Constitutional Law—Evidence Seized Based on Reasonable Police Mistake of Law Held Admissible in North Carolina Court—*State v. Heien*, 737 S.E.2d 351 (N.C. 2012)

Under established constitutional law, a police officer's search or seizure premised on his mistake of law is typically held unconstitutional.[1] Some jurisdictions, however, permit an officer to base his reasonable suspicion or probable cause on a reasonable mistake concerning an ambiguous or confusing law to justify a traffic stop.[2] In *State v. Heien*,[3] the North Carolina Supreme Court considered as a matter of first impression whether a police officer's reasonable mistake of law concerning the defendant's one malfunctioning brake light could provide the reasonable suspicion necessary to stop and subsequently search his vehicle.[4] The North Carolina Supreme Court held that an officer's reasonable mistake of law may give rise to reasonable suspicion.[5]

On April 29, 2009, Sergeant Matt Darisse stopped a vehicle in which the defendant, Heien, was a passenger.[6] When one of the vehicle's brake lights failed to illuminate, Sergeant Darisse believed Heien's vehicle was in violation of North Carolina state law.[7] After Sergeant Darisse approached the vehicle, his interaction with Heien and the vehicle's driver, Vasquez, raised his suspicion and he requested—and received—Heien's consent to search the vehicle.[8] The search produced cocaine, leading Sergeant Darisse to arrest both

1. *See, e.g.*, United States v. Booker, 496 F.3d 717, 722 (D.C. Cir. 2007) (stating reasonable, good-faith mistakes of law generally unconstitutional), *vacated*, 556 U.S. 1218 (2009); United States v. Chanthasouxat, 342 F.3d 1271, 1279 (11th Cir. 2003) (holding reasonable or unreasonable mistake of law cannot provide reasonable suspicion or probable cause); State v. Heien, 714 S.E.2d 827, 829 (N.C. Ct. App. 2011) (holding search unconstitutional and officer's mistake of law not objectively reasonable), *rev'd*, 737 S.E.2d 351 (N.C. 2012).

2. *See* United States v. Bueno, 443 F.3d 1017, 1024 (8th Cir. 2006) (holding stop constitutional for officer's objectively reasonable mistake of law or fact); State v. Barnard, 658 S.E.2d 643, 645 (N.C. 2008) (holding officer's perceived, but nonexistent, traffic violation as a reasonable mistake of law); *see also* United States v. Sanders, 196 F.3d 910, 913-14 (8th Cir. 1999) (holding officer wrong but reasonable, and stop constitutional). *Contra* State v. Barnard, 658 S.E.2d 643, 651 (N.C. 2008) (Brady, J., dissenting) (arguing allowing mistake of law sets reasonable suspicion standard too low).

3. 737 S.E.2d 351 (N.C. 2012).

4. *Id.* at 354.

5. *Id.* at 358-59.

6. *See id.* at 352.

7. *See* 737 S.E.2d at 353; N.C. GEN. STAT. ANN. § 20-129(d) (West 2013) ("Every motor vehicle . . . shall have all originally equipped rear lamps or the equivalent in good working . . . order"); § 20-129(g) (requiring vehicle equipped with rear stop lamp).

8. *See* 737 S.E.2d at 352 (stating driver and defendant's conflicting answers prompted request to search vehicle); State v. Heien, 714 S.E.2d 827, 828 (N.C. Ct. App. 2011) (alleging officer's suspicion raised by driver's apparent nervousness and hesitance producing documents), *rev'd*, 737 S.E.2d 351 (N.C. 2012).

Heien and Vasquez and charge them with trafficking cocaine.[9]

Heien filed a motion to suppress the evidence obtained during the vehicle's search—arguing state law does not allow for a traffic stop based on one malfunctioning brake light—which the trial court subsequently denied.[10] As a result, Heien pled guilty while reserving his right to appeal.[11] On appeal, the North Carolina Court of Appeals, reversing and vacating the trial court's judgment, held that a lawful traffic stop cannot be the result of a single malfunctioning brake light.[12] Following the appeal, the North Carolina Supreme Court agreed to hear the State's Petition for Discretionary Review.[13] The court determined that Sergeant Darisse's traffic stop was constitutional and held that the mistake was a reasonable misinterpretation regarding a "counterintuitive and confusing" statute.[14] Focusing on the "reasonableness" required by the Fourth Amendment, the court determined that a traffic stop based on an officer's objectively reasonable mistake of law may give rise to reasonable suspicion, and therefore does not violate the Fourth Amendment.[15]

The Fourth Amendment has significantly developed over time, specifically regarding nuanced concepts such as *Terry* stops, the exclusionary rule, and the good-faith exception to the exclusionary rule.[16] Probable cause was the initial

9. *See* 737 S.E.2d at 352-53.

