

STATE OF MICHIGAN  
IN THE SUPREME COURT

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

Supreme Court no.  
Court of Appeals no. 339668  
Circuit Court no. 15-031675-AR  
District Court no. 15-1272-STA

v.

ANTHONY MICHAEL OWEN,  
Defendant-Appellee.

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**KYLE BUTLER (P69743)**  
Ionia County Prosecuting Attorney  
**JERROLD SCHROTENBOER (P33223)**  
Jackson County Chief Appellate Attorney  
312 S. Jackson Street  
Jackson, MI 49201-2220  
(517) 788-4283

**EDWARD STERNISHA (P75394)**  
Attorney for Defendant-Appellee  
330 Fuller Avenue NE  
Grand Rapids, MI 49503  
(616) 233-2255

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APPLICATION FOR LEAVE TO APPEAL

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**STATEMENT OF THE QUESTION PRESENTED**

Where (1) the stop occurred on a residential street within the village, (2) the road has a 25 MPH sign facing the other direction, and (3) almost all of the rest of the village has 25 MPH signs, did the deputy reasonably believe that this road (without a sign facing that direction) is also 25 MPH?

**The Court of Appeals answered:**

**No**

**Plaintiff-Appellant answers:**

**Yes**

## STATEMENT OF FACTS

After plenty of hearings, appeals, and remands, on June 20, 2017, defendant entered a conditional guilty plea to impaired driving, MCL 257.625(3), and carrying a concealed firearm while intoxicated, MCL 28.425k(2), in return for plaintiff reducing the charge from drunk driving, MCL 257.625, and dismissing possessing a firearm while under the influence, MCL 750.237. Then, on July 24, 2017, Ionia County Circuit Court Judge Robert Sykes denied leave to appeal. The Court of Appeals also denied leave on January 30, 2018. On September 12, 2018, however, this Court remanded as on leave granted. 503 Mich 855 (2018). The Court of Appeals then reversed on July 23, 2019.

On September 5, 2015, Ionia County Deputy Derrick Madsen stopped defendant on Parsonage Road in Saranac for speeding. (October 21, 2015, Evidentiary Hearing Transcript [ETrI], pp 5-8). Defendant was going 43. (ETrI, p 8). Deputy Madsen testified that the speed limit is 25. (ETrI, p 13).

Defendant had just turned left from Summit Road southbound onto Parsonage. (ETrI, p 17). This corner is a residential neighborhood within the village. (ETrI, p 17). Plaintiff's exhibits (attached and entered at the February 8, 2016, Evidentiary Hearing) show that every sign, except one, in the village is 25. The only sign in the village that is not 25 is a 40 MPH sign on the other side of the village. Although no sign exists on southbound Parsonage saying "25," (ETrI, p 10), a sign saying "25" exists northbound just as the road enters the village. (February 8, 2016, Evidentiary Hearing Transcript [ETrII], p 25). Also, an advisory sign on southbound Parsonage

says "20." (ETrII, p 20).

The Court of Appeals opinion then states what happened after Deputy Madsen stopped defendant:

The deputy required defendant to perform a series of field sobriety tests and gave him a preliminary breath test, which defendant failed. The deputy placed defendant under arrest. (P 1).

## ARGUMENT

Because (1) the stop occurred on a residential street within the village, (2) the road has a 25 MPH sign facing the other direction, and (3) almost all of the rest of the village has 25 MPH signs, the deputy reasonably believed that this road (without a sign facing that direction) is also 25 MPH.

Yes, as counterproductive as it seems, the law says that this residential street within the village is 55 even though it is 25 going the other way and 25 almost everywhere else in the village. As no one would naturally come to such a conclusion, the deputy made a reasonable mistake when he concluded that the traffic rules in this village made sense—rather than the other way around. Not only did the Court of Appeals ignore each of these facts, but it came up with a test that requires officers to know what it took the lower courts months to figure out. This case gives this Court the chance to determine exactly what it means for an officer's mistake to be considered reasonable. MCR 7.302(B)(3). This Court should grant this application, reverse, and reinstate the conviction.

