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Christopher D. Totten

Gang Lee

Michael De Leo

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Christopher D. Totten, [*] *Gang Lee,* [**] *and Michael De Leo* [***]

ABSTRACT

This empirical study examines legal aspects of policing in relation to the landmark Fourth Amendment 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,* Heien *extends the permissible margin of error for these stops by law enforcement officers. Due to the potential far-reaching implications of* Heien *for law enforcement conduct and Fourth Amendment privacy protections, this study aims to empirically examine officer perception and knowledge regarding* Heien*, including officers' decision-making behavior with respect to* Heien *and its core concept of reasonable officer mistakes of laws. Utilizing a survey questionnaire administered to patrol officers, this study also examines officer understanding of key, paradigmatic interpretive cases for* Heien*. This is the first known study to empirically examine police*

[*] Christopher D. Totten is Professor of Criminal Justice (Law) in the Department of Sociology and Criminal Justice at Kennesaw State University. He is a graduate of Princeton University (A.B. 1997) and Georgetown University Law Center (J.D. 2000, LL.M. 2002). Professor Totten is also the criminal law commentator of the Criminal Law Bulletin (2010-present). His research interests span criminal law and procedure, international crime, and criminal law and society with foci on courts/jurisprudence and police attitudes using social science methodologies.

[**] Gang Lee is Professor of Criminal Justice at Kennesaw State University. He received his Ph.D. in Sociology/Criminology from the University of Florida. His current research involves a comparative study of cybercrime and deviant behaviors in cyberspace. His research projects also include empirical investigations of police officers' experiences and perceptions of jurisprudence.

[***] Mr. Michael De Leo is a May 2019 graduate of the MSCJ program. This publication involves work he completed during his master's thesis.

perception and knowledge of Heien*, its core concepts as well as interpretive jurisprudence.*

Overall, this study finds that law enforcement officers have uneven knowledge of Heien*, significant interpretive cases, and related underlying Fourth Amendment concepts such as reasonable mistakes of laws. Furthermore, using bivariate and multivariate logistical regression analyses, this study finds that law enforcement officers who are familiar with* Heien *are more likely to have performed a search and/or seizure under a law they believed was unclear or ambiguous. In particular, the odds of officers performing a search and seizure based on an unclear, confusing, or ambiguous law were almost five (5) times higher for officers who have heard of* Heien *compared to those who have never heard of it. This finding supports the notion that police may be gaining at least a basic familiarity with the general content of landmark United States Supreme Court Fourth Amendment decisions such as* Heien*, and then adjusting their search and seizure behavior accordingly. These adjustments have the potential to impact individual Fourth Amendment rights, including in deleterious ways. Finally, the study found that officers who have a higher educational degree and those who have more experience in law enforcement are more likely to perform a search and seizure based on law that could be considered unclear or ambiguous. Notably, however, the study revealed that an officer's training, years in law enforcement, and education levels cannot be used to directly predict knowledge of* Heien*. Policy implications and recommendations for law enforcement, Fourth Amendment privacy and legal actors (e.g., legislators) are also discussed.*

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I. INTRODUCTION

This study empirically examines police officer knowledge and perception of *Heien v. North Carolina*, related legal principles, and key interpretive case law. In particular, this survey 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. These concepts comprise of, *inter alia*, reasonable mistakes of law and the allowable margin of error for these mistakes. While the legal commentary surrounding *Heien* is plentiful, no other known study exists that has attempted to empirically examine police knowledge and perception of *Heien*.[1] Significantly, *Heien* held that reasonable mistakes of law by officers can support reasonable suspicion for a police traffic stop.[2] By drawing such a conclusion, *Heien* extends the permissible margin of error for these stops by law enforcement officers. In addition, numerous interpretive federal and state appellate decisions have further defined the scope and contours of reasonable officer mistakes of law through reference to the inherent vagueness or ambiguity of the law being applied (i.e., officers can only make reasonable mistakes of law regarding truly ambiguous or vague laws).[3] Notably, *Heien* itself relied upon this overall principle.[4]

Due to the potential, far-reaching, implications of the *Heien* decision, including implications for law enforcement and Fourth Amendment privacy, there is an urgent need to discover what law enforcement officers' current understanding of the *Heien* decision and how they may be applying it. This study will seek to shed light on whether police officers' knowledge and perceptions of *Heien* align with the decision itself while also discussing certain lower court interpretation and application of *Heien*. In addition, officers' knowledge and perception of *Heien* and its related concepts has the potential to more broadly impact police performance and individual privacy in the area of searches and seizures. For example, if officers are knowledgeable about the *Heien* doctrine it is possible that they are more likely to initiate stops on thinner, more questionable grounds or even extend *Heien*'s core reasonable mistake of law principle into other Fourth Amendment search and seizure contexts.

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[1] *See infra* Part II.

[2] *See generally* Heien v. North Carolina, 574 U.S. 54 (2014).

[3] *Id.* at 65. *See generally* Christopher Totten & Michael De Leo, *Interpreting* Heien v. North Carolina*: A Content Analysis of Significant Federal Appellate Court Cases*, 53 CRIM. L. BULL. 1202 (2017) [hereinafter Totten & De Leo (2017)]; *see also* Christopher Totten & Michael De Leo, *Interpreting* Heien v. North Carolina*: A Content Analysis of Significant State Court Cases*, 54 CRIM. L. BULL. 927 (2018) [hereinafter Totten & De Leo (2018)].

[4] *See Heien*, 574 U.S. at 57–68.

This research study seeks to answer various questions, including, *inter alia*: (1) Have officers ever heard of the *Heien v. North Carolina* case?; (2) Do police officers agree with and have knowledge of *Heien*, its fundamental underlying concepts and certain key interpretive cases, including the key concept of reasonable mistakes of law?; and (3) Do law enforcement officers perceive that *Heien* allows them more leeway in other Fourth Amendment contexts beyond the routine traffic stop context (for example, in their search or arrest-related duties)? Further empirical exploration of these issues can help to fill a significant gap in the literature concerning police officers' perceptions and knowledge of *Heien*.

Overall, this study found that law enforcement officers have an uneven knowledge of *Heien* and its underlying Fourth Amendment concepts.[5] On the one hand, officers have moderate to high levels of knowledge of *Heien* itself. For example, over 80% of surveyed officers who read a factual scenario based on the *Heien* case, its ruling, and rationale demonstrated knowledge of the case.[6] Furthermore, nearly 77% of officers demonstrated knowledge of the basic finding or holding of *Heien.*[7] In contrast, previous empirical criminal law and society studies by Perrinand Heffernan and Lovely found that the surveyed police officers had only low to moderate knowledge of other Fourth Amendment laws.[8]

However, officers did not perform as well on questions related to *Heien*'s underlying concepts and whether they had heard of the *Heien* decision. For example, just over 54% of officers indicated that they were familiar with the concept of reasonable mistakes of law.[9] Only 12% of officers reported having heard about the *Heien* decision.[10] In addition, another survey question addressing *Heien*'s underlying concept—that ambiguity in the underlying law is a requirement for any mistake of law to be found reasonable—revealed that only about half (54.8%) of police

[5] *See infra* Tables 4, 9, 10; *see generally Heien*, 574 U.S. at 54. Officer knowledge regarding selected interpretive cases for *Heien* was also uneven. *See generally* United States v. Diaz, 122 F. Supp. 3d 165 (S.D.N.Y. 2015), *aff'd*, 854 F.3d 197 (2d Cir. 2017); *see generally* Abercrombie v. State, 343 Ga. App. 774 (2017); *see also Heien*, 574 U.S. at 66.

