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Goldilocks and the Fourth Amendment: Why the Supreme Court of North Carolina Missed an Opportunity to Get Officer Mistakes of Law “Just Right” in State v. Heien

INTRODUCTION

As the saying goes, ignorance of the law is no excuse. Under this maxim, which dates back to Roman law and is familiar among lawyers and laypeople alike, accused persons find little defense in the claim: “I’m sorry, officer, I didn’t know I couldn’t do that.” The doctrine presumes awareness of legal obligations, and those who do not know their actions are unlawful receive no reprieve from law enforcement officers as a result of their naivety. And for good reason—public policy demands an informed and law-abiding populace and discourages “the easy-to-assert and difficult-to-dispute claim of ignorance that would otherwise flow from the lips of any person facing criminal punishment.”

But what of mistakes of law by those charged with its enforcement? The Supreme Court of North Carolina recently grappled with this issue as a matter of first impression in State v. Heien. In Heien, officers stopped a vehicle on the erroneous belief that its improperly functioning brake light violated the state’s vehicle code. Reversing the North Carolina Court of Appeals, the supreme court held “that so long as an officer’s mistake is reasonable, it may give rise to [the] reasonable suspicion” required to conduct a traffic stop. In so doing, the court rejected the approach taken by the majority of jurisdictions and urged by the three-justice dissent—that

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3. During a stand-up routine, comedian Dave Chappelle describes an occasion where he was the passenger in a car driven by his friend, Chip. DAVE CHAPPELLE, KILLIN’ THEM SOFTLY, at 7:45 (UrbanWorks Entertainment 2003). Chip was driving erratically, and an officer soon stopped the vehicle, prompting Chip’s excuse quoted above. Id. at 9:56.
4. See Davies, supra note 2, at 342-43.
5. Id. at 341; see also CHAPPELLE, supra note 3, at 10:32 (“That [excuse] was good, wasn’t it? Because I did know I couldn’t do that.”).
7. Id. at 275, 737 S.E.2d at 354.
8. Id. at 282, 737 S.E.2d at 358.
an officer's mistaken understanding of underlying substantive statutory law cannot give rise to the requisite level of suspicion required to sustain a traffic stop. By contrast, a more intermediate position is exemplified by the United States Court of Appeals for the District of Columbia Circuit's holding in United States v. Booker that "[a] stop is lawful despite a mistake of law... if an objectively valid basis for the stop nonetheless exists."

This Recent Development argues that the Supreme Court of North Carolina should have adopted the Booker approach to officers' mistakes of substantive law when it confronted the issue in Heien. First, the Booker rule is more consistent with prior North Carolina precedent in that it employs a more appropriate "totality of the circumstances" inquiry. Second, the Booker rule is most representative of the balancing test required by the Fourth Amendment—it maintains officer flexibility while still protecting citizens' constitutional rights. Thus, when tempered by appropriate constraints on post hoc officer claims of independent objective justifications, the intermediate Booker rule is "just right," and the Supreme Court of North Carolina missed an opportunity to adopt it in State v. Heien.

Analysis proceeds in four parts. Part I provides the necessary background to understand Heien, describing legal standards for traffic stops under the Fourth Amendment and mistake-of-law jurisprudence. Part II examines the facts of Heien, the opinion of the North Carolina Court of Appeals, and the majority and dissenting opinions of the Supreme Court of North Carolina. Part III analyzes the approaches taken by courts in assessing officers' mistakes of law in the Fourth Amendment context through analysis of the Eighth Circuit's decision in United States v. Martin, adopted by the Heien majority, and the Eleventh Circuit's decision in United States v. Chanthasouxat, favored by the Heien dissent. Part III also introduces the approach taken by the D.C. Circuit in the Booker line of cases, and Part IV argues that the Supreme Court of North Carolina should have adopted the Booker rule. Provided that certain constraints are present, that rule best embodies the already extant

10. Id. at 722.
11. See infra Part IV.
13. 411 F.3d 998 (8th Cir. 2005).
14. 342 F.3d 1271 (11th Cir. 2003).
balance between Fourth Amendment liberties and law enforcement practicalities under North Carolina law.

I. THE FOURTH AMENDMENT, TRAFFIC STOPS, AND MISTAKES OF LAW

A. The Fourth Amendment and Traffic Stops

The Fourth Amendment to the United States Constitution protects "the people . . . against unreasonable searches and seizures." The Fourth Amendment's "reasonableness" inquiry is particularly fact specific and yields different and often conflicting standards based on the type of search or seizure. The reasonableness test with respect to traffic stops in particular is an issue that has generated an exceptionally large volume of litigation.

The Supreme Court of the United States has long recognized that law enforcement officials may stop people based on less than probable cause; for traffic stops, a "reasonable suspicion" that a traffic law has been violated suffices in nearly all jurisdictions, including North Carolina. That is, an officer must hold only a "reasonable suspicion . . . for traffic stops, regardless of whether the traffic violation was readily observed or merely suspected." The Supreme Court of North Carolina described the standard in State v. Styles:

Reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. The standard is satisfied by some minimal level of objective justification. This Court

15. U.S. Const. amend. IV; see also N.C. Const. art. I, § 20 (prohibiting "general warrants"). In Wolf v. Colorado, 338 U.S. 25 (1949), the Supreme Court held that the Fourth Amendment's restrictions apply to state law enforcement officers in addition to federal agents, and in Mapp v. Ohio, 367 U.S. 643 (1961), the Court held that the exclusionary rule applies to the states as well.
17. See generally 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 9.3 (5th ed. 2012) ("In recent years more Fourth Amendment battles have been fought about police activities incident to a stopping for a traffic infraction . . . than in any other context.").
18. See Terry, 392 U.S. at 22-23.
requires that [t]he stop . . . be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training. Moreover, [a] court must consider the totality of the circumstances—the whole picture in determining whether a reasonable suspicion exists.\(^2\)

Furthermore, any traffic offense committed by a driver provides a legitimate basis for a traffic stop, even if the stop is merely a pretext for a drug search.\(^3\) Thus, generally speaking, a law enforcement officer must have an objective, reasonably articulable suspicion that a traffic violation has occurred to initiate a stop of a vehicle. While this standard is difficult enough to apply in ordinary circumstances,\(^4\) factoring in an officer’s mistake of law compounds the inquiry’s complexity.

\section*{B. Mistakes of Fact and Mistakes of Law}

The courts treat mistakes of fact and mistakes of law differently. An accused person has made a mistake of fact if his conduct would not be unlawful had the surrounding facts been as he believed them to be.\(^5\) Similarly, where an officer acts pursuant to an incorrect perception of a physical fact, he has made a mistake of fact.\(^6\) Courts

\begin{itemize}
  \item \(22\). \textit{Id.} at 414, 665 S.E.2d at 439–40 (internal citations and quotation marks omitted).
  \item \(24\). See United States v. Sokolow, 490 U.S. 1, 7 (1989) ("The concept of reasonable suspicion . . . is not 'readily, or even usefully, reduced to a neat set of legal rules.'" (quoting Illinois v. Gates, 462 U.S. 213, 232 (1983))). \textit{But see Atwater v. City of Lago Vista}, 532 U.S. 318, 366 (O'Connor, J., dissenting) ("Over the past thirty years, it appears that the \textit{Terry} rule has been workable and easily applied by officers on the street.").
  \item \(25\). See Jerome Hall, \textit{Ignorance and Mistake in Criminal Law}, 33 IND. L.J. 1, 2–3 (1957). By way of example, consider the following situation: If one honestly believes that the white, powdery substance in his possession is flour, this factual mistake would exonerate him of the crime of possession of cocaine. See Thomas W. White, Note, \textit{Reliance on Apparent Authority as a Defense to Criminal Prosecution}, 77 COLUM. L. REV. 775, 781 (1977). If, on the other hand, he knows the substance to be cocaine but honestly believes that possession of cocaine is not criminal, his mistake of law would not insulate him from prosecution for the crime of possession. \textit{See id.}
  \item \(26\). See United States v. Cashman, 216 F.3d 582, 586–87 (7th Cir. 2000). In \textit{Cashman}, an officer stopped a car which had a seven- to ten-inch crack in the windshield under a state law requiring that no vehicle’s windshield be "excessively cracked or damaged." \textit{Id.} at 586 (quoting WIS. ADMIN. CODE Transp. § 305.34(3) (1996)). The defendant argued that the crack was not "excessive" under the regulation. \textit{Id.} at 587. The court disagreed, finding the focus of the defendant’s argument "misplaced" because "[t]he pertinent question instead [was] whether it was reasonable for [the officer] to believe that the windshield was cracked to an impermissible degree." \textit{Id.} at 587. Thus, "[g]iven the evident length of the crack and its proximity to the portion of the windshield swept by the wipers," the court concluded that the stop was supported by probable cause. \textit{Id.; see also United
generally excuse the accused’s mistakes of fact, reasoning that the actor’s factual beliefs preclude the requisite mental culpability as to an element of the offense. Similarly, courts typically tolerate reasonable mistakes of fact by law enforcement officers, since “what is reasonable will be completely dependent on the specific and usually unique circumstances presented by each case.”

