was not violated because the actions of Deputy Robinson were the product of a reasonable mistake of law. Simply put, we should not hold a law enforcement officer to a higher standard of legal interpretation than judges. Because a prior panel of the Michigan Court of Appeals determined in 2001 that the impeding-traffic statute is violated when cars stop in a roadway—regardless of whether traffic is, in fact, impeded—and that determination has stood unchallenged for more than 20 years, it was reasonable for Deputy Robinson to interpret the statute in a like manner. For these independent reasons, I dissent. The evidence produced as a result of Deputy Robinson's encounter with defendant should not be suppressed.

I

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ."[3] A seizure of a person is "meaningful interference, however brief, with an individual's freedom of movement."[4] Put another way, a seizure occurs when "a police officer accosts an individual and restrains his freedom to walk away . . . ."[5] This can be accomplished either "by means of force or show of authority . . . ."[6] But "not all personal intercourse

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[3] US Const, Am IV.

[4] *United States v Jacobsen*, 466 US 109, 113 n 5; 104 S Ct 1652; 80 L Ed 2d 85 (1984).

[5] *Terry v Ohio*, 392 US 1, 16; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

[6] *Id*. at 19 n 16.

between [law enforcement] and citizens involves 'seizures' of persons."[7] "When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized."[8]

The United States Court of Appeals for the Sixth Circuit found such an instance of voluntary cooperation in *O'Malley v Flint*.[9] *O'Malley* is instructive here given that the pertinent facts are virtually identical. In *O'Malley*, a police officer observed and followed a blue Chevrolet Tahoe that he suspected was being used to impersonate a police officer. The Tahoe was driven into a residential driveway and parked. After its driver, Sean O'Malley, exited the Tahoe and began walking toward the back of the house, the officer parked his police vehicle in the driveway behind the Tahoe. The officer approached O'Malley and said that he would like to speak with him. O'Malley stopped and answered the officer's questions.

Given these facts, the court held that no seizure occurred because "a reasonable person would feel free to continue walking even after [the officer's] vehicle was parked behind the unoccupied Tahoe."[10] The

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[7] *Id*.

[8] *People v Jenkins*, 472 Mich 26, 33; 691 NW2d 759 (2005). The majority opinion curiously states that "[w]hen exactly an interaction crosses the line and becomes a seizure" is a "difficult question." This is not a difficult question at all. If an officer, through the use of force or a show of authority, prevents a pedestrian from walking away, it is a seizure. If an officer talks to a pedestrian without the use of force or a show of authority, it is not a seizure.

[9] *O'Malley*, 652 F3d at 665.

[10] *Id*. at 669.

panel explained that O'Malley not only reasonably thought that he was free to leave his vehicle at the time of the alleged seizure but, in fact, had left it and was walking away from it. "[P]arking behind a vehicle in a driveway does not inherently send a message of seizure because it is how driveways are routinely used."[11] The court found the following facts probative: (1) the officer "was not accompanied by the threatening presence of several officers"; (2) the officer "neither displayed a weapon, nor touched O'Malley"; and (3) the officer "did not use language or a tone of voice compelling compliance. Rather, he merely stated that he was a police officer . . . and said he wanted to talk to O'Malley about the Tahoe."[12] The court explained that the mere fact that O'Malley stopped walking to respond to the officer's questions did not transform the encounter into a seizure, and it held that in view of the totality of the circumstances, "O'Malley was not 'seized' for purposes of the Fourth Amendment at the time of the initial encounter and questioning."[13]

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[11] *Id.*

[12] *Id.* (cleaned up). See also *United States v Matthews*, 278 F3d 560, 561-562 (CA 6, 2002) (holding that a person walking down the street was not detained when an officer driving in a marked police car yelled, "Hey, buddy, come here," because the statement was a request rather than an order) (quotation marks omitted); *United States v Caicedo*, 85 F3d 1184, 1191 (CA 6, 1996) (holding that no seizure occurred when, as the car in question moved slowly through a bus terminal's parking lot, the officer "asked for permission to speak to either [the driver] or his passenger as [the driver] drove toward the exit, and . . . [the driver] voluntarily stopped the car").

[13] *O'Malley*, 652 F3d at 669.

Similarly, defendant in this case was not seized at the time of the initial encounter and questioning. Deputy Robinson observed and followed defendant from his police car. After defendant pulled into a driveway, Deputy Robinson pulled into the driveway behind him like any private citizen who wished to speak with him would do. By the time Deputy Robinson pulled into the driveway and exited his vehicle, defendant was out of his parked vehicle and appeared to be approaching the adjacent house. Deputy Robinson asked defendant if he lived there, and defendant stated that a friend lived there. Defendant then approached Deputy Robinson and began voluntarily answering questions. During the conversation, defendant admitted that he did not have a driver's license, admitted that he had been drinking and smoking marijuana earlier, and performed poorly on a field-sobriety test, all of which gave Deputy Robinson sufficient cause to place defendant under arrest.

These undisputed facts simply do not form a basis on which to conclude that Deputy Robinson seized defendant. An objectively reasonable person would not feel obligated to talk to Deputy Robinson simply because he was a law enforcement officer who parked his police car in the driveway behind that person's car. A critical component of a seizure is police coercion. Coercion is established by an affirmative use of force or show of authority that sends a message to someone that they are not free to go about their business. No coercive use of force or show of authority was present in this case.

We are materially aided in this case by video evidence obtained from Deputy Robinson's body camera.

As in *O'Malley*, the encounter here involved a lone officer; Deputy Robinson "was not accompanied by the threatening presence of several officers."[14] Deputy Robinson "neither displayed a weapon, nor touched [defendant]."[15] Further, Deputy Robinson "did not use language or a tone of voice compelling compliance."[16] Much like the officer in *O'Malley*, Deputy Robinson merely approached defendant and asked questions about what defendant was doing. Defendant could have declined to answer the questions and then continued to his friend's home. "The fact that [defendant] stopped walking to respond to [Deputy Robinson's] inquiry also does not, by itself, transform this encounter into a seizure for purposes of the Fourth Amendment."[17] Curiosity and the basic human instinct to engage with people who approach you in a nonthreatening manner are simply not enough to turn noncoercive

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[14] *Id*. (quotation marks and citation omitted).

[15] *Id*.