[6] *See infra* Table 3. *See generally Diaz*, 22 F. Supp. 3d at 165; *see also infra* Part II for detailed discussion of *Diaz*.

[7] *See infra* Table 4. *See also Heien*, 574 U.S. at 61; *see also infra* note 113.

[8] *See* L. Timothy Perrin et al., *If It's Broken, Fix It: Moving Beyond the Exclusionary Rule*, 83 IOWA L. REV. 669, 724–25, 735 (1998); *see also* William C. Heffernan & Richard W. Lovely, *Evaluating the Fourth Amendment Exclusionary Rule: The Problem of Police Compliance with the Law*, 24 U. MICH. J.L. REFORM 311, 334–34, Table 3 (1991).

[9] *See infra* Table 6 and accompanying text.

[10] *See infra* Table 6 and accompanying text.

officers either agreed or strongly agreed with this concept.[11] Yet another, more technical survey question posited that if a mistake of law is made, the officer's *subjective* understanding of the law must be examined.[12] Importantly in *Heien*, the Court found that objectively reasonable mistakes of law by police can support traffic stops.[13] The overwhelming majority (87.5%) of police officers reported some level of agreement with this question or statement, which reflects lower levels of officer knowledge with this core, underlying concept from *Heien*.[14] Lastly, with regard to the descriptive data, 32% of police officers reported having engaged in search and/or seizure behavior (i.e., a traffic stop; a search; or an arrest) based on law that they believed could be confusing or ambiguous.[15] Traffic stops were reported the most, followed by searches, and arrests were reported the fewest number of times.[16]

Furthermore, using bivariate and multivariate logistical regression analyses, this study found that 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, ambiguous or confusingly worded (hereinafter, "unclear or ambiguous law"). In particular, under the multivariate analysis, the odds of officers performing a search and seizure based on an unclear, confusing or ambiguous law were almost five times higher for officers who have heard of *Heien v. North Carolina*, compared to those who have never heard of it.[17] This finding supports the notion that police may be gaining at least a basic familiarity with the general content of Supreme Court Fourth Amendment decisions such as *Heien*, and then adjusting certain search and seizure behavior accordingly. In the case of a crime-control oriented decision such as *Heien*, this study's findings lend

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[11] *See infra* Table 4. *See also Heien*, 574 U.S. at 70 (Kagan, J. concurring); *but see* Sinclair v. Lauderdale Cnty, 652 F. App'x 429, 435–36 (6th Cir. 2016) (an officer's mistake of law is reasonable regarding a clear and unambiguous law); *see also supra* notes 3–4 and accompanying text.

[12] *See infra* Part V.

[13] *See infra* Part V.

[14] *See infra* Part V.

[15] *See infra* Part V.

[16] *See infra* Table 4; *see also Heien*, 574 U.S. at 70 (Kagan, J., concurring) (explaining data on officer knowledge of whether subjective vs. objective understanding of law examined if any legal mistake by officer made). *See infra* Table 7 and accompanying text (reporting data on officer search and/or seizure behavior based on laws they believe could be confusing or ambiguous). Also, the bivariate analysis revealed that the longer the officers have served in law enforcement, the more likely the participating officers agree to the statement that a police officer's subjective understanding of the law(s) is to be considered, a statement that directly opposes the *Heien* ruling that an officer's mistake of law must be evaluated objectively. *See infra* Table 8 and accompanying text. *See also Heien*, 574 U.S. at 66–67.

[17] *See infra* Table 9 and accompanying text.

support to the concern that the decision may be having deleterious impacts on individual Fourth Amendment rights and privacy.[18]

Finally, using logistic regression analysis, the study found that police officers' educational level and experience in years of service impacted their likelihood to perform a search and/or seizure based on potentially unclear law(s).[19] In particular, officers who have a higher educational degree and those who have more experience in law enforcement are more likely to perform a search and seizure based on law that could be considered unclear or ambiguous.[20] Officers with higher levels of education and experience may have exposure to *Heien*, including in superficial or tangential ways, and thus calibrate their search and seizure behavior accordingly. These officers may believe they can successfully navigate unclear laws.

Notably, however, the study revealed that an officer's training, years in law enforcement, and highest education levels cannot be used to directly predict knowledge of *Heien*.[21] Neither can familiarity with *Heien* (i.e., whether the officer has heard of *Heien*) be relied upon to directly predict knowledge of *Heien* or its related principles.[22]

Part II contains a description of the key legal cases in the study. Part III comprises the study's methodology, including information about data collection, the sample, and measurements. Part IV consists of the study's findings, including descriptive data as well as bivariate and multivariate or logistical regression analyses. Part V provides the study's conclusions based on the findings, including policy recommendations for law enforcement as well certain legal actors (e.g., legislators). Implications for constitutional, Fourth Amendment privacy rights are also addressed.

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[18] *See infra* Part V. For example, a *Heien*-induced search based on an ambiguous law may very well turn out to be an improper search (albeit based at times on a 'reasonable mistake'). *See infra* Part V.B.

[19] *See infra* Part IV.D.

[20] *See infra* Table 9. *See also* Abercrombie v. State, 808 S.E.2d 245, 251–54 (Ga. Ct. App. 2017); Perrin et al., *supra* note 8, at 735 n.315. This was also found, in part, in the bivariate analysis; that is, officers who served in law enforcement longer were more likely to perform a search and/ or seizure based on unclear laws. *See infra* Table 8 and accompanying text. Separately, the bivariate analysis also revealed that higher-ranked officers are more likely than lower-ranked officers to perform a search and/or seizure based on unclear, ambiguous, or confusingly worded law. *See infra* Table 8 and accompanying text. Finally, under the bivariate analysis, police officers who had proper knowledge of *Heien* were also more likely to 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 to do so. *See infra* Table 8 and accompanying text; *see also infra* Part IV.C.

[21] *See infra* Part IV.D.

[22] *See infra* Table 10 and accompanying text.

II. CASE REVIEW

Heien and key interpretive case law for *Heien* will be explained in this Part.

A. Heien v. North Carolina.

1. Background and Facts of *Heien.*

Heien involved a traffic stop by police based upon an observed malfunctioning brake light.[23] In its opinion, the United States 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.[24]

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.[25] 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."[26] Darisse checked the relevant vehicle records and found no issues.[27] Darisse proceeded to issue the warning ticket to Mr. Vasquez.[28] However, during the stop, Darisse became suspicious of the behavior of Vasquez and Heien.[29] 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

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[23] *See* Heien v. North Carolina, 574 U.S. 54, 57 (2014).
[24] *Id.* (internal quotations omitted).
[25] *Id.* at 57–58.
[26] *Id.* at 58.
[27] *Id.*
[28] *Id.*
[29] *Id*.