On the other hand, where one acts unaware of or under a misinterpretation of substantive law, he has made a mistake of law. When the accused has made a mistake of law, he finds little relief in the courts; when an officer makes a mistake of law, the adjudicatory consequences are less clear.

Police mistakes of law in the realm of Fourth Amendment jurisprudence can be classified into two broad categories—those of constitutional law and those of statutory law. Mistakes of constitutional law can be further subdivided into two types. The first relates to the constitutional validity of a statute invoked by an officer as the grounds for a stop or arrest. The second involves Fourth

States v. Miguel, 368 F.3d 1150, 1154 (9th Cir. 2004) (upholding a traffic stop where the officer reasonably relied on a police vehicle computer which erroneously indicated expired registration).

28. United States v. Chanthasouxat, 342 F.3d 1271, 1277 (11th Cir. 2003); see also United States v. Herring, 555 U.S. 135, 137-38 (2009) (excusing an illegal search based on reasonable reliance on a clerical error); Saucier v. Katz, 533 U.S. 194, 206 (2001) (“Officers can have reasonable, but mistaken, beliefs as to the facts establishing the existence of probable cause or exigent circumstances, and in those situations courts will not hold that they have violated the Constitution.”); Brinegar v. United States, 338 U.S. 160, 176 (1949) (“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 . . .”).

29. See White, supra note 25, at 781.
30. See supra notes 1-5 and accompanying text (discussing the “ignorance of the law is no excuse” adage and the rationale behind it).
31. See Wayne A. Logan, Police Mistakes of Law, 61 EMORY L.J. 69, 76 (2011). Professor Logan illustrates this category using two cases. In Michigan v. DeFillippo, 443 U.S. 31 (1979), the Supreme Court upheld the admission of evidence obtained pursuant to a search incident to an arrest premised on violation of an ordinance that was later struck down as unconstitutionally vague. Id. at 37-40. In Illinois v. Krull, 480 U.S. 340 (1987), the Court upheld the admission of evidence obtained pursuant to a state law permitting officers to search the premises of car dealerships without a warrant, which was later invalidated as “vest[ing] State officials with too much discretion to decide who, when, and how long to search.” Id. at 346. In each instance, the Court emphasized that the deterrence rationale for the exclusionary rule is not served when officers reasonably rely on legislation; exclusion would only be proper when a statute is “so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws.” DeFillippo, 443 U.S. at 38; see also Krull, 480 U.S. at 355 (explaining that an officer cannot “be said to have acted in good-faith reliance upon a statute if its provisions are such that a reasonable officer should have known that the statute was unconstitutional”). Professor
Amendment procedural doctrine, where the constitutional reasonableness of officer behavior, and possible application of the good-faith exception to the exclusionary rule, is assessed by comparing the conduct to court-made standards. Courts generally excuse both types of police mistakes of constitutional law.

This Recent Development concerns police mistakes of statutory law, where officers misunderstand the statutes or ordinances invoked as grounds for an investigatory stop or arrest. In this sphere, courts traditionally have been far less forgiving. Historically, these mistakes of law, even if premised on objectively reasonable misunderstandings, triggered tort liability. The more recent remedy has been application of the exclusionary rule, whereby evidence obtained pursuant to an unlawful search or seizure may not be introduced at trial to convict the accused. In the context of traffic stops, examples of officers’ mistakes of law include erroneous interpretations of vehicle safety requirements, license tag and registration regulations, and regulations of driving conduct. As

Marceau similarly describes these mistakes as “changing-settled-law mistakes,” where “an officer specifically relies on legal authority . . . but subsequent to his actions a court substantially changes the nature of the protection such that his actions were constitutional at the time of the arrest but are unconstitutional under the new precedent.” Justin F. Marceau, *The Fourth Amendment at a Three-Way Stop*, 62 ALA. L. REV. 687, 744 (2011).

32. Logan, supra note 31, at 77; cf. Marceau, supra note 31, at 745 (characterizing this type of mistake as “when an officer relies on then-prevailing interpretations of the Fourth Amendment and this interpretation is deemed unconstitutional by a subsequent case”). Professor Logan points to the Supreme Court’s decision in *Stoner v. California*, 376 U.S. 483 (1964), as illustrative of this area. See Logan, supra note 31, at 77. In *Stoner*, the Court cited earlier cases invalidating searches of hotel rooms by federal agents in holding unconstitutional a warrantless search of the defendant’s hotel room. See *Stoner*, 376 U.S. at 489.

33. See Logan, supra note 31, at 78; Marceau, supra note 31, at 744–45.

34. See, e.g., United States v. Song Ja Cha, 597 F.3d 995, 1005 (9th Cir. 2010) (describing how the failure of law enforcement to ascertain key Fourth Amendment restraints “demonstrates why mistakes of law can and should be deterred”); Malcomson v. Scott, 23 N.W. 166, 168 (Mich. 1885) (“An officer of justice is bound to know what the law is, and if the facts on which he proceeds, if true, would not justify action under the law, he is a wrong-doer.”).

35. See 1 RESTATEMENT (SECOND) OF TORTS § 121 cmt. i (1965) (“[N]o protection is given to a peace officer who, however reasonably, acts under a mistake of law other than a mistake as to the [constitutional] validity of a statute or ordinance.”).


38. See, e.g., United States v. Booker, 496 F.3d 717, 719 (D.C. Cir. 2007) (license tags), vacated on other grounds, 556 U.S. 1218 (2009); United States v. Lopez-Soto, 205 F.3d 1101, 1102 (9th Cir. 2000) (registration stickers).
further discussed in Part III, courts have typically followed one of three approaches in determining whether an officer's mistake of substantive law can provide the necessary reasonable suspicion to justify a traffic stop.\textsuperscript{40} With this legal framework in mind, the Supreme Court of North Carolina got behind the wheel to test out and decide upon its preferred route.

II. \textit{STATE v. HEIEN}

A. \textit{Facts and Procedural History}

On the morning of April 29, 2009, Sergeant Matt Darisse of the Surry County Sheriff's Office was "conducting criminal interdiction"\textsuperscript{41} on Interstate 77.\textsuperscript{42} He noticed a Ford Escort approach a slower-moving vehicle, causing the driver of the Escort to apply the car's brakes.\textsuperscript{43} When the brakes were engaged, Sergeant Darisse noticed that the right rear brake light did not illuminate, so he initiated a traffic stop of the Escort, suspecting an equipment violation.\textsuperscript{44} Upon reaching the vehicle, Sergeant Darisse informed the driver, Maynor Javier Vasquez, that he had pulled the Escort over "for a non-functioning brake light."\textsuperscript{45} The defendant, Nicholas Brady Heien, was the vehicle's owner and its only passenger.\textsuperscript{46} When Vasquez was slow to produce his driver's license and registration upon request and showed signs of nervousness during the exchange, Sergeant Darisse asked Vasquez to exit the vehicle and wait behind it while Sergeant


\textsuperscript{40} See infra Part III.


\textsuperscript{42} \textit{Heien COA I}, 214 N.C. App. at 515, 714 S.E.2d at 827–28.


\textsuperscript{44} Id.

\textsuperscript{45} Id.

\textsuperscript{46} See id.
Darisse verified the documents. Sergeant Darisse then wrote Vasquez a ticket for an improperly functioning brake light and returned his license and registration.

Meanwhile, Deputy Mark Ward, also of the Surry County Sheriff's Office, arrived to assist Sergeant Darisse. Deputy Ward briefly questioned Heien concerning the party's travel plans, and Heien indicated that they were driving to Kentucky. Vasquez had previously told Sergeant Darisse that he and Heien were headed to West Virginia. When Vasquez acquiesced to additional questioning after his documents were returned, Sergeant Darisse asked Heien for permission to search the Escort. Heien consented to the search, which revealed cocaine and other drug paraphernalia.

At trial, Heien moved to suppress the cocaine obtained from what he alleged to be an unconstitutional search of the Escort. After the trial court denied the motion, Heien pled guilty to attempted trafficking of cocaine, though he reserved the right to appeal the denial of his motion to suppress.

On appeal, after a lengthy discourse in statutory interpretation, the North Carolina Court of

No person shall sell or operate on the highways of the State any motor vehicle, motorcycle or motor-driven cycle ... unless it shall be equipped with a stop lamp on the rear of the vehicle. The stop lamp shall display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamp may be incorporated into a unit with one or more other rear lamps.
Appeals concluded that “having a single operable brake light is legally sufficient.” Then, without even addressing whether the officer’s mistake of law was excusable, that court unanimously held “that a vehicle having only one operable brake light is not a valid justification for a traffic stop.” The Supreme Court of North Carolina granted the State’s petition for discretionary review to hear the case.

