

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v.

ANTHONY MICHAEL OWEN

Defendant-Appellee.

Supreme Court no. 160150

Court of Appeals no. 339668

Circuit Court no. 15-031675-AR

District Court no. 15-1272-STA

BRIEF IN OPPOSITION TO
APPLICATION FOR LEAVE TO APPEAL

Kyle Butler (P69743)

Ionia County Prosecuting Attorney

Jerrold Schrottenboer (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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COUNTER-STATEMENT OF QUESTION

When an officer fails to consider the Motor Vehicle Code at all; does not reflect a reasonable interpretation of the Motor Vehicle Code or even a plausible understanding of the applicable law; and, under the Motor Vehicle Code, unposted roads are 55 miles per hour, does the officer have an articulable and reasonable belief for effectuating a traffic stop of a vehicle travelling below that limit?

Court of Appeals states, "No."

Defendant-Appellee states, "No."

Plaintiff-Appellant argues, "Yes."

COUNTER-STATEMENT OF FACTS

On September 5, 2015, Deputy Madsen was in the Village of Saranac when he saw Mr. Owen travel on Summit Street then turn left onto Parsonage Road. (Tr. 10/21/15, at 14). Neither road has signs indicating what the speed limit is. (Tr. 10/21/15, at 10 and 27). Radar indicated Mr. Owen was traveling 43 mph on Parsonage Road, and Deputy Madsen initiated a traffic stop for speeding. (Tr. 10/21/15, at 14-15). Deputy Madsen stated he believed where he clocked Mr. Owen's vehicle the speed limit is 25 mph (Tr. 10/21/15, at 15). But he also stated that further down Parsonage Road, where Mr. Owen came to a stop, there also are no speed limit signs and the speed limit there is 55 mph (Tr. 10/21/15, at 17). Deputy Madsen had been an officer for four months. (Tr. 10/21/2015, at 5-6). Deputy Madsen stated that it would be reasonable for an officer enforcing the speed limit to know the speed limit. (Tr. 10/21/15, at 10). Even within an arm's reach of the Prosecutor's desk are free maps of Michigan that clearly state that unless otherwise posted, the speed limit is 55 mph (Tr. 2/8/16, at 30).

Gary Megge is a Lieutenant with the Michigan State Police and has been employed by the state police almost twenty-three years. (Tr. 2/8/16, at 34-35). Lt. Megge investigated the speed limit on Parsonage Road in Saranac. (Tr. 2/8/16, at 38). His investigation, which included traveling to the scene of the traffic stop, revealed that the speed limit on Parsonage Road is 55 mph (Tr. 2/8/16, at 39). He stated that if a speed limit was established based on Michigan Vehicle Code section 627 the speed limit would be 45 mph but because there were no signs posted, it falls back to the general speed limit of 55 mph (Tr. 2/8/16, at 41). He further stated that if he was using the area in question as an example while teaching new trooper recruits, he would

instruct them that the speed limit is 55 mph. (Tr. 2/8/16, at 36). Shortly after PA 85 went into effect in 2006, Lt. Megge's office produced documents to inform officers, courts, etc. about the changes so they could clearly understand the changes and adequately perform their duties. (Tr. 12/19/16, at 22-25). Lt. Megge's office produced a field update that was prepared for a list serv that goes to prosecutors, attorneys, public officials, police officers, and private individuals. (Tr. 12/19/16, at 21-23).

The Village of Saranac adopted the Michigan Motor Vehicle Code in 2004 (Tr. 12/19/16, at 6, 9). The people introduced a zoning map of the Village. (Village of Saranac Zoning Map, Ex. 0). On several roads entering the Village, there are signs posted indicating village-wide ordinances such as stopping for school bus loading and unloading and no parking on any street during certain times. (Tr. 10/21/15, at 24-25). There are no signs indicating a village-wide speed limit of 25 mph, and at least part of the Village is posted 40 mph (Tr. 10/21/15, at 24-26). However, at least some of the roads entering the Village do have 25 mph signs posted. (Tr. 10/21/15, at 32- 34).

Although the law changed in 2006, the Village of Saranac has yet to comply with it by having a speed study conducted. (Tr. 12/19/16, at 14) Conducting a speed study is a simple process that could be completed in as little as three minutes to half a day. (Tr. 12/19/16, at 36) However, instead of conducting a speed study, the Village has acted in complete defiance to the law. Even after the district court, in this case, held that the speed limit on this section of Parsonage Road was 55 mph, the Village erected a sign indicating that the speed limit was 25 mph. (Tr. 12/19/16, at 40)

ARGUMENT

Because the officer never considered the Motor Vehicle Code at all; did not reflect a reasonable interpretation of the Motor Vehicle Code or even a plausible understanding of the applicable law; and under the Motor Vehicle Code unposted roads are 55 miles per hour; the officer did not have an articulable and reasonable belief for effectuating a traffic stop on a vehicle traveling below 55 miles per hour where no sign was posted.