> 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 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.[30]

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."[31] 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.[32]

The North Carolina Supreme Court reversed the lower court's decision.[33] The North Carolina Supreme Court held that even if there was no violation of state law, the officer's mistaken understanding of the law was reasonable; therefore, the stop was lawful.[34]

2. *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.[35] According to the Court, reasonableness is not perfection and

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[30] *Id.*

[31] *Id.*

[32] *Id.* at 59 (quoting N.C. GEN. STAT. § 20–129(g) (2007)).

[33] *Id.*

[34] *See id.*

[35] *Id.* at 60 ("[T]he ultimate touchstone of the Fourth Amendment is reasonableness." (quoting Riley v. California, 134 S. Ct. 2473, 2482 (2014)).

the Fourth Amendment allows government officials "fair leeway for enforcing the law."[36] The standard of reasonableness must not be unlimited and "(t)he limit is that the mistakes must be those of reasonable men."[37] 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.[38]

In addition to the statute's inherent ambiguity, North Carolina appellate courts had not previously interpreted, clarified, or applied the exact meaning of the statute.[39] 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."[40] Therefore, the U.S. 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.[41]

3. *Heien*'s Rationale.

The majority opinion in the *Heien* case relies, in part, upon nineteenth century precedents.[42] In one such precedent, *United States v. 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.[43]

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[36] *See id* at 60–61 (quoting Brinegar v. United States, 338 U.S. 160, 176 (1949)).

[37] *Id.* at 61 (quoting *Brinegar*, 338 U.S. at 176).

[38] *See id* at 70 (Kagan, J., concurring) (internal quotations and citations omitted).

[39] *Id.* at 68.

[40] *Id*. at 60.

[41] *Id.* at 68.

[42] *See generally* United States v. Riddle, 5 Cranch 311 (1809); *see also* Stacey v. Emery, 97 U.S. 642, 646 (1878).

[43] *See Heien*, 574 U.S. at 62 (quoting *Riddle*, 5 Cranch at 313) (internal quotations omitted and emphasis omitted).

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.[44] Additionally, the Court notes that "[n]o decision of this Court in the two centuries since has undermined that understanding."[45]

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.[46] Moreover, the Court in *Heien* disagreed with the defendant's argument that the Fourth Amendment does not allow errors of law.[47] 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."[48] 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.[49]

The *Heien* ruling, according to the majority opinion, will not prevent law enforcement officers from learning the law.[50] "[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.[51] Accordingly, based upon nineteenth century precedents, the fact that law enforcement officers may

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[44] *Id.* at 63.

[45] *See id.*

[46] *Id*. at 64 (discussing Michigan v. DeFillippo, 443 U.S. 31, 37–38 (1979)).

[47] *Id.* at 66.

[48] *See id.*

[49] *Id.* (citing Whren v. United States, 517 U.S. 806, 813 (1996)).

[50] *Id.*

[51] *See id.* at 67. In this context, an objectively reasonable mistake of law by police means the error must be one that an average officer in terms of training, education, experience, ability, effort, and similar characteristics, would make. Unlike the subjective standard, the objective standard does not take into account any one particular officer in terms of these characteristics. For example, under the objective standard, if a police officer of below average training, education, experience, ability and effort made a mistake of law that the average officer would *not* make, this mistake would not justify a traffic stop or other officer conduct implicating the Fourth Amendment. *Id.* at 69 (Kagan, J., concurring).

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 finding a lawful traffic stop.[52]

B. Interpretive Federal and State Court Cases

Selected federal and state court cases that provide significant analysis of *Heien* are explained in this subsection. These cases were chosen for inclusion in the empirical study, because they represent recurring examples of how most lower courts have interpreted *Heien*.[53] For example, lower courts have determined the reasonableness of a police officer's mistake of law by examining the inherent vagueness or ambiguity (or lack thereof) of the underlying law being applied by the officer (i.e., officers can only make reasonable mistakes of law regarding truly ambiguous or vague laws).[54]

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

a. Background and Facts of *Diaz*

This case began with two officers conducting a foot patrol in the Bronx borough of New York.[55] The two officers entered a multi-story apartment building to conduct a "vertical patrol."[56] After entering via the building's front door, the officers immediately smelled marijuana.[57] Investigating further, they went to the third floor and saw three people in a stairwell, including the defendant.[58]

In the stairwell, defendant Diaz was holding a plastic cup, and there was an opened bottle of vodka on the floor near defendant.[59] Another man was holding a marijuana cigarette, along with a box containing finished cigarettes inside.[60] The officers ordered all three men against the wall of

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[52] *Id*. at 65–68 (note that Section III of the majority opinion in *Heien* summarizes the key reasoning underlying the Court's decision to affirm).

[53] *See* Totten & De Leo (2017), *supra* note 3; *see also* Totten & De Leo (2018), *supra* note 3.

[54] *See* Totten & De Leo (2017), *supra* note 3*; see also* Abercrombie v. State, 808 S.E.2d 245, 252 (Ga. Ct. App. 2017).

[55] *See Diaz*, 122 F. Supp. 3d at 168*; see also* Totten & De Leo (2017), *supra* note 3.

[56] *Diaz*, 122 F. Supp. 3d at 168.

[57] *Id*. at 168–69.

[58] *Id*. at 169.

[59] *Id*.

[60] *Id.*

the stairwell.[61] When Diaz was against the wall, one of the officers smelled alcohol on him and emanating from his plastic cup.[62] The officer intended to issue Diaz a citation, or summons, for a violation of the city's open-container law and did not, at this point, intend to arrest Diaz.[63] After being asked for identification, Diaz "began fumbling in the pockets of his jacket…and rearranged his waistband."[64] The officer "felt unsafe" and "immediately proceeded to frisk Diaz," leading to the discovery of a handgun.[65] Defendant Diaz moved, under the Fourth Amendment, to suppress the evidence of the handgun discovered as the result of the police search.[66]

b. *Diaz*'s Holding

The District Court for the Southern District of New York held that reasonable suspicion did not exist to believe defendant Diaz was armed and dangerous (i.e., as needed to justify the frisk/search); however, the court found that 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.[67] In addition, the court found the search revealing the handgun was a lawful search incident to arrest regardless of the officer's intentions to only issue a summons at the time of the search.[68]

c. *Diaz*'s Rationale

The district court rejected the government's argument that the officer had reasonable suspicion for the frisk because defendant Diaz, when responding to the officer's request for identification, began fumbling with his hands, tried to take his jacket off, and adjusted his waistband.[69] According to the court, "those facts do not suffice to establish reasonable suspicion."[70]

In addition, the district court found that the question of whether the apartment's stairwell was truly a public place for the purposes of the city's

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[61] *Id*.

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] United States v. Diaz, 122 F. Supp. 3d 165, at 167–68 (S.D.N.Y. 2015), aff'd, 854 F.3d 197 (2d Cir. 2017); *see also supra* subsection B(a) of this Section for a detailed discussion of Diaz's appeal to the Court of Appeals for the Second Circuit.