B. Supreme Court of North Carolina Majority Opinion

The only issue appealed to the Supreme Court of North Carolina was “whether an officer’s mistake of law may ... give rise to reasonable suspicion to conduct a routine traffic stop.” The court pointed out that this issue was one of first impression and identified State v. Barnard as being instructive in its resolution. In Barnard, an officer observed a vehicle remain stopped at a traffic light for approximately thirty seconds after the light turned green before

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N.C. GEN. STAT. § 20-129(g) (2013) (emphasis added). Second, subsections 20-129(a) and (d) provide, in pertinent part:

(a) When Vehicles Must Be Equipped.—Every vehicle upon a highway within this State shall be equipped with lighted ... rear lamps as required for different classes of vehicles. ... 

... 

(d) Rear Lamps.—Every motor vehicle ... shall have all originally equipped rear lamps or the equivalent in good working order, which lamps shall exhibit a red light plainly visible under normal atmospheric conditions from a distance of 500 feet to the rear of such vehicle.

Id. § 20-129(a), (d). Third, section 20-183.3 provides, in pertinent part:

(a) Safety.—A safety inspection of a motor vehicle consists of an inspection of the following equipment to determine if the vehicle has the equipment required by Part 9 of Article 3 of this Chapter and if the equipment is in a safe operating condition:

... 

(2) Lights, as required by G.S. 20-129 or G.S. 20-129.1.

Id. § 20-183.3(a)(2).

58. Heien COA I, 214 N.C. App. at 522, 714 S.E.2d at 831. The panel also urged the General Assembly to update the antiquated statutory language. See id.

59. Id.


61. Id. The State did not challenge the intermediate court’s statutory interpretation. See id.


63. Heien, 366 N.C. at 275, 737 S.E.2d at 354.
making a lawful left turn. The officer then stopped the vehicle for “a perceived, though apparently non-existent, statutory violation of impeding traffic,” though he also testified that remaining stopped at a traffic light for thirty seconds after it turned green “definitely would be an indicator of impairment.” The Barnard court then cited Whren v. United States and State v. McClendon for the proposition that the “constitutionality of a traffic stop depends on the objective facts, not the officer’s subjective motivation,” and held that an officer’s mistake of law will not render invalid a stop otherwise supported by reasonable suspicion to believe an actual law had been broken. The Heien majority summarized its reading of Barnard: “[A]n officer’s subjective mistake of law will not cause the traffic stop to be unreasonable when the totality of the circumstances indicates that there is reasonable suspicion that the person stopped is violating some other, actual law.”

Next, the Heien majority introduced the two most common answers to the officer mistake-of-law question that various state and federal courts have offered. In one corner, represented by the Eleventh Circuit’s decision in Chanthasouxat, are the courts that hold that a police officer’s mistake of law, no matter how reasonable, cannot provide reasonable suspicion necessary to sustain a traffic stop. In the other corner, exemplified by the Eighth Circuit’s opinion in Martin, are the courts that hold that reasonable suspicion is still satisfied despite an officer’s mistake of law, as long as the mistake is objectively reasonable.

64. Barnard, 362 N.C. at 245, 658 S.E.2d at 644.
65. Id. at 248, 658 S.E.2d at 645. Notably, the North Carolina Court of Appeals in State v. Roberson, 163 N.C. App. 129, 592 S.E.2d 733 (2004), held that an eight- to ten-second delay does not give rise to reasonable suspicion that a person is driving under the influence of alcohol. Id. at 134–35, 592 S.E.2d at 737. Courts in other jurisdictions have also considered the issue whether such delayed reactions may give rise to the required level of suspicion. See Barnard, 362 N.C. at 257–58, 658 S.E.2d at 651–52 (Brady, J., dissenting) (citing cases from Idaho, Illinois, Minnesota, Nebraska, and New Jersey); Roberson, 163 N.C. App. at 133–34, 592 S.E.2d at 736–37 (citing cases from Idaho, Minnesota, and New Jersey).
66. Barnard, 362 N.C. at 247, 658 S.E.2d at 645 (majority opinion).
71. See United States v. Chanthasouxat, 342 F.3d 1271, 1279 (11th Cir. 2003); see also infra note 85 (listing courts that follow the Chanthasouxat rule).
72. See United States v. Martin, 411 F.3d 998, 1001–02 (8th Cir. 2005); see also infra note 85 (listing courts that follow the Martin rule).
The majority adopted the Martin approach, finding "the Eighth Circuit's reasoning to be more compelling," and offered several legal and policy-based justifications in support. First, the rationale behind the rule "seem[ed] . . . to be consistent with the primary command of the Fourth Amendment—that law enforcement agents act reasonably." Second, the majority emphasized that "the reasonable suspicion standard does not require an officer actually to witness a violation of the law before making a stop." Third, and related to the second reason, the majority argued its rule was more consistent with the rationale behind the reasonable suspicion doctrine itself: "['R]easonable suspicion' is a 'commonsense, nontechnical conception[] that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" Fourth, the majority reasoned that its approach upholds the traditional case-by-case, "totality of the circumstances" test applied when determining the existence of reasonable suspicion, which, by its very nature, rejects bright-line rules such as that proposed by the Eleventh Circuit in Chanthasoukxat.

As for its more policy-based justifications, the Heien majority argued that a contrary approach would "discourage our police officers from conducting stops for perceived traffic violations" and thus jeopardize roadway safety. Finally, the majority contended that its approach allows appellate courts to regard all police mistakes the same, thereby facilitating law enforcement and judicial efficiency. Thus, applying its rule to the facts at hand, and upon consideration of the totality of the circumstances, the majority concluded that Sergeant Darisse held a "reasonable, articulable suspicion to conduct the traffic stop."

73. Heien, 366 N.C. at 278, 737 S.E.2d at 356.
74. Id. (citing Delaware v. Prouse, 440 U.S. 648, 653–54 (1979) ("The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order 'to safeguard the privacy and security of individuals against arbitrary invasions ....'")); see also Martin, 411 F.3d at 1001 ("[T]he validity of a stop depends on whether the officer's actions were objectively reasonable in the circumstances." (citation omitted)).
75. Heien, 366 N.C. at 279, 737 S.E.2d at 356.
76. Id. at 280, 737 S.E.2d at 357 (quoting Ornelas v. United States, 517 U.S. 690, 695 (1996)) (alterations in original).
77. Id. at 281, 737 S.E.2d at 358.
78. Id. at 279, 737 S.E.2d at 357.
79. See id. at 282, 737 S.E.2d at 358.
80. Id. at 283, 737 S.E.2d at 359.
C. Supreme Court of North Carolina Dissent

Given the highly contentious nature of Fourth Amendment jurisprudence generally, and the hard-drawn battle lines between the Martin and Chanthasouxat approaches to officers' mistakes of law, Heien unsurprisingly drew a passionate three-justice dissent. Justice Hudson, writing for the dissent, identified a single sentence from the majority opinion as representative of its flaws: "Police officers should be entitled to interpret our motor vehicle laws reasonably when conducting routine traffic stops." Justice Hudson lamented this introduction of "subjectivity and vagueness" into Fourth Amendment analysis and effective overruling of prior precedent. She warned against the creation of a statutory interpretation role for law enforcement and its slippery slope and separation of powers implications. Justice Hudson also pointed out the overwhelming acceptance of the Chanthasouxat approach among other courts, arguing that "[w]hile using an imprecise tool like circuit-counting to justify a position should be done with care, the overwhelming acceptance of the position directly opposite that taken by the majority" was cause for concern.