10. *See id.* at 353 (concluding malfunctioning brake light established traffic violation raising Sergeant Darisse's reasonable suspicion).

11. *See* State v. Heien, 714 S.E.2d 827, 828 (N.C. Ct. App. 2011), *rev'd*, 737 S.E.2d 351 (N.C. 2012).

12. *See* State v. Heien, 714 S.E.2d 827, 829 (N.C. Ct. App. 2011) (holding no traffic violation for malfunction of one brake light), *rev'd*, 737 S.E.2d 351 (N.C. 2012). Because the statute in question specifies "a" and "the" "stop lamp," the court reasoned that only one light had to be functioning. *See id*. Per the appeals court's reasoning, Heien did not commit a traffic violation and Sergeant Darisse did not have the reasonable suspicion necessary to make a valid constitutional stop. *See id.* at 828-29.

13. 737 S.E.2d at 354.

14. *See id.* at 355 (quoting United States v. Martin, 411 F.3d 998, 1001 (8th Cir. 2005)) (holding officer's interpretation of section 20-129 of North Carolina General Statutes reasonable). Sergeant Darisse believed it was "common knowledge" that vehicles required multiple brake lights. *See id.* (quoting United States v. Martin, 411 F.3d 998, 1001 (8th Cir. 2005)). The *Heien* court's reasoning parallels that of the decision in *Chanthansouxant*, in which the Eleventh Circuit found an officer made a reasonable mistake of law when believing motor vehicles were required to have internal rear-view mirrors. *See id* at 356; *see also* United States v. Chanthasouxant, 342 F.3d 1271, 1278-79 (11th Cir. 2003). The Eleventh Circuit based this ruling on the fact that the officer's training indicated such mirrors were required, a city magistrate had told him they were required, and the officer wrote more than 100 citations to motorists for failing to have internal rear-view mirrors. *See* United States v. Chanthasouxant, 342 F.3d 1271, 1278-79 (11th Cir. 2003).

15. *See* U.S. CONST. amend. IV; 737 S.E.2d at 358 (applying objective standard to satisfy "reasonableness" requirement of Fourth Amendment).

16. *See* U.S. CONST. amend. IV (protecting individuals against unreasonable searches and seizures); *see also* United States v. Leon, 468 U.S. 897, 908 (1984) (creating exception where evidence seized by officer acting in objective good faith not suppressed); Delaware v. Prouse, 440 U.S. 648, 654 (1979) (emphasizing Fourth Amendment objective reasonableness requirement imposed on police officers); Terry v. Ohio, 392 U.S. 1, 27 (1968) (establishing lesser reasonable suspicion requirement for less invasive "stop and frisk" stops); Mapp v. Ohio, 367 U.S. 643, 655 (1961) (establishing evidence seized by illegal search and seizure inadmissible in court). *See generally* Robert C. Hauhart & Courtney Carter Choi, *The Good Faith Exception to the Exclusionary Rule*, 48 CRIM. L. BULL. 316 (2012) (exploring case law relevant to exclusionary rule).

standard necessary to conduct Fourth Amendment searches and seizures, but the landmark decision in *Terry v. Ohio* established the objective reasonable suspicion standard for searches that are less invasive than searches requiring probable cause.[17] Reasonable suspicion is based on the "totality of the circumstances," and its low threshold allows an officer to objectively assess each situation without rigid specifications or requirements to which they must adhere.[18] The exclusionary rule developed through *Mapp v. Ohio* to deter police misconduct as well as individual officer and systemic negligence by suppressing evidence that is illegally obtained.[19]

Following the establishment of the reasonable suspicion standard and exclusionary rule, courts developed the good-faith exception to the rule in instances where suppression does not otherwise discourage police misconduct or negligence, as is often the case where the error results from magistrate or departmental errors with no bearing on police behavior.[20] While generally decreasing the scope of the exclusionary rule, the good-faith exception does not apply in certain specific circumstances.[21] Since the exception developed,

17. Terry v. Ohio, 392 U.S. 1 (1968); *see* Whren v. United States, 517 U.S. 806, 814 (1996) (holding officer's subjective intent irrelevant when certain actions reasonably justified).