[67] *Id.* at 173–74, 181.

[68] *Id.* at 176–78, 181.

[69] *Id.* at 172.

[70] *Id.* at 172, 176.

open-container law was rendered moot in light of *Heien*.[71] This is because even if the officer was mistaken about the stairwell being a public place, the officer's mistake under *Heien* was not an objectively unreasonable one; thus, the officer did have probable cause to arrest the defendant.[72] Thus, the district court ruled in favor of the government and denied the motion to suppress the handgun discovered during the search incident to arrest.[73] However, the court did note that defendant made a persuasive point in arguing that the apartment's stairwell was not a public place for the purposes of the open-container law; nonetheless, defendant's argument could not defeat the finding of probable cause in light of the *Heien* analysis.[74] In sum, the court 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.[75]

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

a. Background and Facts of *Abercrombie*

In *Abercrombie*, two law enforcement officers, while driving in the opposite direction, passed defendant's pickup truck.[76] When the officer driving the vehicle passed defendant, he noticed that defendant's vehicle, a single-cab pickup truck, did not have an interior rearview mirror.[77] The law enforcement officer then initiated a traffic stop based upon the absence of this mirror.[78] Upon approaching the vehicle and making contact with defendant, the officer noticed a "strong odor" of alcohol.[79] An investigation took place that included "field-sobriety" testing.[80] During

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[71] *Id*. at 174–76.

[72] *Id*.; *see* Heien v. North Carolina, 574 U.S. 54, 60 (2014).

[73] *See Diaz*, 122 F. Supp. 3d at 181.

[74] *Id*.

[75] *Id*. at 174–75 (Kagan, J., concurring) (in part quoting *Heien*, 574 U.S. at 60–61) (internal quotations omitted).

[76] *See* Abercrombie v. State, 808 S.E.2d 245, 246 (Ga. Ct. App. 2017).

[77] *Id*.

[78] *Id*. at 246–47.

[79] *See id.* at 246.

[80] *Id*.; *see also id.* at 246 n.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).

this investigation, one of the two law enforcement officers noticed a "pipe used to smoke marijuana" in plain view inside defendant's vehicle.[81] After a brief search, the officers subsequently arrested the defendant for possession of marijuana and "drug-related objects."[82] A subsequent search near Abercrombie's truck revealed methamphetamine and an associated pipe,[83] and Abercrombie was ultimately charged with possession of methamphetamine and "drug-related objects." At trial, defendant moved to suppress the drug-related evidence.[84] Defendant's motion to suppress the evidence discovered as a result of the traffic stop was denied by the Superior Court of Lumpkin County, Georgia.[85] The superior court had reasoned that even if the defendant had not committed a vehicle equipment violation, the officer's interpretation of an ambiguous law was reasonable, and the officer therefore acted in good faith.[86]

b. *Abercrombie's* Holding

The Court of Appeals of Georgia held that the 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.[87] Furthermore, the court of appeals 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 the reasonable articulable suspicion needed to justify the stop.[88] Finally, the court of appeals held that the good-faith exception did not apply, and the trial court's judgement was therefore reversed.[89]

c. *Abercrombie's* Rationale

The court of appeals first evaluated whether defendant's pickup truck's lack of an interior rearview mirror was truly a violation of the Official Code of Georgia Annotated ("OCGA") § 40-8-7 and OCGA §

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[81] *See id.* at 246.

[82] *Id*.

[83] *Id*.

[84] *Id*.

[85] *Id.* at 246–47.

[86] *See generally id.* The trial court also issued a certificate of immediate review and the Court of Appeals of Georgia granted Abercrombie's application for interlocutory appeal. *Id.*

[87] *Id*. at 249–51.

[88] *Id*. at 251–54; *see also* GA. CODE § 40-8-7, § 40-8-72.

[89] *See Abercrombie*, 808 S.E.2d at 253–58; *see generally* Gary v. State, 422 S.E.2d 426 (Ga. 1992), *abrogated by* Mobley v. State, 834 S.E.2d 785 (Ga. 2019) (holding, in part, that the good-faith exception to the exclusionary rule is not applicable in Georgia based on state law grounds).

40-8-72, as the State of Georgia contended.[90] The court interpreted the laws using a plain language test.[91] The relevant portion of OCGA § 40-8-7 requires that motor vehicles be in "good working order and adjustment" so as to not endanger motorists.[92] The court of appeals directly rejected the State's argument that this section required all vehicles to have all original equipment at the time of the vehicle's manufacture, because OCGA § 40-8-7 plainly does not contain such a requirement.[93]

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.[94] The court further mentioned that subsection (b) of OCGA § 40-8-72 has a specific set of circumstances for commercial vehicles which do require the use of an interior mirror.[95] Based on this premise, the court of appeals 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 that his private vehicle does not require such a mirror, is indeed the correct understanding of the law.[96] Accordingly, the State's interpretation was deemed to be incorrect.[97] Moreover, the court of appeals explained that it has previously granted a suppression motion in similar circumstances while also relying upon OCGA § 40-8-72 subsection (a).[98] In sum, the court of appeals concluded that the lack of an interior rearview mirror in defendant Abercrombie's circumstances did not violate any Georgia statutes in question.[99]

The Court of Appeals of Georgia then addressed the argument that the officer's mistake of law regarding the mirror requirement was

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[90] *See Abercrombie*, 808 S.E.2d at 247.

[91] *Id*. at 247–48.

[92] *Id*. at 248; *see also* GA. CODE § 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 section and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.").

[93] *See Abercrombie*, 808 S.E.2d at 248–49; *see also* GA. CODE § 40-8-7.

[94] *See Abercrombie*, 808 S.E.2d at 248–49; *see also* GA. CODE § 40-8-72(a).

[95] *See Abercrombie*, 808 S.E.2d at 248–50; *see also* GA. CODE§ 40-8-72(b).

[96] *See Abercrombie*, 808 S.E.2d at 249–50.

[97] *See id.* at 248–50; *see also* GA. CODE § 40-8-72(a),(b).

[98] *See Abercrombie*, 808 S.E.2d at 250; *see also* GA. CODE § 40-8-72(a). *See generally* State v. Reid, 722 S.E.2d 364 (Ga. Ct. App. 2012) (*Reid's* ruling, in part, states that no law unequivocally requires side view mirrors for every vehicle and emphasized that GA. CODE § 40-8-72(a) requires that cars, i.e., non-commercial vehicles, be equipped simply with "a mirror.").