[16] *Id*. Deputy Robinson also did not touch defendant or display a weapon. See *United States v Mendenhall*, 446 US 544, 554; 100 S Ct 1870; 64 L Ed 2d 497 (1980) (opinion of Stewart, J.) ("Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled."). The majority opinion cites Justice Stewart's list of circumstances indicating a seizure, but none of those circumstances is present here.

[17] *O'Malley*, 652 F3d at 669. See also *Immigration & Naturalization Serv v Delgado*, 466 US 210, 216; 104 S Ct 1758; 80 L Ed 2d 247 (1984) ("While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response.").

police activity into a seizure. The majority opinion in essence concludes that Deputy Robinson's activity was coercive and amounted to an unconstitutional seizure merely because he was a uniformed deputy sheriff functioning out of a marked sheriff's vehicle. Caselaw is clear, however, that the Fourth Amendment is not violated under these circumstances. No action by Deputy Robinson amounted to a use of force or show of authority that would cause defendant to conclude that he was not free to decline to engage with Deputy Robinson and simply walk away.

The majority opinion acknowledges *O'Malley*, but it fails to articulate a genuine difference between the facts at issue in that case and the facts in the present case. It merely observes two mundane factual differences, neither of which is of consequence under Fourth Amendment seizure analysis. First, the majority opinion emphasizes that the police car in *O'Malley* was unmarked, whereas the police car here was marked. But the officer in *O'Malley* identified himself as a police officer before asking the driver questions;[18] O'Malley was under no illusion that he was talking to a private citizen. Moreover, the majority opinion offers no reason why an interaction between a law enforcement officer operating out of an unmarked police vehicle is less coercive than an interaction with a law enforcement officer operating out of a marked police vehicle. Caselaw is clear that the simple indication that one is a police officer is not a "show of authority" sufficient to initiate a seizure. Indeed, it is common sense that people are free to go about their business when they encounter police vehicles without their

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[18] *O'Malley*, 652 F3d at 665.

lights on. Regardless, given that the officer in *O'Malley* immediately identified himself, the difference between the markings on the police vehicles in each case is no more probative than the difference between defendant driving a red Chevrolet Cobalt and O'Malley driving a blue Chevrolet Tahoe.

The other purported factual difference emphasized in the majority opinion is that when Deputy Robinson exited his vehicle, "defendant was by the side of his vehicle and facing the patrol car, as if either defendant had just exited and was waiting for the police officer who had followed him into the driveway or defendant was already walking toward the police officer who had just blocked his car into the driveway." The majority contrasts this with *O'Malley* because Deputy Robinson "did not wait until after the civilian vehicle had parked and its occupant had already begun walking around the home before pulling into the driveway and blocking the path of egress." As a preliminary note, this is a dubious summary of the facts of this case.[19] But even if defendant were standing idle outside his car, it is a distinction without a difference. The fact remains that defendant was outside his parked car and could have chosen to walk into his friend's home instead of talking to the officer. A reasonable person would feel free to walk to the house

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[19] Defendant is not visible on the available body-camera footage until Deputy Robinson has stepped out of his vehicle and has taken a couple strides toward defendant. At that point, defendant appears to be around the front bumper of his car and is in midstride as he walks toward Deputy Robinson. This suggests that defendant had been between the house and the car moments before he appears in the video, not standing around waiting for the officer, as the majority suggests.

even after the officer's vehicle was parked in the driveway behind their unoccupied car.[20] Further, as was the case in *O'Malley*, not only would a reasonable person conclude that they were free to leave their vehicle at the time of the alleged seizure, but defendant, in fact, had left it and appeared to be walking away. Finally, the majority suggests that a reasonable person would not walk toward the house because defendant was not the homeowner, but defendant stated that he had stopped at this house to visit a friend.[21] It makes no difference that defendant himself was not the homeowner.

The majority opinion's characterization of parking in a residential driveway—something any social guest would do—as "a show of force" is risible. Defendant was not in his vehicle when the officer arrived, and defendant indicated that he was visiting his friend, not planning to leave. Only one officer was present, and he did not physically touch defendant. The officer did not turn on his emergency lights or siren, he did not draw his gun, and he did not give any orders or

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[20] See *O'Malley*, 652 F3d at 669.

[21] The majority opinion also attempts to inject doubt into a record that is otherwise clear when it muses about "whether defendant was planning to visit with his friend before Robinson began following defendant or if defendant was planning to keep driving" and when it states that the record is not clear "whether defendant had an independent desire to keep moving" after he got out of his vehicle. But the record supports only one conclusion: defendant was there to visit his friend. There is nothing in the record that suggests defendant wanted to leave but could not do so because his car was blocked. If he wanted to leave, he could have said so; if, at that point, the officer prevented defendant from leaving, it would be a seizure, but those are not the facts of this case.

commands. The officer's tone was conversational and not harassing or overbearing. Under these circumstances, there is no seizure. The majority opinion's contrary holding will make it nearly impossible for an officer to seek cooperation from a citizen unless the officer can articulate reasonable suspicion of a crime.

II

Assuming for the sake of argument that there was a seizure, the next question would be whether there was " 'a particularized and objective basis for suspecting the particular person stopped' of breaking the law."[22] In numerous cases, the United States Supreme Court has made clear that "[t]he reasonable suspicion inquiry falls considerably short of 51% accuracy, for, as [it] has explained, to be reasonable is not to be perfect."[23] As the majority recognizes, reasonable suspicion sufficient to justify a vehicle stop under the Fourth Amendment may exist even when it "rest[s] on a mistaken understanding of the scope of a legal prohibition" so long as that mistaken understanding is objectively reasonable.[24] Thus, any seizure of defendant by Deputy Robinson may have been constitutionally permissible even if defendant did not violate the impeding-traffic statute.

In explaining the "reasonable mistake of law" standard in *Heien*, the United States Supreme Court

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[22] See *Heien v North Carolina*, 574 US 54, 60; 135 S Ct 530; 190 L Ed 2d 475 (2014) (citation omitted).

[23] *Kansas v Glover*, 589 US ___, ___; 140 S Ct 1183, 1188; 206 L Ed 2d 412 (2020) (quotation marks, citations, and brackets omitted).