18. *See* Ornelas v. United States, 517 U.S. 690, 695-96 (1996) (explaining reasonable suspicion as "commonsense, nontechnical" idea not finely tuned); Terry v. Ohio, 392 U.S. 1, 27 (1968) (requiring officer express "specific reasonable inferences" demonstrating reasonable suspicion based on more than "inchoate" hunches); *see also* United States v. Sokolow, 490 U.S. 1, 7 (1989) (articulating Fourth Amendment requires minimal level of objective justification). *But see* Kit Kinports, *Veteran Police Officers and the Three-Dollar Steaks: The Subjective/Objective Dimensions of Probable Cause and Reasonable Suspicion*, 12 U. PA. J. CONST. L. 751, 773-74, 783 (2010) (suggesting reasonable suspicion introduces subjective element of fear on part of individual officer's training, knowledge, and experience).

19. *See* Mapp v. Ohio, 367 U.S. 643, 657 (1961) (contending evidence exclusion will promote cooperation and discourage police disobedience); s*ee also* Hauhart & Choi, *supra* note 16, at 319 (outlining exclusionary rule deterrent effect); *cf.* Wayne A. Logan, *Police Mistakes of Law*, 61 EMORY L. J. 69, 71 (2011) (discussing police historically engaging in illegal activity to preserve legality). *Contra* 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT §9.1(e) (5th ed. 2011) (stating ineffectiveness of exclusionary rule's deterrent effect in certain contexts).

20. *See* N.C. GEN. STAT. ANN. § 15A-974 (West 2013) (establishing good-faith exception in North Carolina by statute). The statute applies where a person committing a violation "acted under the objectively reasonable, good faith belief that the actions were lawful." *Id.*; *see* United States v. Leon, 468 U.S. 897, 919 (1984) (holding exclusionary rule cannot deter objectively reasonable law enforcement activity). The Court did not suppress evidence obtained by a facially valid warrant that later proved insufficient to establish probable cause. *See* United States v. Leon, 468 U.S. 897, 903 (1984). Because the error stemmed from the neutral and detached magistrate, the Court reasoned that the exclusionary rule did not serve its deterrent effect and therefore would not apply against the police's good-faith error. *See id.* at 916; *see also* Arizona v. Evans, 514 U.S. 1, 4 (1995) (applying exception for reasonable police error based on clerk's incorrect identification of defendant's outstanding warrant); Illinois v. Krull, 480 U.S. 340, 360 (1987) (holding no application of exclusionary rule where officer reasonably relied on statute later declared unconstitutional). *See generally* F. LEE BAILEY & KENNETH J. FISHMAN, HANDLING NARCOTIC AND DRUG CASES § 96.2 (2013) (outlining good-faith exception application and history).

21. *See* United States v. Leon, 468 U.S. 897, 914-15 (1984) (demonstrating instances where good-faith exception will not apply). First, the good-faith exception will not apply where the affidavit on which the magistrate relies for probable cause is knowingly or recklessly false. *Id*. Second, there is no exception to the exclusionary rule where the magistrate does not maintain his "neutral and detached" status. *Id.* Third, the

however, some courts have broadened its scope and included analogous concepts involving mistakes of law, arousing concern that the exception itself overshadows the Fourth Amendment's reasonableness requirement and the exclusionary rule altogether.[22] Critics of this expansion fear and anticipate the introduction of subjectivity into ideally objective police standards.[23]

The good-faith exception analogously relates to the relatively recent trend in some circuits of admitting evidence based on a police officer's objectively reasonable mistake.[24] While some courts admit evidence that is based on an officer's mistake of fact, a majority of jurisdictions still subject evidence from an officer's mistake of law to the exclusionary rule.[25] Where courts exclude mistake-of-law evidence, the presence or absence of a violation is a dispositive factor in determining the constitutionality of a stop.[26] Courts that admit

exception will not apply where the magistrate lacks a substantial basis for determining probable cause. *Id*. Finally, the good-faith exception will not apply where the warrant is so facially deficient in particularizing the search that an officer "cannot reasonably presume it to be valid." *Id.* at 923; *see* Robert L. Misner, *Limiting* Leon: *A Mistake of Law Analogy*, 77 J. CRIM. L. & CRIMINOLOGY 507, 511-12 (1986) (outlining where suppression remains an appropriate remedy).