[99] *See Abercrombie*, 808 S.E.2d at 249–50; *see also* GA. CODE § 40-8-7, § 40-8-72(a), (b).

reasonable and made in good faith.[100] In particular, the court first examined *United States v. Chanthasouxat*, an Eleventh Circuit decision that ruled, in part, that an officer's reasonable mistake of law *cannot* provide objective reasonable suspicion required for a lawful traffic stop.[101] 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.[102] Accordingly, the Court of Appeals of Georgia stated it must determine pursuant to *Heien* if the officer's "mistaken-but-honest" belief regarding the mirror requirement was objectively reasonable in light of principles of "statutory construction."[103] The Court of Appeals ultimately found that in contrast to the statute-at-issue in *Heien*, there was only one objectively reasonable interpretation of the statutes-at-hand.[104] In particular, according to the court, this interpretation revealed that defendant Abercrombie had, in fact, *not* violated the mirror provisions of OCGA § 40-8-7 or OCGA § 40-8-72, including subsections (a) and (b).[105] Thus, the mistake of law made by the police officer was objectively unreasonable and could not lawfully justify the traffic stop.[106]

Finally, the court addressed the State's good-faith exception argument.[107] The court, citing *Gary v. State*, first noted that jurisprudence in Georgia had purposefully not adopted a good-faith exception.[108] Moreover, the court found that even if a good faith exception existed in Georgia, such an exception would not apply under the circumstances.[109] The judgment of the trial court denying defendant's motion to suppress the drug evidence was reversed.[110]

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[100] *See Abercrombie*, 808 S.E.2d 250.

[101] *Id*.; *see also* United States v. Chanthasouxat, 342 F.3d 1271, 1279 (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*, 808 S.E.2d. at 250–51 (quoting *Chanthasouxat*, 342 F.3d at 1279) (internal quotations omitted) (emphasis in original).

[102] *See Abercrombie*, 808 S.E.2d at 250–51; *see generally* Heien v. North Carolina, 574 U.S. 54, 67 (2014).

[103] *See Abercrombie*, 808 S.E.2d at 253.

[104] *Id*.; *see also* GA. CODE § 40-8-7, § 40-8-72(a), (b).

[105] *See Abercrombie*, 808 S.E. 2d at 253.

[106] *Id*.

[107] *Id*. at 254.

[108] *Id*. at 255–57; *see also* Gary v. State 422 S.E.2d 426, 428 (Ga. 1992), *abrogated by* Mobley v. State, 834 S.E.2d 785 (Ga. 2019).

[109] *See Abercrombie*, 808 S.E.2d at 258.

[110] *See id.*

III. METHODOLOGY

In general, this study utilized quantitative methodologies to examine research questions related to the United States Supreme Court case of *Heien v. North Carolina*. The study explored police officer perceptions and knowledge of *Heien*, related concepts and lower court interpretations of *Heien.* To collect data from law enforcement officers regarding their knowledge and perceptions of *Heien*, a self-administered survey questionnaire was employed.

A. Data and Sample

The survey utilized had been previously reviewed and approved by a public university's Institutional Review Board ("IRB"). The study population for this research project is law enforcement officers from a large suburban county in Georgia. To ensure representative sampling data, police officers from the county's police department of different shifts, ranks, precincts, and assignments were surveyed. For this study, the primary target population was "line" officers whose ranks range from the lowest-ranking sworn patrol 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 in this study.

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. 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.

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 was conducted in this manner because, in general, police officers from the department initially meet during specified times at the same place (i.e., a training facility), during annual training periods. 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 training facility. All survey data collection was conducted over a four-month period in 2018.

The instruments used to survey consisted of a pencil and paper questionnaire. Questions included in the survey were of various types, and in total the full questionnaire contained twenty-one questions, three of which were scenario-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 and respondents were also permitted to skip questions or stop participating at any time. Ultimately, the complete sample consisted of 189 distributed and returned survey questionnaires. Every survey was hand-distributed by one of this study's authors directly to the study participants when that author was permitted to travel to the law enforcement agency's training facility on a prearranged date and time.

Out of the 189 returned surveys, four were either blank or unusable, indicating a response rate of 97.88 percent. The sample was comprised of 161 (93.1%) male officers and 12 (6.9%) female officers. Sixteen officers did not identify their gender or sex. The average age of the officers in the survey was 36 years old. The race/ethnicity was predominantly White (75.7%, n=128). Black officers represented 14.2% (n=24) of the sample. There were eight (4.7%) Hispanic and two (1.2%) Asian officers. Seven (4.1%) officers identified as "Other" racial/ethnic group.

B. Measurements

1. Knowledge and Perception of *Heien v. North Carolina* and Interpretive Cases

Participating police officers were asked questions regarding their knowledge and perceptions related to *Heien v. North Carolina*, related concepts, and lower court applications and interpretations of *Heien*.[111] The survey contained three scenario-based questions and five Likert-type scale questions to evaluate law enforcement officers' perceptions and knowledge in these areas. Each of the three scenario questions were based on an actual court case and included a description of the facts of the case and the case's outcome or holding, including the court's rationale for its decision (See Table 1). The participating officers were not informed the scenario questions were based on actual court cases. The three scenario-based questions asked participants to read a short scenario and to indicate their level of agreement with the outcome (i.e., the judge's decision). The three scenario-based questions addressed the potential for law(s) to be unclear or ambiguous and how such a situation should be dealt with by the judiciary (i.e., whether a law enforcement officer's mistake of law is objectively reasonable in such a situation and whether the mistake of law resulted in a violation of Fourth Amendment rights).

[111] *See generally* Heien v. North Carolina, 574 U.S. 54 (2014); *see also supra* Part II.A & B, for a detailed discussion of the *Heien* decision, its implications, rationale, and lower court interpretation and application of *Heien*.

Table 1 indicates the court cases used in the scenario questions. The first scenario question was based on the *Heien* case.[112] The second scenario question was the *Diaz*-based question, which mirrors the facts, holding and rationale of the interpretive, federal lower court decision of *United States v. Diaz*.[113] The third scenario question was the *Abercrombie*-based question. This question contained the facts, holding and rationale of the interpretive state appellate court case of *Abercrombie v. State.*[114] The three scenario-based questions had scores that range from one through four. Study participants were able to select one response between strongly disagree; disagree; agree; and strongly agree.

Table 1. Scenario Questions and Cases Used

Scenario Question	Cases
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	*Heien v. North Carolina*, 574 U.S. 54 (2014).

[112] *Heien,* 574 U.S. at 57–58.

[113] *See generally* United States v. Diaz, 122 F. Supp. 3d 165 (S.D.N.Y. 2015), *aff'd*, 854 F.3d 197 (2d Cir. 2017); *see also supra* Part II.B for a detailed discussion of *Diaz*.

[114] *See generally Abercrombie*, 808 S.E.2d 245; *see also supra* Part II.B for a detailed discussion of *Abercrombie*; *see also infra* Part V.

vehicle for its non-functioning brake light. Evidence of drugs is admissible.	
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.	*United States v. Diaz*, 122 F. Supp. 3d 165 (S. D. N.Y. 2015).

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.	*Abercrombie v. State*, 808 S.E.2d 245 (Ga. Ct. App. 2017).

Following the three scenario-based questions, six Likert-type questions asked the participants to read a very brief statement, and then indicate their level of agreement with the statement. Each of these six questions addressed rulings and statements made by certain federal and state appellate courts. More specifically, these six questions were rooted directly in either the United States Supreme Court decision in *Heien* or other federal and state appellate court decisions that significantly interpreted and applied the *Heien* case.[115] These six statements were one sentence in length and requested responses using a Likert-type scale consisting of strongly disagree; disagree; agree; strongly agree.