[24] *Heien*, 574 US at 60.

discussed another case that arose out of this state, *Michigan v DeFillippo*.[25] There, Detroit police officers arrested the defendant under an ordinance that made it illegal for a person suspected of criminal activity "to refuse to identify himself and produce evidence of his identity."[26] Our Court of Appeals determined that the ordinance was unconstitutional and that the arrest was therefore invalid.[27] Accordingly, it ordered the suppression of drug evidence that had been discovered incident to the arrest. The United States Supreme Court accepted the unconstitutionality of the ordinance but reversed the suppression of the drug evidence, holding that the arrest was valid and that the evidence should not have been suppressed.[28] The Court explained that "there was no controlling precedent that this ordinance was or was not constitutional, and hence the conduct observed violated a presumptively valid ordinance."[29] *Heien* then explained that *DeFillippo* is an example of a valid seizure under the Fourth Amendment based on a reasonable mistake of law. "That a court only *later* declared the ordinance unconstitutional does not change the fact that DeFillippo's conduct was lawful when the officers observed it. But the officers' assumption that the law was valid was reasonable, and their observations gave

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

[26] *Id*. at 33.

[27] *Id*. at 34.

[28] *Id*. at 40.

[29] *Id*. at 37.

them 'abundant probable cause' to arrest DeFillippo."[30]

Although this case presents slightly different circumstances, *Heien*'s discussion of *DeFillippo* is instructive. Deputy Robinson observed two cars stopped next to each other in the middle of Old State Road. Deputy Robinson believed this to be a violation of MCL 257.676b(1), which states, in relevant part, that "a person, without authority, shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular . . . or pedestrian traffic upon a public street or highway . . . ." The majority concludes that defendant did not violate this statute because he did not actually interfere with the movement of any other vehicles or pedestrians. But the officer did not have the benefit of this Court's guidance at the time of the alleged offense. In fact, the only opinion at the time of these events that had interpreted the impeding-traffic statute reached the exact opposite conclusion.[31] In the unpublished *Salters* opinion, a unanimous Court of Appeals panel held that MCL 257.676b(1) "did not require a showing of an actual impediment to the smooth flow of traffic in order to establish a violation of the statute."[32] Thus, the circumstances here are similar to *DeFillippo*; in both cases, there was a law that appeared to be grounds for a valid seizure until those grounds were deemed inapplicable by a subsequent judicial ruling. Here, a statute appeared to apply to defendant's conduct based on the only available

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[30] *Heien*, 574 US at 64 (citations omitted).

[31] *People v Salters*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2001 (Docket No. 215396).

[32] *Id*. at 2.

judicial guidance until this Court repudiated the decision. In *DeFillippo*, an ordinance appeared to apply to the defendant's conduct until the Court of Appeals determined that it was unconstitutional. In both cases, the defendant's conduct was lawful, but the officer's assumption that the defendant's conduct was unlawful was reasonable. Thus, any seizure that occurred in this case was the result of a reasonable mistake of law.

The majority concludes that Justice Kagan's concurring opinion in *Heien* provides persuasive guidance about what constitutes an objectively reasonable mistake.[33] But conspicuously absent from the majority's discussion of Justice Kagan's concurrence is her instruction that "the test [for whether police action is a reasonable mistake of law] is satisfied when the law at issue is so doubtful in construction that a reasonable judge could agree with the officer's view."[34] In this case, not only *could* a reasonable judge agree with the officer's view, but three seasoned judges of the Court of Appeals, all of whom served as trial judges prior to their service as appellate judges, unanimously agreed with the officer's view.[35] Judges TALBOT, O'CONNELL,

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[33] It goes without saying that while Justice Kagan's opinion is interesting, a concurring opinion is not binding precedent. As explained earlier, the facts of the instant case support a finding of a reasonable mistake of law pursuant to the majority opinion in *Heien*.

[34] *Heien*, 574 US at 70 (Kagan, J., concurring) (quotation marks and citation omitted).

[35] See *People v Salters*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2001 (Docket No. 215396).

and COOPER[36] all concluded that MCL 257.676b(1) did not require a showing of an actual impediment to the smooth flow of traffic.[37] Although the decision is unpublished and not binding precedent, it is objective proof that three reasonable judges could—and, in fact, did—agree with Deputy Robinson's understanding of the statute at issue. It is also worth noting that this Court denied the defendant's application for leave to appeal in *Salters*.[38] The Court of Appeals' interpretation set out in *Salters* remained unchallenged in Michigan's court system until the present case, more than 20 years after *Salters* was decided.[39]

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[36] Indeed, at the time *Salters* was decided, these three judges of the Court of Appeals possessed a combined 74 years of judicial experience.

[37] *Salters*, unpub op at 2.

[38] *People v Salters*, 465 Mich 920 (2001).

[39] The majority opinion misses the point in its discussion of *Salters* being unpublished and not relied on by another appellate decision in Michigan prior to this case. So what? This only suggests that no litigant who was issued a citation under MCL 257.676b(1) thought *Salters* was wrong. The fact that a recent panel of the Court of Appeals disagreed with *Salters* only further undermines the majority's position. We now have two unpublished Court of Appeals opinions that have interpreted the same statute differently. This is prima facie proof that reasonable judicial minds can—and, in fact, did—differ over the interpretation of the impeding-traffic statute. See *Heien*, 574 US at 68 (holding that it was objectively reasonable for the officer to think that the defendant's faulty right brake light violated North Carolina law because there was a disagreement within the state courts on that very issue). Because Deputy Robinson's interpretation was consistent with that of the only panel of the Court of Appeals to have addressed the question at the time of defendant's arrest, *Heien* dictates that Deputy Robinson's error was a reasonable mistake of law.

The majority's implicit holding that *Salters* was so erroneous that no reasonable judge could reach its conclusion sets far too high a bar for the reasonable-mistake-of-law test. The *Heien* majority explained that "[t]o be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them fair leeway for enforcing the law in the community's protection."[40] A proper reasonableness analysis under the Fourth Amendment "must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are [often] tense, uncertain, and rapidly evolving[.]"[41] In finding that this mistake was unreasonable, the majority holds police officers to an impossibly high standard: a standard of perfection. Under the majority's ruling, to be reasonable, police officers must be so adept and assured in their own statutory interpretation that they would reject longstanding conclusions by Court of Appeals judges if they anticipate that this Court will one day disagree. This ruling flies in the face of *Heien* and requires perfection—if not omniscience—instead of reasonableness. While the standard of perfection is ideal, it is neither required by our Constitution nor realistic. Deputy Robinson's conduct in this case was not only reasonable, it was exemplary, good police work.

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[40] *Heien*, 574 US at 60-61 (quotation marks and citation omitted).