22. *See* State v. Barnard, 658 S.E.2d 643, 647 (N.C. 2008) (Brady, J., dissenting) (cautioning against rendering Fourth Amendment meaningless by setting reasonable suspicion standard too low); Justin F. Marceau, *The Fourth Amendment at a Three-Way Stop*, 62 ALA. L. REV. 687, 743 (2011) (suggesting good-faith exception may include police mistakes of law on different bases). The mistakes in question include mistakes of settled law (where an officer misinterprets or does not know of the authority), unsettled ambiguous law, and "changing-settled-law mistakes" where the law has later been determined unconstitutional. *See* Marceau, *supra,* at 744; *see also* Herring v. United States, 555 U.S. 135, 139-40 (2009) (explaining Fourth Amendment violation for unreasonable search or arrest may not require application of exclusionary rule).

23. *See* Whren v. United States*,* 517 U.S. 806, 810 (1996) (treating traffic stop as reasonable where officer could base stop on traffic violation); State v. Barnard, 658 S.E.2d 643, 653 (N.C. 2008) (Brady, J., dissenting) (criticizing court finding reasonable suspicion where only relevant factor had innocent explanation); Jennifer L. Blair-Smith, Note, *Ignorance of the Law Is no Excuse: Distinguishing Subjective Intent from Mistake of Law in* State v. Barnard, 1 CHARLOTTE L. REV. 331, 337 (2009) (criticizing police mistake of law and subjective intent supporting reasonable suspicion).

24. *See* United States v. Martin, 411 F.3d 998, 1001 (8th Cir. 2005) (holding objectively reasonable mistake of law justifies reasonable suspicion); Marceau, *supra* note *22,* at 743 (detailing expansion of exceptions to exclusionary rule).

25. *See* United States v. Chanthasouxat, 342 F.3d 1271, 1279 (11th Cir. 2003) (holding mistake of law cannot provide reasonable suspicion or probable cause to justify stop); United States v. Lopez-Soto, 205 F.3d 1101, 1106 (9th Cir. 2000) (holding no exclusionary rule exception for good-faith mistake of law)*; see also* United States v. McHugh, 349 F. App'x 824, 828 (4th Cir. 2009) (holding stop constitutional because officer mistake based on fact, not law); United States v. Coplin, 463 F.3d 96, 101 (1st Cir. 2006) (holding officer's objectively reasonable mistake of fact generally constitutional). *But see* United States v. Bueno, 443 F.3d 1017, 1024 (8th Cir. 2006) (stating neither officer's mistake of law or fact renders traffic stop illegal where objectively reasonable).

26. *See* Ornelas v. United States*,* 517 U.S. 690, 697 (1996) (stating pivotal issue whether rule of law violated); State v. McLamb, 649 S.E.2d 902, 904 (N.C. App. 2007) (holding legal justification for stop not objectively reasonable and stop therefore unconstitutional); *cf.* Ross M. Oklewicz, Comment, *Expanding the Scope of the Good-Faith Exception to the Exclusionary Rule To Include a Law Enforcement Officer's Reasonable Reliance on Well-Settled Case Law that Is Subsequently Overruled*, 59 AM. U. L. REV. 1715, 1746 (2010) (demonstrating limits on good-faith exception concerning mistake of law). Where an officer is mistaken concerning a law that is "patently unconstitutional," unsettled, or ambiguous, the good-faith exception may apply. *See* Oklewicz, *supra* at 1745-46. By admitting evidence based on a mistaken interpretation of

evidence based on an officer's mistake of law emphasize that the mistake must be reasonable in order to avoid violating the Fourth Amendment.[27]

