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Heien v. North Carolina and Significant Interpretive Court Cases: An Empirical Examination of Police Officers' Perceptions and Knowledge

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Abstract

This empirical study examines legal aspects of policing in relation to the recent, landmark United States Supreme Court case of *Heien v. North Carolina*. In *Heien,* the Court found that objectively reasonable mistakes of law by police can support traffic stops. By doing so, it extends the permissible margin of error for stops by law enforcement officers. Due to the potential, far-reaching implications of the *Heien* decision, including implications for law enforcement and for the Fourth Amendment privacy protections of individuals, it is important to better understand how the lower courts have interpreted and applied *Heien*. Therefore, key, recent interpretive lower court case law for *Heien* is also analyzed. Furthermore, it is also important to discover what law enforcement officers know about the *Heien* decision and how they may be applying it. This study aims to discern the level, degree, and nature of police officers' knowledge and perceptions of *Heien,* including officers' decision-making behavior with respect to *Heien* and its core concepts. Utilizing a survey questionnaire administered to line officers, this study seeks to shed light on police officers' knowledge and perceptions of *Heien*. This is the first known study to empirically examine officers' knowledge and perceptions of *Heien*.

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Chapter One – Introduction

The purpose of this research study is to examine the United States Supreme Court case of *Heien v. North Carolina*, interpretations and applications of *Heien* by the federal and state appellate courts, and police officers' knowledge and perceptions regarding *Heien*. In particular, the empirical study aims to discern the level, degree, and nature of police officers' knowledge and perceptions of *Heien*, including officers' decision-making behavior with respect to *Heien* and its core concepts (e.g., reasonable mistakes of law and the allowable margin of error for officers' reasonable mistakes of law). While legal commentary regarding *Heien* is plentiful, no other known study exists that has attempted to examine empirically police knowledge and perception of *Heien*.[1] Significantly, *Heien* found that reasonable mistakes of law by officers can support reasonable suspicion for a police traffic stop.[2] By doing so, it extends the permissible margin of error for stops by law enforcement officers. In addition, most federal appellate courts, and many state appellate courts, have defined the scope of what constitutes a reasonable mistake of law through reference to the inherent vagueness or ambiguity of the law being applied by a police officer (i.e., officers can only make reasonable mistakes of law regarding truly ambiguous or vague laws).[3]

Due to the potential, far-reaching implications of the *Heien* decision, including implications for law enforcement and for the Fourth Amendment privacy protections of individuals, it is important to better understand how the lower courts and in particular the federal

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[1] *See infra* Chapter 2 (Literature Review).
[2] *See generally Heien v. North Carolina*, 135 S. Ct. 530 (2014).
[3] *See generally Heien v. North Carolina*, 135 S. Ct. at 530. *See also* Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant Federal Appellate Court Cases*. 53 Crim. L. Bull. 1202 (2017). *See also* Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant State Court Cases*. 54 Crim. L. Bull. 927 (2018). *See also infra* Chapter 3 (Methodology), Section A for a detailed discussion of how interpretive cases were selected for inclusion in this study.

and state appellate courts have interpreted and applied *Heien*. Furthermore, it is also important to discover what law enforcement officers know about the *Heien* decision and how they may be applying it. In particular, this study will seek to shed light on whether police officers' knowledge and perceptions of *Heien* align with the *Heien* decision itself as well as lower court interpretation and application of *Heien*.

Indeed, the interpretations and applications of *Heien* by federal and state appellate courts are a key component of this research study because of the potential for impacts, including deleterious ones, on individuals' Fourth Amendment protections and rights. For example, if courts are applying the *Heien* rationale more frequently in favor of law enforcement by finding that officer mistakes of law support underlying police conduct, including conduct outside the routine traffic stop context, then individuals will be potentially exposed more frequently to certain consequences associated with police intrusion on their Fourth Amendment rights (e.g., searches, arrests, jail time, etc.). On the other hand, if courts apply *Heien*'s holding and rationale more narrowly and with more caution, it is more likely to prevent the 'slippery-slope' problem of eroding Fourth Amendment protections. For example, under the *Heien* doctrine, a reasonable mistake of law can support reasonable suspicion to perform a traffic stop that may result in a subsequent police search, seizure, and/or arrest, as it did in *Heien* itself.[4] In addition, lower courts may apply *Heien* to other contexts outside the traffic stop setting (for example, the arrest

[4] *See generally Heien v. North Carolina,* 135 S. Ct. at 530. The officer in *Heien* observed one (1) faulty brake light and made a traffic stop. The officer then noticed suspicious, nervous behavior by the vehicle occupants and asked for consent to search the vehicle. The officer obtained consent from the vehicle owner, Defendant Heien, to search. Cocaine was found in a duffel bag inside the vehicle, resulting in the arrest of both Heien and the driver. Heien moved to exclude the cocaine because he claimed a violation of his Fourth Amendment rights. He noted that one (1) faulty light is not a violation of North Carolina traffic law. It was determined by the North Carolina Court of Appeals, the Supreme Court of North Carolina, and ultimately the United States Supreme Court that having one faulty brake light is indeed not a violation of North Carolina law. Nonetheless, the U.S. Supreme Court in *Heien* found that the mistake by the officer as to the relevant traffic law was reasonable, and therefore could still support reasonable suspicion for the traffic stop. The cocaine found and seized by police during the stop was admissible. *See* id. *See infra* Chapter 2 (Literature Review) for a detailed discussion of the *Heien* case.

or plain view seizure contexts).[5] This latter outcome may mean that under *Heien* individuals experience Fourth Amendment privacy intrusions in these other contexts. Accordingly, lower court application and interpretation of *Heien* is another focus of the current study.

In addition, the knowledge and perceptions of law enforcement officers regarding the *Heien* decision are another key component of the study. What police officers know about *Heien* can presumably influence their behavior while on the job in numerous situations. Therefore, it is important to learn what police officers know about *Heien*, including its reasonable mistake of law concept as well as the permissible margin of error for their conduct. For example, if police officers are knowledgeable about the *Heien* doctrine it is possible that they are more likely to initiate stops on thinner, more questionable ground. However, it is also possible that if officers are knowledgeable about *Heien* they could be more likely to use additional caution while on the job to prevent the potential for any abuse of their increased powers under the law.

Furthermore, whether or not law enforcement officers' knowledge and perceptions of *Heien* align with what lower courts have determined is another focus of this study. Officer knowledge about *Heien* could have potentially far-reaching implications regarding the manner in which police carry out their duties as a peace officer as well as the accompanying impact on individual rights, including Fourth Amendment rights. If law enforcement officers are

[5] *See generally U.S. v. Diaz*, 122 F.Supp.3d 165 (S.D.N.Y. 2015); *affirmed by United States v. Diaz*, 854 F.3d 197 (2nd Cir. 2017). (Police officers were conducting a routine patrol near Diaz's apartment complex. The officer smelled alcohol and marijuana emanating from an open-air stairwell and proceeded to detain and conduct a pat down search of Diaz. Open alcohol containers and a handgun were found. Defendant Diaz was arrested. The Court of Appeals held that in light of *Heien* the question of whether the apartment complex's stairwell was a public place under the law where alcohol could not be consumed in open containers did not matter. Therefore, the search and arrest of Diaz for violating the open container law were lawful, and the evidence was found to be admissible.). *See infra* Chapter 2 (Literature Review) for a detail discussion of the Diaz cases. *See also* Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant Federal Appellate Court Cases*. 53 Crim. L. Bull. 1202 (2017).

knowledgeable about *Heien* and how lower courts have applied it, then it is possible that officers are more likely to understand the propriety and implications of their actions.

This research study seeks to answer several questions, including: (1) How are lower courts interpreting and applying the *Heien* decision?; (2) Have officers ever heard of the *Heien v. North Carolina* case?; (3) Do police officers agree with and have knowledge of *Heien*, including its underlying concept of reasonable mistakes of law?; and (4) Do law enforcement officers perceive that *Heien* allows them more leeway beyond the routine traffic stop context in their other duties as a police officer (for example, in their search or arrest-related duties)? Further empirical exploration of these issues and questions can help to fill a gap in the literature concerning police officers' perceptions and knowledge of the United States Supreme Court's ruling in *Heien*. Furthermore, examination of these issues will also shed additional light on lower court interpretation and application of *Heien*.

Chapter Two – Literature Review

A. *Heien v. North Carolina*[6]

i. Background and Facts of *Heien.*

Heien v. North Carolina will be addressed first prior to discussing interpretive case law for *Heien*. *Heien* began in 2009 with a traffic stop based upon a malfunctioning brake light.[7] The U.S. Supreme Court described the beginning of the stop as follows:

> [S]ergeant Matt Darisse of the Surry County Sheriff's Department sat in his patrol car near Dobson, North Carolina, observing northbound traffic on Interstate 77. Shortly before 8 a.m., a Ford Escort passed by. Darisse thought the driver looked very stiff and nervous, so he pulled onto the interstate and began following the Escort. A few miles down the road, the Escort braked as it approached a slower vehicle, but only the left brake light came on. Noting the faulty right brake light, Darisse activated his vehicle's lights and pulled the Escort over.[8]

When Sergeant Darisse approached the car there were two men inside: Mr. Vasquez, who was behind the wheel, and Mr. Heien, who was lying down in the backseat of the stopped vehicle.[9] Sergeant Darisse then informed Mr. Vasquez that "as long as his license and registration checked out, he would receive only a warning ticket for the broken brake light."[10] Darisse then checked the appropriate records and no issues were found. Darisse proceeded to issue the warning ticket to Mr. Vasquez. However, during the stop Darisse became suspicious.[11] The Court recounted the details as follows:

> [The driver] Vasquez appeared nervous, [Defendant] Heien remained lying down [in the backseat] the entire time, and the two gave inconsistent answers about their destination. [Sergeant] Darisse asked Vasquez if he would be willing to answer some questions. Vasquez assented, and Darisse asked whether the men were transporting various types of

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[6] The review of *Heien v. North Carolina* has been adapted from Part I of Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant Federal Appellate Court Cases*. 53 Crim. L. Bull. 1202 (2017).
[7] *See Heien v. North Carolina*, 135 S. Ct. at 535 (2014).
[8] *Id.* at 534. (internal quotations omitted)
[9] *Id.* at 534.
[10] *Id*. at 534.
[11] *Id*. at 534.

> contraband. Told no, Darisse asked whether he could search the Escort. Vasquez said he had no objection, but told Darisse he should ask Heien, because Heien owned the car. Heien gave his consent, and Darisse, aided by a fellow officer who had since arrived, began a thorough search of the vehicle. In the side compartment of a duffle bag, Darisse found a sandwich bag containing cocaine. The officers arrested both men.[12]

The North Carolina Court of Appeals reversed Heien's conviction on the grounds that the stop was invalid because "driving with only one working brake light was not actually a violation of North Carolina law."[13] The applicable vehicle code states that cars must 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.[14]

The North Carolina Supreme Court reversed the lower court's decision. The Supreme Court held that even if there was no violation of state law, the officer's mistaken understanding of said law was reasonable; therefore, the stop was lawful.[15]

ii. *Heien's* Holding.

The U.S. Supreme Court found that even though Sergeant Darisse was mistaken about the North Carolina traffic law requiring only one working brake light instead of two, his mistake of law was objectively reasonable.[16] According to the Court, reasonableness is not perfection and the Fourth Amendment allows government officials "fair leeway for enforcing the law."[17] The standard of reasonableness must not be unlimited and "(t)he limit is that the mistakes must be

[12] *Id.* at 534-35.
[13] *Id.* at 535
[14] *Id.* at 535. (quoting N.C. Gen.Stat. Ann. § 20–129(g) 2007.)
[15] *See Heien*, 135 S. Ct. at 532.
[16] *Id.* at 536. (citing *Riley v. California*, 134 S. Ct. 2473, 2482 (2014)). ("[T]he ultimate touchstone of the Fourth Amendment is reasonableness.")
[17] *See Heien*, 135 S. Ct. at 536. (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)).

those of reasonable men."[18] Justice Kagan, in her concurring opinion in *Heien*, explained the Court's decision in this way:

> If the statute is genuinely ambiguous, such that overturning the officer's judgement requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not. [T]he statute must pose a really difficult or very hard question of statutory interpretation.[19]

In addition to the statute's ambiguity, the North Carolina appellate courts had not previously interpreted or clarified the exact meaning of the statute and how it should be applied.[20] Chief Justice Roberts, writing for the majority in *Heien*, simply stated: "The question here is whether reasonable suspicion can rest on a mistaken understanding of the scope of the legal prohibition. We hold that it can."[21] Therefore, the United States Supreme Court held that because Sergeant Darisse's mistake of law regarding North Carolina's traffic code was objectively reasonable, reasonable suspicion existed to justify the traffic stop.[22]

iii. *Heien's* Rationale.

The majority opinion in the *Heien* case in part, relies upon nineteenth century precedents.[23] In one such precedent, *Riddle*, the United States Supreme Court held:

> [Because] the construction of the law was liable to some question, [Chief Justice Marshall] affirmed the issuance of a certificate of probable cause: a doubt as to the true construction of the law is as reasonable a cause for seizure as a doubt respecting the fact.[24]

Riddle is also described as illustrating that the phrase "probable cause" has a "fixed and well known meaning" that includes suspicions which are based on reasonable mistakes of law.[25]

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[18] *Id.* at 536. (quoting *Brinegar*, 338 U.S. at 176)
[19] *See Heien*, 135 S. Ct. at 541. (Kagan, J., concurring) (internal quotations and citations omitted)
[20] *Id.* at 535-34, 539-41.
[21] *Id.* at 536.
[22] *Id.* at 536-37.
[23] *See generally United States v. Riddle*, 5 Cranch 311 (1809). *See also Stacey v. Emery*, 97 U.S. 642, 646 (1878).
[24] *See Heien*, 135 S. Ct. at 537 (quoting *Riddle*, 5 Cranch at 313) (internal quotations omitted and emphasis omitted)
[25] *Id.* at 537.

Additionally, the Court notes that "[n]o decision of this Court in the two centuries since has undermined that understanding."[26]

The Court in *Heien*, in attempting to demonstrate the consistency of its reasoning, also relied upon more recent precedent. In particular, the Court noted that its decision in *Michigan v. DeFillippo* held that assumptions about the law, if reasonable, can establish probable cause.[27] Moreover, the Court in *Heien* disagreed with the defendant's argument that the Fourth Amendment does not allow errors of law. Instead, the Court posited that "an officer may suddenly confront a situation in the field as to which the application of a statute is unclear – however clear it may later become."[28] In addition, the Court added that:

> Contrary to the suggestion of Heien and amici, our decision does not discourage officers from learning the law. The Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes --- whether of fact or of law ---must be *objectively* reasonable. We do not examine the subjective understanding of the particular officer involved.[29]

The *Heien* ruling, according to the majority opinion, will not prevent law enforcement officers from learning the law. "[A]n officer can gain no Fourth Amendment advantage through a sloppy study of the law he is duty-bound to enforce" because the Fourth Amendment only permits objectively reasonable mistakes of law.[30] Accordingly, based upon nineteenth century precedents, more recent precedents, the fact that law enforcement officers may have to make split-second decisions about unclear or ambiguous laws, and the Fourth Amendment's allowance of objectively reasonable mistakes, the United States Supreme Court in *Heien* affirmed the judgement of the Supreme Court of North Carolina.[31]

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[26] *See Heien*, 135 S. Ct. at 537.
[27] *Id*. at 538-39 (discussing *Michigan v. DeFillippo*, 443 U.S. 31, 37-38 (1979)).
[28] *See Heien*, 135 S. Ct. at 539.
[29] *Id*. at 539-40 (citing *Whren v. United States*, 517 U.S. 806, 813 (1996)).
[30] *See Heien*, 135 S. Ct. at 539-40.
[31] *Id*. at 534-40. *See also* id. at 540. (Note that Section III of the majority opinion in *Heien* summarizes the key reasoning underlying the Court's decision to affirm.)

B. Interpretive Federal Appellate Court Cases

Several prominent federal appellate court cases were found to have provided significant treatment to *Heien*.[32] The majority of these federal circuit courts have interpreted and/or applied the rationale of *Heien* in an almost identical manner.[33] In particular, a law enforcement officer's mistake of law must be considered, or found to be, objectively reasonable for any legally relevant outcome(s) to stand in favor of the officer.[34] In addition, the law or statute that is being applied must be ambiguous or vague in some manner (i.e., for any officer mistake regarding that law to be deemed reasonable).[35] A few selected, notable interpretive federal and state court cases are discussed in the following subsections. This section (B) will address federal appellate court cases, section (C) will address federal district court cases, and section (D) will address state court cases.

a. *U.S. v. Alvarado-Zarza*, 782 F.3d 246 (5th Cir. 2015)

i. Background and Facts of *Alvarado-Zarza*.

Alvarado-Zarza's case came before the Fifth Circuit Court of Appeals after his motion to suppress drug evidence, discovered as the result of a traffic stop, was denied by the U.S. District Court for the Western District of Texas. The District Court held that the officer reasonably suspected the defendant had violated a traffic statute.[36] This case began when a highway patrol

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[32] *U.S. v. Flores*, 798 F.3d 645 (7th Cir. 2015), *U.S. v. Alvarado-Zarza*, 782 F.3d 246 (5th Cir. 2015), *U.S. v. Stanbridge*, 813 F.3d 1032 (7th Cir. 2016), *U.S. v. Lawrence*, 2017 WL 129022 (1st Cir. Jan. 13, 2017), *U.S. v. Cunningham*, 630 Fed.Appx. 873 (10th Cir. 2015), *Sinclair v. Lauderdale Co*., 652 Fed. Appx. 429 (6th Cir. 2016), *United States v. Gaffney*, 789 F.3d 866 (8th Cir. 2015), and *Corrigan v. Dist. Of Columbia*, 841 F.3d 1022 (D.C. Cir. 2016). *See also* Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant Federal Appellate Court Cases*. 53 Crim. L. Bull. 1202 (2017).

[33] The circuits are the 1st, 5th, 7th, and 10th . *U.S. v. Flores*, 798 F.3d 645 (7th Cir. 2015), *U.S. v. Alvarado-Zarza*, 782 F.3d 246 (5th Cir. 2015), *U.S. v. Stanbridge*, 813 F.3d 1032 (7th Cir. 2016), *U.S. v. Lawrence*, 2017 WL 129022 (1st Cir. Jan. 13, 2017), *U.S. v. Cunningham*, 630 Fed.Appx. 873 (10th Cir. 2015).

[34] *See Heien v. North Carolina*, 135 S. Ct. 530 at 536, 541. (The standard of reasonableness must not be unlimited and "(t)he limit is that the mistakes must be those of reasonable men.")

[35] *See generally Heien*, 135 S. Ct. at 530. *See also* id. at 540-41.

[36] *See generally U.S. v. Alvarado-Zarza*, 782 F.3d at 248-49.

officer stopped the defendant who changed lanes on a road near the U.S.-Mexican border.[37] The purported basis for the stop was a traffic violation for failing to signal 100 feet prior to a turn.[38] The officer "briefly questioned [the defendant] and obtained consent to search his vehicle."[39] Cocaine was discovered and, before receiving warnings regarding his constitutional rights, the defendant directed the officer to more cocaine in the vehicle.[40]

ii. *Alvarado-Zarza's* Holding.

The officer's basis for initiating the stop was a mistake of law that was objectively unreasonable.[41] The Court of Appeals for the Fifth Circuit stated "[a]s to this Texas statute, the *Heien* analysis compels the opposite conclusion" because "Section 545.104(b) is unambiguous…and only applies to turns [and not] lane changes."[42] Additionally, legal precedent regarding this statute has been clarified by Texas courts.[43] The Fifth Circuit Court of Appeals reversed the defendant's conviction and remanded the case.[44]

iii. *Alvarado-Zarza's* Rationale.

The Court applied the *Heien* analysis in two specific areas of this case. "First, Section 545.104(b) is unambiguous. Its 100-foot requirement only applies to turns; lane changes are not mentioned...[and] the statute elsewhere refers to turns and lane changes separately, thereby

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[37] *See Alvarado-Zarza*, 782 F.3d at 248. *See also* Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant Federal Appellate Court Cases*. 53 Crim. L. Bull. 1202 (2017).
[38] *See Alvarado-Zarza*, 782 F.3d at 248. *See also* Texas Transp. Code Ann. § 545.104(b). (referring to a requirement that drivers signal 100 feet before turning.)
[39] *See Alvarado-Zarza*, 782 F.3d at 248.
[40] *Id*.
[41] *Id*. at 249-50.
[42] *Id*. at 250. *See also Heien*, 135 S. Ct. at 535, 540.
[43] *See Alvarado-Zarza*, 782 F.3d at 250. *See also Heien*, 135 S. Ct. at 535, 540. *See also Mahaffey v. State*, 316 S.W.3d 633, 641 (2010).
[44] *See Alvarado-Zarza*, 782 F.3d at 251.

setting out a distinction between the two."[45] Second, this distinction has been further clarified in Texas courts:

> (a) lane change [is] a lateral maneuver moving the vehicle from one lane to another and a turn [is] a vehicle maneuver to change direction to the left or right. The terms turn and lane change, therefore, signify distinct actions. Thus, Section 545.104(b), by its plain terms does not apply to lane changes.[46]

Additionally, the officer's mistake of law was unreasonable because his "testimony did not provide the sort of specific, articulable facts which would allow a court to determine that he possessed reasonable suspicion that [defendant] had committed a traffic violation."[47] Therefore, the evidence obtained from the illegal stop "must be suppressed" and the case was reversed and remanded.[48]

b. *U.S. v. Cunningham*, 630 Fed.Appx. 873 (10th Cir. 2015)

i. Background and Facts of *Cunningham*.

Cunningham appealed the United States District Court for the District of Colorado's ruling denying his motion to suppress evidence obtained as the result of a traffic stop. The District Court held that a traffic violation had occurred which then justified the traffic stop.[49] In *Cunningham*, the defendant was in the front passenger seat of a vehicle driven by someone else, Ms. Ulloa.[50] Ulloa exited the motel parking lot and did not signal as she made a left turn onto a public road.[51] Police officers "stopped her vehicle for violating Colo.Rev.Stat. [Section] 42-4-903."[52] In part, the statute states:

> (1) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway…or turn a vehicle to enter a private road or driveway, or

[45] *Id*. at 250. *See also* §545.104(a), (b). *See also Heien*, 135 S. Ct. at 535, 540.
[46] *See Alvarado-Zarza*, 782 F.3d at 250. *See also Mahaffey*, 316 S.W.3d at 640-41.
[47] *See Alvarado-Zarza*, 782 F.3d at 251. *See generally Heien*, 135 S. Ct. at 530.
[48] *See Alvarado-Zarza*, 782 F.3d at 251.
[49] *See generally U.S. v. Cunningham*, 630 Fed.Appx. 873, 874-75 (10th Cir. 2015).
[50] *See Cunningham*, 630 Fed.Appx. at 874. *See also* Totten and De Leo (2017).
[51] *Cunningham*, 630 Fed.Appx. at 875.
[52] *Id*. at 875.

> otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety and then only after giving an appropriate signal…[53]

"A subsequent search of the vehicle revealed a firearm, which Cunningham admitted was his."[54] The defendant was then indicted for being "a felon in possession of a firearm."[55]

ii. *Cunningham's* Holding.

The officers' interpretation of Colorado traffic law was objectively reasonable.[56] Because the officer's interpretation of the law was objectively reasonable, the stop was lawful.[57] Therefore, Cunningham's conviction was affirmed.[58]

iii. *Cunningham's* Rationale.

Heien held that "a reasonable mistake of law can…give rise to the reasonable suspicion necessary to uphold [a] seizure under the Fourth Amendment."[59] Thus, under the *Heien* analysis, the Court of Appeals does not need to determine under Colorado law if turning out of a motel's parking lot and then onto a public road is truly a traffic violation.[60] Instead, the court in *Cunningham* only needed to determine whether or not objectively reasonable officers could believe engaging in such driving behavior was a violation of Colorado's laws.[61]

The *Heien* ruling provided guidelines. A police officer's *subjective* understanding of the law(s) is not to be considered; instead, an officer's mistake of law must be *objectively*

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[53] *Id.* at 875. *See also* Colo.Rev.Stat. § 42-4-903(1),(2).
[54] *See Cunningham*, 630 Fed.Appx. at 875.
[55] *Id*. at 875.
[56] *Id.* at 877.
[57] *Id.* at 876-77, 879.
[58] *Id*. at 874, 879.
[59] *Id*. at 876. (quoting *Heien*, 135 S. Ct. at 534.)
[60] *Id.* at 876. *See also Heien*, 135 S. Ct. at 534-40.
[61] *Cunningham*, 630 Fed.Appx at 876.

reasonable.[62] Furthermore, officers cannot gain a Fourth Amendment advantage through "a sloppy study of the laws [they are] duty-bound to enforce."[63] In addition, an officer's mistake of law can be reasonable if the law in question is unclear or ambiguous (i.e., reasonable minds could differ on its interpretation), and the law was never clarified previously by the appropriate courts.[64]

The Court of Appeals also relied on Justice Kagan's concurrence to provide additional clarification regarding how ambiguity in the law should be interpreted in reference to reasonable mistakes of law. "If the statute is genuinely ambiguous, such that the overturning of the officer's judgement requires hard interpretive work, then the officer has made a reasonable mistake."[65]

Another statute the Court reviewed was Colorado Revised Statutes Section 42-4-103 (2) which states, in part, that the requirements of this statute, in relation to operating vehicles, only refers to vehicles using public streets and highways.[66] However, Colorado Revised Statutes Section 42-4-903 (1) and (2), the primary statutes in question, "expressly require a [turn] signal when entering a private road or driveway but [do] not expressly require one when exiting therefrom."[67] While both statutes refer to different types of roadways, the Court concluded that it is of little consequence; even if the statutes used different language or their phrasing was modified, the reliance on *Heien* is the only pertinent issue-at-hand.[68]

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[62] *Id*. at 876-77. *See also Heien*, 135 S. Ct. at 539-40. *See also Whren v. United States*, 517 U.S. 806, 813 (1996). (Heien's rationale of mistakes needing to be *objectively* reasonable without examining the *subjective* understanding of the officer involved draws upon *Whren*.)
[63] *Cunningham*, 630 Fed.Appx. at 877. (quoting *Heien*, 135 S. Ct. at 539-40.)
[64] *Id*. at 877. *See also Heien*, 135 S. Ct. at 540.
[65] *Id.* at 877. (quoting *Heien*, 135 S. Ct. at 547, Kagan, J., concurring).
[66] *Cunningham*, 630 Fed.Appx. at 878. (summarizing Colo.Rev.Stat. § 42-4-103(2)).
[67] *Cunningham*, 630 Fed.Appx. at 878-79. (summarizing, in part, Colo.Rev.Stat. § 42-4-903(1) & (2)).
[68] *Cunningham*, 630 Fed.Appx. at 879. (The reliance on/analysis of *Heien*, as applied in this case, primarily refers to whether or not an officer's mistake of law was objectively reasonable and ambiguity in relevant law.)

Applying *Heien*, the Court found that the state laws were ambiguous and the officers had reasonable suspicion to stop the vehicle based on an objectively reasonable interpretation of the relevant state laws.[69] The police officers reasonably concluded, as did the Court, that defendant's vehicle's turn occurred on public highways or streets. The Court did not find any authority from Colorado's Supreme Court or any appellate court of Colorado that indicated otherwise.[70] Based on the aforementioned reasoning of the court, the lower court's judgement of a conviction was affirmed.[71]

c. *U.S. v. Stanbridge*, 813 F.3d 1032 (7th Cir. 2016)

i. Background and Facts of *Stanbridge.*

Defendant Stanbridge appealed the denial of his motion to suppress drug evidence, discovered due to a traffic stop, by the United States District Court for the Central District of Illinois. The District Court held that the traffic code in question was ambiguous and therefore the officer had made a reasonable mistake of law.[72] This case began with Stanbridge walking to his car with a duffel bag when two police officers passed by on patrol. Stanbridge looked surprised when he noticed the police officers, so the officers circled around to follow him.[73] The Court of Appeals recounted that:

> After driving just a short distance, Stanbridge activated his right turn signal, pulled to the side of the street, and parked parallel with the curb. Officer Steve Bangert, who was driving, had not witnessed any traffic violation before Stanbridge pulled over, but his partner, Officer Paul Hodges, later reported that Stanbridge had turned left at an intersection without signaling while being followed. Unaware of his partner's observation, Bangert stopped behind Stanbridge and activated his blue flashers, effectively seizing Stanbridge. Bangert did so because Stanbridge had not activated his turn signal 100 feet before pulling to the curb…[A] check for criminal history showed that he "did have priors," prompting Officer Bangert to request a drug-sniffing dog

[69] *Id*. at 877-79.
[70] *Id*. at 879.
[71] *Id*. at 879.
[72] *See generally U.S. v. Stanbridge*, 813 F.3d 1032, at 1033-35 (7th Cir. 2016).
[73] *See Stanbridge*, 813 F.3d at 1033. *See also* Totten and De Leo (2017).

> (though Stanbridge's only *drug* conviction was for marijuana possession, 11 years earlier when he was 17).[74]

When the officers noticed the prior drug conviction, a drug-sniffing dog was requested. About ten minutes later the dog arrived and the subsequent alert by the dog led to the officers finding drugs inside the duffel bag defendant was carrying.[75]

ii. *Stanbridge's* Holding.

The Court of Appeals for the Seventh Circuit vacated and remanded the defendant's conviction.[76] The government's silence on the issue of the defendant turning without signaling at a previous intersection, is "an implicit concession that" the officers' misunderstanding "of Section 11-804 [of the Illinois Vehicle Code] was *not* objectively reasonable."[77]

The statute in question is not ambiguous and "*Heien* does not support the proposition that a police officer acts in an objectively reasonable manner by misinterpreting an unambiguous statute."[78]

iii. *Stanbridge's* Rationale.

The Court concluded that the statute in question was not ambiguous at all and clearly does not require a turn signal to be used when pulling to the side of a public road to park.[79] Section 11-804(d) also clearly states that "[t]he electric turn signal required…must be used to indicate an intention to turn, change lanes, or start from a parallel parked position" and does not require a continuous signal for 100 feet before parking.[80]

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[74] *Stanbridge*, 813 F.3d at 1033-34 (quotations and emphasis in original).
[75] *Id*. at 1034.
[76] *Id*. at 1038.
[77] *Id*. at 1036-37. (emphasis added)
[78] *Id*. at 1037-38. *See generally Heien v. North Carolina*, 135 S. Ct. at 530. *See also U.S. v. Flores*, 798 F.3d 645, 649-50 (7th Cir. 2015).
[79] *Stanbridge*, 813 F.3d at 1037. *See also* IL. Vehicle Code §11-804(b) and §11-804(d).
[80] *Stanbridge*, 813 F.3d at 1036-37. *See also* IL. Vehicle Code §11-804(b) and §11-804(d).