[41] *Graham v Connor*, 490 US 386, 396-397; 109 S Ct 1865; 104 L Ed 2d 443 (1989) (considering whether an officer's use of force was "reasonable" under the Fourth Amendment). Thus, "[c]ommon sense and everyday life experiences predominate over uncompromising standards." *People v Nelson*, 443 Mich 626, 635-636; 505 NW2d 266 (1993).

He should not be criticized for his conduct; instead, he should be congratulated.

III

Deputy Robinson did not seize defendant when he pulled his patrol vehicle into the driveway, and even if he had seized defendant, the seizure would be valid under the Fourth Amendment because Deputy Robinson made a reasonable mistake of law. For these reasons, I dissent.

Brian K. Zahra
David F. Viviano

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

UNPUBLISHED
December 17, 2020

No. 353646
Tuscola Circuit Court
LC No. 20-015154-AR

DAVID ALLAN LUCYNSKI,

Defendant-Appellee.

Before: LETICA, P.J., and RIORDAN and CAMERON, JJ.

PER CURIAM.

The People of the State of Michigan appeal by leave granted.[1] Defendant, David Allan Lucynski, was charged with operating a vehicle while intoxicated

[1] *People v Lucynski,* unpublished order of the Court of Appeals, entered July 14, 2020 (Docket No. 353646).

("OWI"), third offense, MCL 257.625(9)(c); operating a motor vehicle while license suspended or revoked ("DWLS"), second offense, MCL 257.904(3)(b); and possession or transportation of an open alcoholic container in a vehicle, MCL 257.624a(1). Following a preliminary examination, the district court denied the People's motion to bind Lucynski over on the OWI charge, dismissed the OWI charge, and held that certain evidence would be suppressed in future proceedings concerning Lucynski's remaining misdemeanor charges. The People appealed to the circuit court, which denied the People's interlocutory application for leave to appeal based on its finding that the district court acted within its discretion. We reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

On January 20, 2020, Tuscola County Sheriff Deputy Ryan Robinson was on duty when he observed "two vehicles stopped in the middle of the roadway, facing opposite directions[.]" Deputy Robinson noted that the vehicles were positioned so that the driver's side windows were facing each other. According to Deputy Robinson, the vehicles were impeding traffic even though there was no other traffic in the area at that time. As Deputy Robinson approached the vehicles, one of the vehicles traveled westbound and the other vehicle traveled eastbound. Lucynski was driving the vehicle that traveled westbound. Deputy Robinson followed Lucynski for 300 to 400 feet before Lucynski pulled into a driveway. Thereafter, Deputy Robinson parked his police cruiser behind Lucynski's

vehicle and exited the cruiser. Lucynski was already out of his vehicle.

Deputy Robinson approached Lucynski, who smelled like marijuana and "intoxicating beverages[.]" Deputy Robinson noted that Lucynski had bloodshot eyes and that his demeanor was "pretty laid back." Lucynski admitted that he had consumed alcohol about 20 minutes before. Lucynski also admitted that he had marijuana in his vehicle and that he did not have a driver's license because it was suspended. Lucynski submitted to field sobriety tests, which supported Deputy Robinson's suspicion that Lucynski was intoxicated. After Lucynski refused to submit to a preliminary breath test, Deputy Robinson placed Lucynski under arrest. Thereafter, Lucynski submitted to a preliminary breath test, which revealed that Lucynski had a blood alcohol content of .035. Later, Lucynski's blood was drawn to test for intoxicants, and the sample reflected the presence of THC.

Lucynski was charged with OWI, third offense; DWLS, second offense; and possession or transportation of an open alcoholic container in a vehicle.[2] The preliminary examination was held on March 4, 2020. In relevant part, the People presented the testimony of Deputy Robinson, and Deputy Robinson's body camera footage was admitted into evidence. At the close of proofs, the People argued that bindover of the OWI charge was appropriate because there was sufficient cause for Deputy Robinson to conduct the traffic stop

[2] A search of Lucynski's vehicle revealed marijuana and a plastic cup of beer.

under MCL 257.676b(1).[3] Lucynski opposed bindover on the OWI charge, arguing that there was "an issue in regards to the actual stop." The district court took the matter under advisement and permitted the parties to file written briefs on the issue of whether Lucynski's Fourth Amendment rights were violated.

In a March 27, 2020 opinion and order, the district court concluded that Deputy Robinson lacked both probable cause and the requisite articulable, reasonable suspicion to conduct a traffic stop. In relevant part, the district court analyzed the plain language of MCL 257.626b(1) and concluded that Deputy Robinson could not have had an articulable, reasonable suspicion that Lucynski was "actually impeding or obstructing actual traffic" because Deputy Robinson testified that "Lucynski's vehicle was not actually impeding or obstructing any actual traffic[.]" Based on the district court's conclusion that the stop was unconstitutional, the district court held that "the evidence obtained after the Traffic stop [w]ould be excluded from evidence" for purposes of the preliminary examination. The district court then found that probable cause did not exist to bind Lucynski over on the OWI charge and dismissed it. The district court indicated that it would set the remaining misdemeanor counts for trial. In doing so, the district court held that "the evidence found as a result of th[e] stop is not admissible in any subsequent hearing o[r] trial on those two misdemeanor counts."

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[3] Although not argued by the People, it appears that a traffic stop could have been initiated based on Lucynski's violation of MCL 257.672.

The People appealed to the circuit court. In a May 6, 2020 order, the circuit court denied the People's interlocutory application for leave to appeal, holding that "the district court was within its discretion to dismiss Count 1 of the complaint after [the] preliminary examination." The People then appealed to this Court, and the interlocutory application was granted.

II. STANDARDS OF REVIEW

"We review issues of constitutional law de novo." *People v Benton*, 294 Mich App 191, 203; 817 NW2d 599 (2011). "When reviewing a district court's bindover decision, we review the court's determination regarding the sufficiency of the evidence for an abuse of discretion, but we review the court's ruling concerning questions of law de novo." *People v Flick*, 487 Mich 1, 9; 790 NW2d 295 (2010). We also review a trial court's decision to dismiss criminal charges against a defendant for an abuse of discretion. *People v Stone*, 269 Mich App 240, 242; 712 NW2d 165 (2005). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). A trial court "necessarily abuses its discretion when it makes an error of law." *People v Feeley*, 499 Mich 429, 434; 885 NW2d 223 (2016) (quotation marks and citation omitted).