In *Heien*, the North Carolina Supreme Court, following the Eighth Circuit, held that a police officer's reasonable mistake of law may give rise to reasonable suspicion and a search that does not violate the Fourth Amendment.[28] To support its reasoning, the court limited the exclusionary rule and analogously relied on other persuasive authority concerning good-faith exceptions.[29] The court held that Sergeant Darisse's reasonable mistake met the reasonable suspicion required to conduct a traffic stop.[30] If the court suppressed the evidence against Heien, it would ineffectively discipline Sergeant Darisse's reasonable actions, thereby imposing what the court perceived as an unwarranted expectation of perfection in police understanding of the law and complex legal concepts.[31] The majority also suggested that the

ambiguous law, courts assign a judicial role of interpretation to police officers, which may invite constitutional violations. *See id.* at 1749.

27. *See, e.g.*, United States v. Bueno, 443 F.3d 1017, 1024-25 (8th Cir. 2006) (holding Fourth Amendment not violated by officer reasonable mistake of law concerning vehicle registration placement); United States v. Martin, 411 F.3d 998, 1001 (8th Cir. 2005) (stating mistake of law "must be *objectively* reasonable"); United States v. Sanders, 196 F.3d 910, 913 (8th Cir. 1999) (holding traffic stop justified by officer's objectively reasonable basis to perceive defendant violation); *see also* Hiromi Sato, *Mistake of Law Within and Outside the International Criminal Court*, 15 TOURO INT'L L. REV. 138, 165 (2012) (observing police mistake of law constitutionally valid for traffic stops based on unclear statute); *cf.* United States v. Washington, 455 F.3d 824, 828 (8th Cir. 2006) (holding traffic stop based on officer's legal misunderstanding concerning driver's cracked windshield unreasonable and unconstitutional).

28. 737 S.E.2d at 356 (holding reasonable mistake may give rise to reasonable suspicion).

29. *Id.* at 355 (citing exceptions to exclusionary rule). The exclusionary rule does not apply where an officer stops a person who violated some other actual law or when a later legal determination establishes that the defendant's previous action was not criminal. *See id.*; *e.g.*, Whren v. United States, 517 U.S. 806, 814 (1996) (holding officer potential subjective belief irrelevant to reasonableness of traffic stop otherwise supported by violation); Arizona v. Evans, 514 U.S. 1, 4 (1995) (holding police error based on incorrect indication of outstanding warrant not subject to exclusionary rule); Illinois v. Krull, 480 U.S. 340, 356-57 (1987) (holding officer's reliance on statute reasonable when statute later declared unconstitutional); *see also* Logan, *supra* note 19, at 76-82 (outlining police mistakes of law). In cases where an officer relies on law that has subsequently been declared unconstitutional, the exclusionary rule fails to serve its deterrent purpose and does not apply. Logan, *supra* note 19, at 77. In considering substantive law, the Eighth Circuit permits an officer's reasonable mistake of law and upholds the constitutionality of a traffic stop where no technical violation occurred. *Id.* at 80-81; *see* United States v. Leon, 468 U.S. 897, 926 (1984) (establishing good-faith exception to exclusionary rule). Where police seize evidence from a search made illegal by magistrate error, but was otherwise conducted on a facially valid warrant, the exclusionary rule fails to serve its deterrent effect on police and the evidence seized as a result is not suppressed. *See* United States v. Leon, 468 U.S. 897, 919 (1984).

30. 737 S.E.2d at 358 (recognizing reasonableness as relevant inquiry); *see, e.g.*, Ornelas v. United States, 517 U.S. 690, 696 (1996) (establishing "fluid concept[]" of reasonable suspicion based on individual circumstances); United States v. Sokolow, 490 U.S. 1, 7 (1989) (requiring only minimal level of objective justification for reasonable suspicion); Delaware v. Prouse, 440 U.S. 648, 653-54 (1979) (emphasizing Fourth Amendment objective reasonableness requirement imposed on police officers); Terry v. Ohio, 392 U.S. 1, 10 (1968) (emphasizing need for flexibility for police in performing duties); United States v. Sanders, 196 F.3d 910, 913 (8th Cir. 1999) (stating probable cause and reasonable suspicion determination based on officer knowledge during confrontation, not hindsight).