Under *Heien*, an officer's objectively reasonable mistake of law can support reasonable suspicion.[81] However, the statute in question is not ambiguous in any way and the officer's mistake of law was objectively *unreasonable*.[82] Because the officer was simply incorrect about the statute's requirements, "[he] can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce."[83]

The defendant "fully complied with Section 11-804…and thus the officer's [objectively unreasonable] mistake of law cannot justify Stanbridge's seizure."[84] Based upon this conclusion, the stop was illegal, and the evidence must be excluded. Therefore, the defendant's conviction was vacated and the case remanded.[85]

d. *United States v. Diaz*, 854 F.3d 197 (2nd Cir. 2017)

i. Background and Facts of *Diaz*

Defendant Diaz appealed the United States District Court for the Southern District of New York's denial of his motion to suppress evidence discovered after a search incident to arrest. The District Court held that the search incident to arrest was lawful and supported by probable cause.[86] The Court of Appeals for the Second Circuit briefly recounted the facts of this case focusing on the actions of police officer Chris Aybar and her interactions with Diaz.[87] While conducting a routine patrol of an apartment building the police officer saw Diaz in a stairwell, a common area, with a plastic cup in his hand.[88] The officer believed the plastic cup smelled of alcohol and intended to issue a summons to Diaz for an open-container violation; however, the

[81] *Stanbridge*, 813 F.3d at 1037. *See also Heien*, 135 S. Ct. at 534-35, 539-40.
[82] *Stanbridge*, 813 F.3d at 1037-38.
[83] *Id*. at 1038. (quoting *Heien*, 135 S. Ct. at 539-40)
[84] *Stanbridge*, 813 F.3d at 1038. *See generally Heien v. North Carolina*, 135 S. Ct. at 530.
[85] *Stanbridge*, 813 F.3d at 1038.
[86] *See generally United States v. Diaz*, 854 F.3d 197, 199-200 (2nd Cir. 2017).
[87] *See Diaz*, 854 F.3d at 199.
[88] *Id*. at 199.

officer did not intend to arrest Diaz.[89] Diaz was then ordered to stand against a wall and provide identification.[90] Diaz then "fumbled" his hands inside of his jacket's pockets and rearranged his waistband.[91] The officer then proceeded to frisk Diaz, felt a bulge on his jacket and subsequently discovered a firearm (i.e., a loaded handgun). Diaz was then arrested for violating the open-container law and illegal firearm possession.[92]

ii. *Diaz's* Holding.

The Court of Appeals for the Second Circuit held that the officer's belief that the apartment building's stairwell was a public place, for the purposes of New York City's open-container law, was objectively reasonable and therefore the officer had probable cause to arrest Diaz for a violation of that law.[93] The Court also held that the search incident to arrest of Diaz was lawful because the officer had probable cause to make the arrest and it was of no consequence whether the officer's intention was to only issue a summons when the frisk occurred revealing a firearm.[94]

iii. *Diaz's* Rationale.

The Court of Appeals first addressed the issue of probable cause to arrest Diaz.[95] The Court reasoned that when the search was conducted the officer had probable cause to arrest Diaz for an open-container violation.[96] More specifically, this probable cause was based on the officer's reasonable belief that the stairwell in question was a public place for the purposes of the

[89] *Id*.
[90] *Id*.
[91] *Id*.
[92] *Id*.
[93] *Id*. at 203-205.
[94] *Id*. at 208-209.
[95] *Id*. at 202-203.
[96] *Id*.

open-container law.[97] A *Heien* based analysis led to the conclusion that the officer's mistake of law regarding whether or not the apartment's stairwell was a public place, was objectively reasonable.[98]

The test relied upon by the Court for determining if a police officer's mistake of law was objectively reasonable, emanates from *Heien* and Justice Kagan's concurring opinion in *Heien.*[99] The Court of Appeals for the Second Circuit clearly grounded its reasoning in both *Heien* and decisions made by other federal circuit courts of appeal that applied *Heien.* Statutory ambiguity was also a key component of this Court's reasoning.[100] In addition to relying upon *Heien, Stanbridge,* and *Alvarado-Zarza* to reach the conclusion that the officer's belief was objectively reasonable, the Court of Appeals further explained that not only was the law ambiguous but also, New York courts addressing whether or not an apartment building's common area is a public place have reached opposite conclusions.[101]

Based upon these reasons, it was ultimately found that the officer's mistake of law was objectively reasonable, and the officer did have probable cause to believe a crime had been

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[97] *Id*.
[98] *Id*. at 203-205.
[99] *Id*. at 204-205. *See also Heien*, 135 S. Ct. at 539-541. ("[T]he test is satisfied [only] when the law at issue is so doubtful in construction that a reasonable judge could agree with the officer's view.") Id. at 541. (Kagan, J., concurring) (internal quotations omitted).
[100] *Diaz*, 854 F.3d at 204-205. *See also United States v. Stanbridge*, 813 F.3d 1032, 1037 (7th Cir. 2016) and *United States v. Alvarado–Zarza*, 782 F.3d 246, 250 (5th Cir. 2015). (Both *Stanbridge* and *Alvarado-Zarza* concluded that for an officer's mistake of law to be objectively reasonable, a prerequisite in such a determination is that there must be ambiguity in the applicable statute(s)). *See generally Heien*, 135 S. Ct. at 539-41.
[101] *See Diaz*, 854 F.3d at 205-206. *See People v. Medina*, 16 Misc.3d 382, 389, 842 N.Y.S.2d 227, 232 (Sup. Ct. Bronx Cty. 2007) (*Medina* found that an apartment's lobby is a public place). *But see People v. Chavez*, 41 Misc.3d 526, 533–34, 972 N.Y.S.2d 858, 862–63 (Crim. Ct. Bronx Cty. 2013) (*Chavez* found that an apartment's elevator is not a public place). *See also United States v. Brown*, 2007 WL 2121883, at *2–*4 (E.D.N.Y. 2007) (*Brown* found that a bodega is a public place by relying upon *Medina*). *See Heien*, 135 S. Ct. at 539-41. *See also Stanbridge*, 813 F.3d at 1037 and *Alvarado-Zarza*, 782 F.3d at 250.

committed.[102] In addition, the search incident to arrest was also lawful and the officer's initial intentions of only issuing a citation when the search occurred were found to be irrelevant.[103]

e. *U.S. v. Flores*, 798 F.3d 645 (7th Cir. 2015)

i. Background and Facts of *Flores.*

The United States District Court for the Southern District of Illinois denied Flores' motion to suppress evidence, over five kilograms of heroin and Flores' confession, which arose as the result of an upheld traffic stop based upon an officer's belief that Flores' had violated a traffic statute; Flores appealed.[104] In this case, the defendant was driving on an Illinois highway "well under the 65 mph speed limit in a very stiff and rigid way with both hands gripping…the wheel very tightly and not relaxed as many motorists operate their vehicle…[and] passed [State Police Trooper] McVicker."[105] Flores then changed lanes and applied the brakes; the officer then pulled out behind Flores and noticed the license plate had a type of bracket on it.[106]

McVicker claimed that the bracket prevented him front seeing what state the license plate "originated from" but as he got closer to the defendant he could read the plate and chose to stop him anyway.[107] The officer initially misread the state displayed on the plate and claimed that the bracket violated the relevant plate-display law.[108] The officer questioned Flores via a translator and then another trooper arrived with a drug-sniffing dog.[109] The dog alerted the officers who then searched the vehicle and found heroin. Defendant Flores was then arrested.[110]

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[102] *See Diaz*, 854 F.3d at 209.
[103] *Id*. at 209. (citing *Rawlings v. Kentucky*, 448 U.S. 98 at 111 (1980).
[104] *See generally U.S. v. Flores*, 798 F.3d 645, 646-47 (7th Cir. 2015).
[105] *See Flores*, 798 F.3d at 646. *See also* Totten and De Leo (2017).
[106] *Flores*, 798 F.3d at 646.
[107] *Id*. at 646.
[108] *Id*. at 646-47.
[109] *Id*. at 647.
[110] *Id*. at 647.

ii. *Flores'* Holding.

The license plate bracket did not violate the state law.[111] The officer's suspicion that the bracket or frame had covered the name of another geographic region or a different state was unreasonable; thus, the traffic stop was found to not be truly based upon reasonable suspicion of a violation. Accordingly, the drug evidence was suppressed.[112] The lower court's decision was vacated and remanded.[113]

iii. *Flores'* Rationale.

Under *Heien*, "only an unreasonable mistake of law invalidates a stop."[114] The officer's mistaken belief that a standard license plate frame violated the state's "improper display statute" constituted an unreasonable mistake of law.[115] More specifically, the officer's suspicion that the bracket or frame had covered the name of another geographic region or a different state was found to be unreasonable for two reasons.[116]

First, had the officer's suspicion been deemed reasonable it would then permit stopping any of the countless vehicles lawfully being driven if they had plates with commonplace, standard frames or brackets similar to the ones in the instant case.[117] In addition, the Court of Appeals added that "[a] suspicion so broad that would permit the police to stop a substantial portion of the lawfully driving public, unless the drivers all removed their plate frames, is not reasonable."[118]

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[111] *Id*. at 649.
[112] *Id.* at 649-50.
[113] *Id*. at 650.
[114] *Id.* at 647-48. *See also Heien*, 135 S. Ct. at 534.
[115] *Flores*, 798 F.3d at 648-49.
[116] *Id*. at 649.
[117] *Id*.
[118] *Id*. *See also Alvarado-Zarza*, 782 F.3d 246, 250 (5th Cir. 2015) (interpreting a statute too broadly is unreasonable).

Second, the police officer admitted that when he arrived closer to vehicle in question, he was able to read the state from which the license plate was issued. Based on photographs from the traffic stop scene, the Court agreed that such an admission was in line with the typical experience of a reasonable police officer.[119] Therefore, the officer contradicted his own argument by admitting that he could read the plate when he was close to it. This is because if he can read the plate in this manner, it does not violate the statute requiring plates to be legible.

Under *Heien*, "reasonable suspicion can [rest] on a reasonable mistake of law. But if the officer's mistake of law is unreasonable, the evidence collected from the traffic stop should be suppressed."[120] Therefore, the Court's reliance on *Heien* lead to the conclusions that the officer's mistake of law was unreasonable and the stop was not based upon reasonable suspicion, and thus was invalid.[121] The Seventh Circuit Court of Appeals vacated the lower court's judgement and remanded the case.[122]

f. *U.S. v. Lawrence*, 2017 WL 129022 (1st Cir. 2017)

i. Background and Facts of *Lawrence*.

Defendant Lawrence appealed the denial of his motion to suppress evidence, discovered as the result of a traffic stop, by the United States District Court for the District of Massachusetts. The District Court held that the officer had made a reasonable mistake in believing that a traffic violation had been committed.[123] This case began with a Detective stopping a sedan for "crossing the fog line" on a two-lane road.[124] The United States Court of Appeals for the First Circuit described the initial facts as follows:

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[119] *See Flores*, 798 F.3d at 649.
[120] *Id.* at 648. *See also Heien*, 135 S. Ct. at 536, 539.
[121] *Flores*, 798 F.3d at 648-49. *See also Heien*, 135 S. Ct. at 534, 536, 539.
[122] *See Flores*, 798 F.3d at 650. *See also Heien*, 135 S. Ct. at 530, 534, 536, 539.
[123] *See generally U.S. v. Lawrence*, 2017 WL 129022 at *1-*2 (1st Cir. 2007).
[124] *See Lawrence*, 2017 WL 129022 at *1. *See also* Totten and De Leo (2017).

> Detective Michael Reynolds saw a black sedan traveling at a rapid rate of speed on [a two-lane road]. The road is…relevant to this case [as it is] divided by a yellow line and framed by white fog lines. When the sedan passed Reynolds' police cruiser, he noticed the vehicle had crossed the fog line by about two feet. Reynolds then ran a check on the license plate, which revealed the sedan was registered to someone other than the defendant. However, Reynolds had received a tip the day before that the defendant was using the sedan, registered to someone else, for trafficking drugs.[125]

Next Reynolds stopped the sedan because he believed that crossing the fog line was a "marked lanes violation" according to the Massachusetts General Laws.[126] In addition, the tip turned out to be credible because the defendant (Lawrence) was the driver and during subsequent searches of Lawrence's vehicle and person the police officer discovered and seized twenty-one bags of crack cocaine.[127]

ii. *Lawrence's* Holding.

The detective's interpretation of Massachusetts' laws was objectively reasonable.[128] Reasonable suspicion that Lawrence violated traffic laws existed.[129] The law in question lacks commentary from Massachusetts courts and is "at best ambiguous."[130] The United States Court of Appeals for the First Circuit affirmed Lawrence's conviction.[131]

iii. *Lawrence's* Rationale.

In *Lawrence*, the federal appellate court relies upon *Heien* in various ways.[132] First, the Court of Appeals addressed the particular basis for establishing reasonable suspicion. As is pertinent in the case-at-hand, reasonable suspicion can rely upon an officer's reasonable mistake of law if the mistake is *objectively* reasonable. For example, *Heien* found that an officer's

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[125] *Lawrence*, 2017 WL 129022 at *1.
[126] *Id*. *See also* Mass. Gen. Laws Ch. 89, § 4A.
[127] *Lawrence*, 2017 WL 129022 at *1.
[128] *Lawrence*, 2017 WL 129022 at *3-*4.
[129] *Id.* at *5.
[130] *Id.* at *3-*5. *See also* Mass. Gen. Laws Ch. 89, § 4A.
[131] *See Lawrence*, 2017 WL 129022 at *5.
[132] *See Lawrence*, 2017 WL 129022 at *2-*5.

mistaken belief regarding an ambiguous vehicle statute that the officer believed required at least two fully functional brake lights was found to be objectively reasonable even though the statute in question only truly required one functioning brake light.[133] The Court of Appeals expanded upon its reasoning by also citing Justice Kagan's concurrence:

> Justice Kagan expanded on the objective reasonableness requirement in her *Heien* concurrence, [by] stating that an officer's mistake of law is objectively reasonable when the law at issue is so doubtful in construction that a reasonable judge could agree with the officer's view.[134]

However, the Court of Appeals for the First Circuit also noted that when using the *Heien* framework, if a police officer makes a mistake of law that leads the officer to conduct a traffic stop, and the mistake of law is objectively *unreasonable*, then evidence from the traffic stop would need to be suppressed.[135]

Another area of *Lawrence* that relied upon *Heien* regards ambiguity in the law and how lower Massachusetts courts have applied the statute in question.[136] The statute in question essentially requires drivers on a road that has been divided into lanes, to keep their vehicle fully within one lane and not move from their lane unless drivers have first determined that movement can be made safely.[137]

Despite the Court's discussion of the actual language of the statute, the Court observed that the lower, district court correctly applied *Heien*.[138] Under *Heien*, "[the instant court] need not resolve whether crossing a fog line on a two-lane road is a violation of Massachusetts law.

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[133] *Id.* at *2. *See also Heien*, 135 S. Ct. at 539-40.
[134] *Lawrence*, 2017 WL129022 at *2. (quoting *Heien*, 135 S. Ct. at 541) (Kagan, J. concurring) (internal quotations omitted).
[135] *See Lawrence*, 2017 WL 129022 at *2. *See also Heien*, 135 S. Ct. at 536. (discussing the majority opinion) (emphasis added)
[136] *Id*. at *3-*4. *See also Heien*, 135 S. Ct. at 540. (concluding that the mistake of law was objectively reasonable because the officer had misinterpreted an ambiguous traffic-related statutory provision that the North Carolina appellate courts had not previously addressed.)
[137] *See Lawrence*, 2017 WL129022 at *3. (summarizing Mass. Gen. Laws Ch. 89, § 4A.)
[138] *See Lawrence*, 2017 WL129022 at *3-*4.

[The instant court] need only decide whether Detective Reynolds *reasonably* thought it was."[139] The Court of Appeals also reasoned that no Massachusetts court had clearly decided the issue and suggested that doing so would require difficult interpretive work in order to overturn the police officer's belief that Massachusetts state law prohibited drivers on roads, divided into lanes, from crossing a fog line under the circumstances.[140]

In reviewing the language of Section 4A, the Court found that not only had Massachusetts courts *not* ruled on this specific statute under these particular circumstances but also that the statute is "at best ambiguous."[141] Therefore, the Court concluded that Reynolds had an objectively reasonable belief the statute in question applied to crossing a fog line and thus had reasonable suspicion for the traffic stop. Based on these factors the stop was found to be lawful and the First Circuit affirmed the defendant Lawrence's conviction.[142]

g. *Sinclair v. Lauderdale County, Tennessee* 625 Fed.Appx. 429 (6th Cir. 2016)

i. Background and Facts of *Sinclair*.

The plaintiff brought a Section 1983 false arrest and malicious prosecution action against defendants Lauderdale County, its sheriff, and other sheriff's department officers which alleged that there was no probable cause for her arrest or prosecution.[143] Defendants' motion for summary judgement was granted by the District Court for the Western District of Tennessee. Plaintiff appealed.[144] Regarding the facts of the case, Ms. Sinclair's son was sentenced to six months of rehabilitation at the "Rose of Sharon rehabilitation program in Burlison,

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[139] *Id*. at *3. (emphasis added)
[140] *Id*. at *3. *See also Heien*, 135 S. Ct. at 541 (Kagan, J., concurring).
[141] *See Lawrence*, 2017 WL129022 at *4-*5. *See also* Mass. Gen. Laws Ch. 89, § 4A.
[142] *See Lawrence*, 2017 WL129022 at *5.
[143] *See generally Sinclair v. Lauderdale County, Tennessee* 625 Fed.Appx. 429, 433 (6th Cir. 2016), cert. denied, 137 S. Ct. 1814 (2017).
[144] *Id*.

Tennessee."[145] A condition of the son, Mr. Sinclair's, sentence required his mother (Ms. Sinclair) to "serve as his exclusive means of transportation to and from the facility."[146] Mr. Sinclair was granted temporary leave to attend a fundraiser for about one day but, did he not return to the facility when required. Instead, he stayed with his girlfriend overnight who then drove him back to the facility.[147] Three days later, a staff member at the rehabilitation facility notified (in writing) Mr. Sinclair's probation officer of the situation but "mistakenly report[ed] that Mr. Sinclair returned…on Monday with his mother, rather than with his girlfriend."[148] As a result, a warrant was issued for his arrest on "escape" and another arrest warrant was issued for his mother for "accessory after the fact."[149] The petitioner, Ms. Sinclair, was arrested at her home later that day.[150]

ii. *Sinclair's* Holding.

The Court of Appeals concluded that probable cause existed for the arrest of Mr. Sinclair for escape. Probable cause also existed to arrest petitioner Ms. Sinclair as an accessory after the fact. The letter written from the rehabilitation facility and subsequently sent to Mr. Sinclair's probation officer, was ruled to be "sufficient evidence to establish probable cause."[151] Thus, the Court of Appeals for the Sixth Circuit affirmed the lower court's decision.[152]

[145] *See Sinclair*, 625 Fed.Appx. at 431. *See also* Totten and De Leo (2017).
[146] *Sinclair*, 625 Fed.Appx. at 431.
[147] *Id*. at 431.
[148] *Id*. at 431-32.
[149] *Id*. at 432-33.
[150] *Id*. at 433.
[151] *Id*. at 436-38.
[152] *Id*. at 438.

iii. *Sinclair's* Rationale.

The Court reasoned that the petitioner "might be correct that the Tennessee criminal statutes were incorrectly applied: to [her son], because he was on probation, and to [petitioner], because accessory after the fact presupposes the commission of an underlying felony."[153] The arresting law enforcement officer's "arguably mistaken application of the unambiguous escape statute may fairly be characterized as a mistake of fact regarding Mr. Sinclair's probation status."[154] The officer's mistaken application of the statute was that a probationer actually cannot be arrested and charged with escape for a violation of probation rules, but the officer did in fact arrest Mr. Sinclair.[155]

Under the *Heien* analysis, however, the Court reasoned that it does not need to determine Mr. Sinclair's status "because even if [he] was on probation, the defendants' mistake of law was not so unreasonable as to preclude probable cause for charging Mr. Sinclair with escape and, as a result, charging [petitioner] with accessory after the fact."[156] The Court also reasoned:

> The Fourth Amendment tolerates only reasonable mistakes, and those mistakes-whether of fact or of law-must be objectively reasonable…[and] some circuits have interpreted *Heien* as suggesting that statutory ambiguity is prerequisite to holding that a mistake of law is objectively reasonable, and we certainly do not wish to afford officers a Fourth Amendment advantage through a sloppy study of the laws.[157]

The Court of Appeals for the Sixth Circuit ultimately relied upon *Heien* in reaching its conclusion that the officer's mistake of law, in regard to the unambiguous statute, was "not so

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[153] *Id*. at 435. *See also* Tenn. Code Ann. § 39-16-601(3), § 39-11-411.
[154] *See Sinclair*, 625 Fed.Appx. at 435-36.
[155] *Id*. at 434, 436. *See also* Tenn. Code Ann. § 39-16-601(3).
[156] *See Sinclair*, 625 Fed.Appx. at 435. *See also Heien*, 135 S. Ct. at 539.
[157] *Sinclair*, 625 Fed.Appx. at 435. (in part quoting *Heien* at 539-40.) *See also Stanbridge,* 813 F.3d 1032 (7th Cir. 2016), and *Alvarado-Zarza,* 782 F.3d 246 (5th Cir. 2015).

unreasonable as to preclude" the lawful arrest and charging of both Mr. Sinclair and petitioner Ms. Sinclair.[158] Therefore, the lower court's decision was affirmed.[159]

C. Interpretive Federal District Court Cases

a. *U.S. v. Diaz*, 122 F. Supp. 3d 165 (S.D.N.Y. 2015)

i. Background and Facts of *Diaz*.

Diaz moved to suppress evidence discovered as the result of a search and alleged that the search was a Fourth Amendment violation and this case represents the opinion and ruling of the U.S. District Court for the Southern District of New York.[160] This case began with two officers conducting a foot patrol in the Bronx.[161] The two officers entered a multi-story apartment building to conduct a "vertical patrol."[162] After entering via the front door, the officers immediately smelled marijuana.[163] They then went to the third floor and saw three people, including the defendant.[164]

The defendant was holding a plastic cup and there was a "partially empty [vodka bottle]" on the floor near Diaz.[165] Another of the three men was holding a "lit marijuana cigarette and a box of…eleven roaches" at which point the officers ordered all three men against the wall.[166] When Diaz was against the wall one of the officers smelled alcohol on him and emanating from his plastic cup. At this point, one of the officers intended to issue Diaz a citation, or summons,

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[158] *Sinclair*, 625 Fed.Appx. at 435-36, 438.
[159] *Id*. at 438.
[160] *U.S. v. Diaz*, 122 F.Supp.3d 165, at 167-68 (S.D.N.Y. 2015), *affirmed by United States v. Diaz*, 854 F.3d 197 (2nd Cir. 2017). *See also supra* Section B, Subsection (d) of this Chapter for a detailed discussion of Diaz's appeal to the Court of Appeals for the Second Circuit.
[161] *See Diaz*, 122 F.Supp.3d at 168. *See also* Totten and De Leo (2017).
[162] *Diaz*, 122 F.Supp.3d at 168.
[163] *Id*. at 168-69.
[164] *Id*. at 169.
[165] *Id*.
[166] *Id*.

for a violation of the city's open-container law and did not, at this point, intend to arrest Diaz.[167] After being asked for identification, Diaz "began fumbling in the pockets of his jacket…and rearranged his waistband."[168] The officer "felt unsafe" and "immediately proceeded to frisk Diaz" which led to the discovery of a handgun.[169]

ii. *Diaz's* Holding.

The court held that reasonable suspicion did not exist to believe the defendant was armed and dangerous (i.e., as needed to justify the frisk/search); however, the officer did have probable cause to arrest Diaz for the open-container violation even if the officer was mistaken as to whether or not the law applied to an apartment stairwell.[170] In addition, the search was a lawful search incident to arrest regardless of the officer's intentions to only issue a summons at the time of the search.[171]

iii. *Diaz's* Rationale.

The District Court rejected the government's argument that the officer had reasonable suspicion for the frisk because Diaz, when responding to the officer's request for identification, began fumbling with his hands, trying to take his jacket off, and adjusting his waistband.[172] According to the Court, "those facts do not suffice to establish reasonable suspicion."[173]

The question of whether the apartment's stairwell was truly a public place for the purposes of the city's open-container law, was rendered moot in light of *Heien*.[174] This is because even if the officer was mistaken about the stairwell being a public place, the officer's

[167] *Id*.
[168] *Id*.
[169] *Id*.
[170] *Id*. at 173-74, 181.
[171] *Id*. at 176-78, 181.
[172] *Id*. at 172.
[173] *Id*. at 172, 176.
[174] *Id*. at 174-76.

mistake under *Heien* was not an objectively unreasonable one; thus, the officer did have probable cause to arrest Diaz.[175] Based on this reasoning, the District Court ruled in favor of the government.[176] However, the Court did note that Diaz made a persuasive argument in advocating that the apartment's stairwell was not a public place for the purposes of the open-container law; however, Diaz's argument cannot defeat the finding of probable cause in light of the *Heien* analysis.[177] The Court summarized and clarified its reasoning by stating:

> To be reasonable…is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them fair leeway for enforcing the law in the community's protection…however the Fourth Amendment tolerates only reasonable mistakes, and those mistakes…must be objectively reasonable.[178]

b. *Dunlap v. Anchorage*, 2016 WL 900625 (D. Ct. Alaska 2016)

i. Background and Facts of *Dunlap*.

The plaintiff brought a Section 1983 claim and state tort law claims against the Anchorage Police Department, the county, and the arresting officer for his alleged false arrest, false imprisonment, and inflicted emotional distress.[179] The United States District Court for the District of Alaska granted defendants' motion for summary judgement on all claims. The plaintiff appealed to the Court of Appeals for the Ninth Circuit which affirmed in part; however, it reversed and remanded the District Court's holding regarding the plaintiff's arrest with instructions to apply the *Heien* ruling.[180] Regarding the facts, the plaintiff, Mr. Dunlap, was sitting in the driver's seat of his car at 3:00 am in a vacant lot when Officer Henry approached

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[175] *Id*. at 174-76. *See Heien*, 135 S. Ct. at 534-36.
[176] *See Diaz*, 122 F.Supp.3d at 181.
[177] *Id*.
[178] *Id*. at 174-75 (in part quoting *Heien*, 135 S. Ct. at 536, 539, 540-41) (Kagan, J., concurring.) (internal quotations omitted).
[179] *See generally Dunlap v. Anchorage*, 2016 WL 900625, at *1-*2 (D. Ct. Alaska 2016).
[180] *Id*. (The Ninth Circuit remanded with instructions that the District Court needed to determine if the plaintiff's arrest was lawful pursuant to the U.S. Supreme Court's decision in *Heien*, and if the arrest was not lawful, determine whether or not the arresting officer would be entitled to qualified immunity). *See Dunlap v. Anchorage*, 607 Fed.Appx. 764 (9th Cir. 2015). *See also Heien*, 135 S. Ct. at 530.

him.[181] Officer Henry spoke with Dunlap and received his identification.[182] At the time of the stop, the Court recounted the facts as follows:

> Dunlap had a loaded rifle on the passenger seat, a machete on the driver's side floor, a large fixed-blade knife in the door compartment on the driver's side, a loaded pistol in a fanny pack next to the driver's seat, another loaded pistol between the front passenger seat and the center console…[but]…did not have any weapons physically attached to his person at that time…[and]…did not notify Officer Henry about any of these weapons at the time of the stop.[183]

The plaintiff maintained that the rifle on the passenger seat of his vehicle was in Officer Henry's plain view.[184] Officer Henry then asked Dunlap if he was aware that he needed to inform police officers when he had weapons in his vehicle and Dunlap responded by asking if Henry was referring to the rifle "that was in plain view on the passenger seat."[185]

Officer Henry then ordered the plaintiff to exit his vehicle, at which time Henry saw the fixed-blade knife and machete. Henry then proceeded to handcuff the plaintiff and conduct a pat-down search.[186] Officer Henry subsequently arrested Dunlap for "misconduct involving weapons in the fifth degree."[187] Dunlap was then arrested, his vehicle was searched, and his personal items were photographed.[188]

ii. *Dunlap's* Holding.

The Court of Appeals for the Ninth Circuit instructed the District Court to consider *Heien's* reasonable mistake of law rationale and apply it to the instant case.[189] The District Court

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[181] *Dunlap*, 2016 WL 900625 at *1.
[182] *Id.*
[183] *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *Id.* at *2. *See also* AS 11.61.220(a)(1). (This law requires that when a peace officer contacts a person, he or she must immediately notify the peace officer of any deadly weapon(s) concealed on his or her person.)
[188] *See Dunlap*, 2016 WL 900625 at *2.
[189] *Id.* at *2. *See generally Heien v. North Carolina*, 135 S. Ct. at 530.

held that Mr. Dunlap's arrest was indeed lawful.[190] Based on the finding that the arrest was lawful and the law in question was ambiguous, summary judgement was granted in favor of the defendants.[191]

iii. *Dunlap's* Rationale.

Heien stated "the Fourth Amendment tolerates only reasonable mistakes…and those mistakes must be objectively reasonable."[192] Moreover, *Heien* also stated that an officer's mistake of law could be reasonable if statutes conflict with one another, are ambiguous, or have not been previously addressed by the relevant appellate courts.[193] The Ninth Circuit's memorandum also suggests that *Heien* can be used as a basis for an objectively reasonable mistake of law to be justified under a law that was not used to make the arrest in question.[194]

Applying *Heien* and the Ninth Circuit's instructions to this case required the District Court to decide if Anchorage Municipal Ordinance 8.25.020 is so ambiguous as to justify an objectively reasonable mistake of law that led to the arrest of a vehicle's occupant because "concealed knives [were] within his reach."[195] The district court noted that parts A and C of this Ordinance are ambiguous and in conflict with each other.[196]

"A reasonable officer could believe that Part C was only intended to relate to firearms so as not to invalidate large portions of [section A]."[197] When *Heien* is applied here, it is clear that the law in question is ambiguous and potentially in conflict with itself; thus, an officer could make an objectively reasonable mistake of law.[198] Based on the court's interpretation and

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[190] *Dunlap*, 2016 WL 900625 at *8-*9.
[191] *Id.* at *5-*6, *8-*9. *See also Heien*, 135 S. Ct. at 534-36, 539-40.
[192] *Dunlap*, 2016 WL 900625 at *4. (quoting *Heien*, 135 S. Ct. at 539).
[193] *Dunlap*, 2016 WL 900625 at *4. *See Heien*, 135 S. Ct. at 534-36, 539-40.
[194] *Dunlap*, 2016 WL 900625 at *4-*5. *See also J. Mack LLC v. Leonard*, 2015 WL 519412 (S.D. Ohio 2015).
[195] *Dunlap*, 2016 WL 900625 at *5. *See also* Anchorage Municipal Ordinance § 8.25.020(A)(C).
[196] *Dunlap*, 2016 WL 900625 at *5-*6. *See also* Anchorage Municipal Ordinance § 8.25.020(A)(C).
[197] *Dunlap*, 2016 WL 900625 at *6. *See also* Anchorage Municipal Ordinance § 8.25.020(A)(C).
[198] *Dunlap*, 2016 WL 900625 at *6-*7. *See also Heien*, 135 S. Ct. at 535-36, 539-40.

application of *Heien*, the arrest was lawful and summary judgement was granted in favor of the defendants.[199]

D. Interpretive State Court Cases

a. *Abercrombie v. State*, 343 Ga.App. 774 (2017)

i. Background and Facts of *Abercrombie*.