81. See Craig M. Bradley, Two Models of the Fourth Amendment, 83 MICH. L. REV. 1468, 1468 (1985) (characterizing Fourth Amendment jurisprudence as "a mass of contradictions and obscurities").
82. Heien, 366 N.C. at 280, 737 S.E.2d at 357 (Hudson, J., dissenting).
83. See id. at 283–84, 737 S.E.2d at 359–60; see also infra Part IV.A (discussing the majority's misapplication of North Carolina precedent).
84. Heien, 366 N.C. at 284, 737 S.E.2d at 359–60. Justice Hudson also cited Barnard, though relying on that case for the proposition that officer subjectivity is irrelevant to the reasonableness inquiry, which instead depends only on objective facts. See id. at 285, 737 S.E.2d at 360 (citing State v. Barnard, 362 N.C. 244, 248, 658 S.E.2d 643, 645–46 (2008)). Justice Hudson later warned that the majority "has now opened a Pandora's box by approving of the use of evidence obtained solely because of a traffic stop based upon an officer's mistake of law." Id. at 284, 737 S.E.2d at 360.
85. Id. at 285–86, 737 S.E.2d at 360–61. Justice Hudson identified seven federal circuits that take some form of the Chanthasouxat approach. See id. at 286, 737 S.E.2d at 361 (citing United States v. Coplin, 463 F.3d 96, 101 (1st Cir. 2006); United States v. Mosley, 454 F.3d 249, 260 n.16 (3d Cir. 2006); United States v. McDonald, 453 F.3d 958, 961 (7th Cir. 2006); United States v. Tibbetts, 396 F.3d 1132, 1138 (10th Cir. 2005) ("[F]ailure to understand the law by the very person charged with enforcing it is not objectively reasonable."); United States v. Lopez-Soto, 205 F.3d 1101, 1106 (9th Cir. 2000); United States v. Miller, 146 F.3d 274, 279 (5th Cir. 1998)); infra Part III.B (discussing Chanthasouxat). Additionally, Justice Hudson observed that district courts in the Second Circuit also follow Chanthasouxat, see, e.g., United States v. Williams, No. 11 Cr. 228, 2011 WL 5843475, at *5 (S.D.N.Y. Nov. 21, 2011), while the Fourth and Sixth Circuits have yet to directly address the issue, see United States v. Jones, 479 F. App'x 705, 712 (6th Cir. 2012) ("This court has not yet answered whether an officer's objectively reasonable mistake of law can establish reasonable suspicion for a search or seizure."); United States v. McHugh, 349 F. App'x 824, 828 n.3 (4th Cir. 2009) ("[W]e assume,
In contrast to the majority, the *Heien* dissent favored adoption of the *Chanthasouxat* approach, albeit somewhat tacitly. Thus, the justices aligned themselves along the traditional battle lines, with the alternative *Booker* approach mentioned only in a footnote in Justice Hudson’s dissenting opinion. With this introduction to the primary methodologies employed by courts in resolving the police mistake of law issue, it is appropriate to delve more deeply into the circuit split and begin discussion of the *Booker* approach.

III. THE CIRCUIT SPLIT

A. The Eighth Circuit Approach: United States v. Martin

The Eighth Circuit and a few state courts have held that the Fourth Amendment allows a law enforcement officer to conduct a seizure based on a reasonable mistake of statutory law. *United States v. Martin* exemplifies this approach. The facts of the case mirror those of *Heien*: officers stopped a vehicle based on the mistaken belief that the law required two functioning brake lights. Without deciding, that an officer’s reasonable mistake of law may not provide the objective grounds for reasonable suspicion to justify a traffic stop. The D.C. Circuit follows a more intermediate approach. See *United States v. Booker*, 496 F.3d 717, 722 (D.C. Cir. 2007), *vacated on other grounds*, 556 U.S. 1218 (2009) (“A stop is lawful despite a mistake of law if an objectively valid basis for the stop nonetheless exists.”); *infra* Part III.C (discussing *Booker*). The Eighth Circuit is alone among the federal courts in excusing an officer’s reasonable mistake of law. See *United States v. Martin*, 411 F.3d 998, 1001-02 (8th Cir. 2005) (holding that the police officer’s mistaken belief that the law required two functioning brake lights was not objectively unreasonable); *infra* Part III.A (discussing *Martin*). As for state courts, California, Delaware, the District of Columbia, Florida, Iowa, Minnesota, Missouri, and New York apply the *Chanthasouxat* approach. See *People v. White*, 132 Cal. Rptr. 2d 371, 372, 375 (Cal. Ct. App. 2003); *McDonald v. State*, 947 A.2d 1073, 1079 (Del. 2008); *United States v. Debruhl*, 38 A.3d 293, 293 (D.C. 2012); *Gordon v. State*, 901 So. 2d 399, 405 (Fla. Dist. Ct. App. 2005); *State v. Louwrens*, 792 N.W.2d 649, 649 (Iowa 2010); *State v. Anderson*, 683 N.W.2d 818, 819 (Minn. 2004) (en banc); *State v. Roark*, 229 S.W.3d 216, 222 (Mo. 2007); *People v. Rose*, 889 N.Y.S.2d 789, 790 (N.Y. App. Div. 2009). Meanwhile, Georgia, Mississippi, Ohio, and South Dakota follow the *Martin* approach. See *McConnell v. State*, 374 S.E.2d 111, 113 (Ga. Ct. App. 1988); *Moore v. State*, 2005-CT-02063-SCT (¶ 21), 986 So. 2d 928, 935 (Miss. 2008); *City of Wilmington v. Conner*, 761 N.E.2d 663, 664 (Ohio Ct. App. 2001); *State v. Wright*, 2010 SD 91, ¶ 1, 791 N.W.2d 791, 792 (S.D. 2010).

86. See *Heien*, 366 N.C. at 286 n.1, 737 S.E.2d at 361 n.1 (Hudson, J., dissenting).
87. See supra note 85.
88. See, e.g., *Martin*, 411 F.3d at 1001-02. Some courts draw a distinction when officers invoke mistaken interpretations of the laws of other jurisdictions as justifications for traffic stops. See, e.g., *Travis v. State*, 959 S.W.2d 32, 34-35 (Ark. 1998) (condoning a stop based on an Arkansas deputy’s “reasonab[le], albeit erroneous[]” belief regarding Texas law); *People v. Glick*, 250 Cal. Rptr. 315, 319 (Cal. Ct. App. 1988) (excusing a California officer’s mistaken interpretation of the New Jersey Vehicle Code, since it “is not something the officer is reasonably expected to know or has an opportunity to routinely enforce”).
the jurisdiction's traffic code required two working brake lights, when in fact "the Code require[d] only that [a] vehicle be equipped with a stop light in good working order." The Martin court quickly clarified its view of the issue: "The determinative question is not whether Martin actually violated the Motor Vehicle Code by operating a vehicle with one defective brake light, but whether an objectively reasonable police officer could have formed a reasonable suspicion that Martin was committing a code violation." The court determined that the mistake was objectively reasonable, and therefore upheld the stop.

Courts have offered several reasons for excusing reasonable mistakes of law by police officers. The primary rationale is found in the wording of the Fourth Amendment itself—that the people should be protected from unreasonable warrantless searches and seizures. When applicable portions of a jurisdiction's traffic code are "counterintuitive and confusing," it seems appropriate to forgive objectively reasonable misinterpretations. Similarly, the U.S. Supreme Court has stressed that assessments of the reasonable

89. Martin, 411 F.3d at 1001 (internal quotation marks omitted). The provision at issue reads, in pertinent part:

It shall be unlawful for any person to drive or cause to knowingly permit to be driven on any public road any motor vehicle which is in such unsafe condition so as to endanger any person or is not at all times equipped with the following:

... (3) STOP LIGHTS: All motor vehicles shall be equipped with a stop light in good working order at all times. Such stop lights to be automatically controlled by brake adjustment.

Id. at 1000–01 (citation omitted).

90. Id. at 1001.

91. Id. at 1002. For an example of an unreasonable mistaken interpretation of a statute, see United States v. Washington, 455 F.3d 824, 828 (8th Cir. 2006) (rejecting the argument for reasonableness of mistaken statutory interpretation where there was no evidence that the officer received training to make stops for cracked windshields, and where officer's mistake of law was "unmoored from actual legal authority").

92. See U.S. CONST. amend. IV.

93. Martin, 411 F.3d at 1001 (8th Cir. 2005); see also Atwater v. City of Lago Vista, 532 U.S. 318, 348 (2001) ("[W]e cannot expect every police officer to know the details of frequently complex penalty schemes . . ."); United States v. Sanders, 196 F.3d 910, 913 (8th Cir. 1999) ("[A reviewing court] should not expect state highway patrolmen to interpret the traffic laws with the subtlety and expertise of a criminal defense attorney."); Logan, supra note 31, at 83 ("The expectation that the law is ‘definite and knowable’ is no more tenable for police today than it is for the lay public." (citations omitted)); Wayne A. Logan, The Shadow Criminal Law of Municipal Governance, 62 OHIO ST. L.J. 1409, 1443–45 (2001) (surveying the recent proliferation of state, local, and federal criminal provisions).
suspicion and probable cause standards are to be "nontechnical, common-sense judgments of laymen."\textsuperscript{94} Courts wish to avoid such a high standard for fear of creating a "systematic disincentive to arrest."\textsuperscript{95}

In the same vein, justification for excusing mistakes of law aligns with the Court's recent decision in \textit{Herring v. United States}.\textsuperscript{96} In that case, the majority held 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.'"\textsuperscript{97} While the officer's mistake in \textit{Herring} would be better characterized as one of fact—reliance on a faulty arrest warrant—the analogy still holds. If a court were to suppress evidence obtained as a result of a reasonable mistake of law, where "negligence . . . rather than systemic error or reckless disregard of constitutional requirements" may be a factor in the reasonableness inquiry, any additional deterrence would be de minimis.\textsuperscript{98}