III. ANALYSIS

A. DISTRICT COURT PROCEEDINGS

The People argue that the district court erred by refusing to bind Lucynski over on the OWI charge and by dismissing the OWI charge. The People also

challenge the district court's decision to suppress evidence in future proceedings concerning the DWLS and open intoxicant charges. We agree, but for reasons that are different from those advanced by the People on appeal.

"The purpose of a preliminary examination is to determine whether probable cause exists to believe that a crime was committed and that the defendant committed it." *People v Bennett*, 290 Mich App 465, 480; 802 NW2d 627 (2010) (quotation marks and citation omitted). "Probable cause is established if a person of ordinary caution and prudence [could] conscientiously entertain a reasonable belief of the defendant's guilt." *Id*. (quotation marks and citation omitted). At the preliminary-examination stage, the prosecutor is not required to "prove each element beyond a reasonable doubt, but must present some evidence of each element." *People v Henderson*, 282 Mich App 307, 312; 765 NW2d 619 (2009). "If, during the preliminary examination, the court determines that evidence being offered is excludable, it must, on motion or objection, exclude the evidence." MCR 6.110(D)(2). "Generally, evidence obtained in violation of the Fourth Amendment is inadmissible as substantive evidence in criminal proceedings." *People v Kazmierczak*, 461 Mich 411, 418; 605 NW2d 667 (2000).

In this case, the district court excluded the evidence based on its conclusion that a Fourth Amendment violation occurred. "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." *Id*. at 417. A person is seized if, "in view of

all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *People v Corr*, 287 Mich App 499, 506-507; 788 NW2d 860 (2010) (quotation marks and citation omitted). The basic purpose of the Fourth Amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Carpenter v United States*, ___ US ___, ___; 138 S Ct 2206, 2213; 201 L Ed 2d 507 (2018) (quotation marks and citation omitted).

Although an officer generally needs a warrant to search and seize, there are several exceptions to the warrant requirement. *People v Barbarich*, 291 Mich App 468, 472; 807 NW2d 56 (2011). One such exception for a warrantless seizure exists when a police officer possesses "information demonstrating probable cause to believe that an offense has occurred and that the defendant committed it." *People v Cohen*, 294 Mich App 70, 74-75; 816 NW2d 474 (2011) (quotation marks and citation omitted). Probable cause to justify an arrest means that the facts and circumstances within the police officer's knowledge are sufficient to warrant a prudent person to believe that, based on the circumstances shown, the suspect has committed, is committing, or is about to commit an offense. *Id*. at 75.

Another exception is an investigatory or *Terry*[4] stop. *Barbarich*, 291 Mich App at 473. Under this doctrine,

> a police officer may approach and temporarily detain a person for the purpose of

[4] *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

> investigating possible criminal behavior even though there is no probable cause to support an arrest. A brief detention does not violate the Fourth Amendment if the officer has a reasonably articulable suspicion that criminal activity is afoot. Whether an officer has a reasonable suspicion to make such an investigatory stop is determined case by case, on the basis of an analysis of the totality of the facts and circumstances. A determination regarding whether a reasonable suspicion exists must be based on commonsense judgments and inferences about human behavior. [*People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005) (quotation marks and citations omitted).]

However, not all encounters between a police officer and private citizens constitute seizures. *Id*. "When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized." *Id*. at 33. Similarly, a police officer's decision to follow someone does not by itself amount to intimidating conduct that would cause a reasonable person to believe that he or she was not at liberty to leave. *People v Jackson*, 175 Mich App 562, 563-564; 438 NW2d 84 (1988).

In *People v Sinistaj*, 184 Mich App 191, 196; 457 NW2d 36 (1990), this Court noted examples "which might constitute a seizure, even where the person made no attempt to leave[.]" Specifically, this Court noted the following examples:

> [T]he threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. [*Id.* (quotation marks and citation omitted).]

In this case, we conclude that Deputy Robinson's initial interaction with Lucynski did not amount to a seizure implicating the Fourth Amendment. Although Deputy Robinson testified that Lucynski impeded traffic, Deputy Robinson did not turn on his lights or signal for Lucynski to pull over. Instead, Deputy Robinson followed Lucynski for 300 to 400 feet. After Lucynski voluntarily pulled into a driveway, Deputy Robinson pulled into the driveway behind him. The body camera footage reveals that, after Deputy Robinson pulled into the driveway, Lucynski was standing outside of his parked vehicle and appeared to be approaching a house that was situated at the end of the driveway. When Deputy Robinson asked Lucynski if he lived there, Lucynski responded that a friend lived there. Lucynski then approached Deputy Robinson and began voluntarily answering Deputy Robinson's questions, which included what Lucynski had been doing on the roadway with the driver of the other vehicle and whether the homeowner was home.

After a short period of time, Deputy Robinson asked Lucynski if he had his driver's license on his person, to which Lucynski responded "nope." Deputy Robinson then asked Lucynski if he had a driver's license. Lucynski responded "nope" and eventually admitted that his license was suspended. Deputy

Robinson did not indicate that Lucynski was under arrest at that point. Rather, Deputy Robinson asked if Lucynski had "a valid id" on his person, and Lucynski provided his identification to Deputy Robinson. Deputy Robinson then asked Lucynski if he had a "pocket knife or anything like that" on his person. Lucynski denied that he did. Thereafter, Deputy Robinson asked Lucynski if he had marijuana on his person, noting "I smell marijuana." Based on Deputy Robinson's questions, Lucynski admitted that he had marijuana in his vehicle and that he had been drinking "a little bit." Specifically, he admitted to drinking "one can." Deputy Robinson indicated on his radio that he was going to be "out with a subject" and instructed Lucynski to stand in front of Lucynski's vehicle. Deputy Robinson then proceeded to guide Lucynski through a series of field sobriety tests.

We conclude that the earliest that the Fourth Amendment was implicated was when Lucynski admitted that he did not have a driver's license, which is when a reasonable person in Lucynski's position might have concluded that he was not free to leave. However, at that point, Deputy Robinson had probable cause to arrest Lucynski. Instead of immediately arresting Lucynski, however, Deputy Robinson investigated further and asked Lucynski whether he had consumed substances. This was permissible given that Deputy Robinson had noticed that Lucynski had bloodshot eyes, that there was an odor of alcohol and marijuana coming from Lucynski's person, and that Lucynski's demeanor was "pretty laid back." See *People v Rizzo*, 243 Mich App 151, 157-158; 622 NW2d 319 (2000). Deputy Robinson discovered that Lucynski had marijuana in the vehicle that he had been

driving and that he had consumed alcohol that day. Based on Lucynski's statements, Deputy Robinson's observations, and Lucynski's performance during the field sobriety tests, Deputy Robinson found probable cause to arrest Lucynski for OWI. Thereafter, Lucynski consented to his blood being drawn, and the results revealed the presence of THC in his system.