The defendant filed a motion to suppress evidence discovered as a result of a traffic stop and was denied by the Superior Court of Lumpkin County. The Superior Court reasoned that even if the defendant had not committed a vehicle equipment violation, the officer's interpretation of an allegedly ambiguous law was reasonable and the officer therefore acted in good-faith.[200] This case began when a law enforcement officer, while driving in the opposite direction, passed defendant Abercrombie's pickup truck.[201] When the officer passed Abercrombie, he noticed that Abercrombie's vehicle, a single-cab pickup truck, did not have an interior rearview mirror.[202] The law enforcement officer then initiated a traffic stop based upon the absence of an interior rearview mirror in Abercrombie's vehicle.[203] Upon approaching the vehicle and making contact with defendant, the officer noticed a "strong odor" of alcohol.[204] An investigation took place and included "field-sobriety" testing.[205] During this investigation, one of the two law enforcement officers noticed there was a "pipe used to smoke marijuana" within plain view inside Abercrombie's vehicle.[206] After a brief search an officer suspected a marijuana

[199] *Dunlap*, 2016 WL 900625 at *7-*9.
[200] *See generally Abercrombie v. State*, 343 Ga.App. 774, 774-76 (2017). (The trial court also issued a certificate of immediate review and the Court of Appeals of Georgia granted Abercrombie's application for interlocutory appeal.)
[201] *See Abercrombie*, 343 Ga.App. at 775.
[202] *Id*.
[203] *Id*. at 775-76.
[204] *See Abercrombie*, 343 Ga.App. at 775.
[205] *Id*. at 775. *See also* Id. at note 2 (specifically mentioning that, according to the officer's own testimony, he could not prove that Abercrombie was driving under the influence such that Abercrombie was less safe to drive or operate the vehicle.)
[206] *See Abercrombie*, 343 Ga.App. at 775.

violation and subsequently arrested Abercrombie for marijuana possession and possession of "drug-related objects."[207] A more thorough search of Abercrombie's truck followed, and a methamphetamine pipe was found.[208] Additionally, the officers also discovered methamphetamine outside, but close to, Abercrombie's pickup truck. Abercrombie was then charged with possession of methamphetamine and "drug-related objects." He then moved to suppress the drug-related evidence.[209]

ii. *Abercrombie's* Holding.

The Court of Appeals of Georgia held that Abercrombie's pickup truck's lack of an interior rearview mirror did not violate the law, and therefore the police officer did not have reasonable suspicion to stop Abercrombie.[210] Further, the Court held that the officer's mistake of law (regarding the absence of an interior rearview mirror) was not objectively reasonable, and thus also could not provide the police officer with reasonable articulable suspicion needed to justify the stop.[211] Finally, the Court of Appeals held that the good-faith exception did not apply and the trial court's judgement was reversed.[212]

iii. *Abercrombie's* Rationale.

In *Abercrombie*, the Court of Appeals of Georgia began by determining if Abercrombie's pickup truck's lack of an interior rearview mirror was truly a violation of OCGA § 40-8-7 and OCGA § 40-8-72, as the State contended.[213] To review the laws in question, the Court interprets the laws using a plain language test or understanding.[214] The relevant portion of OCGA § 40-8-7

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[207] *Id*.
[208] *Id*.
[209] *Id*.
[210] *Id*. at 779-81.
[211] *Id*. at 782-85. *See also* OCGA § 40-8-7 and OCGA § 40-8-72.
[212] *See Abercrombie*, 343 Ga.App. at 786-92. *See generally Gary v. State*, 262 Ga. 573 (1992). (Holding, in part, that the good-faith exception to the exclusionary rule is not applicable in Georgia based on state law grounds).
[213] *See Abercrombie*, 343 Ga.App. at 777.
[214] *Id*. at 777-78.

requires that motor vehicles be in "good working order and adjustment" so as to not endanger motorists.[215] The State's argument that this code section required all vehicles to have all original equipment at the time of the vehicle's manufacture was directly rejected by the Court of Appeals because OCGA § 40-8-7 plainly does not contain such a requirement.[216]

Specifically regarding equipment requirements for mirrors, the Court noted that OCGA § 40-8-72 (a) does not require an interior rearview mirror for non-commercial, private vehicles.[217] The Court further mentioned that subsection (b) of OCGA § 40-8-72 has a specific set of circumstances for commercial vehicles which does require the use of an interior mirror.[218] When reading all applicable portions of the State Code together it is clear that subsection (a) does not require an *interior* rearview mirror and subsection (b) specifies particular circumstances in which an interior rearview mirror is required.[219] Based on this, the Court reasoned that because one subsection does not require an interior rearview mirror and the other specifically mentions when an interior rearview mirror is required (i.e., for commercial vehicles), Abercrombie's view is indeed the correct understanding of the law and the State's interpretation is incorrect.[220] Moreover, the Court goes on to explain that it has previously granted a suppression motion in similar circumstances while also relying upon OCGA § 40-8-72 subsection (a).[221] Therefore, the

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[215] *Id*. at 778. *See also* OCGA § 40-8-7. ("No person shall drive or move on any highway any motor vehicle...unless the equipment upon any and every such vehicle is in good working order and adjustment as required in this chapter and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.") (quoting *Abercrombie*, 343 Ga.App. at 778) (internal quotations added).
[216] *See Abercrombie*, 343 Ga.App. at 778-79. *See also* OCGA § 40-8-7.
[217] *See Abercrombie*, 343 Ga.App. at 778-79. *See also* OCGA § 40-8-72(a).
[218] *See Abercrombie*, 343 Ga.App. at 778-80. *See also* OCGA § 40-8-72(b).
[219] *See Abercrombie*, 343 Ga.App. at 779-80. *See also* OCGA § 40-8-72(a),(b).
[220] *See Abercrombie*, 343 Ga.App. at 779-80. *See also* OCGA § 40-8-72(a),(b).
[221] *See Abercrombie*, 343 Ga.App. at 780. *See also* OCGA § 40-8-72(a). *See generally State v. Reid*, 313 Ga.App. 633 at 634 (2012). (*Reid's* ruling, in part, states that no law unequivocally requires side view mirrors for every vehicle and emphasized that OCGA § 40-8-72(a) requires that cars, i.e., non-commercial vehicles, be equipped simply with "a mirror.")

Court concluded that the lack of an interior rearview mirror in Abercrombie's circumstances did not violate any Georgia statutes in question.[222]

The Court of Appeals then addressed the argument that the officer's mistake of law was reasonable and made in good faith.[223] In *United States v. Chanthasouxat*, the Court of Appeals for the Eleventh Circuit ruled, in part, that an officer's reasonable mistake of law *cannot* provide objective reasonable suspicion required for a lawful traffic stop.[224] However, after *Chanthasouxat* was decided, the United States Supreme Court's ruling in *Heien* held that reasonable mistakes of law *can* support the reasonable suspicion required for a traffic stop.[225] Therefore, the instant court stated it must determine pursuant to *Heien* if the officer's "mistaken-but-honest" belief was objectively reasonable regarding "statutory construction."[226] Regarding *Heien* based, the Court of Appeals found that, in contrast to the statute from *Heien*, there was only one objectively reasonable interpretation of the statutes-at-hand.[227] The only objectively reasonable interpretation of these statutes was that Abercrombie had, in fact, *not* violated OCGA § 40-8-7 or OCGA § 40-8-72 (including subsections (a) and (b)).[228] Thus, the mistake of law made by the police officer was objectively unreasonable and could not lawfully justify the traffic stop.[229]

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[222] *See Abercrombie*, 343 Ga.App. at 780-81. *See also* OCGA § 40-8-7. *See also* OCGA § 40-8-72(a),(b).
[223] *See Abercrombie*, 343 Ga.App. at 781.
[224] *Id*. *See also United States v. Chanthasouxat*, 342 F.3d 1271 (11th Cir. 2003). ("[A] mistake of law, *no matter how reasonable or understandable*, can [never] provide the objectively reasonable grounds for reasonable suspicion or probable cause.") *See also Abercrombie*, 343 Ga.App. at 781-82, (quoting *Chanthasouxat*, 342 F.3d at 1279) (internal quotations omitted) (emphasis in original).
[225] *See Abercrombie*, 343 Ga.App. at 782. *See generally Heien*, 135 S. Ct. at 530.
[226] *See Abercrombie*, 343 Ga.App. at 785.
[227] *Id*. *See* OCGA § 40-8-7 and OCGA § 40-8-72(a),(b).
[228] *See Abercrombie*, 343 Ga.App. at 785.
[229] *Id*.

Finally, the Court of Appeals addressed the State's urging of a good-faith exception.[230] The Court, citing *Gary*, noted that jurisprudence in Georgia had purposefully not adopted a good-faith exception.[231] In order to fully clarify its ruling, the Court also stated that if their ability to consider a good-faith exception to the exclusionary rule had not been inhibited by *Gary*, such an exception would not apply under the circumstances. The judgement of the trial court was reversed.[232]

b. *State v. Rand*, 209 So.3d 660 (D. Ct. App. Fla., 1st Dist. 2017)

i. Background and Facts of *Rand*.

The Circuit Court of Duval County granted the defendant's motion to suppress evidence discovered subsequent to a warrantless arrest. The State appealed. On appeal, the motion to suppress was reversed.[233] The defendant Rand then sought a rehearing based on an officer's hearsay testimony and the District Court of Appeal of Florida for the First District granted the motion for rehearing and vacated the previous panel ruling.[234]

This case began with a law enforcement officer observing defendant exercising on a middle school's track at night.[235] Late at night Rand was exercising just one block away from his home, when he was arrested by a district school board officer.[236] The county middle school in question permitted the general public to use its track anytime not during school hours.[237] The school track in question had an "open-track policy" which allowed people to use the track "after

[230] *Id*. at 787.
[231] *Id*. at 788-90. *See also Gary*, 262 Ga. at 573.
[232] *See Abercrombie*, 343 Ga.App. at 792.
[233] *See generally State v. Rand*, 209 So.3d 660, 661-62 (D. Ct. App. Fla., 1st Dist. 2017).
[234] *Id*.
[235] *See Rand*, 209 So.3d at 662. *See also* Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant State Court Cases*. 54 Crim. L. Bull. 927 (2018).
[236] *See Rand*, 209 So.3d at 662-63.
[237] *Id.* at 662-63.

4 p.m. and before 7 a.m." and the school had also posted signs on the track's fence clearly stating as much.[238]

The officer was driving by the track and noticed "a black male and dark clothing across a very poorly lit field."[239] The school district law enforcement officer shined a light on defendant. Defendant then walked "over to the police car, where the officer immediately arrested him for being at the track."[240] After being arrested for trespassing on the school's track, defendant was searched and a handgun was found by the officer.[241]

ii. *Rand's* Holding.

The District Court of Appeal held that the school district law enforcement officer unlawfully arrested the defendant for trespassing.[242] The officer's alleged mistake of law when arresting defendant without a warrant was found to be objectively unreasonable and no probable cause existed to justify defendant's arrest.[243]

iii. *Rand's* Rationale.

The Court noted and explained the trespassing statute in question:

> § 810.097(1)(a), Fla. Stat. [defines] unlawful trespassing on campus as lacking legitimate business on the campus or any other authorization, license, or invitation to enter or remain upon the school property.[244]

According to the Court, the prosecution "made three substantial concessions."[245] The prosecution admitted that defendant was not trespassing; that the defendant "wasn't doing

[238] *Id.* at 662.
[239] *Id.* at 663.
[240] *Id.* at 663.
[241] *Id.* at 662.
[242] *Id.* at 662-63, 666-67.
[243] *Id.* at 664, 666-67.
[244] *Id.* at 663 (internal quotations omitted).
[245] *Id.* at 662.

anything wrong;" and the officer conceded "that he'd arrested [the defendant] immediately without any investigation."[246] Despite these critical concessions, the State attempted to argue that *Heien* permitted the officer's mistake of law in not knowing the "open-track policy" and then arresting defendant.[247] More specifically, the State argued that "the officer's mistaken, but good faith understanding that anyone on the property at that point at [night] was trespassing, gave [the officer] probable cause to arrest and search [the defendant] for being at the track."[248]

The Court rejected this argument but did state that *Heien* stands for the idea that an officer's mistake about the law does not immediately preclude a finding of probable cause.[249] Instead, the Fourth Amendment allows for reasonable mistakes and permits a finding of probable cause, but only if those mistakes are *objectively* reasonable.[250]

The Court went on to contrast the instant case from that of *Heien*.[251] *Heien* involved a component of ambiguity in the law, but "the officer in this case disregarded a conspicuous school policy posted right on the fence at the track, including right next to the open gate."[252] Furthermore, the Court pointed to the officer's excuse that he had not paid attention to the law in question and "put little stock in the officer's claimed confusion about the policy" whereas *Heien* involved an officer's reasonable misunderstanding of a legal statute.[253] The Court further added that "an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce."[254]

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[246] *Id.* at 662.
[247] *Id.* at 662-65. *See generally Heien*, 135 S. Ct. at 530.
[248] *Rand*, 209 So.3d at 665. *See generally Heien*, 135 S. Ct. at 530.
[249] *Rand*, 209 So.3d at 665.
[250] *Id.* at 665 (summarizing, in part, *Heien*, 135 S. Ct. at 539).
[251] *See Rand*, 209 So.3d at 663-67.
[252] *Id.* at 665.
[253] *Id.* at 665-66.
[254] *Id.* at 662-63 (quoting *Heien*, 135 S. Ct. at 539-40).

In finding the officer's mistake objectively unreasonable the Court also pointed out several important facts.[255] For example, the school posted conspicuous signs which allowed people to use the track at night; the gate to the track was unlocked while other areas of the school were locked; other school district law enforcement officers were aware of the school's policies allowing people to use the track and other officers had confirmed this policy to the officer in this case; other evidence indicated other people used the track at night.[256] The Court therefore found the officer's mistake of law to be objectively unreasonable given the clearly differing circumstances between *Heien* and the instant case. The Court affirmed the trial court's decision.[257] The court concluded its reasoning by stating:

> The bottom line here is that the officer disregarded the school's open-track policy. He said he didn't take the time to look at the sign right in front of the gate and he didn't investigate [the defendant's] reasons for being at the track. Under these circumstances, we find no error in the trial court's decision not to give the officer's sloppy work a Fourth Amendment pass.[258]

c. *Harris v. State*, 344 Ga.App. 572 (2018)

i. Background and Facts of *Harris*.

Mr. Harris was convicted, following a bench trial, of DUI and appealed, contending that the trial court should not have denied his motion to suppress evidence discovered as the result of a traffic stop.[259] The trial court denied Mr. Harris' motion to suppress and held that even though there was no traffic violation (the purported basis for the stop), the officer's mistake regarding that violation was reasonable and honest.[260] In this case, the defendant was stopped for going

[255] *See Rand*, 209 So.3d at 662.
[256] *Id* at 662-63.
[257] *Id* at 666.
[258] *Id* at 667 (internal quotations omitted). The mention of an officer's "sloppy work" refers to *Heien*, which explained that "[A]n officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce." *See Heien*, 135 S. Ct. at 539-40.
[259] *See generally Harris* v. State, 344 Ga.App. 572 (2018).
[260] *Id*. at 573-74.

around a red light by driving through a gas station parking lot instead of waiting for the light to turn green.[261] An officer from the Clayton County Police Department was stopped in his vehicle behind the defendant's vehicle "at a traffic light at the intersection of two roads, and another vehicle was in front of [defendant's] at the light."[262]

The defendant sat for "several minutes" during which time his right turn signal was continuously activated prior to making a right turn into "an adjacent gas station," proceeding through its parking lot, and then exiting on its other side.[263] The police officer then conducted a traffic stop of the defendant's vehicle and, upon further investigation, subsequently arrested him for driving under the influence of alcohol. The officer "also charged him with a traffic control device violation."[264] The alleged traffic violation was based upon section 40-6-20 of Georgia's Code.[265]

ii. *Harris'* Holding.

The Court of Appeals held that the defendant did not violate the statute in question, or any Georgia statute, by "cutting through the parking lot…in order to avoid the traffic light."[266] In addition, the police officer lacked reasonable articulable suspicion to justify the stop and his mistaken understanding of the law was found to be objectively unreasonable.[267] Therefore, the Court of Appeals reversed the trial court's decision to deny defendant's motion to suppress and the defendant's conviction as well.[268]

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[261] *Id.* at 572-73.
[262] *Id*.
[263] *Id*. at 573.
[264] *Id*.
[265] *Id*. *See also* OCGA § 40-6-20(a),(e).
[266] *Id.* at 573, 575.
[267] *See Harris*, 344 Ga.App. at 575.
[268] *Id*. at 575-76.

iii. *Harris'* Rationale.

In *Harris*, the state appellate court began by examining the language of the statute in question.[269] Specifically, section 40-6-20, subsection (a) of the Georgia Code requires drivers to obey instructions of "an official traffic-control device…unless otherwise directed by a police officer."[270] Additionally, subsection (e) of the same statute states that "[t]he disregard or disobedience of the instructions of any official traffic-control device or signal…shall be deemed prima-facie evidence of a violation of law."[271] Upon review of the statutory language, the court found that "based on the plain language of OCGA § 40-6-20 (a) and (e), [defendant] did not violate the statute because he did not disregard or disobey the traffic light's instruction to stop at the intersection."[272] The court in *Harris* conducted this statutory analysis based on the 2014 decision in the *Heien* case and a previous decision of the Georgia Court of Appeals, *Abercrombie v. State*, one year earlier in 2017.[273]

The State contended that even though the defendant did not violate the statute in question, or any Georgia statute, by "taking a detour through the parking lot…the officer had a good faith basis to believe that [defendant] violated the law [and] the traffic stop was based on reasonable articulable suspicion and was valid."[274] Additionally, the State had previously maintained that the "officer's mistake of law was *reasonable but honest*."[275] The Court of Appeals, in reaching its decision, relied on its own previous decision in *Abercrombie v. State* and

[269] *Id*. at 573. *See also* OCGA § 40-6-20(a),(e).
[270] *Harris*, 344 Ga.App. at 573. *See also* OCGA § 40-6-20(a).
[271] *Harris*, 344 Ga.App. at 573. *See also* OCGA § 40-6-20(e).
[272] *Harris*, 344 Ga.App. at 575. *See also* OCGA § 40-6-20(a),(e).
[273] *Harris*, 344 Ga.App. at 574-75. *See generally Abercrombie v. State*, 343 Ga.App. 774 (2017) and *Heien*, 135 S. Ct. 530. *See also* OCGA § 40-6-20(a),(e).
[274] *Harris*, 344 Ga.App. at 574.
[275] *Id*. at 573. (internal quotations omitted) (emphasis added).

the United States Supreme Court's decision in *Heien v. North Carolina*.[276] For an officer's mistake of law to permit the reasonable suspicion required to uphold a traffic stop, it must be tolerable under the Fourth Amendment.[277]

> [T]he Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable. We do not examine the subjective understanding of the particular officer involved.[278]

The Clayton County police officer's mistaken understanding of the law was found to be objectively unreasonable because nothing in the plain language of the applicable statute supported his understanding.[279] In contrast to the statute in *Heien*, the statute applicable to the case-at-hand could not be reasonably interpreted in multiple manners.[280] The appellate court specifically noted that "[u]nlike the statute at issue in *Heien,* there is but one reasonable interpretation of the statute [ ] in this case…[and]…[t]his is not a case where the law in question is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work."[281] Therefore, based upon the aforementioned reasoning, the Court of Appeals concluded that (1) the officer's mistake of law was objectively unreasonable; (2) reasonable articulable suspicion to support the traffic stop did not exist; and (3) these factors rendered the stop a violation of the Fourth Amendment.[282]

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[276] *Id.* at 574-75. *See generally Abercrombie,* 343 Ga.App. 774. *See also Heien,* 135 S. Ct. at 530. ("In light of *Heien,* courts must assess whether an officer's "mistaken-but-honest" belief as to the requirements of a law was objectively reasonable in terms of statutory construction.") Id. (quoting *Abercrombie,* 343 Ga.App. at 784) (internal quotations omitted).
[277] *Harris*, 344 Ga.App. at 574-75.
[278] *Id.* at 574 (quoting *Heien* 135 S. Ct. at 539) (internal quotations omitted) (emphasis in original).
[279] *Harris*, 344 Ga.App. at 575. *See also* OCGA § 40-6-20(a),(e).
[280] *Harris*, 343 Ga.App. at 575. *See also Heien*, 135 S. Ct. at 540.
[281] *Harris*, 344 Ga.App. at 575 (quoting, in-part, *Abercrombie*, 343 Ga.App. at 785) (quoting, in-part, *Heien*, 135 S. Ct. at 541 (Kagan, J., concurring)).
[282] *Harris*, 344 Ga.App. at 575.

It should also be noted that the Court briefly addressed the State's urging for a good faith exception to the exclusionary rule in this case. It was simply stated that "there is no good-faith exception to the exclusionary rule in Georgia."[283]

While most courts currently apply the *Heien* rationale in very similar ways, some notable outliers can potentially cause certain "slippery slope" concerns related to Fourth Amendment privacy. For example, federal district courts have been more willing to apply *Heien's* rationale beyond the context of a traffic stop. Specifically, the cases of *Dunlap, Diaz,* and *Baldwin* all involved an officer's mistake of law leading to the approval or sanctioning by courts of probable cause for someone's *arrest*.[284] The *Leonard* case also involved extending *Heien's* analysis to the context of probable cause determinations; however, in *Leonard*, an officer's mistake of law was allowed to justify a plain view seizure of synthetic marijuana.[285] It should be noted that all of these lower court interpretive cases for *Heien* were decided in favor of law enforcement officers.

In sum, the minority trend among many of the significant federal court cases is the extension of *Heien* beyond the traffic stop context. In addition, a minority of courts have failed to apply the requirement that the underlying law must be ambiguous prior to the court finding an officer has made some reasonable mistake concerning that law.[286]

E. Legal Commentary/Scholarly Articles Regarding *Heien*

Legal commentary regarding the United States Supreme Court's ruling in the case of *Heien v. North Carolina*, 135 S. Ct. 530 (2014), has been largely negative or, at best, neutral. A

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[283] *Id.* at 575. *See also Abercrombie,* 343 Ga.App. at 790 and *Gary v. State,* 262 Ga. 573 (1992). "In light of *Gary*…we must again conclude that, under our [State of Georgia] Supreme Court's interpretation of OCGA § 17-5-30, there is no good-faith exception in Georgia." *Abercrombie*, 343 Ga.App. at 790.

[284] *See generally Dunlap v. Anchorage,* 2016 WL 900625 (D. Ct. Alaska 2016); *U.S. v. Diaz,* 122 F.Supp.3d (S.D.N.Y. 2015); *affirmed by United States v. Diaz*, 854 F.3d 197 (2nd Cir. 2017); and *Baldwin v. Estherville,* 2016 WL 6828208 (N.D. Iowa 2016). *See also* Totten and De Leo (2017).

[285] *See generally J. Mack LLC v. Leonard, 2015* WL 519412 (S.D. Ohio 2015). *See also* Totten and De Leo (2017).

[286] *See generally Sinclair v. Lauderdale Co.,* 625 Fed. Appx. 429 (6th Cir. 2016). *See also* Totten and De Leo (2017). *See also supra* Section B, Subsection (g) for a detailed discussion of the *Sinclair* case.

fair amount of legal commentary argues that the Court's ruling in *Heien* simply gives law enforcement officers even more leeway regarding their conduct, which in turn erodes people's Fourth Amendment rights and protections.[287] Some commentary argues that the rationale and application of *Heien* will serve to allow police to stop members of a racial or ethnic minority more frequently and without consequence.[288] Of course, not all commentary reflects these views but much of it stakes out a position of clear opposition.

Scholars and the general public have shown concern regarding an apparent "whittling away at the Fourth Amendment" by the Supreme Court.[289] The Court's decision in *Heien* is just one of the most recent examples of rulings that seem to infringe upon people's rights while also allowing law enforcement more discretion and protection from their mistakes.[290] However, it is important to note that officers of the law often end up in situations where they are forced to make split-second decisions.[291] Because of this, police officers should be allowed some degree of reasonable leeway regarding errors in their decision-making. The Supreme Court has recognized these facts and allowed law enforcement to have a reasonable margin of error in these split-second legal decisions.[292] However, many legal scholars and commentators appear to believe that *Heien* extends the concept of "objectively reasonable," and actually itself, promotes a "sloppy study of the laws."[293]

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[287] *See infra* notes 293, 294, and accompanying text.
[288] *See* Sarah Ricciardi. *Do You Know Why I Stopped You?: The Future of Traffic Stops in a Post-Heien World.* 47 Conn. L. Rev. 1075 (2015).
[289] *See generally* Kit Kinports. *Heien's Mistake of Law.* 68 Ala. L. Rev. 121 (2016). *See* also id. at 122-25.
[290] *Id.* at 169. *See also* Karen M. Henning. *"Reasonable" Police Mistakes: Fourth Amendment Claims and the "Good Faith" Exception After Heien*. 90 St. John's L. Rev. 271 (2016). *See also* Madison Coburn. *The Supreme Court's Mistake on Law Enforcement Mistake of Law: Why States Should Not Adopt Heien v. North Carolina.* 6 Wake Forest J.L. & Policy 503 (2016).
[291] *See Heien*, 135 S. Ct. at 536, 539-40.
[292] *See Fourth Amendment – Search and Seizure – Reasonable Mistake of Law – Heien v. North Carolina.* 129 Harv. L. Rev. 125 (2015). *See generally Heien*, 135 S. Ct. at 530.
[293] *See generally* Kinports (2016), Henning (2016), Coburn (2016), The Harvard Law Review (2015), and Ricciardi (2015). (These legal articles often argue that the U.S. Supreme Court has gone too far with *Heien* by sanctioning police behavior that, according to the authors, should not be permitted.) *See* Sarah Ricciardi, *Do You Know Why I*

The maxim 'ignorance of the law is no excuse' now appears to only apply to citizens, according to numerous legal scholars and commentators.[294] When law enforcement officers are permitted to make 'objectively reasonable' mistakes to the extent that *Heien's* interpretation can allow, officers could potentially make mistakes that are unreasonable.[295] The detriment to Fourth Amendment rights would manifest itself if courts allow clearly unreasonable mistakes of law to be tolerated. However, the *Heien* ruling could arguably guard against permitting unreasonable mistakes:

> An officer can gain no Fourth Amendment advantage through a sloppy study of the law he is duty-bound to enforce because the Fourth Amendment only permits objectively reasonable mistakes of law.[296] [T]he limit is that the mistakes must be those of reasonable men.[297]

Sinclair is one such example of the potential for negative impacts from *Heien* on Fourth Amendment rights. The Court of Appeals for the Sixth Circuit found in *Sinclair* that even though a law was unambiguous and clear, an officer's mistake of law was not 'unreasonable enough' to invalidate an otherwise unlawful arrest.[298] Not only did the Court greatly 'expand' *Heien's* rationale and applicability but it also acknowledged that it was diverging from the rationale of

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Stopped You?: The Future of Traffic Stops in a Post-Heien World, *See also* Karen M. Henning, *"Reasonable" Police Mistakes: Fourth Amendment Claims and the "Good Faith" Exception After Heien*, *See also* Madison Coburn, *The Supreme Court's Mistake on Law Enforcement Mistake of Law: Why States Should Not Adopt Heien v. North Carolina*, *See also* Harvard Law Review, *Fourth Amendment – Search and Seizure – Reasonable Mistake of Law – Heien v. North Carolina*. *But see Heien*, 135 S. Ct. at 539-40. (The majority opinion in *Heien* states that police officers cannot gain a Fourth Amendment advantage by sloppily studying, or ignoring, the law because only objectively reasonable mistakes of law are permissible.)

[294] *See* Karen M. Henning (2016). *"Reasonable" Police Mistakes: Fourth Amendment Claims and the "Good Faith" Exception After Heien*, *See also* Madison Coburn (2016). *The Supreme Court's Mistake on Law Enforcement Mistake of Law: Why States Should Not Adopt Heien v. North Carolina*, *See also* Harvard Law Review (2015). *Fourth Amendment – Search and Seizure – Reasonable Mistake of Law – Heien v. North Carolina*. *See also* Cynthia Barmore. *Authoritarian Pretext and the Fourth Amendment.* 51 Harv. C.R.-C.L. L. Rev. 273 (2016). (These legal scholars and commentators posit that law enforcement can now be permitted to make so-called reasonable mistakes of law whereas ordinary citizens are not permitted to make legal mistakes without repercussions of some sort.)

[295] *See* Barmore (2016), Henning (2016), and Coburn (2016).

[296] *See Heien*, 135 S. Ct. at 539-40.

[297] *Id*. at 536.

[298] *See Sinclair*, 652 Fed.Appx. at 435-36, 438. *See also* Totten and De Leo (2017).

most other federal circuit courts.[299] This case is a prime example of what many legal commentators are worried could become widespread.[300]

F. Literature Review of Law Enforcement Officer Knowledge and Perceptions Regarding the United States Supreme Court's decision in *Heien v. North Carolina*

At the time of this study, there are no known prior empirical studies regarding law enforcement officer knowledge or perception of the *Heien* decision. However, a few previous empirical studies have focused, at least partially, on discovering police officer knowledge regarding Fourth Amendment law and related legal outcomes.

For example, perhaps one of the most widely known empirical studies that has examined law enforcement officers' knowledge of Fourth Amendment law is the 1998 study conducted by Perrin, Caldwell, Chase, and Fagan.[301] The study conducted by Perrin et al. (1998) utilized a highly detailed survey questionnaire that was administered to 466 law enforcement officers in California.[302] The group of officers sampled by these researchers was primarily from one county in California, but was diverse.[303] The overwhelming majority of police respondents had taken "at least some college courses" and of these officers, about one-third had not obtained a college degree; about one-third had received a two-year degree (Associate's Degree); and the remaining

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[299] *Sinclair*, 652 Fed.Appx. at 435-36. (citing *Stanbridge*, 813 F.3d 1032, (7th Cir.); and *Alvarado-Zarza*, 782 F.3d 246, (5th Cir.). *See also* Totten and De Leo (2017).