Similarly, another court has argued that "[i]t makes no sense to speak of deterring police officers who acted in the good-faith belief that their conduct was legal by suppressing evidence derived from such actions unless we somehow wish to deter them from acting at all."\textsuperscript{99} Finally, there is an "appealing symmetry" in applying the rationale behind the qualified immunity doctrine in this context as well.\textsuperscript{100} Thus, the Eighth Circuit approach is buttressed by some degree of legal underpinning. However, shortcomings remain—the

\begin{itemize}
  \item \textsuperscript{95} \textit{Atwater}, 532 U.S. at 351.
  \item \textsuperscript{96} 555 U.S. 135 (2009). In \textit{Herring}, the officer contacted a county clerk to determine whether there were any outstanding warrants against Herring. \textit{Id.} at 137. Finding nothing in the records available to her, the clerk consulted her peer in a neighboring county, who reported that her records showed that there was an active arrest warrant against Herring for failure to appear. \textit{Id.} In reliance on this representation, the officer stopped Herring and arrested him. \textit{Id.} However, there had "been a mistake about the warrant"—it had been recalled months earlier, but the database the clerk checked had not been updated to reflect that fact. \textit{Id.} at 137-38.
  \item \textsuperscript{97} \textit{Id.} at 147-48 (quoting United States v. Leon, 468 U.S. 897, 907-08 n.6 (1984)).
  \item \textsuperscript{98} \textit{Id.; cf. United States v. Calandra}, 414 U.S. 338, 348 (1974) ("As with any remedial device, the application of the [exclusionary] rule has been restricted to those areas where its remedial objectives are thought most efficaciously served.").
  \item \textsuperscript{99} United States v. Williams, 622 F.2d 830, 842 (5th Cir. 1980) (en banc) (per curiam).
  \item \textsuperscript{100} Logan, \textit{supra} note 31, at 89. The doctrine of qualified immunity shields police from personal financial liability in subsequent federal civil rights suits where officers "have reasonable, but mistaken, beliefs as to the facts establishing the existence of probable cause or exigent circumstances." \textit{Saucier v. Katz}, 533 U.S. 194, 206 (2001), \textit{rev'd on other grounds}, Pearson v. Callahan, 555 U.S. 223 (2009).
\end{itemize}
rule allows too much officer leeway at the expense of individual liberties.

B. The Majority Approach: United States v. Chanthasouxat

The Eleventh Circuit and a significant majority of its sister circuits, as well as several state courts, take the opposite approach. These courts have held that an officer's "mistake of law cannot provide the [requisite] objective basis for reasonable suspicion or probable cause," thus invalidating a search or seizure premised on those grounds.

The Eleventh Circuit's discussion in United States v. Chanthasouxat provides a useful model for this approach. There, an officer stopped the defendant's van for failure to have a rear-view mirror, erroneously believing that omission to be a violation of a city ordinance. The Chanthasouxat court prefaced its analysis by describing the distinction between mistakes of fact and mistakes of law, then justified the different legal implications depending on the type of mistake. The court next characterized the precise issue before it somewhat differently than did the Martin court: "[T]he correct question is whether a mistake of law, no matter how reasonable or understandable, can provide the objectively reasonable grounds for reasonable suspicion or probable cause." Answering that question, the court held that an officer's mistake of law cannot afford reasonable suspicion or probable cause to validate a traffic stop.

Building from the Eleventh Circuit's opinion in Chanthasouxat, there are a number of persuasive justifications for categorically invalidating stops premised on an officer's mistake of law, regardless of the mistake's objective reasonableness or the officer's good faith.

101. See supra note 85.
102. United States v. Chanthasouxat, 342 F.3d 1271, 1280 (11th Cir. 2003).
103. See id. at 1273–74. The ordinance in question required only that a driver be able to "obtain[] a view of the street to the rear by looking backward from the driver's position" or have "a mirror so located as to reflect to the driver a view of the streets for a distance of at least 200 feet of the rear of the vehicle." Id. at 1274 (quoting BIRMINGHAM, ALA. GEN. CITY CODE § 10-11-5).
104. See id. at 1276–77; see also supra Part I.B (discussing the distinction).
105. See Chanthasouxat, 342 F.3d at 1276–78.
106. Id. at 1279. The court openly conceded that the officer's mistake was reasonable. Id. The officer testified at trial that he stopped the defendant's vehicle "based on his training, [a] magistrate's interpretation of the statute [that failure to have an inside rear-view mirror violated the statute], and the fact that he had written over 100 tickets for the same violation." Id. at 1274.
107. Id. at 1279.
These rationales may be broadly categorized as policy reasons and law enforcement reasons.

At bottom, the argument goes, excusing officers' mistakes of law undermines basic rule-of-law principles. That approach, its opponents contend, "violate[s] the fundamental principle that a criminal statute that is so vague that it does not give reasonable notice of what it prohibits violates due process." Those who reject the Martin approach also feel that it violates the fundamental separation of powers doctrine: "The job of the police is to enforce the law as it has been written by the legislature and interpreted by the courts." In addition, supporters of the Chanthasouxat approach assert that legislatures should be held accountable for their vague laws rather than penalizing citizens for their shortcomings in statutory drafting.

Opponents of the Martin methodology are also wary of its effects on law enforcement and the constraints of the Fourth Amendment. Their most basic argument is that officers should know the law, and thus not knowing the law is per se unreasonable. There is also the

108. Logan, supra note 31, at 90; see also JEROME H. SKOLNICK, JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY 233 (3d ed. 1994) ("[P]olice in a democracy are not merely bureaucrats. They are also ... legal officials, that is, people belonging to an institution charged with strengthening the rule of law in society.").

109. Chanthasouxat, 342 F.3d at 1278–79; see also United States v. Miller, 146 F.3d 274, 278 (5th Cir. 1998) ("It should go without saying that penal statutes are to be strictly construed."). The Chanthasouxat court subsequently noted that, while traffic ordinances are generally not criminal statutes, it still refused to use their vagueness against a defendant. Chanthasouxat, 342 F.3d at 1279. This argument carries particular weight in this context, where arguably pretextual stops based on vague statutes often lead to searches revealing criminal activity. Additionally, basic fairness dictates that those who enforce the law should be held to a higher standard than normal citizens, who are penalized for their mistakes of law. See Logan, supra note 31, at 90–95 (arguing that excusing even reasonable police mistakes of law is a disservice to basic rule-of-law values).

110. State v. Heien, 366 N.C. 271, 288, 737 S.E.2d 351, 362 (Hudson, J., dissenting); see also Logan, supra note 31, at 95–101 (discussing the separation-of-powers rationale). But see Daniel N. Haas, Comment, Must Officers Be Perfect?: Mistakes of Law and Mistakes of Fact During Traffic Stops, 62 DEPAUL L. REV. 1035, 1051 (2013) ("[C]ourts that allow mistakes of law have not abdicated this power [to check officers of the executive branch] and continue to review the officer's actions for reasonableness.").

111. See Heien, 366 N.C. at 288, 737 S.E.2d at 362. Similarly, Professor Logan argues that the judiciary plays an important role in this context of "lawless seizures" as a check on the "natural alliance" between the executive and legislative branches in crime-control policy. See Logan, supra note 31, at 101.

112. See Marceau, supra note 31, at 743 ("It is a hallmark of substantive criminal law that ignorance of the law is no defense. The rationale most commonly advanced for this seemingly harsh result is that the refusal to reward ignorance is necessary 'so that the proper standard of conduct will be learned and respected by others.' " (quoting Robert L. Misner, Limiting Leon: A Mistake of Law Analogy, 77 J. CRIM. L. & CRIMINOLOGY 507, 509 (1986))); see also Logan, supra note 31, at 91 ("Reciprocal expectations of law-abidingness between government and citizens can scarcely be expected to endure if one
fear that allowing officers to make stops based on mistakes of law will provide them with wide latitude to abuse their authority and may unintentionally discourage officers from diligently learning the law. Opponents argue that the Martin approach inappropriately injects subjectivity into the Fourth Amendment objective reasonableness analysis. Finally, Chanthasouxat supporters fear that the Martin rule represents "the functional equivalent of a 'good faith exception' for stops conducted in contravention of the law," which courts have consistently rejected. Thus, strong legal and practical backing exists for the Chanthasouxat rule. However, this approach also suffers from a deficiency—its categorical invalidation of stops based on mistakes of law is too restrictive of legitimate law enforcement activity.


In addition to the Chanthasouxat and Martin approaches to the constitutionality of seizures based on officers' mistakes of law, there exists a third view on the issue. Characterized in a footnote in Justice Hudson's Heien dissent as "a middle-of-the-road approach," the D.C. Circuit in United States v. Booker held that "[a] stop is lawful despite a mistake of law . . . if an objectively valid basis for the stop party—the government—need not uphold its end of the bargain." (footnotes omitted)); cf. State v. Burke, 212 N.C. App. 654, 659, 712 S.E.2d 704, 707 (2011) ("It is not unreasonable to expect law enforcement officers to be familiar with the laws they are charged to enforce."). But see Haas, supra note 110, at 1047 (characterizing the argument as "weak given the complexity of laws across the states").

