No. 24-484

In the Supreme Court of the United States

PEOPLE OF THE STATE OF MICHIGAN, PETITIONER

v.

DAVID ALLAN LUCYNSKI

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

REPLY BRIEF

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INTRODUCTION

Respondent Lucynski doubles down on the Michigan Supreme Court's erroneous decision, setting aside this Court's precedent in the process. Like the decision below, Lucynski equates a finding that an officer operated under an unreasonable mistake of law (a Fourth Amendment violation) with the officer engaging in grossly negligent or reckless conduct that requires sanction (the exclusionary remedy). But the exclusionary rule is an independent inquiry from whether the Fourth Amendment was violated. Like the Michigan Supreme Court, Lucynski discards this Court's exclusionary rule precedent, which marks exclusion as a "last resort" to be imposed only when the specific circumstances evidence flagrant police misconduct.

Lucynski's attempt to finely distinguish the facts of this case from this Court's precedent and any number of lower court decisions misses the forest for the trees. That no other case is factually on all fours is not only unsurprising given the fact-intensive nature of Fourth Amendment cases, but also of little import. The petition is premised on the Michigan Supreme Court's creation of an automatic rule that dispenses with this Court's exclusionary rule jurisprudence. The court's if-then rule is plainly inconsistent with governing precedent. This Court should grant the petition or summarily reverse.

ARGUMENT

I. Certiorari or summary reversal should be granted to ensure this Court's exclusionary rule precedents are followed.

Respondent Lucynski reveals both a misreading of the Michigan Supreme Court opinion and a misunderstanding of this Court's relevant Fourth Amendment jurisprudence. And his attempt to distinguish the vagaries of this case from others masks the central deficiency of the brief—the failure to dispel the fact that some courts have faithfully followed this Court's exclusionary rule precedent while others have not. That precedent here firmly supports reversal.

A. In ordering suppression, the Michigan Supreme Court did not engage with the facts, taking a shortcut not permitted by this Court's precedent.

Lucynski portrays the court below as "meticulously dissect[ing] the facts to decide that Deputy Robinson's mistake of law was unreasonable." Resp. Br. 14 (citing Pet. App. 14a). If true, this would thoroughly undermine the Petition. Unfortunately for Lucynski, his quotation of and citation to this supposed "fact-intensive inquiry" and recitation of the contextual facts is, simply, wrong. That very quotation and scrupulous review to which Lucynski cites comes not from the majority opinion, but *from the dissent*. Pet. App. 14a–18a (Zahra, J., dissenting). The dissent rightly points out that "the majority glosses over the case-specific, fact-intensive inquiry necessary," in "conflict[] with guidance from" this Court. Pet. App. 12a.

Lucynski's errant citation only highlights the cursory analysis offered by the majority, which was crystal clear in its bright-line holding: "we conclude that a seizure based on an officer's *unreasonable* interpretation of the law warrants application of the exclusionary rule," full stop. Pet. App. 6a (emphasis added). This automatic exclusion rule created by the Michigan Supreme Court is the error, and it is the crux of the Petition.

B. Lucynski misunderstands this Court's precedent.

What is more, Lucynski repeatedly misses the mark in his legal analysis, misreading this Court's clear caselaw. Three errors in particular merit response.

First, Lucynski has a befuddling understanding of this Court's exclusionary rule precedent. In the face of consistent and repeated statements that the exclusion inquiry is a case-specific one, see, e.g., *Hudson* v. *Michigan*, 547 U.S. 586, 591 (2006) ("reject[ing] indiscriminate application of the rule") (cleaned up); *Herring* v. *United States*, 555 U.S. 135, 143 (2009) ("The extent to which the exclusionary rule is justified by these deterrence principles *varies with the culpability of the law enforcement conduct*.") (emphasis added); *Davis* v. *United States*, 564 U.S. 229, 238 (2011) ("We abandoned the old, 'reflexive' application of the doctrine, and imposed a more rigorous weighing of its costs and deterrence benefits.") (citation omitted), Lucynski asserts that the Michigan Supreme Court's one-size-fits-all test is "consistent with *Herring*." Resp. Br. 20.

But as described in the Petition, Michigan's new test jettisons case-by-case scrutiny—where the propriety of exclusion "varies with the culpability of the law enforcement conduct" at issue, *Herring*, 555 U.S. at 143—opting instead for "indiscriminate application," *Hudson*, 547 U.S. at 591 (cleaned up), where the Fourth Amendment violation arises from an unreasonable mistake of law by itself with no further analysis. Pet. I.A. This is the central problem with the Michigan Supreme Court's decision.