[300] *See generally* Kinports (2016) *Heien's Mistake of Law*, Henning (2016) *"Reasonable" Police Mistakes*, Ricciardi (2015) *Do You Know Why I Stopped You?*, The Harvard Law Review (2015) *Fourth Amendment – Search and Seizure*, Coburn (2016) *The Supreme Court's Mistake on Law Enforcement Mistake of Law*, and Barmore (2016) *Authoritarian Pretext and the Fourth Amendment*. (A Fourth Amendment concern expressed throughout these scholarly articles is that *Heien* will be expanded by courts to permit essentially any law enforcement conduct even when the law clearly permits whatever citizen behavior is in question.)

[301] *See generally* L. Timothy Perrin, H. Mitchell Caldwell, Carol A. Chase & Ronald W. Fagan. *If It's Broken, Fix It: Moving Beyond the Exclusionary Rule*, 83 Iowa L. Rev. 669 (1998).

[302] *Id.* at 712-13.

[303] *Id*.

third had earned a four-year degree (Bachelor's Degree).[304] Almost half of law enforcement officers who participated were of the rank of 'officer;' about one-third were above the rank of detective; and approximately one-fifth were of the rank of 'detective.'[305] In addition to gathering data from law enforcement officers, ten of the hypothetical questions from the survey were also administered to 80 law students in their first year of law school.[306] The survey that was administered to law enforcement officers was a three-part questionnaire containing questions regarding searches and seizures, law enforcement interrogations, and demographical information, such as education and rank.[307] The Perrin et al. (1998) study was primarily focused on the exclusionary rule and issues surrounding it such as the problems it creates for the criminal justice system as a whole and possible remedies to these problems.[308] While the Perrin et al. (1998) study's focus was the exclusionary rule, numerous other important questions were included regarding police officer's knowledge or understanding of Fourth Amendment law, specifically search and seizure law.[309]

In order to determine law enforcement officers' knowledge regarding Fourth Amendment search and seizure law, Perrin et al. (1998) included five 'hypothetical' questions.[310] These so-called 'hypothetical' questions involved key principles taken directly from United States Supreme Court cases which, when administered, were between two and eight years old, and one was derived from "well recognized legal principles."[311] These questions involved a short fact scenario and asked the respondent to choose one of three or four responses, depending on the

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[304] *Id*. at 719.
[305] *Id*.
[306] *Id*. at 712.
[307] *Id*. at 713.
[308] *See generally* Perrin et al., (1998).
[309] *Id*. at 724-25, 735.
[310] *Id*. at 714.
[311] *Id*. at 714-15. *See also* id. at note 388 (describing from which United States Supreme Court cases the principles were derived and noting the "long recognized public-safety exception to the search warrant requirement").

question.[312] Police officers answered the Fourth Amendment legal knowledge questions on searches and seizures correctly about fifty percent of the time.[313] Regarding these questions, the Perrin et al. (1998) study essentially argued that law enforcement officers cannot be expected to be deterred from illegal policing behavior if they simply do not know or understand what behavior is legal or illegal.[314] Portions of the authors' conclusions from these findings were stated in the following manner:

> The study's results support the obvious conclusion that training and education contribute to a better understanding of the law. More extensive training in the academy and, even more so, afterwards, are relatively inexpensive means of improving officer performance.[315]

Perrin et al. (1998) also uncovered some troubling findings regarding police deception.[316] However, the vast majority (e.g. over eighty percent) of law enforcement officers reported:

> …they had never even heard of a police officer attempting to avoid suppression by misrepresenting or failing to fully disclose the facts while giving in-court testimony or in preparing police reports.[317]

This reluctance to disclose misconduct and deception was what the researchers had expected to find.[318] Furthermore, the police officers who did acknowledge the existence of perjury or other misrepresentations on the part of either themselves or other officers appeared to downplay the magnitude of the behavior by only acknowledging a few cases of which they were aware.[319] Some officers were willing to admit to substantial knowledge of such deception and indicated

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[312] *Id*. at 759-61 (Questions C.8 – C.12 are the five questions which test law enforcement officer knowledge of Fourth Amendment search and/or seizure law and its proper application; these questions can be found in their entirety on the aforementioned pages of the Perrin et al. study).
[313] *See* Perrin et al. at 724-725, 735.
[314] *Id*. at 735.
[315] *Id*.
[316] *Id.* at 725-27.
[317] *Id.* at 725.
[318] *Id.*
[319] *Id.*

"pervasive problems."[320] Further, two relationships were discovered concerning deception on the part of law enforcement officers. The first relationship was between an officer's experience (e.g. years of service) and known instances of deception.[321] The more experience an officer had, the more likely the officer would be to report occurrences of police deception.[322] The second relationship was found between an officer's rank and known instances of deception.[323] This relationship followed a similar pattern as the first: as an officer's rank increased so did the reports of known occurrences of police deception.[324] In addition to the aforementioned issues with police officer deception, another seven percent of law enforcement officers stated that they were aware of additional deception by law enforcement in the context of searches and seizures apart from all other contexts.[325] The researchers further explained that:

> …the results almost certainly understate the severity of the problem because of the natural reluctance of many police to admit that they have witnessed perjury or to admit what they know about perjury by their fellow officers.[326]

The 'obvious conclusion' that the authors have reached, in advocating for additional training and education, could certainly prove to be what many would regard as a proper and necessary step toward improving police officers' Fourth Amendment legal knowledge. However, a recent empirical study and analysis of over forty state police training academies by Linetsky

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[320] *Id. See also* Perrin et al. (1998) at 725, n. 429 ("Among the police officer responses to the search and seizure questions, one officer claimed to have heard of 25 incidents of perjured testimony and another claimed to know of 50 such incidents, while an officer from the third group of participants identified twenty instances. Five individuals noted extensive police dishonesty in the description of searches or seizures in police reports, claiming to have heard of between 13 and 50 instances of perjury. The police interrogation questions yielded fewer reports of perjury with two officers identifying 15 incidents of perjury in courtroom testimony and two officers claiming the same amount of misconduct in police reports.").
[321] *Id.* at 725.
[322] *Id.*
[323] *Id.*
[324] *Id.*
[325] *Id.* at 727. *See infra* notes 355, 356, and accompanying text.
[326] *Id.* at 726-27. *See also* Perrin et al., (1998) note 431 at 727 ("police operate by a code of silence which dictates that you do not rat on your mates." (quoting Maurice Punch, *Conduct Unbecoming*, (1985) at 155 (internal quotations omitted)).

(2018) found that police academy training time for all legal topics is "on average, surprisingly low," accounting for only about twelve percent of total police academy training time.[327]

Another well-known empirical study that has examined law enforcement officers' knowledge of Fourth Amendment law is the 1991 study conducted by Heffernan and Lovely.[328] The study conducted by Heffernan and Lovely (1991) employed a detailed survey questionnaire that was administered to 547 law enforcement officers from four different police departments across several northeastern states.[329] About half of the law enforcement officers surveyed had at least some college coursework; most of the officers were assigned to patrol duties (as opposed to plain clothes or supervisory work); and most officers also had ten or more years of experience in police work.[330]

Beyond administering the survey to only law enforcement officers, the researchers also surveyed college students who were "at the start of an introductory course in criminal justice" to gauge a "layperson's" knowledge of Fourth Amendment search and seizure law.[331] Among the college students surveyed, any student who had experience with the criminal justice system were excluded from Heffernan and Lovely's (1991) study.[332] Additionally, the survey was also administered to prosecutors and public defenders in the same general geographic region as the law enforcement officers.[333] The purpose of administering the survey to attorneys was similar to that of the college student, but instead of establishing a lower-end knowledge baseline the attorneys were expected to establish the higher threshold of what someone would know about

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[327] *See* Yuri R. Linetsky. *What the Police Don't Know May Hurt Us: An Argument for Enhanced Legal Training of Police Officers*, 48 New Mexico L. Rev. 1, at 3 (2018).
[328] *See generally* Heffernan, W., & Lovely, R. *Evaluating the Fourth Amendment Exclusionary Rule: The Problem of Police Compliance with the Law*, 24 U. Mich. J.L. Ref. 311 (1991).
[329] *Id*. at 330.
[330] *Id*. at 334-35.
[331] *Id*. at 331.
[332] *Id*.
[333] *Id.*

Fourth Amendment search and seizure law.[334] The 1991 study conducted by Heffernan and Lovely focused on an evaluation of the Fourth Amendment exclusionary rule and asked law enforcement officers numerous questions to determine the extent of police officer knowledge of Fourth Amendment search and seizure law and related legal concepts.[335]

Survey questions to measure officers' legal knowledge of important Fourth Amendment search and seizure concepts included six hypothetical cases, or 'scenarios,' based on United States Supreme Court cases and eight multiple-choice questions about more generalized search and seizure rules.[336] The hypothetical questions asked the participant to review a short scenario and then respond that the scenario involved either illegal or legal behavior.[337] The multiple-choice questions asked respondents to choose the correct answer out of a total of four or five possible choices.[338] The results of these legal knowledge questions for police officers was lower.

For example, police officers were able to correctly answer the short scenario questions about fifty-seven percent of the time, indicated with a mean score of 2.9 (slightly better than the chance of randomized guessing).[339] However, police officers were able to answer the eight more generalized Fourth Amendment multiple-choice questions correctly less than fifty percent of the time (indicated by a mean score of 3.0).[340] By comparison, the "laypersons," or college students correctly answered the hypothetical scenario questions about forty-eight percent of the time.[341] As expected, attorneys performed the best in correctly answering the short scenario questions with an accurate response rate of about seventy-three percent (a mean score of 3.4).[342] Following

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[334] *Id*.
[335] *See generally* Heffernan & Lovely (1991).
[336] *Id.* at 328-29, 333.
[337] *Id*. at 332-33.
[338] *Id*. at 333-34.
[339] *Id*. *See also* id. at 334, Table 3.
[340] *Id.* at 334. *See also* id. at 334, Table 3.
[341] *Id*. at 333.
[342] *Id. See also* id. at 334, Table 3.

an analogous pattern, attorneys also performed better on the eight more generalized Fourth Amendment search and seizure legal knowledge questions with a mean score of 3.8.[343] College students, or "laypersons," again performed the worst compared to law enforcement officers and attorneys surveyed by the researchers.[344]

Despite the overall poor performance by police officers in their attempts to correctly answer questions about Fourth Amendment search and seizure legal knowledge, including the scenarios and more generalized knowledge questions, the authors discovered some interesting relationships.[345] One such relationship for police officers concerned education.[346] Law enforcement officers who had completed at least some college studies, or coursework, were able to correctly answer Fourth Amendment legal knowledge questions, both of the scenario and generalized-type, more frequently than officers who had not completed college coursework.[347] Another relationship discovered concerned the police officers' assigned duties.[348] Officers who were assigned to patrol duties scored noticeably lower in all categories compared to officers assigned to plain clothes investigations, other plain clothes duties (e.g., community policing activities), and officers whose duties were categorized as supervisory.[349] Additionally, police officers whose assignment was categorized as supervisory scored at least the same as plain-clothes officers in correctly answering factual scenario questions and significantly higher in the more generalized legal knowledge questions, compared to both plain-clothes officers and patrol officers.[350] The relationship between law enforcement officers' "in-service training" and their

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[343] *Id*. at 334.
[344] *Id*.
[345] *Id*. at 336-38.
[346] *Id.* at 336-37. *See also* id. at 335, Table 4.
[347] *Id*. at 336-37. *See also* id. at 335, Table 4.
[348] *Id*. at 336-37. *See also* id. at 335, Table 4.
[349] *Id*. at 335-36. *See also* id. at 335, Table 4.
[350] *Id.* at 335-36. (Supervisors had a mean score of 3.6 for 'case scenarios' and a mean score of 4.5 for 'legal rules;' the patrol officers had a mean score of 3.3 for 'case scenarios' and a mean score of 3.5 for 'legal rules').

legal knowledge, or understanding, was the most significant of the observed relationships.[351] Police officers who had "extensive [in service] training" (defined by Heffernan and Lovely as four or more legal courses after basic police academy training) were able to score nearly as well as the surveyed attorneys did.[352] However, even officers who had completed extensive in-service training were incorrect answering both types of legal questions approximately thirty percent of the time.[353] More generally, over one-third of all surveyed officers, about thirty-four percent, indicated that they would unknowingly engage in unconstitutional behavior simply because they did not have an adequate understanding or knowledge of Fourth Amendment search and seizure procedures and rules.[354] Perhaps the most disconcerting finding of the authors' study was that about fifteen percent of the over five hundred law enforcement officers surveyed stated that they would knowingly and intentionally engage in illegal policing behavior.[355] Regarding this very unsettling finding, Heffernan and Lovely stated:

> As we have already noted, training has a significant, positive influence on officers' knowledge of the law. Table 12 demonstrates, however, that we cannot say the same thing about training's effect on officers' willingness to comply with what they believe the law requires. The data in Table 12 reveal that officers do not become more committed to the rule of law as a result of increased training. Instead, commitment to the rule of law appears to be formed independently of training.[356]

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[351] *See* id. at 337-38. *See also* id. at 336, Table 6.
[352] *Id*. at 338. *See also* id. at 336, Table 6.
[353] *Id*. at 337.
[354] *Id*. at 322-33.
[355] *Id*. at 345-52. *See also* id. at 351 and 353, Tables 11 & 12. *See also* Ronald L. Akers & Lonn Lanza-Kaduce, *The Exclusionary Rule: Legal Doctrine and Social Research on Constitutional Norms, 2 Sam Houston St. U. Crim. Just. Cent. Res. Bul*., 1-6 (1986) (This study utilized a survey administered to over 200 police officers and reported findings that about nineteen percent of officers surveyed had conducted searches that were of "questionable authenticity" at least once per month. Additionally, four percent reported that they would perform searches that they, at the time of execution, knew were not legal at least once per month). For an empirical examination of crimes committed by police officers *See* Philip Matthew Stinson, John Liederback, Steven Lab, and Steven L. Brewer. *Police Integrity Lost: A Study of Law Enforcement Officers Arrested*, National Institute of Justice, (2016). Available directly at https://www.ncjrs.gov/pdffiles1/nij/grants/249850.pdf. ("The rate of officers arrested was 0.72 officers arrested per 1,000 officers or a rate of 1.7 officers per 100,000 population nationwide… The cases identified in this research stemmed largely from opportunities inherent in the context of police work…").
[356] *See* Heffernan & Lovely at 354. *See also* id. at 353, Table 12. *See also* Perrin et al. at 685 ("Although Heffernan and Lovely take comfort in the fact that slightly more than five out of six officers in their study would not knowingly violate a suspect's Fourth Amendment rights, the fact that almost one in six was willing to knowingly disregard the rights of the accused is a matter of serious concern. It is particularly alarming when one realizes that

An earlier empirical study concerning Fourth Amendment legal knowledge on search and seizure laws was conducted in 1987 by Orfield, and examined narcotics officers in Chicago and whether or not the exclusionary rule actually deterred law enforcement officers from violating the law.[357] The study conducted by Orfield in 1987 was based upon structured interviews with twenty-six narcotics officers.[358] The interviews were questionnaire-based and included both open-ended and narrowly focused questions.[359] The questionnaire utilized by Orfield (1987) contained 148 questions and took, on average, between one and a half to two hours to fully complete.[360] All twenty-six respondents came from one of the two subdivisions of the narcotics section that included "Special Enforcement Narcotics [or] SEN and General Enforcement Narcotics [or] GEN."[361] Both of these subdivisions of the narcotics sections were comprised of about half police officers and half detectives.[362]

The interviews contained the two types of questions previously discussed.[363] A significant portion of the survey questionnaire concentrated on the narrowly focused questions and addressed topics such as police experience; training regarding Fourth Amendment search and seizure law and rules; reactions to the suppression of evidence; and situations that resulted in

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the statistic is most likely understated, because most officers would be reluctant to admit to researchers that they would knowingly break the law. The fact that 15% of the participants admitted such an inclination suggests that the actual (unadmitted) rate of non-compliance is higher.").

[357] *See generally* Myron W. Orfield. *The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 U. Chi. L. Rev. 1016 (1987).

[358] *Id*. at 1024-25.

[359] *Id*. at 1024.

[360] *Id*. *See also* Orfield (1987) at 1024, note 40. ("The questionnaire focused on the deterrent effect of the exclusionary rule on police behavior. After revisions in response to a field test on two detectives from the Narcotics Section, the questionnaire consisted of 148 questions and took an average of [1.5] to 2 hours to administer. Unfortunately, due to time constraints and the demands of the officers' schedules, some of the officers did not answer all of the questions, but generally at least nineteen detectives answered each question.").

[361] *See* Orfield (1987) at 1025 (The SEN group dealt with larger complicated drug cases, including drug importation from other U.S. jurisdictions; the GEN group focused on more localized drug distribution cases).

[362] *Id*. (Orfield's 1987 study sample reflected the representation of these two groups).

[363] *Id*. at 1025.

loss of evidence.[364] The "open-ended questions" asked for broader answers to questions such as the amount of harm done to policing by the exclusionary rule; if the rule should be removed; the frequency with which the rule precludes officers or detectives from executing searches; and the frequency of law enforcement officers lying in court.[365] The findings of Orfield's 1987 study were much more promising than the other empirical studies previously discussed.[366]

In particular, Orfield (1987) asked officers if they "always find out when their evidence has been suppressed" and about eighty-five percent, or seventeen of the twenty who responded, said "yes."[367] Most of the surveyed officers, eighty percent, said that they found out about their evidence being suppressed in court, while even more officers found out either in court or also via a notification from the state's attorney (i.e., about ninety-two percent).[368] Not only did most police officers know when evidence they had seized was suppressed, but most officers also generally understood why their evidence was suppressed while they were in court.[369] The surveyed officers responded that they "always" had a "good or complete understanding" of why their evidence was suppressed one-third of the time.[370] Furthermore, fifty-four percent of responding officers stated that they "usually" had a "good or complete understanding" of the reason for the suppression.[371] These findings demonstrates that overall about eighty-five percent of all police officers, including detectives, surveyed by Orfield (1987) knew when evidence they had seized was suppressed, but perhaps more importantly, these officers and detectives also

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[364] *Id*.
[365] *Id.*
[366] *Id.* at 1017-18, 1024-25, 1027-29, 1033-35, 1036.
[367] *Id*. at 1033.
[368] *Id.* at 1033-34. *See also* Orfield (1987) at 1034, note 83 (reviewing the question asking how officers find out about their evidence being suppressed and the officers' responses).
[369] *Id*. at 1035. *See* Orfield (1987) at 1035, note 85 (reviewing the question asking how often police officers had a "good or complete understanding" of why their evidence was suppressed and the officers' responses).
[370] *Id.* at 1035.
[371] *Id.*

knew why their evidence had been suppressed.[372] One of the law enforcement officers interviewed who indicated that he always had a "good or complete understanding" of why his evidence was suppressed said:

> If I get something thrown out, I have the defense attorney xerox the case law, and if I don't understand it, I ask the assistant state's attorney how to draw parallels from it. I try to figure out since the last time I was there what changed.[373]

Ninety-five percent of officers who responded indicated that their own experiences were one manner through which they learned about Fourth Amendment law and related important legal changes.[374] Overall, Orfield's 1987 study indicated that the vast majority of law enforcement officers had a "good or complete understanding" of the Fourth Amendment laws and rules surrounding search and seizure procedures.[375] Law enforcement officers also continued to learn about Fourth Amendment law beyond just basic academy training through their own experiences, additional training or instruction, and stricter rules or regulations imposed by their police department.[376]

However, with regard to asking police officers and detectives about lying in court or making false statements, many officers gave responses that potentially indicate purposeful, illegal behavior.[377] For example, nearly half of all officers and detectives responded that judges were frequently correct to distrust law enforcement officer testimony.[378] In addition, over three-quarters of all law enforcement officers surveyed agreed that "police do shade the facts a little (or a lot) to establish probable cause when there may not have been probable cause in fact," yet;

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[372] *Id.* at 1017-18, 1024-25, 1027-29, 1033-35, 1036.
[373] *Id*. at 1035. *See* Orfield (1987) at 1035, note 86.
[374] *Id.* at 1036.
[375] *Id.* at 1017-18, 1024-25, 1027-29, 1033-35, 1036.
[376] *Id.* at 1026-29.
[377] *Id.* at 1049-51.
[378] *Id.* at 1049-50. *See* Orfield (1987) at 1050, note 129 (reviewing the question asking officers how often judges are correct in "disbelieving police testimony" and the officers' responses).

fifty-six percent of officers and detectives indicated that these actions occurred infrequently.[379] This disconcerting finding seems to be echoed by previously discussed empirical studies.[380]

Finally, some of Orfield's (1987) findings seem to conflict with earlier empirical findings. For example, Wasby (1978) found that "recruit training is sadly lacking in criminal procedure content [and]…[t]he spirit and tone of communication about the law, particularly when the law [is] favorable to defendants' rights, is often negative, with the need for compliance stressed only infrequently."[381] Additionally, Hyman (1979) concluded that "the average officer did not know or understand proper search and seizure rules…[and that]…supervisors and senior officers only achieved slightly improved scores."[382]

In 1992, Orfield conducted another study that focused on similar Fourth Amendment topics, including search and seizure laws and the exclusionary rule, but gave more attention to the issue of deception (e.g. perjury) by law enforcement officers.[383] Orfield's 1987 study was conducted through interviewing police officers and detectives using a survey questionnaire. In Orfield's 1992 study, interviews were still conducted using a survey questionnaire, but instead of interviewing law enforcement, judges, public defenders, and prosecutors were interviewed.[384] The 1992 study again used both narrow multiple-choice questions and open-ended questions.[385] This study encompassed the aforementioned courtroom actors from fourteen randomly selected

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[379] *Id.* at 1050 (internal quotations omitted).
[380] *See generally* Perrin et al. (1998) and Heffernan and Lovely (1991). *See also supra* notes 355, 356, and accompanying text.
[381] *See* Stephen Wasby, *Police Training about Criminal Procedure: Infrequent and Inadequate*, 7 Pol'y Stud. J. 461, at 464-66 (1978).
[382] *See* Eugene Hyman, *In Pursuit of a More Workable Exclusionary Rule: A Police Officer's Perspective*, 10 Pac. L. J. 33, 47 (1979).
[383] *See generally* Myron W. Orfield, *Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts*, 63 U. Colo. L. Rev. 75 (1992).
[384] *Id.*
[385] *Id.* at 81.

courtrooms; courtroom actors were also randomly selected when possible.[386] Those who agreed to participate in the study are as follows: thirteen judges, eleven state's attorneys, and all fourteen public defenders.[387] Similar to the author's earlier study, the average interview took about one and a half to two hours to complete.[388]

Confirming what was found in the author's first study, the 1992 study found that not only does the exclusionary rule serve as a legitimate deterrent to illegal searches and seizures but also serves to continue to provide important education to law enforcement officers.[389] More specifically, just over half of respondents indicated that the suppression of evidence in court was at least as instructive, if not more so, in teaching law enforcement officers proper Fourth Amendment search and seizure law when compared to more formalized, official training.[390] Respondents further noted that when police officers have their evidence suppressed in court, they are more likely to change their behavior to ensure increased compliance with the law. Such behavior changes were facilitated through training programs and new departmental rules or procedures.[391] About ninety percent of all participants indicated that law enforcement officers generally understood search and seizure laws, at least enough for adequate job performance without hindering their abilities to effectively police.[392] Numerous participants in Orfield's 1992 study found that law enforcement officers who work within "specialized units" or on the more serious cases (e.g. the Narcotics Section studied in the 1987 Orfield study or large cases likely to

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[386] *Id*. at 81-82.
[387] *Id*. State's attorneys who declined the invitation to take part in the study were replaced by others "assigned to the same courtroom;" however, the judge who declined to participate could not be appropriately replaced. *Id*. at 81-82.
[388] *Id*. at 82.
[389] *Id*. at 81-82, 91, 92-93. *See also generally* Orfield (1987).
[390] *See* Orfield (1992) at 91.
[391] *Id*. at 80, 82. *See also* id. at 98 (Just over eighty percent also believe that "[t]he possibility of suppression in big cases sometimes causes officers to change their testimony in court rather than their behavior"). *See also infra* note 396 and accompanying text.
[392] *Id*. at 92.

cause public backlash if convictions were not obtained) "knew the law better than most lawyers or better than law professors."[393] However, respondents qualified these responses slightly by noting that patrol officers (as opposed to those in specialized units) did not fully understand certain complicated areas of Fourth Amendment law as well as the officers assigned to specialized units.[394] Orfield discovered an interesting dynamic in the 1992 study: the exclusionary rule fostered an improved relationship between prosecuting attorneys and law enforcement officers; however, such an improved relationship was not found for any other two groups.[395] Finally, police perjury and "judicial abdication" was found to be a seemingly unescapable problem occurring at "shocking[ly]" high levels.[396] Orfield (1992) concluded by apparently accepting these types of illegal behaviors as necessary "evils" required to protect the public. He also concluded by stating that the majority of participants continued to believe that Fourth Amendment law was not overly complex and police officers are generally able to understand this law.[397]

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[393] *Id.* at 92-93 (internal quotations omitted). *See also* id. at 114-116; (A "heater" is a big case that has the potential to arouse public ire if the defendant goes free for procedural or technical reasons. In Chicago, "heater cases" are taken out of the normal random assignment system by the Chief Judge and diverted to "heater case judges" — judges statistically far more likely to convict. *See* id. at 116 (quotations in original).

[394] *Id.* at 92-93. *See* id. at 93 ("Detectives are smarter. They have better training. Eighty to ninety percent of them understand why evidence was suppressed. Patrolmen are not used to testifying. They understand approximately fifty percent of the time. They don't do a lot of testifying in felony courts. If a little law is involved, they are hard-pressed to understand. . . . [Patrol officers] know what exigent circumstances are. They know what is involved in consent. But can they delineate the fine points? I don't think so. Even lawyers, a lot of them, can't do it. . . . [Patrol officers] are roughly able to do their jobs.") *Id.* at 93 (quoting one of the State's attorneys).

[395] *Id.* at 82.

[396] *Id.* at 82-83, 98, 108-09, 111, 131 (Nearly forty percent of respondents believed that law enforcement supervisors actually encouraged perjury to prevent evidence exclusion; almost seventy percent indicated that supervisors simply accepted perjury as a regular occurrence; just under thirty percent indicated that supervisors actively discouraged perjury, over ninety percent said that sometimes prosecutors knew that officers were committing perjury; three quarters of judges noted that judges sometimes allowed evidence they knew to be obtained via an illegal search; seventy percent of all participants stated that judges sometimes would not exclude evidence when it was legally required). *See supra* notes 355, 356, and accompanying text for an additional brief discussion of illegal activity by law enforcement officers.

[397] *Id.* at 131-132.

A more recent empirical study of Fourth Amendment law and related legal knowledge (e.g., executing arrests under the knock and announce rule at a home or premise after the Supreme Court's ruling in *Hudson*) was conducted by Totten and Cobkit in 2013.[398] This study also encompassed discussions and analysis of the *Hudson* ruling, the exclusionary rule, and other potential deterrents for knock and announce violations.[399] In addition, Totten and Cobkit's 2013 study also included an analysis of lower court case law that applied the *Hudson* ruling to arrests. The study also sought to examine police chiefs' knowledge of *Hudson*, including their perceptions of law enforcement officer training in the knock and announce context, as well as the exclusionary rule's value compared to certain alternatives.[400]

Police chiefs in this survey study were selected "from the 2010 National Directory of Law Enforcement Administrators."[401] Two hundred-fifty chiefs were selected for inclusion from "large cities" across the United States.[402] The researchers chose police chiefs from "large cities" because law enforcement officers in larger cities are typically required to deal with more criminal activity and related problems such as arrests or seizures, compared to officers in smaller-sized cities.[403] Of the two hundred-fifty police chiefs selected, one hundred thirty-three

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[398] *See generally* Christopher Totten and Sutham Cobkit. *The Knock-and-Announce Rule and Police Arrests: Evaluating Alternative Deterrents to Exclusion for Rule Violations*, 48 Univ. San. Fran. L. Rev. 71 (2013). *See also* Christopher D. Totten and Sutham Cobkit. *The Knock and Announce Rule and Police Searches After Hudson vs. Michigan: Can Alternative Deterrents Effectively Replace Exclusion for Rule Violations?*, 15 New Crim. L. Rev. 446 (2012). *See generally Hudson v. Michigan*, 547 U.S. 586 (2006). (The *Hudson* ruling essentially stated that the exclusionary rule is no longer applicable to violations of the knock-and-announce rule) *Hudson*, 547 U.S. at 599. *See also* 8 U.S.C. § 3109 (2012). (This section of the United States Code requires that law enforcement officers make their presence known and state their authority prior to entering a home or building, whether forcefully or not after being refused admittance thereto; this requirement is commonly referred to as the knock-and-announce rule). *See also U.S. v. Banks*, 540 U.S. 31, 33, 38 (2003). (*Banks* ruled that law enforcement officers need to wait a reasonable amount of time prior to entering a home, between fifteen and twenty seconds was deemed reasonable under the circumstances of the case) *Banks*, 540 U.S. at 38.

[399] *See* Totten and Cobkit (2013) at 71-73, 77-84. *See generally Hudson*, 547 U.S. at 586.

[400] *See* Totten and Cobkit (2013) at 85-87, 98-104.

[401] *Id*. at 96.

[402] *Id.* ("large cities" were defined as cities with populations over 100,000) *Id*.

[403] *Id.* at 96.