In the time preceding the seizure, Lucynski's body language was relaxed, he did not attempt to leave, and he did not demonstrate an unwillingness to answer questions. Rather, Lucynski was entirely cooperative. Although Lucynski was not told that he was "free not to respond," this "hardly eliminates the consensual nature of the response[s]." See *Jenkins*, 472 Mich at 33 (quotation marks and citation omitted). There is no indication that Deputy Robinson had weapons displayed and at no point during the initial conversation did Deputy Robinson touch Lucynski's person. Moreover, Deputy Robinson spoke to Lucynski in a normal, respectful tone of voice. Although Deputy Robinson asked Lucynski a myriad of questions and asked him for his identification, a police officer's brief and noncoercive questioning, or mere request for identification, does not constitute a seizure. See *id.*

Therefore, the district court erred by analyzing the initial conversation between Deputy Robinson and Lucynski as if the protections of the Fourth Amendment were implicated. Considering the totality of the circumstances, Deputy Robinson had a reasonable suspicion sufficient to warrant transforming the consensual encounter into an investigatory stop and eventually into a lawful arrest. Because the seizures were lawful under the Fourth Amendment, the

district court erred by excluding the evidence produced by the investigatory stop and arrest when deciding whether probable cause existed to support the bindover and erred by suppressing the evidence in future hearings concerning the remaining misdemeanor charges.[5]

With respect to whether the district court abused its discretion by denying the People's motion for bindover on the OWI charge, Lucynski does not argue that probable cause did not exist to support the bindover when considering the improperly excluded evidence. Moreover, upon review of the evidence presented at the preliminary examination, it is clear that probable cause existed to support that Lucynski committed the crime of OWI. Therefore, the district court abused its discretion by refusing to bind Lucynski over for trial and by dismissing the OWI charge.

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[5] Based on this conclusion, we need not address Lucynski's argument that MCL 257.676b(1) requires an actual impediment to traffic. However, even if we were to accept Lucynski's assertion that the statute requires an actual impediment to traffic, we note that this Court has addressed this issue in at least one prior opinion. Specifically, in *People v Salters*, unpublished per curiam opinion of the Court of Appeals, issued January 26, 2001 (Docket No. 215396), p 2, we concluded that the purpose of MCL 257.676b(1) does "not require a showing of an actual impediment to the smooth flow of traffic in order to establish a violation of the statute." Based on this, the *Salters* Court concluded that a traffic stop was proper, even though "[n]o other traffic was in the area at the time" of the stop. *Id*. Therefore, even under Lucynski's reading of MCL 257.676b(1), the evidence should not have been suppressed because the traffic stop was based on Deputy Robinson's reasonable mistake of law or fact. See *Heien v North Carolina*, 574 US 54, 60-68; 135 S Ct 530; 190 L Ed 2d 475 (2014).

Consequently, we reverse the district court's March 27, 2020 order.

B. CIRCUIT COURT PROCEEDINGS

The People argue that the circuit court abused its discretion by denying the interlocutory application for leave to appeal. As already stated, the circuit court held that it was proper to deny the People's application based on the circuit court's conclusion that the district court acted within its discretion. Given the above analysis, we agree with the People that the circuit court abused its discretion. See *Feeley*, 499 Mich at 434 (holding that a trial court "necessarily abuses its discretion when it makes an error of law") (quotation marks and citation omitted). Therefore, we reverse the circuit court's May 6, 2020 order.

IV. CONCLUSION

In sum, because a Fourth Amendment violation did not occur, we conclude that the district court erred by excluding evidence from the preliminary examination proceeding and by holding that the evidence produced by investigatory stop and arrest would be excluded from future proceedings concerning Lucynski's DWLS and open intoxicant charges. We further conclude that the district court abused its discretion by denying the People's motion for bindover on the OWI charge and by dismissing the OWI charge. Therefore, we reverse the district court's March 27, 2020 order, reverse the circuit court's May 6, 2020 order, and remand to the district court for reinstatement of the OWI charge and for entry of an order reflecting that the matter is bound over to the circuit court for further proceedings.

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

/s/ Anica Letica
/s/ Michael J. Riordan
/s/ Thomas C. Cameron

STATE OF MICHIGAN
IN THE 54TH CIRCUIT COURT FOR THE
COUNTY OF TUSCOLA

PEOPLE OF THE STATE OF MICHIGAN,

VS. File No: 20-15154-AR
Hon. Amy Grace Gierhart

DAVID ALLAN LUCYNSKI,
Plaintiff,

MARK E. REENE (P47247)
Tuscola County Prosecutor
BY: Eric F Wanink (P64002)
Chief Assistant Prosecutor
207 E. Grant Street, Ste 1
Caro, MI 48723
(989) 672-3900

BERNARD A. JOCUNS, JR (P65478)
Bernard Anthony Jocuns & Assoc, PLLC
Attorney for Defendant
385 West Nepessing St
Lapeer, MI 48446
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ORDER REGARDING APPLICATION FOR LEAVE TO APPEAL

At a session of said Court held in the
Courthouse Building, City of Caro,
State of Michigan, on May 6, 2020.

PRESENT: THE HONORABLE AMY GRACE GIERHART
54TH Circuit Court Judge

This matter is before the Court on an Application for Leave to Appeal, **NOW THEREFORE**:

IT IS HEREBY ORDERED that the Court orders that the application for leave to appeal is DENIED, as the district court was within its discretion to dismiss Count I of the complaint after preliminary examination.