31. *See* 737 S.E.2d at 357-58; *see also* United States v. Sanders, 196 F.3d 910, 913 (8th Cir. 1999)

state initiative to keep roads safe outweighed the minimal invasion citizens stood to endure as a result of an officer's misguided but reasonable interpretation of the law.[32] Finally, the court reasoned that its holding would encourage uniformity regarding police mistakes of law or fact.[33]

The *Heien* majority erred by introducing subjectivity into what should be an objective, reasonableness-based interpretation of the law.[34] Although the court retained some objectivity by emphasizing the apparent reasonableness of the officer, the court unnecessarily addressed the issue altogether by focusing on the officer's reasonableness rather than the more relevant issue on appeal: whether or not a statutory violation occurred.[35] *Heien* follows the Eighth Circuit, which not only completely departs from its own precedent, but also ignores the overwhelming majority of federal circuits.[36] Because North Carolina already enacted a statutory good-faith exception to the exclusionary rule, the majority's ruling excessively expands the exception and lessens the

(reasoning police need not interpret traffic law with "subtlety and expertise of . . . criminal defense attorney[s]"). *Contra* 737 S.E.2d. at 361 (Hudson, J., dissenting) (arguing against permitting mistakes of law and instead advocating police diligence, not perfection).

32. *See* 737 S.E.3d at 357 (claiming highway safety as important concern); *see also* State v. Barnard, 658 S.E.2d 643, 645 (N.C. 2008) (holding thirty-second delay at light reasonable to arouse suspicion based on nonexistent "impeding traffic" statute). *But see* United States v. Chanthasouxat, 342 F.3d 1271, 1278 (11th Cir. 2003) (holding search unconstitutional based on perceived violation of obstruction in rear-view mirror); State v. Ivey, 633 S.E.2d 459, 462 (N.C. 2006) (holding officer mistake of law unreasonable and no violation where defendant failed to use signal), *abrogated by* State v. Styles, 665 S.E.2d 438 (N.C. 2008).

33. *See* 737 S.E.2d at 358 (applying same reasoning for mistake of law and mistake of fact). Moreover, the court asserts mistakes of law and fact should be treated similarly because legal and factual errors may be difficult to distinguish. *Id.*; *see* United States v. McHugh, 349 F. App'x 824, 828 (4th Cir. 2009) (demonstrating mistake of law treatment distinguishable from mistake of fact treatment); United States v. Coplin, 463 F.3d 96, 101 (1st Cir. 2006) (observing mistake of fact constitutional where objectively reasonable but reasonable mistake of law generally unconstitutional).

34. *See* 737 S.E.3d at 359-60 (Hudson, J., dissenting) (criticizing majority decision of permitting police statutory interpretation). *Contra* Kinports, *supra* note 18, at 783 (suggesting reasonable suspicion considering officer knowledge, training, and experience inherently introduces subjectivity).

35. 737 S.E.3d at 360 (Hudson, J. dissenting) (arguing proper issue whether statutory violation existed, not officer reasonableness); *see, e.g.*, Ornelas v. United States, 517 U.S. 690, 697 (1996) (stating issue whether facts satisfy relevant statutory or constitutional standard); State v. Barnard, 658 S.E.2d 643, 645 (N.C. 2008) (holding objective facts, not subjective motivation, relevant for constitutionality of stop); State v. Heien, 714 S.E.2d 827, 831 (N.C. Ct. App. 2011) (holding officer stop unreasonable because statute at issue not violated), *rev'd*, 737 S.E.2d 351 (N.C. 2012); *see also* United States v. Washington, 455 F.3d 824, 828 (8th Cir. 2006) (holding officer mistake unreasonable, traffic stop subsequently unconstitutional, and ultimately focusing on violation).