Second, Lucynski misreads the import of *Heien* v. *North Carolina*, 574 U.S. 54 (2014), with an extended discussion of how this case differs. Resp. Br. 16–20. *Heien* held that, like a mistake of fact, an officer's mistake of law does not automatically turn a subsequent seizure into a Fourth Amendment violation. 574 U.S. at 61. In other words, "the mistake of law relates to the antecedent question of whether it was reasonable for an officer to suspect that the defendant's conduct was illegal. If so, there was no violation of the Fourth Amendment in the first place." *Id*. at 66. Lucynski appears to miss that the existence of a Fourth Amendment violation is "an issue separate from" whether suppression "is appropriate in a particular context." *Arizona* v. *Evans*, 514 U.S. 1, 10 (1995).

Here, Petitioner has conceded the officer's mistake was unreasonable and thereby acknowledges the existence of the Fourth Amendment violation. Pet. 8, n.1, 17 n.4. That ship has sailed. Thus, the only question is whether suppression is warranted; comparison to *Heien* is of little moment.

Lucynski also claims that *Heien* left open the question of whether an unreasonable mistake of law

automatically requires suppression. Resp. Br. 3 n.3, 34. True enough, *Heien* did not address the question—indeed, it could not— since it found the mistake of law was reasonable and thus no Fourth Amendment violation occurred. 574 U.S. at 67. But *Heien*'s silence on this contrasts with the loud and repeated holdings in *Hudson*, *Herring*, *Davis*, and others, which make clear that the question of suppression is distinct from the Fourth Amendment question and reinforce the requirement of a case-by-case assessment of flagrancy.

Third, Lucynski attempts to conjure a distinction between the Fourth Amendment consequences following from a mistake of fact and one of law. Claiming to contrast with mistakes of fact, Lucynski asserts that "the good-faith exception is wholly inapplicable in mistake of law cases." Resp. Br. 25. The genesis of or support for this proposition is unclear. But this Court has not split hairs between mistakes of fact and mistakes of law in its Fourth Amendment analysis:

> Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: The facts are outside the scope of the law. *There is no reason*, *under the text of the Fourth Amendment or our precedents*, *why this same result should be acceptable when reached by way of a reasonable mistake of fact*, *but not when reached by way of a similarly reasonable mistake of law*.

Heien, 574 U.S. at 61 (emphasis added); see also *id*. at 62 ("[C]ases dating back two centuries support treating legal and factual errors alike in this context."). While the question of a Fourth Amendment violation

is distinct from the suppression remedy, *Evans*, 514 U.S. at 10, the fact that this Court considers mistakes of fact and of law as comparable in the Fourth Amendment analysis strongly augurs against Lucynski's convenient categorization of the "good faith exception" as "wholly inapplicable in mistake of law cases." Resp. Br. 25.

C. Some courts have rejected the Michigan Supreme Court's shortcut while others have applied it.

It may well be that many cases involving a Fourth Amendment violation premised on an officer's unreasonable mistake of law will ultimately require suppression of evidence. But even if the lion's share ultimately result in suppression, *the analysis matters*. Without it, automatic suppression "would come at a high cost to both the truth and the public safety" by excising otherwise admissible evidence. *Davis*, 564 U.S. at 232. It is the analytic shortcut of the Michigan Supreme Court that is at odds with this Court's precedent, and one that yields a contrary result here.

Lucynski's attempts to distinguish many of the cases cited in the Petition to demonstrate a split in authority fall flat. See Pet. 20–22. For example, Lucynski dismisses *State* v. *Monafo*, 384 P.3d 134 (N.M. Ct. App. 2016) on the ground that "[t]he mistake [of law] . . . was later cured in a second stop of the defendant's vehicle." Resp. Br. 28. Whether *Monafo* is factually on all fours is of little moment. What matters is that *Monafo* clearly, and correctly, stated that "an unreasonable mistake alone is not sufficient to establish flagrant misconduct." 384 P.3d at 140.