After the six statement questions, two questions addressed *Heien* directly. One question asked respondents to indicate whether they were familiar with a particular legal concept from the *Heien* decision, such as the reasonable mistake of law concept. The second question simply asked if the study participant had heard of the *Heien* case. Both questions had only two possible selections: yes or no.

2. Performance of the Search and Seizure Based on Laws

The participating officers were asked whether they 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. If the officers answered "yes" to the performance question, they indicated the area(s) or context(s) in which the law(s) applied, including traffic stops, arrests, searches, and/or other areas.

[115] *See generally Heien*, 574 U.S. 54.

3. Officer's Background Information

The officers were asked to report their highest level of education, their rank, their 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 (See Table 2).

Forty-five percent of respondents reported their highest educational level as a bachelor's degree, representing the most frequent response. 34.5% of police officers reported their highest educational level as having some college experience (the second most frequent response). Approximately two-thirds (67.9%) of participants reported their rank as "Officer 1" or "Officer." According to the surveyed police department, an officer with the rank of "Officer 1" has not fully completed the training process and must still have a Field Training Officer ("FTO"), supervising them. In comparison, an officer who has earned the rank of "Police Officer II" (most commonly referred to as simply "Officer") has successfully completed the training process and can complete their patrol duties without supervision. The average length of law enforcement service was 10.96 years. 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.

Table 2. Participated Officers' Biographical Information

	Frequency (%)
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%)
Rank	
Officer 1	73 (43.5%)
Officer	41 (24.4%)
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%)
Agency Offered Legal Training Program in Past 12 Months?	
YES	167 (94.9%)
NO	9 (5.1%)

IV. FINDINGS

Overall, this survey study contained questions designed to examine law enforcement officers' perceptions and knowledge regarding *Heien v. North Carolina*, its related components or concepts, and lower court application and interpretations of *Heien*.[116] Part IV will first explain the descriptive data gleaned from the survey, first turning to data related to officer knowledge before examining data related to officer perception.

[116] *See generally Heien*, 574 U.S. at 54; *see also supra* Part II.A & B for a detailed discussion of the *Heien* decision, its implications, rationale, and lower court interpretation and application; *see also supra* Part III for a description of question types and possible responses; *see also infra* Appendix for a copy of the survey questionnaire completed by police officers.

Next, it will examine the survey data using correlational or bivariate analysis. Finally, this part will explain the data after conducting a multivariate or logistical regression analysis.

A. Descriptive Data: Knowledge-Based Questions

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

Table 3 reflects officer responses to three scenario-based questions. The first scenario-based question included a description of the same facts and decision, or holding, as *Heien*.[117] 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 "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 Disagree" with the decision of the court. The mean score of participants for the *Heien*-based scenario question was 3.20, reflecting a high level of agreement/knowledge of the United States Supreme Court's decision in *Heien*. More generally, 147 (80.4%) 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. Over 80.4% of officers reported some level of agreement with the court's decision or holding in *Heien*.

Table 3. Actual Case Based Scenario Questions

	SD[a]	D[a]	A[a]	SA[a]	Mean
Heien-based Scenario	8 (4.4%)	28 (15.3%)	66 (36.1%)	81 (44.3%)	3.20
Diaz-based Scenario	21 (11.6%)	75 (41.4%)	64 (35.4%)	21 (11.6%)	2.47
Abercrombie-based Scenario	10 (5.4%)	34 (18.4%)	99 (53.5%)	42 (22.7%)	2.94

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

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

The *Diaz*-based scenario question mirrors the facts, holding and rationale of the interpretive, lower court decision of *United States v.*

[117] *See generally Heien*, 574 U.S. at 54; *see also supra* Part II.A for a detailed discussion of *Heien*; *see also infra* Part V.

Diaz.[118] 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 "Agree" with the court's decision. Twenty-one (11.6%) police officers indicated that they "Strongly Agree" with the court. Additionally, another twenty-one (11.6%) officers reported that they "Strongly Disagree" with the decision of the court. Study respondents' mean score for the *Diaz*-based scenario question was 2.47, 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.[119] 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.

The *Abercrombie*-based scenario question (See Table 3) contains the facts, holding, and rationale of the interpretive, lower court case of *Abercrombie v. State*.[120] The most frequent response to this question by officers was that they "Agree" with the court's decision, 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 Disagree" with the court's decision. The mean score for study participants for this question was 2.94, 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. 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. Finally, only four police officers chose not to indicate a response to this question

[118] *See generally* United States v. Diaz, 122 F. Supp. 3d 165 (S.D.N.Y. 2015), *aff'd* 854 F.3d 197 (2d Cir. 2017); *see also supra* Part II.B for a detailed discussion of *Diaz*.

[119] *See generally Diaz*, 122 F. Supp. 3d 165; *see also supra* Part II.B for a detailed discussion of *Diaz*; *see also infra* Part V.

[120] *See generally Abercrombie*, 808 S.E.2d 245 (Ga. Ct. App. 2017); *see also supra* Part II.B for a detailed discussion of *Abercrombie*; *see also infra* Part V.

Accordingly, police officers' agreement with and knowledge of this *Abercrombie*-based scenario question and the underlying court decision was found to be moderate to high.

Table 4 demonstrates officer responses to five brief questions, which address rulings that are rooted in either the decision in *Heien* or other federal appellate court decisions that significantly interpret and apply the *Heien* rationale.[121]

Table 4. The Level of Agreement with the Court Decisions in Heien.

	SD[a]	D[a]	A[a]	SA[a]	Mean
If an officer happened to make a mistake of law, his/her subjective understanding of the law must be examined.	0 (0.0%)	23 (12.5%)	139 (75.5%)	22 (12.0%)	2.99
For any officer mistake of law to be reasonable, the law the officer is applying *must* be ambiguous or vague.	6 (3.4%)	74 (41.8%)	82 (46.3%)	15 (8.5%)	2.60
For any officer mistake of law to be reasonable, the law the officer is applying could be clear or unambiguous.	7 (4.0%)	67 (38.5%)	92 (52.9%)	8 (4.6%)	2.58
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.).	7 (3.9%)	35 (19.3%)	110 (60.8%)	29 (16.0%)	2.89
An officer's reasonable mistake of law can support reasonable suspicion for a traffic stop.	6 (3.3%)	36 (19.9%)	117 (64.6%)	22 (12.2%)	2.86

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

The first knowledge-related brief 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.[122] The majority, 139 (75.5%) respondents, stated that they "Agree". Twenty-three (12.5%) respondents stated that they "Disagree" while the minority of participants, twenty-two (12.0%), indicated that they "Strongly Agree."

[121] *See generally Heien*, 574 U.S. 54.

[122] *See id.* at 66–67; *see also id.* at 69 (Kagan, J., concurring) ("[A]n officer's 'subjective understanding' [of the law] is irrelevant: As the Court notes, '[w]e do not examine' it at all.'").