36. *See* 737 S.E.3d at 360 (Hudson, J., dissenting) (stating Eighth Circuit stands alone on issue). The majority rule prohibits mistake of law as a basis for reasonable suspicion in eight other circuits and is undecided in three. *See id.* at 360-61; *see also, e.g.*, United States v. Martin, 411 F.3d 998, 1002 (8th Cir. 2005) (holding stop based on officer's reasonable mistake of law constitutional); United States v. Chanthasouxat, 342 F.3d 1271, 1279 (11th Cir. 2003) (holding reasonable mistake of law cannot provide reasonable suspicion); United States v. Lopez-Soto, 205 F.3d 1101, 1105 (9th Cir. 2000) (agreeing with Fifth Circuit rationale requiring objectively grounded legal justification for stop); State v. McLamb, 649 S.E.2d 902, 904 (N.C. Ct. App. 2007) (holding reasonable suspicion based on officer's subjective reasoning or good-faith mistake of law unjustified).

deterrence that the exclusionary rule seeks to establish.[37]

By condoning police mistakes of law, the *Heien* majority recklessly alters the application of the legal maxim that "ignorance of the law is no excuse."[38] The majority risks fostering citizen distrust of the police by insisting that the public adhere to the same counterintuitive laws they permit police to misinterpret.[39] Although the reasonable suspicion standard does not require that police officers interpret the nuances and particularities of the law with expertise, they are arguably capable of both understanding current law and adapting to its changes.[40] While the law may arguably be complex or counterintuitive, police officers currently have more technology and tools available to them than ever before to effectively increase their awareness and understanding of such rules.[41] Permitting reasonable mistakes of law may diminish the deterrence that the exclusionary rule would otherwise have on police misunderstanding or uncertainty towards the law, potentially encouraging police ignorance or creative interpretation of the law.[42]

Rather than achieve uniformity in its treatment of mistakes of law and fact, the *Heien* court should have alternatively sought uniformity across different jurisdictions regarding an officer's reasonable mistake of law.[43] The majority

37. *See* N.C. GEN. STAT. ANN. § 15A-974 (West 2013) (creating statutory basis for exclusionary rule in North Carolina); United States v. Lopez-Soto, 205 F.3d 1101, 1106 (9th Cir. 2000) (holding mistake of law exception to exclusionary rule defeats deterrent purpose and discourages statutory knowledge); 737 S.E.2d at 361 (Hudson, J., dissenting) (alleging good-faith exception as analogous to permitting officer mistakes of law); *see also* Misner, *supra* note 21, at 544 (cautioning against broad application of good-faith exception and mistake-of-law doctrine).

38. *See* 737 S.E.2d at 360 (Hudson, J., dissenting) (declaring there is "no room for reasonable mistakes of law"); Misner, *supra* note 21, at 518 (stating no common-law defense for ignorance or mistake of law).

39. *See* United States v. Chanthasouxat, 342 F.3d 1271, 1280 (11th Cir. 2003) (noting "fundamental unfairness" of allowing police ignorance of law where trusted to enforce it); Logan, *supra* note 19, at 93 (suggesting allowing technically lawless seizures will lessen citizen confidence in police). Where the government allows reasonable mistakes of law by the police, there is a lack of a "reciprocal expectation[] of law-abidingness between government and citizens" where one party does not hold up its "end of the bargain" to adhere to the law. Logan, *supra* note 19, at 91; *see* Blair-Smith, *supra* note 23, at 337 (admonishing *Barnard* court permitting police mistakes of law); Marceau, *supra* note 22, at 751 (acknowledging "remarkable asymmetry" between government and defendant experience with legal change).

40. *See* 737 S.E.2d at 361-62 (Hudson, J., dissenting) (suggesting diligence in study of law as reasonable police requirement); *see also* United States v. Sanders, 196 F.3d 910, 913 (8th Cir. 1999) (stating state highway patrolmen need not interpret laws with attorney's skill).

41. *See* Logan, *supra* note 19, at 84 (arguing police mistakes of law not justified because specific education and computer access).

42. *See* United States v. Lopez-Soto, 205 F.3d 1101, 1106 (9th Cir. 2000) (holding good-faith exception to exclusionary rule removes incentive to ensure proper police understanding of law); 737 S.E.2d at 361 (Hudson, J., dissenting) (arguing reasonable mistake of law exception to exclusionary rule retreats from its deterrent purpose); *see also* Logan, *supra* note 19, at 87 (claiming exclusionary rule serves purpose for mistake of law). Because officer training may be incorrect, evidence exclusion based on police mistakes of law may deter "systemic negligence" in training and instead encourage properly focused legal training. *See* Logan, *supra* note 19, at 87. Additionally, Logan argues that excluding evidence based on police mistakes will deter impetuous behavior associated with police competition to reduce crime. *See id.* at 88.