113. See United States v. Lopez-Valdez, 178 F.3d 282, 289 (5th Cir. 1999) ("[I]f officers are allowed to stop vehicles based upon their subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred, the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive."). But see Haas, supra note 110, at 1051 (downplaying the argument, since the mistaken officer must show that the error was reasonable).

114. See id. at 284, 737 S.E.2d at 360 (citing Ornelas v. United States, 517 U.S. 690, 696-97 (1996) ([T]he issue is whether the facts satisfy the [relevant] statutory [or constitutional] standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.) (alterations in original))).

115. See id. at 286, 737 S.E.2d at 361; see also United States v. Lopez-Soto, 205 F.3d 1101, 1106 (9th Cir. 2000) ("To create an exception here would defeat the purpose of the exclusionary rule, for it would remove the incentive for police to make certain that they properly understand the law that they are entrusted to enforce and obey."). But see Davis v. United States, 131 S. Ct. 2419, 2428-29 (2011) (holding that when officers conduct a search in good-faith reliance on binding appellate precedent, the exclusionary rule does not apply since excluding evidence in such cases deters no police misconduct and imposes substantial social costs).


117. 496 F.3d 717 (D.C. Cir. 2007), vacated on other grounds, 556 U.S. 1218 (2009).
... exists” despite an officer’s reasonable, good-faith mistake. This methodology is superior: it preserves both Fourth Amendment protections and law enforcement practicalities and is the most consistent with existing North Carolina precedent.

In Booker, three police officers passed the defendant’s vehicle as they were traveling in the opposite direction in their unmarked car. Observing that the vehicle’s front license tag seemed to be displayed improperly, the officers elected to conduct a traffic stop. After making a U-turn, the officers finally caught up to Booker’s vehicle, finding it parked and its occupants disembarking. The officers alighted from their vehicle and identified themselves. The passenger fled and was not apprehended, though the officers handcuffed the driver, Booker, and detained him while they secured the scene. When Booker informed the officers that he did not have a driver’s license, they arrested him, conducted a search of the vehicle, and recovered contraband. The trial court found that, while a dealership’s license plate was in fact properly affixed to the rear of the defendant’s vehicle, and thus in compliance with a specific ordinance regarding dealer’s tags, the vehicle’s front tag was improperly affixed beneath the windshield.

The appellate court began its analysis by stating the majority rule: “[S]tops premised on a mistake of law, even a reasonable, good-faith mistake, are generally held to be unconstitutional.” The court then qualified the majority rule by excusing such a mistake if a

119. Id. at 722.
120. See infra Part IV.A.
121. Booker, 496 F.3d at 719.
122. See id.
123. See id.
124. See id.
125. See id.
127. See Booker, 496 F.3d at 719.
128. The pertinent regulation provides: “Motorized . . . vehicles identified by a dealer’s tag . . . shall display only one (1) valid identification tag on the rear of the vehicle.” D.C. MUN. REGS. tit. 18, § 422.2 (2007) (emphasis added).
129. See Booker, 496 F.3d at 723. Another D.C. regulation requires “[o]wner’s identification tags” to be “securely fastened.” § 422.4 (mandating that tags be fastened in a clearly visible place and position and “not less than twelve inches (12 in.) from the ground”).
130. Booker, 496 F.3d at 722 (citing United States v. Coplin, 463 F.3d 96, 101 (1st Cir. 2006)).
distinct, objectively valid reason for the stop exists nonetheless.\textsuperscript{131} Applying this rule to the facts at hand, the court forgave the officers' mistake of law and upheld the seizure on two grounds.\textsuperscript{132} First, the court concluded that the officers had an objectively reasonable perception of a front license tag violation.\textsuperscript{133} Then, the court determined that the officers reasonably failed to see the rear dealer's tag because they were distracted by the vehicle's fleeing occupants and "were not close enough" to see the rear tag.\textsuperscript{134} Therefore, the officers made an objectively reasonable mistake of fact.\textsuperscript{135} Had the physical facts accurately reflected the officers' perceptions (that is, had there actually not been a properly affixed dealer's tag on the rear of the vehicle), there would have been an independent and readily observable statutory violation.\textsuperscript{136} The court summarized its conclusion: "[A]lthough Booker had not violated any law regarding the display of tags, the officers reasonably thought initially that he

\textsuperscript{131} See id. (citing United States v. Southerland, 486 F.3d 1355 (D.C. Cir. 2007)). In Southerland, officers stopped the defendant's vehicle upon observing that its front license plate had been placed on the dashboard, which they believed violated Maryland traffic control laws. See United States v. Southerland, 486 F.3d 1355, 1357 (D.C. Cir. 2007). In fact, while Maryland law does not require that front license plates be affixed to the bumper, it does mandate that vehicles have license plates that are "[s]ecurely fastened" and "clearly visible." Id. at 1359 (quoting MD. CODE ANN., TRANSP. § 13-411(a), (c) (LexisNexis 2007)). The court found "it objectively reasonable for the officers to suspect that Southerland's dashboard plate was in violation of Maryland law, even assuming they were mistaken that the law required display of the front plate on the bumper." Id.; see also United States v. Delfin-Colina, 464 F.3d 392, 399 (3d Cir. 2006) ("In situations where an objective review of the record evidence establishes reasonable grounds to conclude that the stopped individual has in fact violated the traffic-code provision cited by the officer, the stop is constitutional even if the officer is mistaken about the scope of activities actually proscribed by the cited traffic-code provision."); cf. Devenpeck v. Alford, 543 U.S. 146, 153 (2004) ("[The arresting officer's] subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause."); United States v. Bookhardt, 277 F.3d 558, 560 (D.C. Cir. 2002) (upholding an arrest where the original basis—driving with an expired license—was later determined invalid, but probable cause existed to arrest the defendant for a different offense readily apparent at the time of the stop—reckless driving).

\textsuperscript{132} See Booker, 496 F.3d at 724.

\textsuperscript{133} See id.

\textsuperscript{134} Id.

\textsuperscript{135} Id. Judge Rogers, dissenting, disagreed with the court's characterization of the officers' failure to see the rear dealer's plate: "[T]he record does not support the further conclusion that the officers' failure to notice the rear tag on Booker's car was objectively reasonable" since the officers "had ample opportunity, prior to stopping Booker, to determine whether there was a tag on the rear of Booker's car and failed to do so." Id. at 727 (Rogers, J., dissenting).

\textsuperscript{136} See id. at 724 (majority opinion).
had and then, again, reasonably failed to recognize that he had not," thus justifying the stop. 137

Unfortunately, the Booker court's conclusion seems to be premised on a roundabout application of the rule. After all, the court had to rely upon an officer's mistake of fact to trigger the requisite "independent, objectively reasonable" grounds for the stop. Still, the rule remains a good one, 138 as it is more representative of the ideal "reasonableness" balance required by the Fourth Amendment than either the Martin or Chanthasouxat approaches.

IV. WHY THE BOOKER APPROACH IS BEST AND WHY NORTH CAROLINA SHOULD ADOPT IT

A. Booker's Consistency with North Carolina Precedent

The Booker approach is more consistent with prior North Carolina case law than either the Martin or Chanthasouxat approaches, since it represents a proper "totality of the circumstances" inquiry. 139 That is, the majority in Heien misapplied the standard. An officer's subjective beliefs have no place in a Fourth Amendment analysis and therefore should not factor into the totality of the circumstances. 140 Rather, the standard should encompass the totality of the circumstances in the sense that another, objectively valid reason for the stop nonetheless exists. Application of the Booker rule would yield the same result in previous North Carolina cases whether the stop was found to be constitutional or was later determined to be unconstitutional.