No respondent indicated that he or she "Strongly Disagree." This question's mean score was 2.99, indicating a high level of officer agreement with the question/statement. This finding, in turn, reflects a low-level of 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.[123] More generally, 161 (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 Court's ruling in *Heien* and other precedents regarding the judicial evaluation of officer mistakes of law.[124] Finally, only five police officers declined to provide a response to this question.

The second question in Table 4 displays law enforcement responses examining officer knowledge in the mistake of law area. 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 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 2.60, and it demonstrates a moderate to low level of agreement or knowledge concerning this particular question.[125] More generally, just over half of

[123] *See id* at 66–67 ("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." *Id.* (citing Whren v. United States, 517 U.S. 806, 813 (1996)). Justice Kagan's concurrence in Heien reiterated this point: "[T]he 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.'" *Id.* at 68–69 (Kagan, J., concurring).

[124] *See supra* Part II.A (discussing *Heien*); *see also* Whren v. United States, 517 U.S. 806, 813; *see also infra* Part V.

[125] *See Heien*, 574 U.S. at 70 (Kagan, J., concurring) ("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.'"). *See also infra* Part V. *See generally* Totten & De Leo (2017), *supra* note 3; Totten & De Leo (2018), *supra* note 3. In these two content analysis studies, the majority of courts

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, a little over half of officers possess adequate knowledge of this 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).[126] Finally, twelve police officers chose not to report any response to this question.

For the third brief knowledge-related 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 (See Table 4). 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 2.58, and it demonstrates that responding officers had a moderate to low level of agreement with this question and hence a moderate to low level of knowledge with this question.

More generally, 100 (57.5%) law enforcement officers who responded to this third brief knowledge-related 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 lacked adequate knowledge of this component of the *Heien* decision. This component or principle has also been followed by the majority of federal appellate and state court interpretations of *Heien*.[127] Finally, fifteen law enforcement officers chose not to indicate a response to this question.

For the fourth brief knowledge-related question, the respondents were asked whether they agree that a judge will evaluate the reasonableness of any mistakes of law they make (See Table 4). One hundred ten (60.8%) study participants indicated they "Agree" that any

(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. *Id.*

[126] *See Heien*, 574 U.S. at 68. *See also supra* notes 37–39 & 49.

[127] *See Heien*, 574 U.S. 54; United States v. Diaz, 122 F. Supp. 3d 165, *aff'd*, 857 F.3d 197 (2d Cir. 2017); Abercrombie v. State, 808 S.E.2d 245 (Ga. Ct. App. 2017). *But see* Sinclair v. Lauderdale Cnty., 652 Fed. App'x. 429, 435–36, 438 (6th Cir. 2016) (an officer's mistake of law reasonable regarding a clear and unambiguous law)). Thus far, *Sinclair* represents the minority trend among federal appellate courts in the interpretation and application of the *Heien* ruling and rationale. *See* Totten & De Leo (2017), *supra* note 3, at 1230.

officer's 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."

More generally, the vast majority of study participants, 139 (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 2.89 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.

Finally, for the fifth brief question examining police knowledge, respondents were asked to indicate their level of 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, 117 (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 2.86, indicating that study participants had moderate to high levels of knowledge concerning the general outcome or holding of the *Heien* decision.[128] More generally, 139, or over three-quarters (76.8%) of study respondents, reported either agreement or strong agreement with the basic holding of the Court in *Heien*. On the other hand, 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 of *Heien.*[129] Finally, only eight police officers did not indicate a response to this question.

B. Descriptive Data: Perception-Related Questions

Perception-related questions do not directly evaluate a survey respondent's knowledge of the *Heien* case, its related components, or concepts and lower court application and interpretation. Instead, these

[128] *See Heien*, 574 U.S. at 57–60 ("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.").

[129] *Id.*; *see also supra* Table 3.

questions examined the beliefs, opinions, or prior behaviors of police officers as they pertain to *Heien*, its related concepts, and lower court application and interpretation.

Table 5. The Level of Agreement in Quick Decisions and a Margin of Error Allowed

	SD[a]	D[a]	A[a]	SA[a]	Mean
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.	4 (2.2%)	18 (9.8%)	109 (59.2%)	53 (28.8%)	3.15

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

Table 5 displays police officers' perceptions concerning law enforcement decision-making on unclear or ambiguous 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 for their decisions. The majority (59.2%, or 109) 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 with the statement. Only four officers, (2.2%) reported strongly disagreeing with the statement. More generally, an overwhelming majority, 162 (88.0%) study participants, either agreed or strongly 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%) police officers either strongly disagreed or disagreed with this statement. The mean score for study participants for this question was 3.15, which reflects a high level of agreement with the belief that police officers must make quick decisions about unclear law(s) and should be allowed a certain margin of error.[130] Five study participants chose not to indicate a response.

[130] 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. *See generally Heien*, 574 U.S. at 56 (". . . [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

Table 6 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 had heard of *Heien*. 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 the study participants had heard of the case of *Heien v. North Carolina*, the overwhelming majority, 161 (88.0%), stated that they had 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 they had heard of the *Heien* case.

Table 6. 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)

Table 7 displays whether 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 confusingly worded law. One hundred twenty-two (67.8%) officers indicated they had never performed such a search and/or seizure based on such a 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

nevertheless have to make a quick decision on the law the first time one whizzes by.") The *Heien* ruling also addressed whether officers should be allowed a margin of error when making reasonable mistakes. *See id.* at 53 (quoting Brinegar v. United States, 338 U.S. 160, 176 (1949)) ("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.'").

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 (forty-four, or 42.3%, of police officers provided this response). The second most frequently reported area was searches, indicated by thirty-eight (36.6%) law enforcement officers. Twenty-two (21.1%) officers responded that they had engaged in such behavior in the arrest area. Fourteen (14) 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."

Table 7. 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	42.30%
Arrests	22	21.10%
Searches	38	36.60%
Total	104	100.00%

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

C. The Bivariate Relationships Among Police Officers' Performance, Knowledge, Perception and Background Information.

Table 8 shows the Spearman's correlation coefficients to invest monotonic relationships between officers' performance of searches and seizures based on unclear, ambiguous laws; responses to various *Heien*-related knowledge questions; perceptions on *Heien* and related principles; and background information including the officer's rank, the level of education and years of service. Because the variables in this study were ordinal or dichotomous variables, Spearman's correlation is appropriate for the bivariate analyses.