Dated: May 6, 2020

AMY GRACE GIERHART
HONORABLE AMY GRACE GIERHART (P51305)
54th Circuit Court Judge

STATE OF MICHIGAN
IN THE 71-B JUDICIAL DISTRICT COURT FOR
THE COUNTY OF TUSCOLA

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v

File No. 20-0045FD
Hon. Jason E. Bitzer
District Court Judge

DAVID ALLAN LUCYNSKI,
Defendant,
_____/

Mark E. Reene P47247
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BERNARD A. JOCUNS P65478
Attorney for Defendant
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(810) 245-8900

At a session of said Court held in the courthouse, in the City of Caro, County of Tuscola, State of Michigan, on this 27th day of March, 2020

PRESENT: HONORABLE JASON E. BITZER
District Court Judge

OPINION AND ORDER

On March 4, 2020, the Court conducted the Preliminary Examination in *The People of the State of Michigan v David Allan Lucynsk*i, 20-0045-FD. The Prosecution called the arresting officer, Deputy Ryan Robinson of the Tuscola County Sheriffs Office, as their first witness.

Deputy Robinson testified that on January 20, 2020, he was on road patrol in Wisner Township, Tuscola County, State of Michigan. Deputy Robinson testified that at approximately 10:01 a.m. he effectuated a traffic stop on the Defendant, David Allan Lucynski, on Old State Road. Following that traffic stop, Deputy Robinson testified that he detected an odor of marijuana and of intoxicating beverages as he was speaking to Lucynski. Deputy Robinson then asked Lucynski if he had used marijuana or alcohol recently. Lucynski responded that he had used both approximately twenty (20) minutes prior to the stop at the nearby boat launch. Deputy Robinson testified that Lucynski had blood shot eyes, which Deputy Robinson attributed to Lucynski's recent use of marijuana. Deputy Robinson then conducted the following Field Sobriety Tests on Lucynski:

1) Horizontal Gaze Nystagmus.
2) One-Legged Stand
3) Walk and Turn
4) Alphabet Test
5) Counting Test
6) Finger-to-Nose

Deputy Robinson testified that he had observed Lucynski exhibit actions during the performance of these tests that could be indicators of impairment.

Following these tests, Lucynski was placed under arrest. He agreed to a blood draw which took place at McClaren Caro Hospital. The laboratory report of this blood sample was admitted into the Preliminary Examination record as Exhibit 3. This report revealed the presence of THC in Lucynski's blood.

However, as the Court inquired during its summation at the end of the Preliminary Examination, is the evidence obtained as a result of this traffic stop on Lucynski admissible? Generally, seizures, which includes traffic stops, are reasonable for purposes of the Fourth Amendment only if based on probable cause. *People v Hamp,* 170 Mich App 24, 32, 428 N.W.2d 16 (1988), vacated in part 437 Mich 865; 462 NW2d 589 (1990) (citing *Dunaway v New York,* 442 US 200, 207-209; 99 S Ct 2248; 60 L Ed 2d 824 (1979))

However, an Officer may conduct an investigative stop and seizure of a motor vehicle if the officer has an "articulable and reasonable suspicion that the vehicle or one of its occupants is violating the law …." *People v Matthew Williams,* 236 Mich App 610, 612; 601 NW2d 138 (1999). "A valid investigatory stop must be justified in its inception and must be reasonably related in scope to the circumstances that justified interference by the police with a person's security. Justification must be based on an objective manifestation that the person stopped was or was about to be engaged in criminal activity as judged by those versed in the field of law enforcement when viewed under the totality of the circumstances. The detaining officer must have had a particularized and objective basis for the suspicion of criminal activity." *People v Champion,* 452 Mich 92, 98-99; 549 NW2d 849 (1996), citing

People v Shabaz, 424 Mich 42, 378 NW2d 451 (1985). "Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or 'hunch' but less than the level of suspicion required for probable cause." *Id.* at 98, citing *United States v. Sokolow,* 490 US 1; 109 S Ct 1581; 104 L Ed2d 1 (1989).

This includes, but is not limited to, reasonable suspicion that the Defendant has committed a civil infraction. *People v Dillon,* 296 Mich App 506, 510; 822 NW2d 611 (2012) citing *People v Williams,* 236 Mich App 610, 612; 601 NW2d 138 (1999). If the traffic stop and seizure of the Defendant was not supported by probable cause or articulable and reasonable suspicion, then all evidence seized as a result of the unconstitutional stop and seizure must be excluded from trial. See *People v Goldston*, 470 Mich 523, 528; 682 NW2d 667 (2004).

Deputy Robinson testified first that he had stopped Lucynski's vehicle because Lucynski's vehicle was impeding traffic in violation of MCL 257.626b(l). To support that conclusion, Deputy Robinson testified that he observed Lucynski's vehicle stopped on Old State Road having a conversation with an individual in a different vehicle in the opposite lane. Deputy Robinson estimated that when he got approximately eight hundred (800) feet away from where the vehicles were stopped on Old State Road, the vehicles started to pull away. Further, the Court and Deputy Robinson had the following exchange:

> THE COURT: Did you at any time, Deputy Robinson, see the two vehicles that were idling or stopped on Old State Road actually

> block, obstruct, impede, or interfere with the normal flow of traffic on Old State Road?
>
> THE WITNESS: Deputy Robinson: No, there were no other vehicles on that stretch, other than us.

Secondly, on redirect, Deputy Robinson testified that his initial thought after observing these vehicles in the roadway was that there was potentially an illicit drug transaction taking place. Those were the only two reasons given for the traffic stop of Lucynski.

In analyzing these two reasons for the traffic stop, the Court first will address its ability to consider the exclusion of evidence at the Preliminary Examination stage of proceedings. Pursuant to MCR 6.110(D), the Court has the ability to exclude evidence that is not admissible during the Preliminary Examination. Therefore, if the evidence was obtained as a result of an unconstitutional seizure of the Defendant, the evidence would not be admissible for purposes of the Preliminary Examination.

The Court will first address the second reason provided by Deputy Robinson for the stop, namely his belief that a drug deal was taking place between the two vehicles. Again, Deputy Robinson's testimony was this traffic stop was effectuated at approximately 10:00 a.m. in broad daylight on a rural, dirt road. He further testified that he has no prior personal or second-hand knowledge of drug deals taking place on Old State Road. He did not testify that he witnessed an exchange of any items or money between the two vehicles. He did not testify that he witnessed any furtive actions on the part of either vehicle prior to the stop

of the Defendant, or any nervous looking occupants of said vehicles prior to the stop of the Defendant. He did not testify that prior to the stop that he was familiar with the vehicles or their occupants and had knowledge of prior drug-related activity on their part.

In summary, this belief by Deputy Robinson that the vehicles were engaged in a drug deal was an inchoate or unparticularized suspicion or hunch. Therefore, as it relates to this testified reason for the traffic stop of Lucynski, neither probable cause nor reasonable suspicion was present.