First, both the majority and dissenting opinions in Heien cite to State v. Barnard in support of their arguments. 141 The Heien majority summarized the holding in Barnard: "[A]n officer's subjective mistake of law will not cause the traffic stop to be unreasonable when the totality of the circumstances indicates that there is reasonable

137. Id. at 725.
138. The rule has also been applied, though less explicitly, in other jurisdictions. See, e.g., United States v. Wallace, 213 F.3d 1216, 1217 (9th Cir. 2000) (affirming the validity of a stop based on the officer's mistaken belief that any tinting of the front windows of a vehicle violated the traffic code, when in actuality the defendant's tint exceeded the allowed tint).
139. See State v. Styles, 362 N.C. 412, 414, 665 S.E.2d 438, 440 (2008) (requiring the court to "consider the totality of the circumstances—the whole picture in determining whether a reasonable suspicion exists" (citations and internal quotation marks omitted)).
140. See Ornelas v. United States, 517 U.S. 690, 696 (1996) ("The principal components of a determination of reasonable suspicion or probable cause will be . . . viewed from the standpoint of an objectively reasonable police officer." (emphasis added)).
141. See supra notes 62-70, 84 and accompanying text.
suspicion that the person stopped is violating some other, actual law.\textsuperscript{142} This conclusion fits squarely with the \textit{Booker} rule. In \textit{Barnard}, the defendant was stopped for the nonexistent violation of impeding traffic flow.\textsuperscript{143} But, that same behavior also indicated to the officer, drawing on his experience and training, that the defendant was driving while impaired—an independent, actual violation, which thus gave rise to the requisite "reasonable suspicion" that the court later found to be objectively reasonable.\textsuperscript{144}

Second, the \textit{Booker} rule is also consistent with other North Carolina decisions in \textit{State v. Ivey}\textsuperscript{145} and \textit{State v. McLamb},\textsuperscript{146} in which the appellate court affirmed the exclusion of evidence obtained during stops based solely on officers' mistakes of law. In \textit{Ivey}, an officer stopped the defendant's vehicle when he made a right turn without signaling, which the officer thought qualified as "unsafe movement" under the traffic code.\textsuperscript{147} However, the layout of the intersection was such that the defendant could only turn right from where he was situated, and there were no other vehicles or pedestrians in the immediate vicinity.\textsuperscript{148} Thus, the defendant was not in violation of any law.\textsuperscript{149} As the State presented no other basis for reasonable suspicion or probable cause that the defendant had committed a traffic violation, the court found the stop unconstitutional.\textsuperscript{150}

\textsuperscript{144} See id. The two dissenting opinions in \textit{Barnard} vigorously disagreed with the majority's conclusion. See id. at 248, 658 S.E.2d at 646 (Brady, J., dissenting) ("Defendant's thirty second delay at a traffic intersection after the light turned green did not violate any law and, standing alone, could not have raised a reasonable, articulable suspicion that defendant was engaged in criminal activity."); id. at 261, 658 S.E.2d at 654 (Hudson, J., dissenting) ("Because impeding the flow of traffic is not a violation of law and because the thirty second delay is easily explained as innocent, I do not agree that under the totality of these circumstances, the officer here had reasonable suspicion to stop defendant's vehicle.").
\textsuperscript{146} 186 N.C. App. 124, 649 S.E.2d 902 (2007).
\textsuperscript{147} Ivey, 360 N.C. at 563, 633 S.E.2d at 460.
\textsuperscript{148} Id. at 565, 633 S.E.2d at 461–62. The officer’s vehicle was “some distance behind” the defendant’s. Id. at 565, 633 S.E.2d at 461.
\textsuperscript{149} Id. at 565, 633 S.E.2d at 461 ("[T]he duty to give a statutory signal of an intended turn does not arise in any event unless the operation of some other vehicle may be affected by such movement.").
\textsuperscript{150} See id. at 566, 633 S.E.2d at 462. Interestingly, the court made sure to point out that "driving while black" was not valid grounds for a stop. See id. at 564, 633 S.E.2d at 461. The court distinguished the facts of the instant case from those of \textit{Whren}, where
Similarly, in McLamb, a deputy observed the defendant’s vehicle round a curve in the road at approximately thirty miles per hour. 151 Believing the speed limit to be twenty miles per hour for that particular roadway, when in fact it was fifty-five miles per hour, the deputy stopped the vehicle on those grounds alone. 152 The trial court granted the defendant’s motion to suppress the evidence obtained as a result of the seizure, and the North Carolina Court of Appeals affirmed. 153 Citing Ivey and several of the cases following the Chanthasouxat approach, the appellate court determined that the deputy’s stop of the defendant’s vehicle for the mistaken speed limit violation was not objectively reasonable and was therefore unconstitutional. 154

Finally, the Booker rule is consistent with the North Carolina Court of Appeals’ decision in State v. Osterhoudt. 155 In Osterhoudt, the state highway patrolman observed the defendant “make a wide right turn onto Fifth Street whereby half of [the] defendant’s car went over the double yellow line into the turning lane for traffic coming in the opposite direction.” 156 The patrolman stopped the defendant for “driving left of center” and “failing to keep his vehicle on the right half of the highway.” 157 However, the applicable law, section 20-146(a) of the North Carolina General Statutes, provides an exception to the requirement that “a vehicle shall be driven upon the right half of the highway” when the “highway [is] divided into three marked lanes.” 158 Despite the patrolman’s mistaken belief as to the applicability of section 20-146(a), the court of appeals still addressed “whether [his] proffered justification for stopping [the] defendant [was] sufficient to establish an objectively reasonable basis for the stop.” 159 The court held that the patrolman’s testimony regarding his grounds for the stop was sufficient to establish violations of three other statutory provisions. 160 Thus, “regardless of his subjective belief

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151. McLamb, 186 N.C. App. at 124, 649 S.E.2d at 902.
152. Id. at 124–25, 649 S.E.2d at 902–03.
153. Id. at 128, 649 S.E.2d at 904.
154. Id. at 126–27, 649 S.E.2d at 903–04.
156. Id. at ___, 731 S.E.2d at 456 (internal quotation marks omitted).
157. Id. at ___, 731 S.E.2d at 461 (internal quotation marks omitted).
159. Osterhoudt, ___ N.C. App. at ___, 731 S.E.2d at 461.
160. Id. at ___, 731 S.E.2d at 459–60, 462. The court found evidence sufficient to support violations of the following:
that [the] defendant violated N.C. Gen. Stat. § 20-146(a), [the patrolman's] testimony establishe[d] objective criteria justifying the stop.”

Close analysis of Barnard, Ivey, McLamb, and Osterhoudt reveals that North Carolina courts were already following a Booker-type approach in their application of the totality-of-the-circumstances test for reasonableness. When the totality of the circumstances indicates an objectively reasonable basis for a stop independent of the officer's mistake of law, the stop is valid under both Booker and the pre-Heien line of North Carolina cases. When the totality of the circumstances offers no further objective grounds for a stop beyond the officer's mistake of law, the court has no difficulty finding the stop unconstitutional. Given this strong support in prior precedent, the Supreme Court of North Carolina would have no trouble adopting a rule taken from a federal circuit court opinion.

B. Policy Reasons to Adopt Booker

In addition to its consistency with North Carolina precedents, the Booker approach to officers' mistakes of law serves important policy interests. The Booker rule properly balances the individual liberty and privacy concerns protected by the Fourth Amendment while promoting efficient and effective law enforcement practices. Police officers are still free to initiate stops based on misunderstandings of

(1) N.C. Gen. Stat. § 20-146(d)(3-4) since ... crossing the double yellow line constitutes a failure to obey traffic-control devices;

(2) N.C. Gen. Stat. § 20-146(d)(1) because by crossing the double yellow line, [the] defendant failed to stay in his lane; and

(3) N.C. Gen. Stat. § 20-153 as [the] defendant failed to stay close to the right-hand curb of Fifth Street when he veered over the double yellow line.

_Id. at __, 731 S.E.2d at 462._

161. _Id. at __, 731 S.E.2d at 462._ Notably, the court concluded its opinion by briefly distinguishing _Heien_ and _McLamb_. See _id._ (“We note that because [the patrolman's] reason for stopping [the] defendant was not based solely on his mistaken belief that defendant violated N.C. Gen. Stat. § 20-146(a) but because [the] defendant crossed the double yellow line, we find the present case distinguishable from other cases where our Court has held that an officer's mistaken belief a defendant has committed a traffic violation is not objectively reasonable and, thus, violates a defendant's Fourth Amendment rights.” (citing _Heien COA I_, 214 N.C. App. 515, 520-21, 714 S.E.2d 827, 831 (2011), rev'd, 366 N.C. 271, 737 S.E.2d 351 (2012); State v. Burke, 212 N.C. App. 654, 658-59, 712 S.E.2d 704, 707 (2011), _aff'd_ 365 N.C. 415, 720 S.E.2d 388 (2012) (per curiam); State v. McLamb, 186 N.C. App. 124, 127, 649 S.E.2d 902, 904 (2007))). _Burke_ is inapplicable here because that case involved an objectively unreasonable stop. See _State v. Burke_, 212 N.C. App. 654, 658-59, 712 S.E.2d 704, 707 (2011), _aff'd_, 365 N.C. 415, 720 S.E.2d 388 (2012) (per curiam).
the law; courts will simply suppress evidence obtained from such stops upon proper motion at trial. The General Assembly must pass clear, enforceable laws and update archaic language, and police departments must provide adequate training for their officers. Additionally, the Booker rule places law enforcement and normal citizens on more equal footing with respect to their mistakes of law—if society penalizes citizens for their mistakes of law, so too should it chasten law enforcement officials for theirs.

The Booker approach also echoes the policy-based reasoning behind the Whren line of cases. The Supreme Court of the United States has long held that the officer’s underlying motivation for a traffic stop is irrelevant to the reasonableness analysis, so long as the objective circumstances surrounding the stop support objectively reasonable suspicion. Regardless of whether the motivation for the stop was based on pretext or a mistake of law, the stop should be upheld as long as an actual law is being violated.