Lucynski also tosses aside *Delker* v. *State*, 50 So. 3d 300 (Miss. 2010) because it is a mistake-of-fact case rather than a mistake-of-law case. Resp. Br. 28. But as noted in the Fourth Amendment context, this Court has treated the two as twins. See generally *Heien*, 574 U.S. at 61–67. *Delker* presents a fair comparator to this case. The Mississippi Supreme Court assumed a Fourth Amendment violation, 50 So. 3d at 303, just as the People do here, see Pet. 17 n.4. Where the Mississippi and Michigan Supreme Court's analysis splinters is on the case-by-case nature of the suppression inquiry. Mississippi got it right, stating, in no uncertain terms, that "[e]ven in the event of a Fourth Amendment violation, *the supreme law of the land requires a case-by-case balancing test* to be performed, and suppression ordered only in those unusual cases in which exclusion will further the purpose of the exclusionary rule." *Delker*, 50 So. 3d at 303 (emphasis added; quotation marks omitted). The Michigan Supreme Court's error is in bypassing "the supreme law of the land."

The fact that *United States* v. *Herrera-Gonzalez*, 474 F.3d 1105 (8th Cir. 2007), predates *Heien* and *Herring*, see Resp. Br. 27–28, only shows that some courts have properly understood this Court's "line of cases beginning with *United States* v. *Leon*, 468 U.S. 897, 900 (1984)." *Davis*, 564 U.S. at 238. The Eighth Circuit understood that, "even assuming the stop was unreasonable, that unreasonableness itself does not suggest that [the officer's] conduct was obviously improper or flagrant, or that he knew it was likely unconstitutional. An unreasonable mistake alone is not sufficient to establish flagrant misconduct." 474 F.3d

at 1113. Each of these cases are at odds with Michigan's approach.

It is unsurprising that there is not a raft of cases where a court found a mistake of law unreasonable and also found that suppression was not warranted. See Resp. Br. 29. This is in no small part due to several courts, including the court below, applying the rigid if-then rule. See Pet. 20–21. Nationwide application of this Court's suppression jurisprudence in cases involving an unreasonable mistake would inevitably yield some where an unreasonable mistake does not warrant exclusion of evidence. This case is a fine example.

D. The exclusionary rule does not apply.

Applying this Court's analysis here is straightforward. Under the correct standard for application of the exclusionary rule, suppression is not warranted. "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." *Herring*, 555 U.S. at 144 (cleaned up).

Lucynski contends that the officer's reliance on the impeding traffic statute was a pretext, thereby establishing culpable misconduct. Resp. Br. 2–3, 36. He maintains that the Michigan Supreme Court "no doubt sens[ed]" that Officer Robinson's reliance on the impeding traffic statute was "pretextual." Resp. Br. 2. But courts act through their opinions and orders, not their unspoken senses or the after-the-fact hunches of attorneys reading their opinions. The Court did not opine on pretext. Rather, it jumped directly to

automatic exclusion from its Fourth Amendment ruling that Robinson's mistaken understanding of the law was unreasonable (thereby rendering unreasonable his subsequent seizure of Lucynski).

Like the Michigan Supreme Court's dissent, Michigan's intermediate appellate court properly looked to "the circumstances of the case" as balanced against "the policy served by the exclusionary rule." Pet. App. 38a (quoting *Brown* v. *Illinois*, 422 U.S. 590, 604 (1975) (cleaned up)). Saddled with the Michigan Supreme Court's finding that Officer Robinson's mistaken understanding of the law was unreasonable, the panel nevertheless concluded that "Deputy Robinson did not demonstrate any deliberate reckless, or grossly negligent conduct," Pet. App. 40a, because he "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," Pet. App. 41a.

This, in conjunction with the contextual overlay, shows that Officer Robinson did not engage in flagrant police misconduct. He observed two cars stopped, side-by-side in the middle of the road and followed one of the vehicles to a nearby single-lane driveway, pulling his cruiser behind the vehicle. Pet. App. 45a. Out of the vehicle, Lucynski answered several run-of-the-mill questions, like whether he lived there (he did not), whether he had a valid license (he did not), and, upon Robinson's smelling marijuana and alcohol, whether Lucynski had used either (he did, both, just minutes before). Pet. App. 114a.

Officer Robinson's "simple, isolated" fault, *Davis*, 564 at 239, was in sharing an understanding of the

impeding-traffic law with a considered panel of the Michigan Court of Appeals. For that, suppression of Lucynski's own words and the officer's observations is uncalled for. In this case, "[e]xclusion cannot pay its way." *Davis*, 564 U.S. at 238 (cleaned up).

CONCLUSION

The lower court's decision should be summarily reversed or the petition for a writ of certiorari should be granted.

Respectfully submitted,

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