Under the law, because the road did not have a posted speed sign, the speed limit was 55 miles per hour. This is very clear and only seems to be confusing to Plaintiff. It was not confusing for the Michigan State Police lieutenant who investigated the scene and testified for Defendant. It is also taught to police officers across the state, and is even clearly indicated on maps sitting only a few feet from the prosecutor's desk. The Plaintiff cites MCR 7.302(B)(3) (which doesn't exist) and fails to assert grounds under MCR 7.305(B). Contrary to Plaintiff's assertion, this case does not give the Court the chance to determine exactly what it means for an officer's mistake to be considered reasonable. The statute is clear and Deputy Madsen didn't even consider the statute let alone try to understand it. Plain and simple, one cannot make a reasonable mistake of a law that they decline to even consider or understand.

Deputy Madsen saw a vehicle travelling 43 miles per hour and saw no signs to support that a traffic stop for speeding would be proper. Deputy Madsen would not have had any training that there was a "village-wide" speed limit because no such law existed for almost ten years before he became an officer. Although residential speed limits were repealed in 2006, nearly a decade before Deputy Madsen became an officer and made this traffic-stop, Plaintiff continues to rest their entire case on the deputy's improper enforcement of such a nonexistent law. Plaintiff also refuses to accept that there is no such thing in Michigan speed limit laws as a

“residential area.” The Court of Appeals correctly found that a reasonably competent officer would not have made such a traffic stop. There was no statute allowing “village-wide” speed limits, there was no sign posted on either of the two streets the deputy saw Defendant driving on, and the law is clear that with no sign otherwise posted, the speed limit is 55 miles per hour. Simply put, the deputy’s mistake was not reasonable.

Plaintiff supports his argument by citing the unpublished opinion of *United States v Blackburn*.¹ This case is easily distinguishable from *Blackburn*. Unlike here where there was no sign posted, in *Blackburn* a sign was posted and the officer relied on the inaccurate speed-limit sign. Here, Plaintiff is relying on a sign posted on the other side of the road that can’t even be seen in the direction the officer or Defendant were traveling. Officer Madsen did not make a mistake that just about anyone would have made. He made a mistake based on his subjective knowledge of some other speed limit signs in the area that were not visible at the time of the stop and his lack of considering an unambiguous statute. “We do not examine the subjective understanding of the particular officer involved.”² “An officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce.”³

Plaintiff also claims, without citing any authority, that both directions of travel on the same roadway must follow the same rules. This argument easily fails when one considers any roadway where there is a painted yellow centerline that is solid for one direction of travel and is separated for the other direction. Plaintiff would have to agree that although drivers traveling one

¹ *United States v. Blackburn*, unpublished opinion of the Northern District of Oklahoma, issued 2/20/2002 (Docket no. 01-CR-86).

² *Heien v North Carolina*, 135 S Ct 530(2014) at 539, citing *Whren v United States*, 517 US 806, 813 (1996).

³ *Id.* at 539-540.

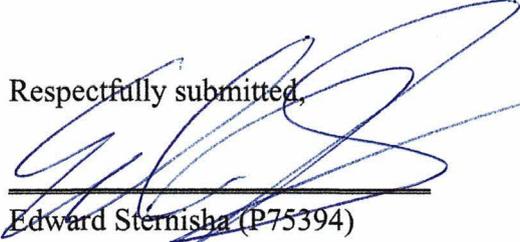
direction may pass, the other direction is a no-passing zone. Clearly motorists are only obligated to comply with the traffic control devices for their direction of travel. It would be absurd to expect drivers to comply with signs they cannot even see or are for another direction of travel; but that absurdity is exactly what Plaintiff is arguing.

Finally, the Court of Appeals did not concentrate entirely on the statute as Plaintiff argues. The Court considered from what source of the law Deputy Madsen gained his purported reasonable-but-mistaken understanding. The Court also carefully considered that Deputy Madsen knew the speed limit was not posted; under MCL 257.628(1), the lack of a posted speed limit sign means that the speed limit was 55 miles per hour; his testimony did not reflect a reasonable interpretation of the statute or even a plausible understanding; and that he never considered the Motor Vehicle Code at all. Therefore, the Court properly held, “the circuit court erred because it essentially held that a law enforcement officer’s unreasonable ignorance of the law was equivalent to a reasonable mistake of the law.” And although Plaintiff continues to argue that it was reasonable for the deputy to believe the speed limit was 25 miles per hour because the area was “residential,” there is no law to support this argument. Any reference to residential areas with regards to speed limits was repealed by the legislature nearly a decade before this traffic stop occurred. Reliance on a law that had been repealed many years ago cannot be considered reasonable.

RELIEF

Anthony Owen respectfully requests that this Honorable Court deny Plaintiff's Application for Leave to Appeal and affirm the Court of Appeals decision.

Respectfully submitted,



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

Dated: September 23, 2019