"usable surveys were returned," a response rate of just over fifty-three percent.[404] The survey contained questions pertaining to three key areas: (1) knowledge about the knock-and-announce rule when applied in the context of an arrest; (2) training regarding the knock-and-announce rule in this context; and (3) potential factors that could deter violations of the knock-and-announce rule.[405]

Totten and Cobkit (2013) found that police chiefs' general knowledge of the knock-and-announce rule, when being applied in the arrest situation, was satisfactory.[406] More specifically, over eighty-two percent of respondents indicated that when there were no exigent circumstances, law enforcement officers are required to "knock and announce their presence and authority and then wait a reasonable amount of time prior to entering a home or other building to conduct an arrest."[407] Regarding how long officers should wait before entering a home to conduct an arrest, chiefs again showed generally suitable knowledge.[408] More than sixty-four percent of police chiefs correctly indicated that the amount of time law enforcement officers are required to wait is dependent upon certain important factors (e.g., the "impending destruction of evidence").[409] However, just over one quarter of police chiefs, about twenty-six percent, agreed that under normal conditions police officers must wait at least fifteen seconds.[410] Only about nine percent of police chiefs responded that the "wait time" should be less than fifteen seconds.[411] Concerning law enforcement officer training, about sixty-four percent of respondents believed that officers

[404] *Id.*
[405] *Id.* at 97.
[406] *Id.* at 98-99.
[407] *Id.* at 99.
[408] *Id*. at 98, 100.
[409] *Id*. at 100.
[410] *Id*. at 100. *See Banks*, 540 U.S. at 38. (law enforcement officers need to wait a reasonable amount of time prior to entering a home; between fifteen and twenty seconds was deemed reasonable under the circumstances present).
[411] *See* Totten and Cobkit (2013) at 100.

obtain sufficient training in the context of both arrests and arrests in which the knock-and-announce rule is required.[412] Only about thirty-six percent indicated that either they did not know if officers were trained enough in these areas or believed that officers needed more training.[413] The majority of police chiefs believed that education, training, and internal disciplinary measures were significant deterrents to knock-and-announce violations in the arrest context.[414] However, over sixty-four percent of respondents indicated that the risk of evidence being excluded from court was significant in deterring these violations.[415]

Overall, Totten and Cobkit (2013) found that police chiefs are "generally knowledgeable about the Fourth Amendment knock-and-announce rule in the context of arrests at premises."[416] Moreover, the majority of respondents indicated that police officers had obtained sufficient training in these areas.[417] These results show support for Orfield's (1987) finding that law enforcement officers "generally understand" Fourth Amendment law concerning searches and seizures.[418] On the other hand, the high level of knowledge demonstrated by the respondents in Totten and Cobkit's 2013 empirical study are, in general, at odds with what was found by Perrin et al. (1998) and Heffernan and Lovely (1991).[419] Totten and Cobkit (2013) stated:

> This difference in knowledge may be because chiefs have undergone more training and education than the average officer, and they have had more opportunities to learn as a result of their longer career experience.[420]

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[412] *Id*. at 100, 107.
[413] *Id*. at 101, 107.
[414] *Id*. at 101. *See also Hudson*, 547 U.S. at 596-99 (suggesting that education, training, and internal discipline would be effective at deterring improper conduct by police in the knock-and-announce area).
[415] *See* Totten and Cobkit (2013) at 102. *See also Hudson*, 547 U.S. at 599 (suggesting that the exclusionary rule was not as effective a deterrent mechanism as other mechanisms).
[416] *See* Totten and Cobkit (2013) at 99-100, 108.
[417] *Id*. at 100-101, 108.
[418] *Id*. at 100. *See* Orfield (1987) at 1017-18, 1035. *See supra* note 372.
[419] *Id*. at 100. *See* Perrin et al. (1998), *supra* note 313. *See* Heffernan and Lovely (1991), *supra* notes 339 and 340.
[420] *See* Totten and Cobkit (2013) at 100.

In addition to the fact that police chiefs typically have these potential "advantages" over other law enforcement officers it should also be mentioned that Heffernan and Lovely (1991) discovered some relationships that support Totten and Cobkit's (2013) findings regarding the comparison of a police chief to an average police officer. For example, Heffernan and Lovely (1991) found that police officers who had more training performed nearly as well as attorneys did on Fourth Amendment knowledge questions.[421] Additionally, law enforcement officers with at least some form of college education performed better than officers who had no form of college education.[422] Finally, officers who were working as supervisors also performed better than officers who were not supervisors.[423]

Totten and Cobkit (2017) conducted another empirical study concerning legal knowledge of Fourth Amendment law (e.g., searches incident to an arrest at vehicles, post-*Gant*).[424] This 2017 study contained an analysis and discussion of the United States Supreme Court ruling in *Gant* and the Court's prior ruling in *Belton*.[425] In overall, similar fashion to their 2013 empirical study, Totten and Cobkit's 2017 empirical study aimed to ascertain the extent of police chiefs' knowledge of the *Gant* ruling, as well as the earlier *Belton* ruling.[426]

In the 2017 study, the authors again sent surveys to two hundred-fifty police chiefs from across the United States.[427] Police chiefs were chosen from "the 2014 National Directory of Law

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[421] *See* Heffernan and Lovely (1991), *supra* note 352.
[422] *See* Heffernan and Lovely (1991), *supra* note 347.
[423] *See* Heffernan and Lovely (1991), *supra* note 350.
[424] *See generally* Christopher Totten and Sutham Cobkit, *Police Vehicle Searches Incident to Arrest: Evaluating Chief's Knowledge of Arizona v. Gant*, 11 N.Y.U. J. L. & Liberty 257 (2017). *See also* Christopher Totten, *Arizona v. Gant and its Aftermath: A Doctrinal "Correction" Without the Anticipated Privacy "Gains,"* 46 Crim. L. Bull. 1293 (2010). *See also Arizona v. Gant*, 129 S. Ct. 1710 (2009).
[425] *See* Totten and Cobkit (2017) at 258-268. *See generally Gant*, 129 S. Ct. 1710 (2009). *See also New York v. Belton*, 453 U.S. 454 (1981).
[426] *See* Totten and Cobkit (2017) at 258-259, 271. *See generally* Totten and Cobkit (2013).
[427] *See* Totten and Cobkit (2017) at 271.

Enforcement Administrators."[428] The selected police chiefs were also from "large cities" with populations of over 100,000 people.[429] Of the original two-hundred fifty police chiefs selected, only about seventeen percent, or forty-two police chiefs, returned a "usable survey."[430] Five key questions were asked including one regarding the older, more lenient *Belton* rule; two questions (one each) regarding the two *Gant* "prongs;" a question about criteria that should be taken into consideration by police officers prior to a search incident to arrest of a vehicle's passenger "compartment;" and whether or not the respondent had heard of the *Gant* case or the *Gant* rule.[431]

Compared to their earlier study, the researchers found that over half of the respondents, fifty-five percent, were unaware that the safety prong of *Gant* is the present law governing vehicle searches incident to an arrest.[432] Just over half of police chiefs surveyed, fifty-one percent, knew that the evidence prong of *Gant* is also the present law for such searches.[433] Additionally, most respondents were unaware that pursuing a warrant is not a required criterion for consideration prior to executing a search incident to arrest of a vehicle's passenger compartment.[434] However, most police chiefs, sixty-two percent, knew that the older *Belton* ruling was no longer the pertinent legal standard for such searches.[435] More generally, the vast

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[428] *Id*.
[429] *Id.*
[430] *Id*.
[431] *Id*. at 272-73. *See also Gant*, 129 S. Ct. at 1719 (The *Gant* ruling now required that at least one of two prongs, or tests, be met prior to a law enforcement officer being able to conduct a legal search incident to an arrest at a vehicle. The first prong concerns safety; essentially, an occupant or recent occupant of a vehicle who is arrested must be within reaching distance of the vehicle in order for the search incident to proceed. The second prong concerns evidence; simply put, a law enforcement officer must reasonably believe that evidence of the crime for which the suspect was arrested could be found in the passenger compartment).
[432] *See* Totten and Cobkit (2017) at 273-76, 277. *See also* Totten and Cobkit (2013), *supra* note 416 (The researchers 2013 study found that, overall, chiefs were generally knowledgeable of the Fourth Amendment knock and announce rule when conducting arrests at premises).
[433] *See* Totten and Cobkit (2017) at 277.
[434] *Id*.
[435] *Id.* at 276.

majority, over eighty-eight percent, of chiefs said that they "had heard of the *Gant* case or rule."[436]

In addition, nearly ninety-three percent of participants knew that law enforcement officers are required to consider whether they have a reasonable belief that evidence of the arrestee's crime could be found in the vehicle prior to a search incident to arrest.[437] Most respondents also knew that a suspect's identity and a vehicle description are not factors that must be considered before a search of a vehicle's passenger compartment incident to arrest.[438] Moreover, the vast majority of police chiefs, over ninety-five percent, correctly indicated that whether or not the arrested person is actually capable of accessing, or reaching into, the vehicle's passenger compartment in order to obtain a weapon is a factor that must be considered before such a search can legally occur.[439] Thus, the majority of participants correctly knew of certain legal factors that, under *Gant*, are or are not applicable to searches incident to arrests at vehicles.[440] Based on these findings, the researchers considered police chiefs' knowledge of "search incident to arrest law at vehicles to be unevenly balanced."[441]

[436] *Id*. at 274.
[437] *Id*. at 277.
[438] *Id*.
[439] *Id*.
[440] *Id*.
[441] *Id*. at 283 (Chiefs had strong knowledge in some areas but weak knowledge in others).

Chapter Three – Methodology

In general, this study utilized both qualitative and quantitative methodologies to examine research questions related to the United States Supreme Court case of *Heien v. North Carolina*. The study examined federal and state court cases which have interpreted *Heien* in a significant manner; in addition, the study explored police officer perceptions and knowledge of *Heien*, related concepts and lower court interpretive case law. For the purpose of case selection, a legal citator was used. In order to collect data from law enforcement officers regarding police perceptions and knowledge of *Heien*, a self-administered survey questionnaire was employed. These two different methodologies are described separately below.

A. Legal Citator: Finding Significant Interpretive Court Cases for *Heien v. North Carolina*[442]

To find federal and state court cases that interpreted *Heien* significantly, a legal citator was used. A citator is a tool or program that assists the researcher in identifying various legal sources, including court cases, that cite or rely upon a particular legal source.[443] In particular, for this study, Westlaw's legal citator, known as "Keycite," was used to locate certain interpretive cases for *Heien* based on several criteria.

First, within Keycite, the following federal appellate courts were selected: The United States Supreme Court and Federal Circuit Courts of Appeals. Second, cases from these courts that provided significant treatment to *Heien* were identified. This was accomplished in Keycite by selecting certain depth of treatment indicators for *Heien* (i.e., Keycite must indicate either

[442] *See generally Heien v. North Carolina*, 135 S. Ct. 530 (2014). *See infra* note 444.
[443] Amy E. Sloan, Basic Legal Research: Tools and Strategies 143 (5th ed. 2012).

three or four 'bars' of treatment depth on a scale of zero through four bars, with four bars reflecting the most significant treatment depth). Federal district court cases providing such significant treatment to *Heien* were also identified in Keycite if, upon further review, they were deemed most relevant or applicable to the study-at-hand.

In particular, federal district court cases were selected for final inclusion if they applied *Heien* outside of the traffic stop context and also had at least three 'bars' of treatment depth. The initial results yielded fifteen (15) federal appellate court cases and sixty-one (61) federal district court cases (including all federal district court cases with at least 3 'bars' of treatment depth). Several of the federal appellate court cases and a select number of the most relevant federal district court cases were included in this study as example, or "model, cases to illustrate how these lower courts are interpreting *Heien*. Finally, selected significant interpretive cases (three and four "bars" of treatment depth only) for *Heien* from state courts are also included in this study for similar, illustrative purposes.[444]

B. Collecting Data from Law Enforcement Officers

To collect data from law enforcement officers regarding police perceptions and knowledge of *Heien*, related concepts, and the lower court interpretive case law, a self-administered survey questionnaire was used. The survey utilized had been previously reviewed and approved by the Kennesaw State University IRB (IRB Study Number: 18-490). The study population for this research project is law enforcement officers from a large, Southeastern United States county. For the purposes of policing, the county in question is divided into five different zones or precincts, each with its own supervising commander. In order to ensure representative

[444] Other studies by this author have described interpretive cases for *Heien*. *See* Christopher Totten and Michael De Leo, *Interpreting Heien v. North Carolina: A Content Analysis of Significant Federal Appellate Court Cases*, 53 Crim. L. Bull. 1202 (2017). *See also* Christopher Totten and Michael De Leo, *Interpreting Heien v. North Carolina: A Content Analysis of Significant State Court Cases*, 54 Crim. L. Bull. 927 (2018).

sampling data, police officers from different shifts, precincts, with different assignments, and of different ranks were surveyed. For this study, the primary target population was "line" officers whose ranks range from the lowest-ranking sworn officer up to officers who had attained the rank of sergeant. However, during this study some police officers who had attained the rank of lieutenant agreed to participate and their responses are included in this study. Command staff within the police department also offered to let their recruits participate. However, this latter offer was declined as this study was intended to include sworn and currently serving officers. This study utilized a pencil and paper survey questionnaire and was administered in person.

To gain access to the respondents for the sample, contact was made with the appropriate ranking members of the police department. Permission was then obtained to administer the survey questionnaire to the study's sample and an official letter of support was provided. Permission to administer the surveys and collect data was contingent upon the conditions of anonymity and confidentiality for all law enforcement officers involved as well as the police department to which they belonged. Upon completion of this study, the police department which was surveyed will be granted access to the finalized results.

Various dates and times were scheduled to administer and collect the surveys in person. The surveys were administered to randomized groups of police officers during annual training periods. The survey administration can be conducted in this manner because, in general, police officers initially meet during specified times at the same place.[445] This allowed for the collection of data from police officers of different ranks assigned to different precincts and assignments. Survey questionnaires were administered on eleven different occasions. All survey questionnaires were administered at the same location --- the police department's primary

[445] *See* Michael Maxfield & Earl Babbie, Basics of Research Methods for Criminal Justice and Criminology 1, 183, 185 (2nd ed. 2009).

training facility. All survey data collection was conducted over a four-month time period from May through August of 2018.

The survey instrument was a pencil and paper questionnaire. Various types of question formats were used. The survey questionnaire contained a consent cover letter which included important information such as the study's IRB Study Number; the researcher's and university's contact information; a description of the project; an explanation of procedures; information regarding potential risks or discomforts; benefits; confidentiality; a statement of understanding; and inclusion criteria for participation. This consent cover letter was included with each survey questionnaire and respondents were able to detach and keep it. Additionally, the consent cover letter and its contents were verbally explained to all potential respondents prior to any survey being administered. Questions included in the survey were of various types and, in total, the full questionnaire contained twenty-one questions, two of which were contingency-based.

The surveys were completed in an anonymous manner that does not allow any individual police officer involved in the study to be personally identified as a result of his or her participation. Respondents' participation in this study was voluntary (i.e., commanding officers did not require individuals to take the survey) and respondents were also permitted to skip questions or stop participating at any time. Ultimately, the complete sample and subsequent data collection represented 189 distributed and returned survey questionnaires. Every survey was hand-distributed by this study's author directly to study participants when the author was permitted to travel to the law enforcement agency's training facility at a prearranged date and time. Prior to handing out the surveys the author would explain basic information about the current study, such as confidentiality, anonymity, voluntariness, data security, IRB approval, and that permission had been granted by the law enforcement agency to conduct the survey study.

After the basic information about the current study was explained, the author would then hand-out surveys to law enforcement officers willing to participate. Next, the author would explain the IRB Consent Cover Letter attached to the front of every survey. This document contained written descriptions of the study's focus, description, procedures, and other important information such as: IRB Study Number; estimated time required to complete the survey; potential risks or discomforts; benefits; confidentiality; inclusion criteria; the researcher's and university's contact information; and a statement of understanding. Every study participant was encouraged to detach and keep the IRB Consent Cover Letter should they have any future questions or concerns. When a study participant completed his or her survey, the author would simply collect it and thank the participant. When an entire group of participants had completed the survey, the author would ensure there were no stray copies of the survey documents and then thank all the present participants once again. This process occurred about once per week for approximately four months (May through August 2018), and eleven total visits were made to the training facility for data collection purposes. Each visit averaged about 17 participating officers.

Out of the 189 returned surveys, four were either blank or unusable, indicating a response rate of 97.88 percent. The collected survey data was stored in the IBM SPSS Statistics® v.25 data analysis program. This data is preserved on a supervising professor's desktop computer to maintain security and confidentiality. Using this analysis program, various relationships were able to be identified in addition to descriptive statistics and univariate analyses. Furthermore, data in the Findings Chapter (Chapter 4) is presented textually as well as graphically. (Note: Since not every survey respondent elected to answer all questions contained in the survey, not all numbers will represent the total/complete sample and some percentages may not total to exactly 100.0% due to rounding).

C. *Heien v. North Carolina* Survey Questions

This study's data is derived from a survey questionnaire distributed to law enforcement in 2018. Participating police officers were asked questions regarding their perceptions and knowledge related to the 2014 United States Supreme Court decision in *Heien v. North Carolina*, related concepts, and lower court applications and interpretations of *Heien*.[446] The survey contained twelve questions to evaluate law enforcement officers' perceptions and knowledge in these areas. Three of these twelve questions were scenario-based and asked participants to read a short scenario and to indicate their level of agreement with the outcome (i.e., the judge's decision). The scenario questions were two short paragraphs in length. Each scenario question was based on an actual court case and included a description of the facts of the case and the case's outcome including the court's rationale for its decision. Each of the three scenario-based questions revolved around the potential for law(s) to be unclear or ambiguous (e.g., worded in a confusing manner or difficult to understand) and how such a situation should be dealt with by the judiciary (i.e., whether or not a law enforcement officer's mistake of law is objectively reasonable in such a situation and whether or not the mistake of law resulted in a violation of Fourth Amendment rights).

Following the three scenario-based questions, six questions request that the participants read a very brief statement and then indicate their level of agreement with the statement. Each of these six questions address rulings and statements made by certain federal appellate courts. More specifically, these six questions are rooted directly in either the United States Supreme Court

[446] *See generally Heien*, 135 S. Ct. at 530. *See also supra* Chapter 2 (Literature Review, Sections A, B, C, and D) for a detailed discussion of the *Heien* decision, its implications, rationale, and lower courts' interpretations and applications.

decision in *Heien* or other federal appellate court decisions that significantly interpret and apply the *Heien* case. These six statements were only one sentence in length.

After the six statement questions, the first of two questions ask respondents to indicate whether or not they are familiar with a particular legal concept from the *Heien* decision. The second question simply asks if the study participant has heard of the *Heien* case.

The final "mixed" perception and knowledge question asked police officers to respond to a prompt that allows for multi-option responses. This multi-option question essentially asks police officers to assess how much leeway should be legally tolerable when a law enforcement officer commits a reasonable mistake of law. Additionally, respondents were able to indicate that none of the options should be permitted (e.g., there should be no legal leeway for police officer mistakes).

The three scenario-based questions have scores that range from one through four. Study participants were able to select one response between strongly agree; agree; disagree; and strongly disagree. The next six questions, which provide a Likert type scale, also have responses between strongly agree; agree; disagree; and strongly disagree. The participating police officers were again able to select one of the four options previously listed. The next two questions ask the officers to respond to simple questions, as described above, and both questions have only two possible selections: yes or no (i.e., these two questions are dichotomous). The final question related to law enforcement officers' perceptions and knowledge permits respondents to select more than one response. There are four options that participants could choose: (1) reasonable mistakes of law to support traffic stops; (2) reasonable mistakes of law to support arrests; (3) reasonable mistakes of law to support searches; (4) none of the above (e.g., officers should not be allowed any margin of error for mistakes). A zero indicates that no leeway, or margin of error,

should be permitted for officers' mistakes. On the other side, a score of seven (i.e., officers selecting options 1, 2, and 3) represents a margin of error that should be permitted which allows for reasonable officer mistakes of law to legally support a traffic stop, an arrest, and a search (i.e., the largest margin of error that officers can select in this survey).

Chapter Four – Findings

Overall, this survey study contains questions designed to examine law enforcement officers' perceptions and knowledge regarding the 2014 United States Supreme Court decision in *Heien v. North Carolina*, its related components, and lower court application and interpretations of *Heien*.[447] In addition, this study also contains questions regarding the officers' demographic and background information. The first data to be examined will be the reported demographic and background information of the study participants (see Table 1). Empirical findings regarding 'perception-related' survey questions will be examined second (see Tables 2-6). Empirical findings concerning 'knowledge-based' questions will be examined third (see Tables 7-14 and Figure 1). Empirical findings regarding any statistically significant relationships between survey question responses will be examined last (see Tables 15-21).

A. Reported Demographic and Background Information

Table 1 displays data regarding study participants' demographic and background information. Various commonplace demographic questions were included. These include asking respondents to report their educational level, gender, race, and age. Demographic questions relevant to police officers were also included. These questions asked officers to report their rank, length of service in law enforcement, and if their police agency offered a legal training program or workshop within the last year. If the police agency did offer such a program, officers were then asked to indicate what the program covered.

[447] *See generally Heien*, 135 S. Ct. at 530. *See also supra* Chapter 2 (Literature Review, Sections A, B, C, and D) for a detailed discussion of the *Heien* decision, its implications, rationale, and lower courts' interpretations and applications. *See also supra* Chapter 3 (Methodology) for a description of question types and possible responses. *See also infra* Appendix for a copy of the survey questionnaire completed by police officers.

Table 1. Reported Descriptive Demographic Information

	Frequency	Percentage
Highest Level of Education		
High School	15	8.8%
Some College	59	34.5%
Associate's Degree	18	10.5%
Bachelor's Degree	77	45.0%
Master's Degree	2	1.2%
Gender		
Male	161	93.1%
Female	12	6.9%
Race		
White	108	75.7%
African American	24	14.2%
Hispanic/Latino	8	4.7%
Asian	2	1.2%
Other	7	4.1%
Rank		
Officer 1	3	1.8%
Officer	111	66.1%
Detective	19	11.3%
Field Training Officer	8	4.8%
Sergeant	17	10.1%
Lieutenant	10	6.0%
Length of Service in Law Enforcement		
1-5 years	63	37.5%
6-10 years	33	19.6%
11-15 years	21	12.5%
16-20 years	23	13.7%
21-25 years	20	11.9%
26 or more years	8	4.8%

Age		
Lower than 30	50	30.3%
30-39	56	33.9%
40-49	42	25.5%
50 or greater	17	10.3%
Police Agency Offered Legal Training Program in Past 12 Months?		
YES	167	94.9%
NO	9	5.1%
If "YES," what did the Program Cover? (Please Indicate All that Apply)		
Traffic Stops	87	20.0%
Arrests	87	20.0%
Searches	103	23.7%
Court/Judicial Rulings	97	22.5%
Other areas	20	4.6%
Did NOT Attend	40	9.2%

Forty-five percent of respondents reported their highest educational level as a bachelor's degree; this was also the most frequent response. Thirty-four and one-half percent of police officers reported their highest educational level as having some college experience (the second most frequent response). In general, over three-quarters (75.7%) of the police officers reported their race as White. About fourteen percent (14.2%) of respondents indicated their race as African American and this was the second most frequent response. The overwhelming majority (93.1%) of police officers indicated their gender as male. Nearly two-thirds (66.1%) of participants reported their rank as 'Officer' or 'Police Officer II.' According to the surveyed police department, an officer who has earned the rank of 'Police Officer II' (most commonly referred to simply as 'Officer') is fully through the training process and can complete their patrol duties themselves (i.e., they are not required to have the direct supervision of a Field Training

Officer while on patrol). In comparison, an officer with the rank of 'Officer 1' has not fully completed the training process and is still required to have an 'FTO,' or Field Training Officer, supervising them. The average length of law enforcement service was 10.96 years. The average age of the participants was 35.98 years old. The youngest study respondent reported that he or she were nineteen years of age and the oldest respondent reported his or her age as sixty years old. Finally, the overwhelming majority (94.9%) of police officers reported that their police agency did offer a legal training program or workshop within the last twelve months.

B. Perception-related Questions

Perception-related questions do not directly evaluate a survey respondent's knowledge of the *Heien* case, its related components, or lower court application and interpretation. Instead, these questions examine the beliefs, opinions, or prior behaviors of police officers as they relate to *Heien*, its related components, and lower court application and interpretation.

Table 2. Quick Decisions are Required and a Margin of Error Should be Allowed

	SA[a]	A[a]	D[a]	SD[a]	Mean Score
A law enforcement officer sometimes has to make quick decisions regarding the application of unclear or ambiguous law(s) *and* should be allowed a certain margin of error.	53 (28.8%)	109 (59.2%)	18 (9.8%)	4 (2.2%)	1.85

Note: Scores ranged from 1 through 4, with 1 meaning strongly agree and 4 meaning strongly disagree.
[a]SA-(Strongly Agree), A-(Agree), D-(Disagree), SD-(Strongly Disagree)

Table 2 displays police officers' perceptions concerning law enforcement decision-making on unclear laws as well as any allowable margin of error on these laws. Nearly thirty percent (28.8%, fifty-three) of police officers reported strong agreement with the statement that officers sometimes need to make quick decisions regarding the application of unclear law(s) *and*

should be allowed a certain margin of error. The majority (59.2%, or one hundred nine) of police officers indicated that they agree with this statement. Almost ten percent (9.8%), or eighteen, of law enforcement officers indicated that they disagree. Only four officers, (2.2%) reported strongly disagreeing. More generally, an overwhelming majority, one hundred sixty-two (88.0%) study participants, either strongly agreed or agreed with the statement that a law enforcement officer sometimes has to make quick decisions regarding the application of unclear or ambiguous law(s) *and* should be allowed a certain margin of error. Only twenty-two (12.0%) of police officers either strongly disagreed or disagreed with this statement. The mean score for study participants for this question was 1.85, which reflects a high-level of agreement with the belief that police officers have to make quick decisions about unclear law(s) *and* should be allowed a certain margin of error.[448] Five study participants chose not to indicate a response.

Table 3. Familiar with Reasonable Mistakes of Law and Heard of Heien

	Yes	No	Total
Are you familiar with the concept of reasonable mistakes of law?[a]	99 (54.4%)	83 (45.6%)	182 (100.0%)
Have you heard of the case of Heien v. North Carolina?[b]	22 (12.0%)	161 (88.0%)	183 (100.0%)

[a]Reasonable mistakes of law is a legal concept at the core of the Heien decision.
[b]Heien v. North Carolina, 135 S. Ct. 530 (2014)

[448] This question does not test law enforcement officer knowledge of *Heien*. Instead, this question's responses reflect officers' perceptions regarding decision-making behavior on unclear law(s) and whether officers should be allowed a margin of error when applying ambiguous or unclear law(s). However, the *Heien* ruling did make a specific point in addressing such situations. ("…[A]n officer may 'suddenly confront' a situation in the field as to which the application of a statute is unclear–however clear it may later become. A law prohibiting 'vehicles' in the park either covers Segways or not…but an officer will nevertheless have to make a quick decision on the law the first time one whizzes by.) *See Heien*, 135 S. Ct. at 539. The *Heien* ruling also addressed whether officers should be allowed a margin of error when making reasonable mistakes. (To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them "fair leeway for enforcing the law in the community's protection.") (quotations in original) *See Heien*, 135 S. Ct. at 536 (in-part quoting *Brinegar v. United States*, 338 U.S. 160, at 176 (1949)).

Table 3 shows the number of law enforcement officers who reported that they were familiar with the concept of reasonable mistakes of law. This table also shows how many of the study's respondents have heard of the 2014 United States Supreme Court case of *Heien v. North Carolina*. Regarding police officers' familiarity with the concept of reasonable mistakes of law, ninety-nine (54.4%) officers stated that they were familiar with this legal concept. Eighty-three (45.6%) officers indicated that they were *not* familiar with the concept of reasonable mistakes of law. Only seven officers did not indicate a response. Concerning whether or not the study participants had heard of the case of *Heien v. North Carolina*, the overwhelming majority, one hundred sixty-one (88.0%), stated that they have not heard of the case. Only a very small number of officers, twenty-two (12.0%), reported that they had heard of *Heien v. North Carolina*. Finally, six of the study's participants failed to indicate whether or not they had heard of the *Heien* case.

Table 4. Allowable Margin of Error

	Frequency	Percentage
A certain margin of error should be allowed that permits officers to make ---		
Reasonable mistakes of law to support traffic stops	53	30.8%
Reasonable mistakes of law to support arrests	1	0.6%
Reasonable mistakes of law to support searches	0	0.0%
Reasonable mistakes of law to support traffic stops AND arrests	13	7.6%
Reasonable mistakes of law to support traffic stops AND searches	14	8.1%
Reasonable mistakes of law to support arrests AND searches	2	1.2%
Reasonable mistakes of law to support traffic stops AND arrests AND searches	63	36.6%
None of the above (e.g., officers should not be allowed any margin of error for mistakes)	26	15.1%
Total	172	100.0%

Table 4 shows the extent of the margin of error respondents perceived should be allowed to officers when a reasonable mistake of law is made. This question allowed respondents to select one or more choices. There are four options that participants could chose: (1) reasonable mistakes of law to support traffic stops; (2) reasonable mistakes of law to support arrests; (3) reasonable mistakes of law to support searches; and (4) none of the above (e.g., officers should not be allowed any margin of error for mistakes). Therefore, there are eight possible responses to the question regarding what the allowable margin of error should be for officers. To illustrate, if a respondent selected “reasonable mistakes of law to support traffic stops” and also selected

"reasonable mistakes of law to support searches" then that survey response would be displayed as "Reasonable mistakes of law to support traffic stops AND searches." If a respondent only selected "reasonable mistakes of law to support traffic stops" then that survey response would be displayed as "Reasonable mistakes of law to support traffic stops," and etcetera for all eight possible responses to this question (Note: all possible responses are displayed in Table 4). The largest number of officers, sixty-three (36.6%), indicated that an officer's reasonable mistake of law should be permitted to support traffic stops, arrests, and searches (i.e., the widest scope for a margin of error that respondents could indicate in this study). The second most frequent response by officers, following traffic stops, arrests, and searches, was that a margin of error should be allowed that permits officers to make reasonable mistakes of law to support traffic stops. In particular, fifty-three (30.8%) officers indicated this response. Twenty-six (15.1%) law enforcement officers reported 'none of the above' (e.g., officers should not be allowed any margin of error for mistakes). Fourteen (8.1%) police officers indicated that a margin of error should be permitted for officers to make reasonable mistakes of law concerning both traffic stops and searches. A slightly smaller number of police officers, thirteen (7.6%), stated that such a margin of error should be allowed for traffic stops and arrests. Two (1.2%) law enforcement officers indicated that the margin of error for reasonable legal mistakes should encompass arrests and searches and just one officer (0.6%) reported that arrests should be included in the margin of error. Zero police officers indicated the response that searches alone should be permitted by such a margin. Finally, seventeen (17) police officers did not indicate a response. Interestingly, a more detailed examination of the responses on this question reveals that while only twenty-six (15.1%) officers indicated that there should be no margin of error for police mistakes, the vast majority of officer responses, one hundred forty-six (84.9%), reported that at least some margin of error

should be permitted to support officer reasonable mistakes of law on traffic stops, arrests, and/or searches. In other words, 84.9 percent of the responses reflected the perception that officers should be allowed some margin of error to commit a reasonable mistake of law.