As it relates to the contention that Lucynski was "impeding traffic" in violation of MCL 257.6766(1), the Court must first analyze the content of that particular statute. MCL 257.6766(1) provides as follows:

> Subject to subsection (2), a person, without authority, shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street or highway in this state, by means of a barricade, object, or device, or with his or her person. This section does not apply to persons maintaining, rearranging, or constructing public utility facilities in or adjacent to a street or highway.

Again, Deputy Robinson testified that besides the two vehicles, including Lucynski's, stopped on Old State Road, he was the only other vehicle at that time that he observed on that road. He testified that he was approximately eight hundred (800) feet away when the two vehicles started to pull away. He testified that the two vehicles were not blocking, obstructing,

impeding, or interfering with any traffic on Old State Road.

The Prosecution has stated that showing an actual impediment to the normal flow of traffic is not necessary to support a violation of this statute. In support of that contention, the People cite to an unpublished case, *People v Salters,* 2001 WL 765852, No. 215396 (Jan. 26th 2001). Specifically, that case held as follows:

> The intent of the statute was clearly to prohibit a vehicle from impeding vehicular or pedestrian traffic to promote public safety. Consistent with this purpose, we conclude that the statute did not require a showing or an actual impediment to the smooth flow of traffic in order to establish a violation of the statute.

Pursuant to MCR 7.215(C), an unpublished opinion is not precedentially binding under the rule of stare decisis. However, the Court may use it as persuasive authority. Neither Counsels' briefs address any additional cases as it pertains to the interpretation of this particular Statute.

Upon the Court's own research, the Tennessee Supreme Court in *State of Tennessee v Hannah,* 259 SW3d 716 (Tennessee 2008) analyzed its "impeding traffic" statute, Tennessee Code Annotated section 55-8-154(a) (2004). In this case, the Defendant was operating a motor vehicle at a speed of twenty (20) to twenty-five (25) miles per hour in a thirty-five (35) mile per hour zone. *Id.* at 719. The police followed the Defendant's vehicle for fifteen (15) to seventeen (17) blocks before initiating the traffic stop for impeding

traffic. *Id* No other traffic violations were observed by the police during this time. *Id.* After the stop was effectuated, drugs were discovered in the vehicle. *Id.*

The Defendant had filed a motion to suppress, arguing that there was no constitutionally legitimate reason his vehicle was stopped by law enforcement. *Id.* During this hearing, the investigating officer testified that the vehicle's slow speed was unusual for the area because other automobiles would generally exceed the posted maximum speed limit. *Id.* The Officer testified that though the vehicle never forced approaching automobiles to completely stop in the roadway, that most traffic was doing double that vehicle's speed. *Id.* He further testified that when approaching automobiles would come up behind the vehicle that they would have to brake fairly quickly and change lanes in order to pass. *Id.* The Officer also noted that there was moderate traffic even for that time of night on that road. *Id.*

The Trial Court reviewed Tennessee Code Annotated section 55-8-154(a), which provides: "No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or compliance with law." *Id.* The Trial Court concluded that the Defendant's vehicle did not violate this statute, and granted the Motion to Suppress. *Id.* at 719-720.

The Tennessee Supreme Court reviewed cases from Minnesota, Montana, Pennsylvania, Wisconsin, Illinois, North Dakota, Oregon, and Texas. In doing so, the court noted that the decisions from those states focused on whether a driver's slow speed blocked or

otherwise backed-up traffic. *Id.* at 722. The Court then concluded from this exhaustive research that if a driver's slow speed ***does not affect other motorists*** then the driver is not impeding traffic. *Id.* at 722-723. In particular, the Court cited the Illinois case of *People v. Brand,* 71 Ill App 3d 698, 28 Ill Dec 83, 390 NE2d 65, 68 (1979), which held that a police officer lacked reasonable suspicion to initiate a stop of the defendant's automobile for impeding traffic when there was no evidence in the record that the defendant's slow speed affected other drivers. *Id.* at 722. The Tennessee Supreme Court sent the case back to the trial level because of a misinterpretation of this statute by the Trial Court, albeit with the reasoning cited above as the framework for the Trial Court to base their decision on.

While this case is not precedentially binding, it like the *Salters* case, can be used as persuasive authority Certainly, the Court concedes that there are obvious differences between the Tennessee State Statute cited above and MCL 257.676b(1). And certainly the Court concedes that the facts of the cases are different in that the Tennessee case dealt with a slow vehicle, while in this instant action, the Defendant's vehicle was momentarily stopped in the roadway. But the general premise of the statutes is similar and the language is substantially similar in key areas as illustrated below:

> Michigan: ... block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic ....
>
> Tennessee: ... impede the normal and reasonable movement of traffic

The Court believes that the Tennessee Supreme Court's interpretation follows the most important maxim of statutory interpretation, which is to afford the text of the statute its plain and ordinary reading. Applying the same, common sense approach to the interpretation of MCL 257.6766(1), this Court finds that a violation of that statute requires a showing that real, not imagined, traffic was actually impeded or obstructed in some way by a person or a vehicle. The scant, cursory conclusion of Michigan Court of Appeals in *Salters* does not offer any insight as to why that panel of the Court of Appeals believed otherwise. Therefore, in comparing the two persuasive authorities cited within this brief, the Court gives more credence to *State of Tennessee v Hannah, supra,* and the plethora of cases from other jurisdictions that are cited within that opinion.

Therefore, because the testimony of Deputy Robinson was that Lucynski's vehicle was not actually impeding or obstructing any actual traffic, the Court finds that he lacked probable cause or reasonable suspicion to effectuate the traffic stop. Therefore, the Court finds that the evidence obtained after the Traffic stop should be excluded from evidence in this matter.

In reviewing the legally admissible evidence in this matter, the Court finds that there is not probable cause to support the bind over on Count l, and the Court will dismiss this Count.

The Court will therefore set Count 2, Operating while License Suspened-2nd or Subsequent Offense and Count 3, Open Intoxicants in a Vehicle for a Pre-Trial in this matter. However, because the Court has

found the traffic stop of Lucynski to be without probable cause or reasonable suspicion, the evidence found as a result of that stop is not admissible in any subsequent hearing of trial on those two misdemeanor counts.

Dated: March 27, 2020 *Jason E. Bitzer*
Jason E. Bitzer P71710
District Court Judge