43. *See* 737 S.E.2d at 358 (creating uniformity of treatment regarding reasonable mistake of law or fact

could have relied on the recently adopted North Carolina statutory good-faith exception to fully maintain the integrity of the exclusionary rule instead of adopting an additional analogous exception.[44] While the concepts of the good-faith and reasonable-mistake-of-law exceptions are highly related, evidence discovered based on an officer's mistake of law is traditionally inadmissible and should remain so.[45] Rather than encourage police ignorance, the court should have emphasized improving legal training to further the deterrent goal initially set out by the exclusionary rule and in *Mapp v. Ohio*.[46] Under the fundamental doctrine of separation of powers, the police should be properly trained and maintain their knowledge of the law to properly enforce it, while the legislature ought to carefully draft—and judiciary interpret—any latent ambiguity, without allowing a court to use such ambiguity against potential defendants.[47]

In *State v. Heien*, the Supreme Court of North Carolina considered whether a police officer's reasonable mistake of law could be the basis of reasonable suspicion in a traffic stop. While the court espoused a number of reasons to support excepting an officer's reasonable mistake of law from the exclusionary rule, it failed to defend itself against the longstanding maxim that ignorance of the law is no excuse, as well as contrary holdings in a sizeable majority of jurisdictions. Where reasonable suspicion based solely on a mistake of law renders a traffic stop unconstitutional, the exclusionary rule serves its deterrent effect by encouraging the criminal justice system to properly train officers rather than encouraging their ignorance of the law. The North Carolina Supreme Court added an unnecessary subjective element to reasonable

by police). The majority demonstrated the distinction between the Eleventh and Eighth Circuit's approaches towards police mistakes of law, but did not address the numerous other circuits that similarly follow the Eleventh Circuit, leaving the Eighth Circuit alone in its treatment of mistakes. *See id.* at 360-61 (Hudson, J., dissenting).

44. *See* N.C. GEN. STAT. ANN. § 15A-974 (West 2013); 737 S.E.2d at 362 (Hudson, J., dissenting) (claiming majority action "premature" in failing to consider good-faith exception).

45. *See* United States v. Lopez-Soto, 205 F.3d 1101, 1106 (9th Cir. 2000) (holding no good-faith exception to exclusionary rule for police mistake of law); Marceau, *supra* note 22, at 742 (stating historically no exception for mistake of law). *But see* 737 S.E.2d at 356 (holding officer reasonable mistake of law basis for reasonable suspicion).

46. *See* United States v. Washington, 455 F.3d 824, 828 (8th Cir. 2006) (holding officer mistake of law unreasonable based on own misunderstanding of statute). The court stated that the officer had not been trained to enforce the law as he interpreted it; if he had, the same unreasonable mistake and traffic stop may have been considered reasonable and constitutional in the Eighth Circuit. *See id*; *see also* Logan, *supra* note 19, at 106 (recognizing exclusionary rule's unmistakable impact on improving police training). Logan maintains that mistake of law should not be permitted and that suppression should incentivize police to improve training. *See id.* at 106-07. *See generally* Mapp v. Ohio, 367 U.S. 643 (1961).

47. *See* United States v. Chanthasouxat, 342 F.3d 1271, 1278-79 (11th Cir. 2003) (holding use of statutory ambiguity against defendant violates void for vagueness concept); 737 S.E.2d at 362 (Hudson, J., dissenting) (arguing police must knowledgeably enforce, not carelessly interpret the law). The legislature wrote the ambiguous law that Sergeant Darisse relied upon, the court of appeals subsequently interpreted it, and the legislature could have rewritten it had the North Carolina Supreme Court not instead rewritten the state's position concerning an officer's reasonable mistake of law. *See* 737 S.E.2d at 362 (Hudson, J., dissenting).

suspicion that may lead the public to distrust police. By altering North Carolina's stance on mistake of law, the *Heien* court ignored the limits of the good-faith exception and permitted ignorance of the law where it had been previously forbidden to support the constitutionality of otherwise illegal searches and seizures.

Brittanee Friedman