Table 5. Allowable Margin of Error (Traffic Stop Emphasis)

	Frequency	Percentage
A certain margin of error should be allowed that permits officers to make ---		
Reasonable mistakes of law to support ONLY traffic stops	53	30.8%
Reasonable mistakes of law to support traffic stops AND arrests AND/OR searches	90	52.3%
Reasonable mistakes of law to support arrests AND/OR searches BUT NOT traffic stops	3	1.8%
None of the above (e.g., officers should not be allowed any margin of error for mistakes)	26	15.1%
Total	172	100.0%

Table 5 also shows the margin of error respondents perceived should be permitted for officers; however, this Table focuses on traffic stops and responses that included multiple, other selections such as traffic stop and another choice (e.g., arrest and/or searches); *only* traffic stops, or an indication that *no* margin of error should be allowed. Over half of the police officers (90 or 52.3%) indicated that a margin of error should be permitted for officers to make a reasonable mistake of law in conducting traffic stops and arrests; traffic stops and searches; or all three (i.e., stops, arrests and searches) while just fifty-three officers (30.8%) indicated that traffic stops alone should be the permitted margin of error for such mistakes. In addition, twenty-six police officers (15.1%) reported that no margin of error for these mistakes should be allowed, and three

(1.8%) officers believed that a margin of error should be allowed that includes arrests and/ or searches but *not* traffic stops.

Table 6. Performing Search/Seizure based on Unclear Law

	Yes	No	Total
Have you ever performed a search and/or seizure based on law(s) that you believe could be considered unclear, ambiguous, or worded in a confusing manner?	58 (32.2%)	122 (67.8%)	180 (100.0%)

If you answered "YES" above, please indicate the area(s) or context(s) in which the law(s) applied (Indicate All that Apply)[a]

	Frequency	Percentage
Traffic Stops	44	42.3%
Arrests	22	21.1%
Searches	38	36.6%
Other area(s) - Please Specify:_____	0	0.0%
Total	104	100.0%

[a]Fourteen of the fifty-eight police officers who answered "YES" did not indicate any area or context

Table 6 displays whether or not a study participant had ever performed a search and/or seizure based on law(s) that they believed could be considered unclear, ambiguous, or worded in a confusing manner. Fifty-eight (32.2%) law enforcement officers stated that they had performed a search and/or seizure based on unclear, ambiguous or worded confusingly law. One hundred twenty-two (67.8%) officers indicated they had never performed such a search and/or seizure based on such law. Nine police officers declined to respond to this question. In addition, if study participants indicated that they had performed a search and/or seizure based on law(s) they believed could be considered unclear, ambiguous, or worded confusingly, they were also asked to report the area(s) or context(s) in which the unclear, ambiguous, or confusing law(s) had been applied; respondents were also allowed to select more than one choice. In sum, the most frequently reported area or context in which such laws have been applied was traffic stops (i.e.,

forty-four, or 42.3%, of police officers provided this response). The second most frequently reported area was searches, indicated by thirty-eight, or 36.6%, of law enforcement officers. Twenty-two, or 21.1%, of officers responded that they had engaged in such behavior in the arrest area. Fourteen of the fifty-eight study participants who stated that they had performed a search and/or seizure based on law(s) they believed could be considered unclear, ambiguous, or worded in a confusing manner chose not to report in which area or context such behavior had occurred. Finally, no police officer indicated a response in an area or context of 'other' (i.e., police officers only reported engaging in behavior based on potentially unclear law in the traffic stop, search, or arrest areas).

C. Knowledge-based Questions

The three scenario-type survey questions examining officer knowledge addressed the *Heien* decision, its rationale and related issues from select interpretive, lower court cases. In general, for these questions, officers were asked to report their level of agreement or disagreement with a decision by a hypothetical court.

Table 7. Heien-based Scenario (Scenario One)

	SA[a]	A[a]	D[a]	SD[a]	Mean Score
A police officer is observing highway traffic and notices a driver who looks very stiff and nervous. The officer proceeds to follow the vehicle for a short distance and observes that only the left brake light comes on when slowing for another vehicle. The officer initiates a traffic stop because of the faulty right brake light, truly believing this to be a violation of State Code. The stopped vehicle has a passenger lying down in the rear seat. Upon investigation, the officer only issues a warning ticket to the driver but becomes suspicious because the passenger is lying down the entire time, the driver appears nervous, and both driver & passenger give conflicting answers about their destination. The officer obtains consent from both individuals to search the vehicle and discovers drugs hidden in a duffle bag. Both individuals are arrested.	81 (44.3%)	66 (36.1%)	28 (15.3%)	8 (4.4%)	1.8
Based on the relevant State Code, a judge finds that the Code is unclear/ ambiguous and the vehicle's brake lights actually do not violate the State Code. The judge finds, however, that the officer's mistaken belief regarding the State Code is reasonable and can justify stopping the vehicle for its non-functioning brake light. Evidence of drugs is admissible.					

Note: Scores ranged from 1 through 4, with 1 meaning strongly agree and 4 meaning strongly disagree.

[a]SA-(Strongly Agree), A-(Agree), D-(Disagree), SD-(Strongly Disagree)

Table 7 reflects officer responses to the first scenario-based question, which included a description of the same facts and decision, or holding, as *Heien*.[449] Officers' most frequent response to this question was "Strongly Agree," with eighty-one (44.3%) officers indicating they strongly agreed with the court's decision. Sixty-six (36.1%) respondents reported that they

[449] *See generally Heien*, 135 S. Ct. at 530. *See also supra* Chapter 2 (Literature Review), Section A, for a detailed discussion of *Heien*. *See also infra* Chapter 5 (Discussion and Conclusion).

"Agree" with the court's decision. The third most frequent response by law enforcement officers was "Disagree," reported by twenty-eight (15.3%) officers. Finally, only eight (4.4%) participants "Strongly Disagreed" with the decision of the court. The mean score of participants for the *Heien*-based scenario question was 1.80, reflecting a high-level of agreement/ knowledge of the United States Supreme Court's decision in *Heien*. More generally, one-hundred forty-seven (80.3%) respondents either strongly agreed or agreed with the court's decision, while just thirty-six (19.7%) either disagreed or strongly disagreed. Six respondents did not indicate a response to the *Heien*-based scenario question. Accordingly, police officer agreement or knowledge regarding this first scenario-based question was found to be quite high (i.e., over eighty percent of officers agreed with the court's decision or holding in *Heien*).

Table 8. Diaz-based Scenario (Scenario Two)

	SA[a]	A[a]	D[a]	SD[a]	Mean Score
A police officer is conducting foot patrol and enters the public/ common areas of an apartment complex. Upon entering a stairwell, the officer smells marijuana, proceeds to the third floor, and sees two people in the stairwell. One person is holding a plastic cup and there is a partially empty liquor bottle on the floor nearby. Another person is holding a lit marijuana cigarette. The officer asks the people to put their hands on a wall next to them and they comply. When the officer approaches the person with the plastic cup, a strong odor of alcohol is detected emanating from the cup. The police officer arrests the person for violating an open-container law, believing that the law applies to the stairwell. A judge later finds that the open container law, though somewhat unclear/ ambiguous, does not apply to apartment stairwells or similar common areas of an apartment complex. However, any potential mistake by the officer as to the applicability of the open-container law to an apartment stairwell is found to be reasonable. Arrest upheld.	21 (11.6%)	64 (35.4%)	75 (41.4%)	21 (11.6%)	2.53

Note: Scores ranged from 1 through 4, with 1 meaning strongly agree and 4 meaning strongly disagree.

[a]SA-(Strongly Agree), A-(Agree), D-(Disagree), SD-(Strongly Disagree)

Table 8 shows officers' responses for the *Diaz*-based scenario question, which mirrors the facts, holding and rationale of the interpretive, lower court decision of *United States v. Diaz*.[450] Study participants' most frequent response to the second scenario-type question was "Disagree," with seventy-five (41.4%) officers indicating that they disagreed with the court's decision. However, sixty-four (35.4%) officers agreed with the court's decision. Twenty-one

[450] *See generally United States v. Diaz*, 122 F.Supp.3d 165 (S.D.N.Y. 2015); *affirmed by United States v. Diaz*, 854 F.3d 197 (2nd Cir. 2017). *See also supra* Chapter 2 (Literature Review, Sections B and C) for a detailed discussion of *Diaz*.

(11.6%) police officers indicated that they strongly agreed with the court. Additionally, another twenty-one (11.6%) officers reported that they strongly disagreed with the decision of the court. Study respondents' mean score for the *Diaz*-based scenario question was 2.53, indicating lower to moderate knowledge/ agreement with this scenario question and its embedded case decision. More generally, just over half (ninety-six, or 53.0%) of the respondents either disagreed or strongly disagreed with the question and the case decision included therein.[451] Additionally, eighty-five (47.0%) law enforcement officers either agreed or strongly agreed with the court's decision. Accordingly, officers' agreement and knowledge regarding this *Diaz*-based scenario question was lower to moderate. For example, officers reporting strong responses, either agreement or disagreement, only occurred on forty-two (23.2%) occasions, with both "Strongly Agree" and "Strongly Disagree" *each* indicated by twenty-one (11.6%) police officer participants. Finally, eight police officers chose not to respond to this *Diaz*-based scenario question.

[451] *See generally United States v. Diaz*, 122 F.Supp.3d 165 (S.D.N.Y. 2015); *affirmed by United States v. Diaz*, 854 F.3d 197 (2nd Cir. 2017). *See also supra* Chapter 2 (Literature Review, Sections B and C) for a detailed discussion of *Diaz*. *See also infra* Chapter 5 (Discussion and Conclusion).

Table 9. Abercrombie-based Scenario (Scenario Three)

	SA[a]	A[a]	D[a]	SD[a]	Mean Score
During routine patrol, a police officer notices that a passing vehicle does not have an interior rearview mirror. The officer initiates a traffic stop, truly believing the absence of the mirror to be a violation of the relevant State Code section. During the stop, officer observes drugs in plain view, conducts a search, and arrests the driver for possession of illegal drugs. Based on later interpretation of the State Code by a judge, including review of some precedent cases, the judge finds that the Code is clear and does not require an interior rearview mirror. The judge finds the officer's mistaken belief regarding the State Code to be unreasonable and therefore also finds the original traffic stop lacked justification. Evidence of the drugs is excluded from court.	42 (22.7%)	99 (53.5%)	34 (18.4%)	10 (5.4%)	2.06

Note: Scores ranged from 1 through 4, with 1 meaning strongly agree and 4 meaning strongly disagree.

[a]SA-(Strongly Agree), A-(Agree), D-(Disagree), SD-(Strongly Disagree)

Table 9 presents the officers' responses from the *Abercrombie*-based scenario question. This third scenario question contains the facts, holding and rationale of the interpretive, lower court case of *Abercrombie v. State*.[452] The most frequent response to this question by officers was that they "Agree" with the court's decision, which was reported on ninety-nine occasions (53.5%). After "Agree," the second most common response by officers was that they "Strongly Agree" with the decision. "Strongly Agree" was indicated by forty-two (22.7%) officers. Thirty-four (18.4%) officers indicated that they "Disagree" with the decision. Only ten (5.4%) officers stated that they strongly disagreed with the court's decision. The mean score for study

[452] *See generally Abercrombie*, 343 Ga.App. 774 (2017). *See also supra* Chapter 2 (Literature Review, Section D) for a detailed discussion of *Abercrombie*. *See also infra* Chapter 5 (Discussion and Conclusion).

participants for this question was 2.06, which indicates that study participants have moderate to high levels of agreement and knowledge concerning this *Abercrombie*-based scenario question and the underlying court case (i.e., *Abercrombie*). More generally, one hundred forty-one (76.2%) study participants either strongly agreed or agreed with the court's decision and just forty-four (23.8%) respondents either strongly disagreed or disagreed with the court's ruling. Accordingly, police officers' agreement with and knowledge of this *Abercrombie*-based scenario question and underlying court decision was found to be moderate to high. For example, over three-quarters (76.2%) of law enforcement officers who participated in this study indicated some level of agreement with the court's decision, including its rationale. Additionally, less than one-quarter (23.8%) of the officers reported either disagreeing or strongly disagreeing with the decision of the court. Finally, only four police officers chose not to indicate a response to this question.

Figure 1. Participants' Responses to Scenario-based Questions

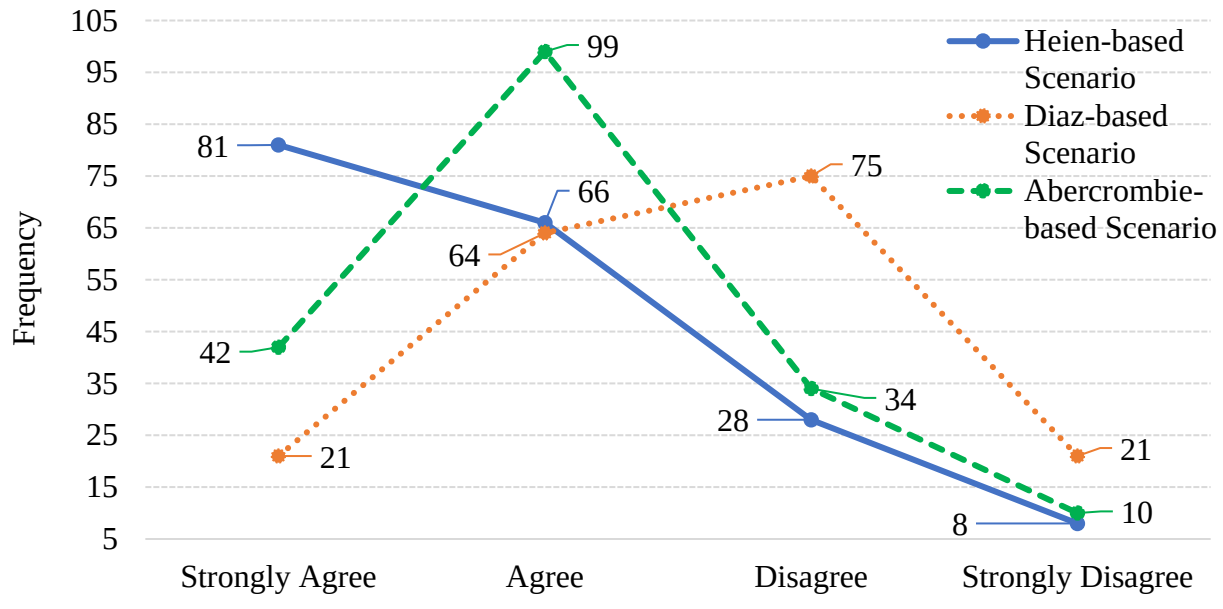

Figure 1 displays the detailed empirical findings from all three scenario-based questions using a line figure. Each scenario-based question has its own line and each line is a different color in order to distinguish one scenario-based question's responses from another. The four possible responses to each scenario-based question (i.e., Strongly Agree, Agree, Disagree, and Strongly Disagree) are displayed along the X-Axis. The Y-Axis displays the frequency scale in intervals of ten.

Table 10. If Mistake of Law, Subjective Understanding Must Be Examined

	SA[a]	A[a]	D[a]	SD[a]	Mean Score
If an officer happened to make a mistake of law, his/her subjective understanding of the law must be examined.	22 (12.0%)	139 (75.5%)	23 (12.5%)	0 (0.0%)	2.01

Note: Scores ranged from 1 through 4, with 1 meaning strongly agree and 4 meaning strongly disagree.

[a]SA-(Strongly Agree), A-(Agree), D-(Disagree), SD-(Strongly Disagree)

Officer responses from the first knowledge-related question that did not form part of a case scenario (i.e., if a mistake of law occurs, officer's subjective understanding must be examined), are shown in Table 10. This question or statement focuses on whether an officer who has made a mistake of law must have his or her *subjective* understanding of the law examined, or considered, by a court.[453] The majority, one hundred thirty-nine (75.5%) respondents, stated that they "Agree" (i.e., if an officer happened to make a mistake of law, the officer's *subjective* understanding of the law must be examined). Twenty-three (12.5%) respondents disagreed while the minority of participants, twenty-two (12.0%), strongly agreed. No respondent indicated that he or she strongly disagreed. This question's mean score was 2.01, indicating a high-level of officer agreement with the question/ statement. This finding, in turn, reflects a low-level of

[453] *See Heien*, 135 S. Ct. at 539-40. *See also Heien*, 135 S. Ct at 541. ("…an officer's 'subjective understanding' [of the law] is irrelevant: As the Court notes, '[w]e do not examine' it at all.") (Kagan, J., concurring).

knowledge among officers regarding whether an officer's *subjective* understanding of the law must be examined by a court in evaluating a mistake of law.[454] More generally, one hundred sixty-one (87.5%) respondents indicated some level of agreement that an officer's *subjective* understanding must be examined while just twenty-three (12.5%) officers reported some level of disagreement. Concerning this particular question, participants' knowledge was found to be quite low because the overwhelming majority of officers (87.5%) indicated a response that contradicts the United States Supreme Court's ruling in *Heien* and other precedent regarding judicial evaluation of officer mistakes of law.[455] Finally, only five police officers declined to provide a response to this question.

Table 11. For Mistake of Law to be Reasonable, Law Must Be Ambiguous

	SA[a]	A[a]	D[a]	SD[a]	Mean Score
For any officer mistake of law to be reasonable, the law the officer is applying *must* be ambiguous or vague.	15 (8.5%)	82 (46.3%)	74 (41.8%)	6 (3.4%)	2.4

Note: Scores ranged from 1 through 4, with 1 meaning strongly agree and 4 meaning strongly disagree.

[a]SA-(Strongly Agree), A-(Agree), D-(Disagree), SD-(Strongly Disagree)

Table 11 displays law enforcement responses concerning another question examining officer knowledge in the mistake of law area (i.e., the fifth knowledge-related question overall). In particular, officers were asked their level of agreement with the following statement --- for an officer's mistake of law to be found reasonable, the law the officer applied *must be* ambiguous or

[454] *See Heien*, 135 S. Ct. at 539. ("The Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable. We do not examine the subjective understanding of the particular officer involved." (citing Whren v. United States, 517 U.S. 806, 813 (1996)). *See also Heien*, 135 S. Ct. at 540-41. (Justice Kagan's concurrence in Heien reiterated this point: "the Fourth Amendment tolerates only… *objectively* reasonable mistakes of law… [and] an officer's 'subjective understanding' [of the law] is irrelevant: As the Court notes, '[w]e do not examine' it at all." (Kagan, J., concurring).

[455] *Id*. *See also supra* Chapter 2 (Literature Review, Sections A, B, C, and D). *See also Whren v. United States*, 517 U.S. 806, 813. *See also infra* Chapter 5 (Discussion and Conclusion).

vague. Fifteen (8.5%) officers reported that they "Strongly Agree" with this statement. The most frequent response indicated was "Agree," with eighty-two (46.3%) officers selecting this response. However, seventy-four (41.8%) officers stated that they "Disagree" with the statement. Only six (3.4%) respondents reported a response of "Strongly Disagree." The mean score for participants' responses to this fifth knowledge-testing question is 2.4 and demonstrates a moderate to low level of agreement or knowledge concerning this particular question.[456] More generally, just over half of the study participants, ninety-seven officers (54.8%), indicated a response of strongly agree or agree. On the other hand, eighty (45.2%) officers reported some level of disagreement. Accordingly, over half of officers possess adequate knowledge of this statement or component of the *Heien* decision, which itself is also reflected in the majority of federal appellate court interpretations and applications of *Heien* (i.e., for an officer mistake of law to be reasonable, the underlying law in general must be ambiguous or unclear).[457] Finally, twelve police officers chose not to report any response to this question.

[456] *See Heien*, 135 S. Ct. at 541. (("A court tasked with deciding whether an officer's mistake of law can support a seizure thus faces a straightforward question of statutory construction. If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not… [T]he statute must pose a 'really difficult' or 'very hard question of statutory interpretation.'" (Kagan, J., concurring)). *See also infra* Chapter 5 (Discussion and Conclusion). *See generally* Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant Federal Appellate Court Cases*. 53 Crim. L. Bull. 1202 (2017), and Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant State Court Cases*. 54 Crim. L. Bull. 927 (2018). In these two content analysis studies, the majority of courts (federal and state) found that for an officer's mistake of law to be reasonable the underlying law being applied needed to be ambiguous or vague.

[457] *See Heien*, 135 S. Ct. at 541. (("A court tasked with deciding whether an officer's mistake of law can support a seizure thus faces a straightforward question of statutory construction. If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not… [T]he statute must pose a 'really difficult' or 'very hard question of statutory interpretation.'" (Kagan, J., concurring)). *See also* Totten and De Leo (2017), (2018). In these two content analysis studies, the majority of courts (federal and state) found that for an officer's mistake of law to be reasonable the underlying law being applied needed to be ambiguous or vague.

Table 12. For Mistake of Law to be Reasonable, Law Could Be Unambiguous

	SA[a]	A[a]	D[a]	SD[a]	Mean Score
For any officer mistake of law to be reasonable, the law the officer is applying could be clear or unambiguous.	8 (4.6%)	92 (52.9%)	67 (38.5%)	7 (4.0%)	2.42

Note: Scores ranged from 1 through 4, with 1 meaning strongly agree and 4 meaning strongly disagree.

[a]SA-(Strongly Agree), A-(Agree), D-(Disagree), SD-(Strongly Disagree)

Table 12 shows respondents' answers from the sixth knowledge-related survey question. For this question, respondents must indicate their agreement with the following statement: for any officer mistake of law to be reasonable, the underlying law the officer is applying *could be* unambiguous or clear. Eight (4.6%) respondents indicated that they "Strongly Agree" with the statement. The majority of study participants, ninety-two (52.9%), reported that they "Agree" with the statement. The third most frequent response was "Disagree," with sixty-seven (38.5%) law enforcement officers indicating this choice. Only seven (4.0%) respondents indicated "Strongly Disagree." This question's mean score is 2.42 and demonstrates that responding officers have a moderate to low level of agreement with this question or statement and hence a moderate to low level of knowledge related to this question.

More generally, regarding Table 12, one hundred (57.5%) law enforcement officers who responded to this question/ statement either indicated strong agreement or agreement with the statement while seventy-four (42.5%) respondents reported either disagreement or strong disagreement. With the majority of officers (i.e., one hundred or 57.5%) indicating some level of agreement with the statement, most respondents lack adequate knowledge of this component of the *Heien* decision (i.e., the component consisting of the principle that for an officer mistake of law to be reasonable, the underlying law applied by the officer must in general be ambiguous or unclear). This component has also been followed by the majority of federal appellate and state

courts interpreting *Heien*.[458] Finally, fifteen law enforcement officers chose not to indicate a response to this question.

Table 13. Reasonable Mistake of Law Can Support Reasonable Suspicion for Stop

	SA[a]	A[a]	D[a]	SD[a]	Mean Score
An officer's reasonable mistake of law can support reasonable suspicion for a traffic stop.	22 (12.2%)	117 (64.6%)	36 (19.9%)	6 (3.3%)	2.14

Note: Scores ranged from 1 through 4, with 1 meaning strongly agree and 4 meaning strongly disagree.

[a]SA-(Strongly Agree), A-(Agree), D-(Disagree), SD-(Strongly Disagree)

Officer responses from the seventh question examining police knowledge are displayed in Table 13. For this question, respondents were asked to indicate their level agreement with the statement that an officer's reasonable mistake of law *can* support reasonable suspicion for a traffic stop. This statement reflects the basic holding of *Heien*. The majority of officers, one hundred seventeen (64.6%), indicated that they "Agree" with this statement, or holding of *Heien*. Twenty-two (12.2%) study participants reported a response of "Strongly Agree." The third most frequently selected response was "Disagree," with thirty-six (19.9%) participants indicating that they disagree with the statement or holding. Only six (3.3%) police officer participants indicated the "Strongly Disagree" response. The mean score for this question was 2.14 and this indicates that study participants had moderate to high levels of knowledge concerning the general outcome

[458] *See Heien*, 135 S. Ct. at 541. (("A court tasked with deciding whether an officer's mistake of law can support a seizure thus faces a straightforward question of statutory construction. If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not… [T]he statute must pose a 'really difficult' or 'very hard question of statutory interpretation.'" (Kagan, J., concurring)). *See also* Totten and De Leo (2017) *A Content Analysis of Significant Federal Appellate Court Cases*, (2018) *A Content Analysis of Significant State Court Cases*. In these two content analysis studies, the majority of courts (federal and state) found that for an officer's mistake of law to be reasonable the underlying law being applied needed to be ambiguous or vague. *But see Sinclair*, 652 Fed.Appx. at 435-36, 438 (an officer's mistake of law regarding a clear and unambiguous law was sanctioned by the *Sinclair* court). However, at least one federal appellate court has found that an officer's mistake of law need not be based on an ambiguous or unclear law. Thus far, this approach represents the minority trend among federal appellate courts in the interpretation and application of the *Heien* ruling and rationale (summarizing Totten and De Leo, 2017 at 1230).

or holding of the *Heien* decision.[459] More generally, over three-quarters, one hundred thirty-nine (76.8%), of study respondents reported either agreement or strong agreement with the basic holding of the United States Supreme Court in *Heien* and just forty-two (23.2%) respondents indicated either strong disagreement or disagreement with the Court's ruling. Accordingly, similar to the question consisting of a factual scenario based on *Heien*, officers exhibited moderate to higher levels of knowledge on this question addressing the outcome or holding of *Heien.*[460] Finally, only eight police officers did not indicate a response to this question.

Table 14. If Mistake of Law, Judge Will Evaluate for Reasonableness

	SA[a]	A[a]	D[a]	SD[a]	Mean Score
If an officer happens to make a mistake of law, it will be evaluated for whether it is reasonable by a judge (i.e., as opposed to another officer, member of the public, etc.).	29 (16.0%)	110 (60.8%)	35 (19.3%)	7 (3.9%)	2.11

Note: Scores ranged from 1 through 4, with 1 meaning strongly agree and 4 meaning strongly disagree.
[a]SA-(Strongly Agree), A-(Agree), D-(Disagree), SD-(Strongly Disagree)

Finally, Table 14 displays the responses from a survey question asking whether the officers agree that a judge will evaluate the reasonableness of any mistakes of law they make. One hundred ten (60.8%) study participants indicated they "Agree" that any officer mistake of law will be evaluated for its reasonableness by a judge. Twenty-nine (16.0%) police officers reported a response of "Strongly Agree." Thirty-five (19.3%) respondents stated they "Disagree" that a judge will evaluate officer mistakes of law for reasonableness. Only seven (3.9%) participants indicated a response of "Strongly Disagree."

[459] *See Heien*, 135 S. Ct. at 534-36. ("The question here is whether reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition. We hold that it can.") *Heien*, 135 S. Ct. at 536.
[460] *Id*. *See also supra* Table 7.

More generally, the vast majority of study participants, one hundred thirty-nine (76.8%), reported either agreement or strong agreement with this question. Less than one-quarter, forty-two (23.2%), of survey respondents stated they either disagreed or strongly disagreed that a judge will evaluate any potential officer mistakes of law for reasonableness. This question's mean score was 2.11 and indicates that survey respondents had moderate to higher levels of knowledge concerning who will ultimately evaluate an officer's mistake of law for its reasonableness.

D. Bivariate Analyses

Chi-square tests were conducted to determine if statistically significant relationships exist between participants' responses to various perception, knowledge, and other types of questions, including demographic questions.

Table 15. Performing Search/Seizure based on Unclear Law by Heard of Heien v. NC

		Have you heard of the case of *Heien v. North Carolina*[a]		
		NO	YES	Total
Ever performed a search/seizure based on law(s) that you believe could be unclear or ambiguous	NO	71.1% (113)	40.0% (8)	67.6% (121)
	YES	28.9% (46)	60.0% (12)	32.4% (58)
	Total	100.0% (159)	100.0% (20)	100.0% (179)

$\chi^2(1)=7.829$, $p<.05$; ( ) = is a count number

[a]Heien v. North Carolina, 135 S. Ct. 530 (2014)

Table 15 displays findings for statistical significance regarding police officers' responses between two perception-based questions. More specifically, a cross-table analysis was performed to compare responses to whether officers had heard of *Heien* and if officers had ever performed a search/seizure based on potentially unclear law(s). This cross-table analysis utilized whether police officers had heard of *Heien* as the independent variable and whether officers had

performed such a search or seizure as the dependent variable.[461] This analysis shows a Chi-square of 7.829 with 1 degree of freedom and it is statistically significant at the 0.05 level. Among study participants who had not heard of the *Heien* case, just over seventy-one percent (71.1%) had also not performed a search and/or seizure based on potentially unclear law(s) and less than twenty-nine percent (28.9%) had performed such a search. Among police officers who have heard of the *Heien* case, forty percent (40.0%) had not performed a search/seizure based on potentially unclear law(s); however, sixty percent (60.0%) of officers who have heard of *Heien* had also performed a search/seizure based on potentially unclear law(s). Accordingly, law enforcement officers who are familiar with *Heien* are more likely to have performed a search and/ or seizure under a law they believed could be unclear or ambiguous. Thus, as familiarity with *Heien* increases, the likelihood of performing a search and/ or seizure based on potentially unclear law(s) also increases.

Table 16. Quick Decisions are Required by Familiar with Reasonable Mistakes of Law

		Familiar with Reasonable Mistakes of Law		
		NO	YES	Total
A law enforcement officer sometimes has to make quick decisions regarding the application of unclear or ambiguous law(s) and should be allowed a certain margin of error.	Agree[b]	82.9% (68)	92.9% (92)	88.4% (160)
	Disagree[b]	17.1% (14)	7.1% (7)	11.6% (21)
	Total	100.0% (82)	100.0% (99)	100.0% (181)

$\chi^2(1)=4.375$, $p<.05$; ( ) = is a count number
[b]Agree and Disagree include Strongly Agree and Strongly Disagree, respectively.

A cross-table analysis was conducted between participants' responses regarding whether they were familiar with reasonable mistakes of law and participants' agreement or disagreement

[461] *See infra* Chapter 5 (Discussion and Conclusion).

with the statement that quick decisions are required regarding the application of unclear law(s) and officers should be allowed a certain margin of error. Table 16 displays these findings. This cross-table analysis used familiarity with reasonable mistakes of law as the independent variable and participants' agreement or disagreement with the above statement regarding quick decisions and an allowed margin of error as the dependent variable. This analysis shows a Chi-square of 4.375 with 1 degree of freedom and it is statistically significant at the 0.05 level. Among police officers who indicated that they were **not** familiar with reasonable mistakes of law, about eighty-three percent (82.9%) either "Agreed" or "Strongly Agreed" with the statement and about seventeen percent (17.1%) either "Disagreed" or "Strongly Disagreed." Among those officers who reported that they were familiar with reasonable mistakes of law, nearly ninety-three percent (92.9%) "Agreed" or "Strongly Agreed" and only about seven percent (7.1%) "Disagreed" or "Strongly Disagreed." Stated more generally, police officers who indicated that they were familiar with the concept of reasonable mistakes of law were also somewhat more likely to indicate that they also "Strongly Agree" or "Agree" with the idea that officers at times have to make quick decisions regarding the application of unclear or ambiguous law(s) and should be allowed a certain margin of error.