An officer needs nothing more than a reasonable belief that a motorist has committed a traffic violation. *People v Simmons*, 316 Mich App 322, 326; 894 NW2d 86 (2016). As stated in *Illinois v Rodríguez*, 497 US 177; 185-186; 110 S Ct 2793; 111 L Ed 2d 148 (1990), “it is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable.” Earlier, *Brinegar v United States*, 338 US 160, 176; 69 S Ct 1302; 93 L Ed 2d 1879 (1949), said:

Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on

their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability.

This Court reviews this issue de novo. *People v Mазzie*, 326 Mich App 279, 289; 926 NW2d 359 (2018).

Here, Deputy Madsen’s mistake was reasonable (understandable). Most people try to make sense of the law. A law that says that one direction on a residential street within a village is 55 while the other direction is 25 makes no sense (especially where almost the rest of the village is 25). Compounding the matter is the advisory sign saying 20 around an upcoming curve. (ETrII, p 20). Reducing the speed from 25 to 20 makes much more sense than from 55 to 20.

The court in *United States v Blackburn*, unpublished opinion of the Northern District of Oklahoma, issued 2/20/2002 (Docket no. 01-CR-86), came to a conclusion opposite to the Court of Appeals in a very similar situation. In that case, someone had mistakenly placed “45” over a highway sign where the speed was 75. The sign was close to a construction site. Even though the law unambiguously said that the speed limit there was really 75, the court upheld stopping the car. The officer made a reasonable mistake when he relied on an inaccurate speed-limit sign in stopping the defendant—even though the law itself was unambiguous. Call it “mistake of law” or “mistake of fact,” the mistake was reasonable. Almost anyone would have believed it.

Just as almost anyone would have believed it in *Blackburn*, so the officer believed it in the present case. A 55 zone facing one direction in a residential neighborhood and a 25 zone

facing the opposite direction is something that just about anyone would not readily accept. Common sense says both directions of traffic should travel at the same speed. Officer Madsen made a mistake that just about anyone else would have made.

The Court of Appeals was wrong in concentrating entirely on what the statute says, even if unambiguous. By doing so, it not only ignored facts like the 25 MPH sign facing the other direction on this residential street, but also failed to realize that the situation is more complicated than it appears on its face. The statute itself being unambiguous is not enough to make the officer's actions unreasonable. An unambiguous law may be ambiguous as applied to certain situations—like the situation in the present case. In other words, the Court of Appeals said that the deputy should have known, even in this counterintuitive situation, what the lower courts took months to figure out—exactly what the speed limit is for the road facing that direction (even though it is much lower for traffic facing the other direction).

In the end, suppressing here accomplishes nothing. It does not have the deterrent value necessary for excluding evidence. This was a mistake—nothing more, and certainly nothing pernicious. As stated in *Herring v United States*, 555 US 135, 147; 129 S Ct 695; 172 L Ed 2d 496 (2009):

Petitioner's claim that police negligence automatically triggers suppression cannot be squared with the principles underlying the exclusionary rules, 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 the 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.”

The Court of Appeals fails to explain how the officer not figuring out something counterintuitive (that took the lower courts months to figure out) is either “systemic error or reckless disregard of constitutional requirements.”

This Court thought enough about the issues in this case to remand it back to the Court of Appeals previously. It should now take the case to ensure that the law is correct, is correctly applied, and that all of the facts are considered. As it is, very few cases in Michigan so far have considered *Heien v North Carolina*, 574 US 54; 135 S Ct 530; 190 L Ed 2d 475 (2014), and its mistake-of-law analysis. And no Michigan case has considered when an otherwise clear law becomes ambiguous in certain situations (where the law requires a counterintuitive result).

**RELIEF**

**ACCORDINGLY**, plaintiff asks this Court to grant leave to appeal, reverse, and remand.

August 27, 2019

Respectfully submitted,

/s/Jerrold Schrottenboer  
Jerrold Schrottenboer (P33223)  
Jackson County Chief Appellate Attorney

**PROOF OF SERVICE**

On August 27, 2019, I mailed a copy of this application to Edward Sternisha at the above address.

/s/Jerrold Schrottenboer  
Jerrold Schrottenboer (P33223)  
Jackson County Chief Appellate Attorney