162. See Heien COA I, 214 N.C. App. 515, 520–21, 714 S.E.2d 827, 830–31 (2011), rev’d, 366 N.C. 271, 737 S.E.2d 351 (2012). The United States Supreme Court had occasion to weigh in on archaic statutory language in Papachristou v. City of Jacksonville, 405 U.S. 156 (1972). At issue in Papachristou was the City of Jacksonville’s vagrancy ordinance, the “early English law” origins of which were evident by its antiquated language. See id. at 161. The ordinance classified as “vagrants” a number of types of people and individuals who engaged in certain activities, including “lewd, wanton, and lascivious persons, ... common railers and brawlers, ... [and] habitual loafers.” Id. at 156–57 n.1 (quoting JACKSONVILLE, FLA. ORDINANCE CODE § 26-57 (1965)). The Court struck down the law, finding it “void for vagueness.” Id. at 162. Following invalidation of similar laws by appellate courts throughout the country, drafters of vagrancy laws rewrote them “by limiting ‘loitering’ or ‘vagrancy’ to a particular place, scope, or illicit purpose,” which most courts subsequently upheld on review. T. Leigh Anenson, Comment, Another Casualty of the War ... Vagrancy Laws Target the Fourth Amendment, 26 AKRON L. REV. 493, 500–06 (1993).

163. See Logan, supra note 31, at 103–09 (“[T]he most promising solution lies in improving both the amount and quality of substantive law police training, both pre- and in-service, to promote police legal knowledge and help ensure that mistakes are, if not eradicated, at least minimized in number.”).

164. Cf. Horton v. California, 496 U.S. 128, 138 (1990) (“[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer.”).

165. See United States v. Whren, 53 F.3d 371, 375 (D.C. Cir. 1995) (“[R]egardless of whether a police officer subjectively believes that the occupants of an automobile may be engaging in some other illegal behavior, a traffic stop is permissible as long as a reasonable officer in the same circumstances could have stopped the car for the suspected traffic violation.”), aff’d, 517 U.S. 806 (1996); see also Devenpeck v. Alford, 543 U.S. 146, 153 (2004) (“[A]n arresting officer’s state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause.” (citing Whren, 517 U.S. at 812–13)); United States v. Mitchell, 951 F.2d 1291, 1295 (D.C. Cir. 1991) (upholding an arguably pretextual stop where officers observed the defendants commit two minor traffic violations).
Whren also stands for the proposition that courts cannot and should not have to assess variations in police enforcement practices. Similarly, courts should not be forced to read into variations in officer training from the potentially numerous police departments within their jurisdiction. Again, the existence of a readily apparent, independent, and objective reason for a stop forecloses case-by-case inquiry into training standards and improves judicial efficiency and fairness.

C. Necessary Limitations

The Booker court simply stated its rule and applied it to the facts at hand without further elaboration. However, for the Booker rule to function properly and maintain the appropriate Fourth Amendment balance, important safeguards must be in place. Or, alternatively, these safeguards may be viewed as positive externalities that should result from the rule's diligent application.

Given the sheer volume of traffic regulations in any jurisdiction, an officer who cannot find an ex post violation as grounds for a stop is simply not trying hard enough. But courts should not appear to invite subjectivity into the analysis. The independent, objectively reasonable grounds for the stop must be readily apparent to the trial court ruling on a motion to suppress, or to the appellate court in its review of the record. Preferably, the government should demonstrate these independent, objectively reasonable grounds using the most impartial means available—video from the officer’s dashboard.

166. See Whren, 517 U.S. at 816.


168. See Orin Kerr, Can a Police Officer Lawfully Pull Over a Car for a Traffic Violation Based on an Erroneous Understanding of the Traffic Laws?, THE VOLOKH CONSPIRACY (Dec. 21, 2012, 3:42 PM), http://www.volokh.com/2012/12/21/can-a-police-officer-lawfully-pull-over-a-car-for-a-traffic-violation-based-on-an-erroneous-understanding-of-the-traffic-laws/; see also Delaware v. Prouse, 440 U.S. 648, 661 (1979) (recognizing the “multitude” of traffic and equipment regulations in a given jurisdiction). For example, Professor Paul Butler described riding in a police cruiser with an officer friend and playing a game his friend had contrived called “Stop That Car!” in which Butler “pick[s] a car—any car—and [his officer friend] stops it.” Paul Butler, Let’s Get Free: A Hip-Hop Theory of Justice 24–25 (2009). Butler insists that his friend “is a good cop” because “[h]e waits until he has a legal reason to stop the car. It doesn’t take long, never more than three or four blocks of following. There are so many potential traffic infractions that it is impossible to drive without committing one.” Id. at 25.
camera,\textsuperscript{169} photographs of the vehicle once it has been impounded,\textsuperscript{170} or the contemporaneous police report\textsuperscript{171}—though officer testimony at the suppression hearing should also suffice. That way, the integrity of the independent grounds is preserved, and the reviewing court can properly make the objective, detached analysis that the Fourth Amendment requires.

This requirement—a separate, objectively reasonable basis for a stop—may necessitate changes in police training procedures. Similar changes occurred following the application of the Fourth Amendment’s exclusionary rule to the states in \textit{Mapp v. Ohio}.\textsuperscript{172} Adoption of the \textit{Booker} rule could require increased officer training in statutory law. In fact, one scholar has argued that “the most promising solution [to police mistakes of law] lies in improving both the amount and quality of substantive law police training . . . to promote police legal knowledge and help ensure that mistakes are, if not eradicated, at least minimized in number.”\textsuperscript{173} Indeed, a 1973

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\textsuperscript{169} See David A. Harris, \textit{Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance by Police}, 43 TEX. TECH L. REV. 357, 360 (2010). In fact, a bill was introduced in the North Carolina General Assembly in March 2013, which would mandate that “[a] person who is charged with an impaired driving offense must have his or her conduct at the incident site and the breath-testing site video recorded,” with very limited exceptions. S.B. 449, 2013–2014 Gen. Assemb., Reg. Sess., § 1 (N.C. 2013). However, the bill was referred to the Senate Rules Committee after its first reading and has seen no action since. \textit{Senate Bill 449 Information/History}, N.C. GEN. ASSEMBLY, http://ncleg.net/gascripts/billlookup/billlookup.pl?Session=2013&BillID=S449 (last visited Feb. 25, 2014). The trend appears to be the outfitting of officers with Body-Worn Video (commonly known as “head cameras”), consisting of video and audio recording equipment that is attached to the officer like a Bluetooth earpiece. See Harris, \textit{supra}, at 360. For a discussion on whether police officers should be required to wear cameras that record their interactions with the public, see \textit{If Police Encounters Were Filmed}, N.Y. TIMES (Oct. 22, 2013), http://www.nytimes.com/roomfordebate/2013/10/22/should-police-wear-cameras.

\textsuperscript{170} But, while a picture is worth a thousand words, an officer’s testimony may still carry more weight than photographs taken pursuant to an impoundment. See People v. Watkins, 89 Cal. Rptr. 3d 135 (Cal. Ct. App. 2009) (upholding probable cause for a traffic stop where the officer testified that the defendant’s driver’s side brake light was not functioning properly, regardless of photographs taken of the impounded vehicle showing all brake lights working).


\textsuperscript{173} Logan, \textit{supra} note 31, at 103.
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report of the National Advisory Commission on Standards and Goals recommended that only ten percent of four hundred police training hours be dedicated to “Law.” 174 Little has changed in the interim—a 2006 survey reported that a median of thirty-six hours (representing a mere eight percent) of instructional time was devoted to criminal law. 175 While it is true that law enforcement officers cannot realistically be expected to construe statutes and ordinances with the same proficiency as lawyers and judges, they can be expected to know the laws they choose to invoke while on ordinary patrol. 176 Thus, when independent, objectively reasonable grounds for a stop are readily apparent, the Booker rule may be effectively and equitably applied.

CONCLUSION

The role of officers’ mistakes of law in the Fourth Amendment’s reasonableness inquiry has been a divisive issue across state and federal jurisdictions in recent decades. Under the majority rule, officers’ mistakes of law, even if objectively reasonable, cannot provide the necessary reasonable suspicion to support a traffic stop. A minority of courts take the opposite view and excuse objectively reasonable mistakes of law by law enforcement personnel. The D.C. Circuit has taken an intermediate approach by forgiving an officer’s mistake of law as long as other, independent grounds for reasonable suspicion are present.

In State v. Heien, the Supreme Court of North Carolina “significantly, and ... unnecessarily” altered Fourth Amendment jurisprudence in North Carolina “by introducing subjectivity and vagueness into [the] analysis and effectively overruling ... prior precedent.” 177 The court should have adopted the Booker rule followed by the D.C. Circuit, which would maintain the “just right” Fourth Amendment balance and remain consistent with prior North Carolina case law. But, courts must be diligent in maintaining the

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sanctity of the *Booker* rule by requiring contemporaneous, objective proof of independent grounds for reasonable suspicion.

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