Table 17. Allowable Margin of Error by Familiar with Reasonable Mistakes of Law

		Familiar with reasonable mistakes of law		
		NO	YES	Total
Allowable margin of error	None	19.7% (15)	11.6% (11)	15.2% (26)
	Stops, Arrests, and/or Searches[a]	80.3% (61)	88.4% (84)	84.8% (145)
	Total	100.0% (76)	100.0% (95)	100.0% (171)

$\chi^2(1)=2.179$, N/S; ( ) = a count number

[a]Responses include all possible responses except "No margin should be permitted."

A cross-table analysis was conducted between familiarity with reasonable mistakes of law and the perceived allowable margin of error for officers. Familiarity with reasonable mistakes of law was used as the independent variable and the allowable margin of error was the dependent variable. This analysis shows a Chi-square of 2.179 with 1 degree of freedom and it is **not** statistically significant at the 0.05 level. This analysis included all valid responses regarding the allowable margin of error for police officers. More specifically, responses that indicated **any** allowable margin of error were included (i.e., any margin including searches, arrests, and/or traffic stops), and this was examined with responses that indicated **no** margin should be permitted.

Table 18. Allowable Margin of Error (Detailed) by Familiar with Reasonable Mistakes of Law

		Familiar with reasonable mistakes of law		
		NO	YES	Total
Allowable margin of error	None	20.0% (15)	11.7% (11)	15.4% (26)
	Stops Only	37.3% (28)	26.6% (25)	31.4% (53)
	Stops & Other[a]	42.7% (32)	61.7% (58)	53.3% (90)
	Total	100.0% (75)	100.0% (94)	100.1% (169)

$\chi^2(2)=6.239$, $p<.05$; ( ) = a count number

[a]Responses include Stops and either Arrests or Searches, or all three

Table 18 displays results from a cross-table analysis similar to Table 17, but conditions were altered to only include responses regarding the allowable margin of error that mentioned either **no** margin of error should be allowed, or traffic stops, or traffic stops and another choice (i.e., arrests and/ or searches). However, responses that did not indicate traffic stops in some manner and responses that did not indicate that no margin should be allowed were excluded (e.g., compared to Table 17 which included all possible responses). The cross-table analysis under these new conditions (i.e., focusing on responses that only included or mentioned traffic stops

and responses that indicated **no** margin of error should be allowed) are displayed in Table 18.[462] This analysis shows a Chi-square of 6.239 with 2 degrees of freedom and it is statistically significant at the 0.05 level. Among officers who were not familiar with reasonable mistakes of law, twenty percent (20.0%) indicated that no margin of error should be allowed for these mistakes; approximately thirty-seven percent (37.3%) reported that only traffic stops should be allowed such a margin; and approximately forty-three percent (42.7%) indicated that traffic stops and arrests and/or searches should be allowed this margin. Among officers who were familiar with reasonable mistakes of law, less than twelve percent (11.7%) reported that no margin of error should be allowed for these mistakes; approximately twenty-seven percent (26.6%) indicated that only traffic stops should be allowed such a margin; and the majority (61.7%) of officers familiar with reasonable mistakes of law reported that traffic stops as well as arrests and/ or searches should be permitted this margin. In other words, police officer participants who indicated that they were familiar with the concept of reasonable mistakes of law --- a key component of the United States Supreme Court's decision and rationale in *Heien* --- are also more likely to perceive or believe that the allowable margin of error for an officer's reasonable mistake of law should include not only the routine traffic stop context but also the search and/ or arrest contexts.

[462] Two cases from officers' survey responses are excluded due to not indicating 'traffic stops' or 'no margin of error should be allowed' (i.e., these two excluded responses did not meet the required criteria for inclusion in this analysis).

Table 19. Heien-based Scenario by Reasonable Mistake Supports Reasonable Suspicion for Stop

		An officer's reasonable mistake of law can support reasonable suspicion for a traffic stop		
		Agree[b]	Disagree[b]	Total
Heien-based Scenario	Agree[b]	84.9% (118)	64.3% (27)	80.1% (145)
	Disagree[b]	15.1% (21)	35.7% (15)	19.9% (36)
	Total	100.0% (139)	100.0% (42)	100.0% (181)

$\chi^2(1)=8.596$, $p<.05$; ( ) = is a count number

[b]Agree and Disagree include Strongly Agree and Strongly Disagree, respectively.

A cross-table analysis between responses from the *Heien*-based scenario and participants' agreement or disagreement with the statement that an officer's reasonable mistake of law *can* support reasonable suspicion for a traffic stop was conducted and the results are displayed in Table 19. Agreement or disagreement with the above-mentioned statement was used as the independent variable while the *Heien*-based scenario was used as the dependent variable. This analysis shows a Chi-square of 8.596 with 1 degree of freedom and it is statistically significant at the 0.05 level. Among police officer participants who indicated that they "Strongly Disagreed" or "Disagreed" with the statement mentioned above, about sixty-four percent (64.3%) reported that they "Strongly Agreed" or "Agreed" with the *Heien*-based scenario question while nearly thirty-six percent (35.7%) indicated that they "Strongly Disagreed" or "Disagreed" with the *Heien*-based scenario question. Among police officers who stated that they "Strongly Agreed" or "Agreed" with the statement mentioned above, nearly eighty-five percent (84.9%) also "Strongly Agreed" or "Agreed" with the *Heien*-based scenario question while only about fifteen percent (15.1%) of officers "Strongly Disagreed" or "Disagreed" with the *Heien*-based scenario

question. In other words, police officers who agree and hence know that an officer's reasonable mistake of law can support the reasonable suspicion required to justify a traffic stop, are more likely to also agree with the judicial ruling or holding as well as the rationale of *Heien* described in the *Heien*-based scenario question.

Table 20. Ever Performed a Search Based on Unclear Law by Officers' Rank

		Officers' Rank			
		Lieutenant and Sergeant	Detective and FTO	Officer and Officer 1	Total
If you ever performed a search and/or seizure based on a potentially unclear law, was the Context a "Search"?	NO	63.0% (17)	81.5% (22)	84.2% (96)	80.4% (135)
	YES	37.0% (10)	18.5% (5)	15.8% (18)	19.6% (33)
	Total	100.0% (27)	100.0% (27)	100.0% (114)	100.0% (168)

$\chi^2(2)=6.269$, $p<.05$; ( ) = is a count number

A cross-table analysis was performed between responses that indicated a participant had conducted a search and/or seizure based on unclear law(s), including the reported context, and study participants' rank. An officer's rank was used as the independent variable and responses that indicated a participant had conducted a search and/or seizure based on unclear law(s), including the reported context, was the dependent variable. Only one type of context was statistically significant when comparing these two questions. This was the "searches" context and Table 20 displays these findings (note: other potential contexts included "traffic stops" and "arrests."). This analysis shows a Chi-square of 6.269 with 2 degrees of freedom and it is statistically significant at the 0.05 level. Among police officers holding the rank of "Officer or Officer 1" ninety-six (84.2%) reported that they have not conducted a search based on potentially unclear law(s) while eighteen (15.8%) officers indicated they had conducted such a search. Among officers whose rank was "Detective or FTO" (Field Training Officer) twenty-two

(81.5%) police officers had not conducted such a search while five officers (18.5%) reported that they had performed a search based on potentially unclear law(s). However, among officers who had attained the rank of "Lieutenant or Sergeant" seventeen (63.0%) indicated that they had not performed such a search while ten (37.0%) of these high-ranking officers admitted to having performed a "search" based on potentially unclear law(s). In sum, higher-ranking police officers, including in particular lieutenants and sergeants, were found to have conducted "searches" potentially based on unclear law(s) more frequently than lower-ranking officers.

Table 21. Performing Search/Seizure based on Unclear Law by Educational Level

		Highest level of education		
		High School or Some College	Associate's Degree or Higher	Total
Ever performed a search/ seizure based on law(s) that you believe could be unclear or ambiguous?	NO	75.7% (56)	60.0% (57)	66.9% (113)
	YES	24.3% (18)	40.0% (38)	33.1% (56)
	Total	100.0% (74)	100.0% (95)	100.0% (169)

$\chi^2(1)=4.613$, $p<.05$; ( ) = is a count number

Table 21 displays a cross-table analysis which was performed to examine whether an officer's educational level could impact their likelihood to perform a search and/or seizure based on potentially unclear law(s). The officers' highest level of education was used as the independent variable while whether or not a participant had conducted a search and/or seizure based on unclear law(s) was the dependent variable. This analysis shows a Chi-square of 4.613 with 1 degree of freedom and it is statistically significant at the 0.05 level. Among police officers who had completed "High School" or "Some College" fifty-six (75.7%) reported not having performed a search and/or seizure based on potentially unclear law(s) and just eighteen (24.3%) had performed such a search. However, among officers who had completed a college degree of

some kind (i.e., Associate's and Bachelor's degrees or a Master's Degree) fifty-seven (60.0%) had not performed a search and/or seizure based on potentially unclear law(s) while thirty-eight (40.0%) of these more highly educated officers admitted to having previously conducted some type of search and/or seizure based on potentially unclear law(s). In sum, police officer participants who hold an Associate's Degree or higher were found to be more likely than officers who do not have a college degree to have also performed some form of search and/or seizure based on potentially unclear law(s).

Finally, using the data collected from this survey, various statistical tests (T-Tests, One-way ANOVA, and Chi-square tests) were also conducted to determine if other statistically significant relationships exist between police officer respondents' knowledge of *Heien* and their respective training, years in law enforcement, gender, or race. None of the study participants' responses to these demographic questions were found to have any statistical significance when compared with knowledge-testing questions related to *Heien*. In other words, an officer's training, years in law enforcement, gender, and race cannot be used to directly predict knowledge of *Heien*.

Chapter Five – Discussion and Conclusion

This study found several noteworthy results and detailed evaluations are presented in this Chapter. In addition, this study's results are related to findings from earlier studies whenever possible. Overall, police officers seem to possess greater levels of knowledge (and aligning, accurate perceptions) regarding the more general Fourth Amendment law related to the United States Supreme Court ruling in *Heien*, but officers also seem to possess lower levels of knowledge (and aligning, accurate perceptions) regarding the more specific Fourth Amendment Law related to *Heien*. Based on the reviewed court cases, the majority of federal and state courts only interpret and apply *Heien* in the traffic stop context and the minority of these courts have extended *Heien's* application to the arrest context. Various implications and recommendations based on this study's findings are provided for law enforcement. Finally, limitations of the current study and suggestions for future research are also addressed in this Chapter.

A. Evaluations

a. Scenario Questions

Generally, law enforcement officers' knowledge was found to be at a moderate to high level when examining factual scenarios and judicial rulings involving *Heien* and related cases.[463] For example, over eighty percent of officers who read a factual scenario based entirely on the *Heien* case, its ruling and rationale demonstrated an adequate level of agreement with and knowledge of the case.[464] Another factual scenario question was based on the case of *Abercrombie v. State* (a Court of Appeals of Georgia decision from 2017).[465] *Abercrombie* held

[463] *See supra* Tables 7-9, and Figure 1.
[464] *See supra* Table 7 and Figure 1. *See also Heien*, 135 S. Ct. at 530.
[465] *See generally Abercrombie*, 343 Ga.App. 774 (2017).

that reasonable suspicion to support a traffic stop based upon a vehicle's lack of an interior rearview mirror, did not exist because the lack of such a mirror was not a legal violation.[466] Additionally, the officer's mistake of law regarding the presence of a legal violation was found to be objectively unreasonable due to the fact that the laws in question were only subject to one reasonable interpretation.[467] Because this study was conducted in the state of Georgia and the surveys were administered to law enforcement officers who must follow the rulings of Georgia appellate courts, it is important that officers understand a case such as *Abercrombie*.[468] Similar to results from the scenario question based on *Heien*, police officers demonstrated adequate levels of agreement and knowledge of this case. For example, over seventy-six percent of officers reported agreement with the court's ruling in *Abercrombie*.[469]

However, there was one scenario question where survey respondents did not demonstrate adequate agreement or knowledge. This scenario question involved *United States v. Diaz*, which held that an officer did have probable cause to arrest Diaz for a legal violation and conduct a lawful search incident to arrest. The United States District Court for the Southern District of New York in *Diaz* reasoned that any potential officer mistake of law regarding whether the underlying statute applied to the physical location where Diaz was arrested, was objectively reasonable under *Heien*.[470] Less than half (47%) of police officers demonstrated adequate levels of

[466] *See Abercrombie*, 343 Ga.App. at 779-81.
[467] *Id*. at 782-85. *See also supra* note 211.
[468] *See generally Abercrombie*, 343 Ga.App. at 774.
[469] *See supra* Table 9 and Figure 1.
[470] *See generally United States v. Diaz*, 122 F.Supp.3d 165, at 174-76, 181 (S.D.N.Y. 2015); *affirmed by United States v. Diaz*, 854 F.3d 197 (2nd Cir. 2017). *See supra note* 175. *See also supra* Table 8 and Figure 1. *See also supra* Chapter 2 (Literature Review), Sections B and C, for a detailed discussion of *Diaz*. *See also* Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant Federal Appellate Court Cases*. 53 Crim. L. Bull. 1202 (2017).

agreement or knowledge concerning the *Diaz* case.[471] However, this scenario question is arguably the most complex of the three scenario-based questions because it involves several, potential legal violations (e.g., drug and alcohol violations), and an evaluation of whether or not particular law(s) apply in a certain physical location or area. Moreover, this scenario question implicates law that is later determined to be somewhat unclear or ambiguous.[472] Finally, it is important to note that the *Diaz* ruling is not technically binding law or precedent in the state of Georgia because it is a federal circuit court of appeals decision from a circuit that does not encompass Georgia.[473] Accordingly, it may be somewhat understandable if law enforcement officers in Georgia are not adequately knowledgeable of this particular case. While police officers did perform poorly on the *Diaz*-based scenario question, they performed significantly better on the scenario questions based on *Heien* and *Abercrombie*, respectively. Thus, when these factual scenario questions are examined as a whole, police officers' knowledge related to these scenarios and their associated judicial outcomes or rulings can be considered adequate.[474]

Officer performance on the scenario-based questions lends support to some earlier studies concerning law enforcement officers' Fourth Amendment legal knowledge; however, at the same time, there are some differences compared to these earlier studies.[475] For example, Perrin et al. (1998) found that police officers were only able to correctly answer fact-based scenario questions regarding Fourth Amendment search and/ or seizure law at "coin-flip" chances (i.e.,

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[471] *See generally United States v. Diaz*, 122 F.Supp.3d 165, at 174-76, 181 (S.D.N.Y. 2015); *affirmed by United States v. Diaz*, 854 F.3d 197 (2nd Cir. 2017). *See also supra* Table 8 and Figure 1. *See also supra* Chapter 2 (Literature Review), Sections B and C, for a detailed discussion of *Diaz*.

[472] *See generally United States v. Diaz*, 122 F.Supp.3d 165 (S.D.N.Y. 2015); *affirmed by United States v. Diaz*, 854 F.3d 197 (2nd Cir. 2017). *See also supra* Chapter 2 (Literature Review), Sections B and C, for a detailed discussion of *Diaz*.

[473] *Diaz* is a decision from the Second Circuit and the state of Georgia falls within the Eleventh Circuit. *See supra* note 470.

[474] *See supra* Tables 7-9, and Figure 1.

[475] *See generally* Perrin et al., (1998); Heffernan & Lovely (1991); Orfield (1987); Orfield (1992); Totten and Cobkit (2013); Totten and Cobkit (2017).

only about fifty percent of the time).[476] These questions were also based upon United States Supreme Court cases and "well recognized legal principles."[477] Heffernan & Lovely (1991) also utilized short scenario questions based on United States Supreme Court cases.[478] Officers in Heffernan & Lovely's (1991) study were only able to answer these questions correctly about fifty-seven percent of the time (i.e., slightly better than the chances of randomized guessing).[479] Overall, Perrin et al.'s (1998) and Heffernan and Lovely's (1991) findings indicate that police officers had only low to moderate knowledge of important Fourth Amendment laws.[480] These studies' findings, therefore, stand in contrast to the current study's findings related to scenario-based legal questions.

However, with respect to short situation or scenario questions directed to police and based on United States Supreme Court cases, other earlier studies have reported more encouraging findings. For example, Totten and Cobkit (2013) found that police chiefs are generally knowledgeable concerning Fourth Amendment knock-and-announce rules in the context of an arrest at premises.[481] Totten and Cobkit's 2017 study on police chief knowledge of the *Gant* case found that chiefs' knowledge was unevenly balanced; for example, chiefs had high levels of knowledge in some areas but low levels in other areas.[482] In particular, most chiefs were incorrect regarding the applicability or content of *Gant's* safety prong but did know the safety-related criteria underlying the prong. In addition, only about half of the chiefs were correct regarding the basic content of the evidentiary prong; however, most chiefs recognized or knew

[476] *See* Perrin et al., (1998) at 724-25, 735.
[477] *See* Perrin et al., (1998) at 714-15. *See also* Id. at note 388.
[478] *See* Heffernan & Lovely (1991) at 333-34.
[479] *Id*. *See also* Table 3 in Heffernan & Lovely (1991) at 334.
[480] *See supra* notes 476-479.
[481] *See* Totten and Cobkit (2013) at 99-100, 108. *See generally Hudson*, 547 U.S. 586 (2005).
[482] *See* Totten and Cobkit (2017) at 283. *See generally Gant*, 129 S. Ct. 1710 (2009).

the proper criteria underlying the prong.[483] Orfield (1987) found that, overall, the vast majority of police officers had a "good or complete understanding" of Fourth Amendment laws and related search and seizure procedures.[484] Orfield (1992) found that approximately ninety percent of all respondents reported that police officers generally understood search and seizure laws enough to adequately work as a police officer and conduct effective policing.[485]

When evaluating *only* the three scenario-based questions in the current study, the moderate to high level of knowledge demonstrated by police officers in this study aligns more closely with the earlier findings of Orfield (1987) and Totten and Cobkit (2013).[486] However, it should be noted that Totten and Cobkit's 2013 study evaluated police chiefs while the current study evaluated mostly lower ranking officers (i.e., patrol officers).[487] However, Orfield (1987) evaluated lower-ranking officers such as detectives and general 'police officers' (i.e., a sample more similar to that of the current study).[488] Thus, when evaluating the findings of *only* the scenario-based questions in the current study it may be more appropriate to align these findings closer to Orfield (1987) rather than Totten and Cobkit (2013).

The difference in rank between a police chief and a lower-ranking officer such as a patrol officer or 'line-officer' merits further consideration. A police chief may have more experience (i.e., years in law enforcement) compared to a patrol officer. Compared to chiefs, patrol officers may also suffer a disadvantage concerning their educational background. For example, a police

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[483] *Id*. at 277. Knowledge of a prong entails knowing when the particular legal rule applies in the abstract (i.e., for "safety" or "evidence-gathering."), whereas knowledge of criteria underlying a prong entails knowing what specific, concrete factors should be considered when the legal rule is being applied. *Id*. at 277-78. *See also Gant*, 129 S. Ct. at 1715.
[484] *See* Orfield (1987) at 1017-18, 1024-25, 1027-29, 1033-35, 1036.
[485] *See* Orfield (1992) at 92.
[486] *See generally* Orfield (1987) and Totten and Cobkit (2013).
[487] *See* Totten and Cobkit (2013) at 96.
[488] *See* Orfield (1987) at 1024-25.

chief may have higher levels of education compared to lower-ranking officers. It is also possible that police chiefs would receive information concerning legal updates or developments prior to this information being disseminated to the line-officers. In short, it is possible that police chiefs may have certain advantages over lower-ranking officers in terms of legal knowledge.

b. Non-scenario Questions

Overall, compared to the scenario-based questions, officers in the current study did not perform as well on the shorter, non-scenario questions related to *Heien*. For example, only twelve percent of participating officers reported that the have heard of the *Heien v. North Carolina* case.[489] In contrast to this finding, Totten and Cobkit (2017) found that about eighty-eight percent of police chiefs **had** heard of the *Gant* case.[490] In addition, just over fifty-four percent of officers indicated that they *are* familiar with the concept of reasonable mistakes of law.[491]

However, one short question from this study addressed the basic holding of *Heien* ("An officer's reasonable mistake of law can support reasonable suspicion for a traffic stop"), and nearly seventy-seven percent of officers demonstrated adequate knowledge of this general outcome or holding from *Heien*.[492] Similarly, in response to a short question regarding officer decision-making ("Officers sometimes have to make quick decisions regarding unclear laws and

[489] *See supra* Table 3.
[490] *See* Totten and Cobkit (2017) at 276. Totten and Cobkit's 2017 study evaluated police chiefs as opposed to the current study which evaluated lower ranking officers. *Id*. at 271.
[491] *See supra* Table 3.
[492] *See supra* Table 13. *See also Heien,* 135 S. Ct. at 534-36. ("The question here is whether reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition. We hold that it can.") *Heien,* 135 S. Ct. at 536.

should be allowed a certain margin of error"), officers again demonstrated adequate knowledge with eighty-eight percent of officers reporting some level of agreement.[493]

In contrast, study participants' responses to a question concerning what the allowable margin of error for a reasonable mistake of law should include, most frequently consisted of traffic stops, arrests, and searches. This margin of error, the largest possible margin able to be selected, was reported by 36.6% of participants, or sixty-three officers.[494] In other words, 36.6% (or sixty-three officers) indicated all available choices apart from "none of the above (i.e., officers should **not** be allowed any margin of error)."[495] Similarly, when evaluating the same question but emphasizing traffic stops, officers' responses most frequently indicated that the allowable margin of error should include traffic stops and arrests and/ **or** searches (reported by 52.3%, or ninety officers).[496] In other words, 52.3% (or ninety officers) selected traffic stops **and** at least one other choice (arrests, searches, or both).[497] Generally, less than thirty-one percent of officer responses indicated that *only* traffic stops should be permitted when an officer makes a reasonable mistake of law. This response is in accord with *Heien*, which allows for reasonable mistakes of law to support traffic stops.[498] Thus, when evaluating the non-scenario question responses together, on the one hand, it seems that officers clearly have adequate knowledge of the *Heien* holding or ruling, and on the other hand, when given the option to indicate what the allowable margin of legal error should be, the majority of officers selected the largest possible

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[493] *See supra* Table 2. *See also Heien*, 135 S. Ct. at 539-40. ("…[A]n officer may 'suddenly confront' a situation in the field as to which the application of a statute is unclear—however clear it may later become. A law prohibiting 'vehicles' in the park either covers Segways or not […], but an officer will nevertheless have to make a quick decision on the law the first time one whizzes by.") *Heien*, 135 S. Ct. at 539.
[494] *See supra* Table 4. Study participants were able to select more than one response to this question.
[495] *Id*.
[496] *See supra* Table 5. Table 5 represents the same question as Table 4 but re-evaluates responses and emphasizes traffic stops. *See supra* Chapter 4 (Findings) for a more detailed discussion.
[497] *Id*.
[498] *See supra* Tables 4-5. *See also Heien*, 135 S. Ct. at 534-36.

margin of error. This latter selection, or outcome, reaches beyond the scope of the margin of error permitted by *Heien,* which limited the margin for reasonable police errors under the law to the traffic stop context.[499]

It is possible that this discrepancy between officers' adequate knowledge of *Heien* and their support for an allowable margin of error beyond what *Heien* permits (i.e., traffic stops) could be the result of an ever-changing legal landscape for police officers. For example, courts may issue rulings which expand permissible police behaviors (e.g., *Heien* permitting reasonable mistakes of law to support traffic stops), or further restrict police conduct.[500] Furthermore, police officers cannot be expected to also be legal experts and thus, cannot be expected to know every applicable law in every situation. Additionally, when officers are required to apply potentially unclear laws in a situation that requires a quick decision to be made it seems logical that officers would want to have a larger margin of error for making reasonable mistakes in order to avoid any punitive or negative consequences (e.g., exclusion of evidence; civil suits; internal discipline). Furthermore, in a situation that requires a split-second decision regarding unclear law, it is not always feasible for officers to be expected to consult with legal experts prior to making a decision. It is also possible that legal training, or legal updates, for officers cannot keep up with newly decided court cases, changes in departmental policies, or changing laws (i.e., legislation). Finally, it could be possible that officers want to be afforded the largest possible

[499] *See supra* Tables 4, 5, and 13. *See generally Heien*, 135 S. Ct. at 530.

[500] *See generally Heien*, 135 S. Ct. at 530. (The *Heien* ruling expanded permissible police behavior by holding that objectively reasonable mistakes of law can support the reasonable suspicion necessary for a traffic stop.) *See Heien*, 135 S. Ct. at 530, 534-36. *See generally Hudson*, 547 U.S. 586 (2006). (The *Hudson* ruling essentially stated that the exclusionary rule is no longer applicable to violations of the knock-and-announce rule (i.e., *Hudson* could be seen to 'expand' permissible police conduct.)) *See Hudson*, 547 U.S. at 599. *But see Gant*, 129 S. Ct. at 1714-15, 1718-19. (In *Gant* the Supreme Court rejected the majority of lower courts' interpretative reading of the *Belton* rule (i.e., police behavior in the context of searches incident to arrests at vehicles was restricted)). *See Gant*, 129 S. Ct. at 1718-19. *See generally Belton*, 453 U.S. 454 (1981).

margin of error for mistakes of law due to the fact that being a police officer is not an easy occupation and can require difficult decisions to be made quickly, resulting in frequent job stress and anxiety.

An evaluation of certain questions containing a higher degree of specificity on the law demonstrates lower levels of knowledge on the part of law enforcement officers. For example, over eighty-seven percent of police officers indicated some level of agreement with the statement: "If an officer happened to make a mistake of law, his/her subjective understanding of the law *must* be examined."[501] According to the *Heien* ruling, this statement is inaccurate; instead, the officer's *subjective* understanding of the law is not examined and is considered irrelevant when a court is evaluating a mistake of law.[502] Additionally, police officers demonstrated moderate to low levels of knowledge regarding two other questions concerning criteria required for a mistake of law to be found reasonable. These criteria addressed whether the underlying law being applied needs to be ambiguous or vague.[503] One of these two questions indicates that the law being applied *must be* ambiguous or vague and officers were correct approximately fifty-five percent of the time, and the other question indicates that the law being applied *could be* clear or unambiguous and officers here were correct only about forty-three percent of the time.[504] When these two questions are evaluated under the law, there is a clear conflict.[505] The concurrence written by Justice Kagan in *Heien*, in part, states:

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[501] *See supra* Table 10.
[502] *See Heien*, 135 S. Ct. at 539. ("The Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable. We do not examine the subjective understanding of the particular officer involved." (citing Whren v. United States, 517 U.S. 806, 813 (1996)). *See also Heien*, 135 S. Ct. at 540-41. (Justice Kagan's concurrence in Heien reiterated this point: "the Fourth Amendment tolerates only… *objectively* reasonable mistakes of law… [and] an officer's 'subjective understanding' [of the law] is irrelevant: As the Court notes, '[w]e do not examine' it at all." (Kagan, J., concurring).
[503] *See supra* Tables 11 and 12.
[504] *Id*.
[505] *Id. See supra* notes 453, 454, and 456 and accompanying text. *See also supra* Chapter 2 (Literature Review). *See generally* Totten and De Leo (2017).

> A court tasked with deciding whether an officer's mistake of law can support a seizure thus faces a straightforward question of statutory construction. If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not… [T]he statute must pose a 'really difficult' or 'very hard question of statutory interpretation.[506]

Additionally, the majority of state and federal lower courts have found that mistakes of law are only reasonable when the law, or statute, being applied is ambiguous or vague.[507] Accordingly, the law, or statute, being applied by an officer must generally be truly ambiguous or unclear for a mistake of law to be found reasonable. In sum, many officers do not exhibit adequate knowledge regarding the widely adopted judicial principle that for a mistake of law to be reasonable, the underlying law being applied by the officer must be ambiguous or vague.[508]

Officers' responses to questions regarding certain forms of decision-making and behavior related to *Heien* suggests many officers may not be abusing *Heien* and its allowance for police legal errors.[509] Only about thirty-two percent of police officers indicated that they have *ever* conducted a search and/or seizure based on law(s) they thought could be unclear or confusing.[510] However, this finding may be disconcerting because nearly one-third of police officers have engaged in search/seizure behavior which could lead to Fourth Amendment violations and concern for citizens' privacy rights. In addition, of the officers who did report having engaged in

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[506] *See Heien*, 135 S. Ct. at 541 (Kagan, J., concurring). *See also* Totten and De Leo (2017), and Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant State Court Cases*. 54 Crim. L. Bull. 927 (2018). In these two content analysis studies, the majority of courts (federal and state) found that for an officer's mistake of law to be reasonable, the underlying law being applied needed to be ambiguous or vague.

[507] *See* Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant Federal Appellate Court Cases*. 53 Crim. L. Bull. 1202 (2017). *See also* Christopher Totten and Michael De Leo. *Interpreting Heien v. North Carolina: A Content Analysis of Significant State Court Cases*. 54 Crim. L. Bull. 927 (2018). In these two content analysis studies, the majority of courts (federal and state) found that for an officer's mistake of law to be reasonable, the underlying law being applied needed to be ambiguous or vague. *See also supra* Chapter 2 (Literature Review).

[508] *See* Totten and De Leo (2017), (2018). In these two content analysis studies, the majority of courts (federal and state) found that for an officer's mistake of law to be reasonable, the underlying law being applied needed to be ambiguous or vague. *See also supra* Table 11.

[509] *See supra* Table 6.

[510] *Id.*

such behavior, the most frequent area or context reported was traffic stops.[511] This is promising for multiple reasons: first, over two-thirds of police officers reported having *never* performed a search and/or seizure behavior (i.e., a traffic stop; a search; or an arrest) based on law(s) that they believe could be confusing or ambiguous; second, of the thirty-two percent of police officers who did report having engaged in such behavior, the frequency with which areas or contexts were reported are (non-statistically) related to their respective level of intrusiveness. For example, traffic stops were reported the most, followed by searches, and finally arrests were reported the fewest number of times. If a law enforcement officer is going to perform a search and/or seizure behavior based on law that he or she believes is unclear or confusing, it would be more likely that most people would want that law to lead to police behavior that is least intrusive in nature (i.e., being pulled over as part of a traffic stop may be viewed as less intrusive than being placed under arrest or having one's house or other personal property searched).

c. Concurrent Evaluations

An overall evaluation of law enforcement officers' perceptions and knowledge gleaned from this study supports the notion that police officers have demonstrated adequate knowledge (i.e., moderate to higher levels of knowledge) of basic Fourth Amendment principles related to *Heien*. For example, 88.0% of police officers reported some level of agreement with a short decision-making question which is drawn directly from the *Heien* ruling ("Officers sometimes have to make quick decisions regarding unclear laws and should be allowed a certain margin of error").[512] Officers also demonstrated adequate knowledge for a question regarding *Heien's* basic holding (i.e., an officer's reasonable mistake of law can support reasonable suspicion for a traffic

[511] *Id*.
[512] *See supra* note 493 and accompanying text.

stop). Over three-quarters (76.8%) of police officers reported either agreement or strong agreement with *Heien's* basic holding.[513] A little more than half (54.4%) of law enforcement officers reported that they were familiar the concept of reasonable mistakes of law.[514] Finally, the vast majority of police officers (80.3%) agreed or strongly agreed with the scenario question based entirely on the *Heien* case itself.[515]

However, concerning the more technical, or specific, legal concepts of Fourth Amendment law pertaining to *Heien*, police officers have demonstrated moderate to lower levels of agreement and knowledge. One question regarding *Heien's* concept that statutory ambiguity is needed for any mistake of law to be found reasonable revealed that only about half (54.8%) of police officers either agreed or strongly agreed with this concept.[516] In addition, a slightly greater number of officers (57.5%) reported that a mistake of law could be found to be reasonable even if the underlying law was clear or unambiguous.[517] Another more technical question which revealed lower levels of knowledge and agreement with *Heien* stated that if a mistake of law is made, then the officer's *subjective* understanding must be examined. The overwhelming majority (87.5%) of police officers reported some level of agreement with this statement.[518] In short, this

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[513] *See supra* note 492 and accompanying text.
[514] *See supra* Table 3.
[515] *See supra* Table 7 and Figure 1.
[516] *See supra* Table 11. *See also Heien*, 135 S. Ct. at 541. (("A court tasked with deciding whether an officer's mistake of law can support a seizure thus faces a straightforward question of statutory construction. If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not… [T]he statute must pose a 'really difficult' or 'very hard question of statutory interpretation.'" (Kagan, J., concurring)). *See also* Totten and De Leo (2017), (2018). In these two content analysis studies, the majority of courts (federal and state) found that for an officer's mistake of law to be reasonable, the underlying law being applied needed to be ambiguous or vague.
[517] *See supra* Table 12. *See also Heien*, 135 S. Ct. at 541. (("A court tasked with deciding whether an officer's mistake of law can support a seizure thus faces a straightforward question of statutory construction. If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not… [T]he statute must pose a 'really difficult' or 'very hard question of statutory interpretation.'" (Kagan, J., concurring)). *See also* Totten and De Leo (2017), (2018). In these two content analysis studies, the majority of courts (federal and state) found that for an officer's mistake of law to be reasonable, the underlying law being applied needed to be ambiguous or vague.
[518] *See supra* note 502 and accompanying text. *See also supra* Table 10.

study found that overall, law enforcement officers seem to possess greater levels of knowledge and aligning, accurate perceptions regarding the more general Fourth Amendment law related to the United States Supreme Court ruling in *Heien*; however, officers seem to possess lower levels of knowledge and aligning, accurate perceptions regarding the more specific Fourth Amendment Law related to *Heien*.

B. Hypotheses

The current study had four primary hypotheses, and each will be discussed individually. First, it was hypothesized that police officer knowledge of *Heien* and related Fourth Amendment principles would be low to modest. Some findings from this study support this hypothesis, yet others do not. For example, regarding findings that do *not* support the hypothesis, knowledge/or agreement with the Supreme Court's ruling in the *Heien* case was found to be high.[519] Similarly, levels of knowledge/or agreement with the related Court of Appeals of Georgia decision in *Abercrombie* were found to be moderate to high.[520] *Abercrombie* held that reasonable suspicion to support a traffic stop did not exist because there was no actual legal violation and the officer's mistaken belief was objectively unreasonable because there was only one objectively reasonable interpretation of the applied statutes (i.e., the relevant laws were unambiguous).[521] In addition, over three-quarters of police officers demonstrated moderate to high levels of knowledge/or agreement with a statement indicating reasonable mistakes of law *can* support reasonable suspicion for a traffic stop.[522]

[519] *See supra* Table 7 and Figure 1. *See generally Heien*, 135 S. Ct. at 530.
[520] *See supra* Table 9 and Figure 1. *See generally Abercrombie*, 343 Ga.App. at 774.
[521] *See Abercrombie*, 343 Ga.App. at 779-85.
[522] *See supra* Table 13. *See also Heien*, 135 S. Ct. at 534-36.

However, regarding findings that do support the first hypothesis, study participants have lower to moderate levels of knowledge/or agreement with the *Diaz* ruling.[523] *Diaz* held that an officer did have probable cause to make an arrest and perform a lawful search incident to arrest because any potential mistake of law was found to be objectively reasonable in light of *Heien*.[524] In addition, about eighty-seven percent of police officers report that if a mistake of law occurs the officer's *subjective* understanding of the law must be examined by the court when making its reasonableness determination; however, this understanding by the officers is not accurate under the law.[525] About fifty-five percent of respondents indicated correctly that in general, for a mistake of law to be reasonable, the law in question *must be* ambiguous/or vague. Accordingly, this latter finding reflects a moderate to lower level of knowledge.[526] Finally, a question regarding a similar, related principle (i.e., for a mistake of law to be reasonable the applied law *could be* clear or unambiguous) found moderate to low levels of police knowledge related to the question.[527] The first hypothesis (officer knowledge will be low to modest) cannot be fully supported because police officer knowledge related to *Heien* was found to be moderate to high for several questions but on other questions, this knowledge was found to be moderate to low. On balance, knowledge was uneven.

Second, it was hypothesized that police officers will perceive the *Heien* ruling, its rationale, and significant lower court interpretive cases to allow them additional leeway in their

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[523] *See supra* Table 8 and Figure 1. *See generally United States v. Diaz*, 122 F.Supp.3d 165 (S.D.N.Y. 2015); *affirmed by United States v. Diaz*, 854 F.3d 197 (2nd Cir. 2017). The Second Circuit's ruling in *Diaz* is not technically binding law or precedent in the state of Georgia because Georgia falls within the Eleventh Circuit.
[524] *See generally United States v. Diaz*, 122 F.Supp.3d at 174-76, 181 (S.D.N.Y. 2015); *affirmed by United States v. Diaz*, 854 F.3d 197 (2nd Cir. 2017). *See also supra* Table 8 and Figure 1. *See also supra* Chapter 2 (Literature Review), Sections B and C, for a detailed discussion of *Diaz*. *See also* Totten and De Leo (2017).
[525] *See supra* Table 10. *See supra* note 501 and accompanying text.
[526] *See supra* Table 11. *See supra* note 515 and accompanying text.
[527] *See supra* Table 12. *See supra* note 516 and accompanying text.

policing duties. This hypothesis was generally supported by the findings. For example, eighty-eight percent of officers indicated that they have to make quick decisions regarding the application of unclear or ambiguous law(s) *and* should be allowed a certain margin of error.[528] The majority (76.8%) of police officers report that a reasonable mistake of law can support reasonable suspicion for a traffic stop (i.e., as in *Heien*).[529] When officers were asked what activities or conduct should be permitted a margin of error when a reasonable mistake of law has occurred, the most frequent response was to indicate that traffic stops as well as arrests and searches should be allowed such a margin.[530]

However, there is one caveat or revision that must be made to this second hypothesis. This is because most officers (53.0%) report disagreement, or strong disagreement, with the *Diaz* ruling/rationale, a significant lower court interpretive case included in the study.[531] *Diaz* held that an officer did have probable cause to make an arrest and conduct a lawful search incident to arrest because any potential mistake of law --- regarding whether the underlying statute applied to the physical location where Diaz was arrested --- was found to be objectively reasonable under *Heien*.[532] Over half (53.0%) of police officers reported some level of disagreement with the *Diaz* ruling, which demonstrates that these officers, after reading the *Diaz*-based scenario and court ruling, agreed that police should not be allowed additional leeway regarding certain behavior or conduct (i.e., in an arrest context).[533] However, recall that when officers were asked to indicate

[528] *See supra* Table 2.
[529] *See supra* Table 13. (According to the Supreme Court, an officer's reasonable mistake of law can support reasonable suspicion for a traffic stop) *See generally Heien*, 135 S. Ct. at 530.
[530] *See supra* Table 4. (The Supreme Court has explicitly permitted an officer's reasonable mistake of law to support traffic stops but did not explicitly permit such a mistake to allow for arrests or searches) *See generally Heien*, 135 S. Ct. at 530.
[531] *See supra* note 524 and accompanying text.
[532] *See supra* Table 8 and Figure 1.
[533] *Id*.

what the allowable margin of error should include when a reasonable mistake of law has occurred, the most frequent response was to indicate that the margin should apply to traffic stops and arrests and searches.[534] It is possible that these two seemingly conflicting findings were the result of the level of detail involved with each question, respectively. For instance, the *Diaz*-based scenario question contained a specific explanation of the facts and court's rationale in *Diaz* while the question asking what should be included in the allowable margin of error for reasonable mistakes of law was much shorter and more general (i.e., lacked significant detail).

The third hypothesis --- the majority of officers will not be familiar with the *Heien* decision itself, but a moderate amount will have knowledge of the overall concept of reasonable mistakes of law and ambiguous laws --- can be generally supported. To illustrate, only twelve percent of officers report having heard of the *Heien* case and over half (54.4%) of officers report being familiar with the concept of reasonable mistakes of law.[535] Additionally, police officers report that a margin of error should be allowed that permits reasonable mistakes of law to support traffic stops, but *not* also arrests and/or searches 30.8% of the time (this is the second most frequent response to the question concerning what the allowable margin of error should be).[536] Furthermore, about eighty percent of police officers were able to read a summarized version of the facts and holding in the *Heien* case and then demonstrate a high-level of knowledge/ agreement with the Supreme Court's ruling; however, as noted, only twelve percent of officers report having heard of the case of *Heien v. North Carolina*.[537] This could be the result of adequate legal training concerning what behavior or conduct is permissible for police officers.

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[534] *See supra* Table 4.
[535] *See supra* Table 3.
[536] *See supra* Tables 4 and 5. The most frequent response was for police officers to indicate traffic stops and at least one other context. *Id.*
[537] *See supra* Tables 3, 7, and Figure 1.

For example, if study participants attended a legal training program it is possible that they learned about the content of the *Heien* case and its key components but did not learn the actual name of the case (*Heien v. North Carolina*).

In addition, regarding the third hypothesis, less than one-third (32.2%) of participants report having *ever* performed a search and/or seizure based on law(s) they believe could be ambiguous, confusing, or unclear.[538] In addition, of these police officers who *had* conducted such a search and/or seizure the most frequent area or context in which this behavior was reported was traffic stops (i.e., the context permitted by *Heien* for reasonable officer mistakes of law).[539]

The fourth and final hypothesis stated that most federal and state lower courts will limit the *Heien* decision to routine traffic stop situations and a minority of courts will interpret *Heien* beyond the traffic stop context. This hypothesis is also supported by the findings.[540] For example, seven out of twelve interpretive lower court cases reviewed within the Literature Review chapter took place in the context of a traffic stop situation and these courts did not suggest expanding *Heien* beyond this context.[541] The five interpretive lower court cases reviewed that did not take place in the traffic stop context all took place in the arrest context.[542] However, only one of these five cases held that the officer's mistake of law was objectively unreasonable and the subsequent arrest to be unlawful.[543] Based on the twelve cases reviewed, the majority of

[538] *See supra* Table 6.
[539] *See supra* Table 6.
[540] *See supra* Chapter 2 (Literature Review), Sections B, C, and D.
[541] *Id*. *See generally* Totten and De Leo (2017), (2018). In these two content analysis studies, the majority of courts (federal and state) contained *Heien* to the routine traffic stop situation.
[542] *See supra* Chapter 2 (Literature Review), Sections B, C, and D.
[543] *See supra* Chapter 2 (Literature Review), Section D, Subsection (b) reviewing the case of *State v. Rand*, 209 So.3d 660 (*Rand* was the only reviewed case which applied *Heien* in the arrest context and also held that that the police officer's mistake of law was unreasonable and the arrest unlawful (i.e., four out of five reviewed cases which applied *Heien* in the context of an arrest found the officers' mistake of law to be reasonable and arrest lawful).

federal and state lower courts only interpret *Heien* in the traffic stop context and the minority which do interpret *Heien* beyond the traffic stop context have extended *Heien* to the arrest context.

C. Implications and Analysis

Several policy implications can be provided based on the findings of this study. For example, police departments may want to consider more frequent legal training sessions for their officers because only twelve (12) percent had heard of the *Heien* case and just over half (54.4%) were familiar with the concept of reasonable mistakes of law. More detailed legal training could also help to limit perceived officer discretion because the majority of officers (52.3%) believe they should be allowed a margin of error in applying laws to areas apart from the traffic stop context, including laws in the search and arrest contexts. This latter belief is inaccurate under the law.[544]

In particular, Linetsky (2018) sheds some light on the current state of police training. Mandatory national standards do not currently exist; therefore, each state sets its own requirements.[545] For example, in the past fifteen years, police officers' required training hours have only increased by about 260 hours across the United States (by way of reference, in 1993 the national average of state required training was a minimum of 400 hours and in 2018 Georgia required only 408 hours of training).[546] Accordingly, Georgia appears to be behind the national average in terms of increasing police training hours over the course of the past 15 years.

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[544] *See generally Heien*, 135 S. Ct. at 530. (*Heien* held that an officer's objectively reasonable mistake of law can support the reasonable suspicion required for a traffic stop; but, *Heien* did not address or explicitly allow an officer's objectively reasonable mistake of law to support searches or arrests). *See Heien*, 135 S. Ct. at 536, 540.
[545] *See* Yuri R. Linetsky. *What the Police Don't Know May Hurt Us: An Argument for Enhanced Legal Training of Police Officers*, 48 New Mexico L. Rev. 1, at 17 (2018).
[546] *See* Linetsky (2018) at 17-18, 57.

However, the state of Georgia requires about twenty-seven percent of total hours to be used for legal topics and this is among the highest percentage in this area of all reported states.[547]

Several statistically significant findings merit further discussion and analysis in light of their potential implications. For example, one analysis found that police officers who **had** heard of *Heien v. North Carolina* were more likely to have also performed a search and/or seizure based upon law(s) that the officer believed could be potentially unclear or confusing. Therefore, as an officer's familiarity with *Heien* increases, the likelihood of the officer performing a search and/or seizure based on confusing or unclear law also increases.[548] Additionally, another analysis found that the majority of officers (61.7%) who indicated that they *are* familiar with the concept of reasonable mistakes of law --- a key component of the Court's rationale in *Heien* --- are also more likely to believe that the allowable margin of error for their mistakes of law should apply not only in the routine traffic stop context (i.e., the area permitted by *Heien*) but also in the search and/or arrest contexts.[549]

When evaluating these two findings together one can see how law enforcement officers may be molding their behavior to take into account the *Heien* decision. To an extent, this conduct reflects the new legal landscape following *Heien;* in particular, the conduct may include newly permitted behaviors under *Heien*. However, certain aspects of the behavior and/ or beliefs of these officers may adversely impact citizens' constitutional privacy rights (i.e., Fourth Amendment rights and protections), in particular in the context of officers potentially applying *Heien* beyond the allowable context of traffic stops. Thus, additional legal training, including educational training and initiatives aimed at improving officer decision-making skills, may help

[547] *Id*. at 26-27 and 57.
[548] *See supra* Table 15.
[549] *See supra* Table 18.

to further protect citizens' constitutional rights in this area. This is especially true if the police officer believes or perceives that a reasonable mistake of law will justify their behavior in the context of an arrest or a search, contexts not directly permitted under *Heien*.

Yet, it is also noteworthy that the majority (67.8%) of law enforcement officers in the current study report that they have *not* performed a search and/or seizure based on potentially unclear law(s).[550] In contrast, this finding clearly shows the potential for officers to protect citizens' constitutional privacy rights. Police departments should continue to encourage such behavior (i.e., restraint) when officers are unclear or unsure about particular law(s) and their applicability.

Another, related finding showed that higher-ranking police officers, in particular lieutenants and sergeants, reported having performed "searches" potentially based on unclear or confusing law(s) more frequently than lower-ranking officers.[551] Additionally, as an officer's rank increases so does the likelihood that the officer may conduct "searches" based upon unclear or ambiguous law(s).[552] Higher ranking police officers should therefore also be required to participate in legal training and educational sessions. While the majority (63.0%) of lieutenants and sergeants surveyed in this current study had *not* performed a search based upon potentially unclear law(s), it is certainly possible that the thirty-seven percent of those who *had* performed such a search could have advised lower-ranking officers to engage in similar behavior. Furthermore, it should be noted that this search-related behavior could be potentially illegal, depending on any future resolution of the law by the courts. Nonetheless, the sixty-three percent of lieutenants and sergeants who had *not* performed a search based upon potentially unclear laws

[550] *See supra* Table 6.
[551] *See supra* Table 20.
[552] *Id*.

could have discouraged lower ranking officers from engaging in this type of search behavior. Accordingly, this group of findings could potentially impact citizens' constitutional rights both negatively or positively. In general, supervisors should encourage more restraint among lower ranking officers regarding Fourth Amendment search behavior based on unclear laws.

Finally, according to the study's findings, police officers who hold a college or higher education degree of some kind (i.e., an Associate's, Bachelor's, or Master's Degree) were more likely than officers who do not hold such a degree to perform a search and/or seizure based on law(s) they believe could be unclear or ambiguous.[553] These officers' increased education may provide them with the additional skills and understanding needed to navigate somewhat vague legal landscapes (e.g., critical thinking skills to apply existing laws to different or new factual situations). Pursuing higher education is not an endeavor that should be discouraged, since it can help equip a law enforcement officer with certain skills to better understand and learn the law (e.g., critical thinking skills). Indeed, Linetsky (2018) proposes that law enforcement officers should have at least a two-year degree specializing in criminal justice.[554] Importantly, police officers are duty-bound to enforce the law and cannot gain any "Fourth Amendment advantage through a sloppy study of the law[]."[555] Considering that courts are not willing to forgive officers for an inadequate understanding or study of laws, a requirement of additional formalized higher education, in criminal justice areas, appears reasonable. In particular, at least one state, Minnesota, already requires officers to have at least an Associate's Degree (or its equivalent) in policing or criminal justice.[556] Linetsky (2018) also notes that while some scholars posit that college is not needed, no study has found that increased education is truly harmful or a detriment

[553] *See supra* Table 21.
[554] *See* Linetsky (2018) at 39.
[555] *See Heien*, 135 S. Ct. at 539-40.
[556] *See* Linetsky (2018) at 39.

to police officers or policing in general.[557] Additionally, officers should be provided opportunities to attain higher education degrees. This could be achieved through flexible scheduling, financial support, or other types of incentives.

Other non-police-oriented implications are also worth examining. Many of the court cases that rely on the *Heien* decision examine the actual language of the law (i.e. how the law is written and its clarity). Thus, it would seem to be important for legislators to focus on writing laws using more precise language that can also be more clearly understood without requiring a court to construe what a given law truly means or requires. For example, more clearly written laws could result in fewer laws that are confusing, unclear, or vague to the law enforcement officers that must enforce them. At the same time, this could also help protect Fourth Amendment privacy rights for citizens by reducing officer "leeway" in interpreting ambiguous or vague laws. In addition, many courts have interpreted *Heien* in a strict manner (i.e., allowing its application only in traffic stop contexts). However, a minority of courts have interpreted *Heien* in a far-reaching manner to allow for reasonable mistakes of law to support arrests or searches. Such court decisions, or interpretations, could bring about confusion for police officers regarding what behavior or conduct is truly legal and acceptable. Finally, the expansion of *Heien* to new contexts or areas can open the door to restricting Fourth Amendment rights and protections for citizens outside of routine traffic stop situations. Appellate courts, including the United States Supreme Court and individual state supreme courts, should intervene to resolve conflicts in the case law of this type, and limit *Heien* to the traffic stop context.

[557] *Id*. at 37.

D. Limitations and Future Research

One limitation of this study is that just under two-hundred police officers were surveyed and the majority were lower-ranking 'patrol' officers. A study that surveyed a greater number of officers could possibly yield different results. Findings may also differ if higher-ranking officers such as police chiefs were surveyed (e.g., similar to Totten and Cobkit (2013, 2017)). Another limitation is that the *Heien* case is only about four years old; therefore, there has not been a substantial amount of significant interpretive case law by the lower courts. Other previous studies such as Heffernan & Lovely (1991), Perrin et al. (1998), and Totten and Cobkit (2013) have utilized some Supreme Court cases that are older and therefore have greater numbers of significant interpretive cases.[558] Overall, these cases implicated by the previous studies have more developed case law and precedent surrounding them, compared to *Heien*.[559] It is also possible that, even after several rounds of review, some officers had difficulty understanding the

[558] *See* Heffernan & Lovely (1991) at 326, Table 1 (listing the court cases utilized by the study). *See* Perrin et al. (1998) at 715, note 388 (listing the court cases utilized by the study). *See* Totten and Cobkit (2013) at 71-73 (describing the court case utilized by the study). *See* Totten and Cobkit (2017) at 260-62 (describing the court case utilized by the study).

[559] Utilizing the same methodology as the present study, court cases utilized by previous studies were examined through Westlaw's citator tool, Keycite. Court cases utilized by Heffernan & Lovely (1991) include: *Ybarra v. Illinois*, 444 U.S. 85 (1979); *Warden v. Hayden*, 387 U.S. 294 (1967); *Sibron v. New York*, 392 U.S. 40 (1968); *United States v. Ross*, 456 U.S. 798 (1982); *Hayes v. Florida*, 470 U.S. 811 (1985); and *California v. Carney*, 471 U.S. 386 (1985). Utilizing the same methodology as the current study, each of these court cases were evaluated for their number of significant interpretive court cases. In sum, the number of significant interpretive court cases ranged between 88 and 493 for the court cases utilized in the Heffernan & Lovely (1991) study. Court cases utilized by Perrin et al. (1998) include: *Maryland v. Buie*, 494 U.S. 325 (1990); *California v. Acevedo*, 500 U.S. 565 (1991); and *Ornelas v. United States*, 517 U.S. 690 (1996). Utilizing the same methodology as the current study, each of these court cases were evaluated for their number of significant interpretive court cases. In sum, the number of significant interpretive court cases ranged between 146 and 1,019. The court case utilized by Totten and Cobkit (2013) was *Hudson v. Michigan*, 547 U.S. 586 (2006). Utilizing the same methodology as the current study, this case was evaluated for the number of significant interpretive court cases. The number of significant interpretive court cases was 277. The court case utilized by Totten and Cobkit (2017) was *Arizona v. Gant*, 129 S. Ct. 1710 (2009). Utilizing the same methodology as the current study, this case was evaluated for the number of significant interpretive court cases. The number of significant interpretive court cases was 1,532. *See supra* Chapter 3 (Methodology), Section A for a detailed description of the methods utilized to find significant interpretive court cases for *Heien v. North Carolina*, 135 S. Ct. 530 (2014). The number of significant interpretive court cases for *Heien* is 178. Overall, the vast majority of court cases utilized by these earlier studies have greater numbers of significant interpretive cases (i.e., older court cases overwhelmingly tend to have greater numbers of significant interpretive court cases).

wording of some questions and thus, may have become confused. This confusion may have impacted the study's findings. This study was also conducted in Georgia on Georgia law enforcement officers and studies conducted on officers that must abide by rules or laws in different jurisdictions could produce different results.

Based on this study's findings, future research can consider different methodologies or try to add additional or different participants, including higher-ranking officers such as chiefs. For example, regarding methodologies, a future study with a similar focus to the current study could employ a pre-test / post-test structure and test respondents before and after they receive a legal update. In addition, this study was conducted in Georgia; accordingly, future research could conduct a similar study in another state within the Eleventh Circuit that requires police officers to abide by very similar laws. Moreover, a different location within Georgia with a different police department could be studied in an attempt to replicate this study's findings. It should also be noted that while this study covered in a minor way the subject of potential police misconduct, it did not explore this subject in as significant depth as certain earlier studies, including Orfield (1987, 1992), Heffernan and Lovely (1991), and Perrin et al. (1998). As a result, future studies could explore this aspect in more detail.

Finally, as this is the first known research study to examine law enforcement officers' perceptions, knowledge, and decision-making relating specifically to the *Heien* case and related concepts, follow-up studies could build upon this research in more depth. This could be accomplished by examining *Heien* and related concepts through interviews with law enforcement officers. Interviews can provide significant depth by allowing for participants to

expand their responses or elaborate on certain topics which they believe are important.[560] Additionally, personal interviews with police officers would allow researchers the ability to ask follow-up questions or probe for the participant's reasoning behind a particular response.[561] Future studies utilizing interviews with law enforcement officers have the potential to build upon this research by adding substantial depth and detail that a survey questionnaire cannot provide.

[560] *See* William M. Trochim, James P. Donnelly, & Kanika Arora, Research Methods: The Essential Knowledge Base, 174-77 (2nd ed. 2014).
[561] *Id*. at 198-99.

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Appendix

Questionnaire Completed by Police Officers

Police Officer Perceptions and Knowledge: Traffic Stops, Arrests, and Officer Decision-Making
IRB Study # 18-490

Section One:

DIRECTIONS: For each of the three (3) hypothetical scenarios below, **please indicate whether you agree or disagree with the judge's decision** by circling **ONE** of the responses next to the scenario.

Scenario #1: A police officer is observing highway traffic and notices a driver who looks very stiff and nervous. The officer proceeds to follow the vehicle for a short distance and observes that only the left brake light comes on when slowing for another vehicle. The officer initiates a traffic stop because of the faulty right brake light, truly believing this to be a violation of State Code. The stopped vehicle has a passenger lying down in the rear seat. Upon investigation, the officer only issues a warning ticket to the driver but becomes suspicious because the passenger is lying down the entire time, the driver appears nervous, and both driver & passenger give conflicting answers about their destination. The officer obtains consent from both individuals to search the vehicle and discovers drugs hidden in a duffle bag. Both individuals are arrested. Based on the relevant State Code, a judge finds that the Code is unclear/ ambiguous and the vehicle's brake lights actually do **not** violate the State Code. The judge finds, however, that the officer's mistaken belief regarding the State Code is reasonable and can justify stopping the vehicle for its non-functioning brake light. Evidence of drugs is admissible.	Strongly Agree ☐	Agree ☐	Disagree ☐	Strongly Disagree ☐
Scenario #2: A police officer is conducting foot patrol and enters the public/ common areas of an apartment complex. Upon entering a stairwell, the officer smells marijuana, proceeds to the third floor, and sees two people in the stairwell. One person is holding a plastic cup and there is a partially empty liquor bottle on the floor nearby. Another person is holding a lit marijuana cigarette. The officer asks the people to put their hands on a wall next to them and they comply. When the officer approaches the person with the plastic cup, a strong odor of alcohol is detected emanating from the cup. The police officer arrests the person for violating an open-container law, believing that the law applies to the stairwell. A judge later finds that the open container law, though somewhat unclear/ ambiguous, does **not** apply to apartment stairwells or similar common areas of an apartment complex. However, any potential mistake by the officer as to the applicability of the open-container law to an apartment stairwell is found to be reasonable. Arrest upheld.	Strongly Agree ☐	Agree ☐	Disagree ☐	Strongly Disagree ☐

Scenario #3: During routine patrol, a police officer notices that a passing vehicle does not have an interior rearview mirror. The officer initiates a traffic stop, truly believing the absence of the mirror to be a violation of the relevant State Code section. During the stop, officer observes drugs in plain view, conducts a search, and arrests the driver for possession of illegal drugs. Based on later interpretation of the State Code by a judge, including review of some precedent cases, the judge finds that the Code is clear and does **not** require an interior rearview mirror. The judge finds the officer's mistaken belief regarding the State Code to be unreasonable and therefore also finds the original traffic stop lacked justification. Evidence of the drugs is excluded from court.	Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

Section Two:
DIRECTIONS: Circle **ONE** response next to the question/ statement indicating your level of agreement.

1.	A law enforcement officer sometimes has to make quick decisions regarding the application of unclear or ambiguous law(s) **and** should be allowed a certain margin of error.	Strongly Agree ☐	Agree ☐	Disagree ☐	Strongly Disagree ☐
2.	If an officer happened to make a mistake of law, his/her subjective understanding of the law must be examined.	Strongly Agree ☐	Agree ☐	Disagree ☐	Strongly Disagree ☐
3.	For any officer mistake of law to be reasonable, the law the officer is applying **must be** ambiguous or vague.	Strongly Agree ☐	Agree ☐	Disagree ☐	Strongly Disagree ☐
4.	For any officer mistake of law to be reasonable, the law the officer is applying could be clear or unambiguous.	Strongly Agree ☐	Agree ☐	Disagree ☐	Strongly Disagree ☐
5.	If an officer happens to make a mistake of law, it **will be** evaluated for whether it is reasonable by a judge (i.e., as opposed to another officer, member of the public, etc).	Strongly Agree ☐	Agree ☐	Disagree ☐	Strongly Disagree ☐
6.	An officer's reasonable mistake of law **can** support reasonable suspicion for a traffic stop.	Strongly Agree ☐	Agree ☐	Disagree ☐	Strongly Disagree ☐
7.	Are you familiar with the concept of *reasonable mistakes of law*?	Yes ☐		No ☐	
8.	Have you heard of the case of *Heien v. North Carolina*?	Yes ☐		No ☐	

9. A certain margin of error should be allowed that permits officers to make **--- (CHECK/ CIRCLE ALL THAT APPLY):**

___ reasonable mistakes of law to support traffic stops
___ reasonable mistakes of law to support arrests
___ reasonable mistakes of law to support searches
___ none of the above (e.g., officers should **not** be allowed any margin of error for mistakes)

Section Three:

DIRECTIONS: Circle the **MOST ACCURATE** response(s) below the question/ statement.

10. In the past 12 months, has your department offered a legal training program or workshop?
CIRCLE ONE: YES NO

If you answered "YES" above, what did the program or workshop cover? (Please indicate all that apply)

_____ Traffic Stops
_____ Arrests
_____ Searches
_____ Court/Judicial Rulings
_____ Other areas - Please Specify:_____
_____ Did **NOT** Attend

11. Have you ever performed a search and/or seizure based on law(s) that you believe could be considered unclear, ambiguous, or worded in a confusing manner?
CIRCLE ONE: YES NO

If you answered "YES" above, please indicate the area(s) or context(s) in which the law(s) applied (**CHECK OR CIRCLE ALL THAT APPLY**)

_____ Traffic Stops
_____ Arrests
_____ Searches
_____ Other area(s) - Please Specify:_____

Demographic Questions:

12. What is your sex?
    ___ Male
    ___ Female

13. What is your race?
    ___ White
    ___ African American
    ___ Hispanic/Latino
    ___ Asian
    ___ Other: _____

14. What is your highest level of education?
    ___ High School
    ___ Some College
    ___ Associate's Degree
    ___ Bachelor's Degree
    ___ Master's Degree or above

15. What is your age? _____

16. What is your rank? _____

17. How long have you been in law enforcement? _____ years

18. How long have you been with your current department? _____ years

END OF SURVEY THANK YOU!