The officers' performing a search/seizure based on potentially unclear law(s) was positively associated with officers' knowledge on whether a mistake of law must be examined by a court in light of their subjective understanding of the law ($r = .23$, $p < .01$) and whether their reasonable mistake of law can support reasonable suspicion for a traffic stop ($r = .20$, $p < .05$). In addition to officers' knowledge on the *Heien* case, two perception-related measurements were significantly related with the officer's performing a search/seizure based on potentially unclear law. First, police officers' level of agreement with the statement that quick decisions are required regarding the application of unclear law(s) and officers should thus be allowed a certain margin of error ($r = .20$, $p < .05$),

and whether officers had heard of *Heien* ($r = .23$, $p < .01$).[131] Both had positive relationships with the officers performing a search/seizure based on possibly unclear laws. Thus, as officers' familiarity with *Heien* increases, the likelihood of performing a search and/or seizure based on potentially unclear law(s) also increases. Second, regarding the officers' background information, years of service as a police officer had a significant relationship with officers performing a search/seizure based on unclear law ($r = .18$, $p < .05$). As a result, the longer the officers have served in law enforcement, the more likely the officers would perform a search and/or seizure based on unclear, ambiguous or confusingly worded law(s). Officers' rank was positively related to their performing search/seizure based on unclear law ($r = .18$, $p < .05$). That is, higher-ranking police officers, including in particular lieutenants and sergeants, were found to have conducted searches and seizures potentially based on unclear law(s) more frequently than lower-ranking officers.

Officers' knowledge of the *Heien*-based scenario case was positively and significantly related with their knowledge that a reasonable mistake of law can support reasonable suspicion for a traffic stop ($r = .17$, $p < .05$). Also, knowledge of this scenario was positively and significantly related with the level of the officers' agreement 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 ($r = .26$, $p < .01$). 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 agree with the judicial holding, as well as the rationale of *Heien* described in the *Heien*-based scenario question. In addition, police officers who had proper knowledge concerning the holding and rationale of *Heien* were also more likely to indicate that they also "Agree" or "Strongly 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.

Officers' knowledge concerning the holding and rationale of *Diaz* in the *Diaz*-based scenario question had a strong relationship only with the officers' knowledge that a reasonable mistake of law can support reasonable suspicion for a traffic stop ($r = .33$, $p < .01$). Officers' knowledge concerning the holding and rationale of *Abercrombie* was positively and significantly related with officers' agreement on whether the law the officer is applying must be ambiguous for any officer mistake to be reasonable ($r = .22$, $p < .01$), and it was negatively associated with officers' agreement on whether the law the officer is applying could be clear or unambiguous for any officer mistake of law to be reasonable ($r = -.17$, $p < .05$).

[131] *See infra* Part V for further, detailed discussion of these findings.

Table 8. Spearman's Correlation Coefficients on the Study Variables. (N=146) [a]

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
1) Performing Search/Seizure Based on Unclear Law	1.00														
2) Heien-based Scenario	0.04	1.00													
3) Diaz-based Scenario	0.06	0.11	1.00												
4) Abercrombie-based Scenario	0.05	0.14	-0.15	1.00											
5) If Mistake of Law, Subjective Understanding Must Be Examined	0.23**	0.05	0.06	0.15	1.00										
6) For Mistake of Law to be Reasonable, Law Must Be Ambiguous	0.06	0.09	-0.05	0.22**	0.18*	1.00									
7) For Mistake of Law to be Reasonable, Law Could Be Unambiguous	-0.01	0.07	0.04	-0.17*	0.04	-0.22**	1.00								
8) If Mistake of Law, Judge Will Evaluate for Reasonableness	-0.05	0.12	0.03	0.16	0.19*	0.09	0.10	1.00							
9) Reasonable Mistake of Law Can Support Reasonable Suspicion for Stop	0.20*	0.17*	.33**	-0.02	0.21*	-0.03	0.12	0.18*	1.00						
10) Quick Decisions are Required and a Margin of Error Should be Allowed	0.20*	0.26**	0.10	0.08	0.24**	0.12	-0.08	0.14	0.31**	1.00					
11) Familiar with Concept Reasonable Mistakes of Law	0.00	0.06	0.13	0.00	0.11	-0.06	-0.15	0.02	0.04	0.17*	1.00				
12) Heard of Heien v. NC	0.23**	-0.12	0.14	0.11	0.02	-0.16	-0.01	-0.12	0.00	-0.04	0.13	1.00			
13) Officer Rank	0.18*	-0.01	-0.10	0.14	0.04	-0.07	-0.03	-0.01	0.01	0.16	-0.11	0.02	1.00		
14) Highest Education Level	0.15	-0.01	-0.03	0.11	0.11	0.03	-0.03	0.00	0.00	0.08	0.04	-0.14	0.05	1.00	
15) Years of Service	0.18*	0.06	-0.05	0.08	0.17*	0.06	-0.10	-0.10	0.04	0.23**	0.06	-0.04	0.44**	0.02	1.00
16) Legal Training Offered by Department	-0.02	-0.10	-0.07	-0.09	-0.14	0.07	0.05	0.07	0.02	0.01	0.02	0.08	0.03	0.05	-0.03

* $p < .05$; ** $p < .01$.

[a] Listwise deletion, the total cases are 146 in the Spearman's correlation analysis

Table 8 also shows weak to moderate interrelations among the five brief knowledge-related measures. The level of agreement with the statement consisting of whether an officer who has made a mistake of law must have his or her subjective understanding of the law examined by a court was positively and significantly associated with officers' responses with the following statements: 1) for an officer's mistake of law to be found reasonable, the law the officer applied *must be* ambiguous or vague ($r = .18$, $p < .05$); 2); a judge will evaluate the reasonableness of any mistakes of law police officers make ($r = .19$, $p < .05$); and 3) an officer's reasonable mistake of law can support reasonable suspicion for a traffic stop ($r = .21$, $p < .05$). In addition, the officers' responses from the statement asking whether the officers agree that a judge will evaluate the reasonableness of any mistakes of law they make was significantly and positively related to the level of agreement with the statement that an officer's reasonable mistake of law can support reasonable suspicion for a traffic stop ($r = .18$, $p < .05$). Police officers' perceptions concerning law enforcement's quick decision-making on unclear laws as well as any allowable margin of error on these laws were strongly and positively related to officers' level of agreement with the statement consisting of whether an officer who has made a mistake of law must have his or her subjective understanding of the law examined ($r = .24$, $p < .01$) and an officer's reasonable mistake of law can support reasonable suspicion for a traffic stop ($r = .31$, $p < .01$).

The officers' years of service in law enforcement was positively related to the level of agreement with the statement focused on whether an officer who has made a mistake of law must have his or her subjective understanding of the law examined by a court ($r = .17$, $p < .05$), and to the level of 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 ($r = .23$, $p < .01$). The longer the officers had served in law enforcement, the more likely the participating officers agreed to the statement that a police officer's subjective understanding of the law(s) is to be considered, a statement that directly opposes the Heien ruling that an officer's mistake of law must be evaluated objectively.

D. Logistic Regression Analysis of Police Officers' Performance, Knowledge, Perception and Background Information

The bivariate analyses provided monotonic relationships among police officers' performing a search/seizure based on unclear law, officers' knowledge, and perceptions of the *Heien* decision and officers' background information. Now, we hypothesize that the officers' decision to perform a search/seizure based on unclear law could be influenced by officers' knowledge and perceptions on *Heien,* their respective training,

years in law enforcement, and levels of education. Furthermore, we posit that officers' knowledge of the *Heien* decision would be predicted by their respective training, years in law enforcement, and levels of education.

Table 9. Logistic Regression on Officers' Performing Search/Seizure Based on Unclear Law

Performing Search/Seizure Based on Unclear Law (N=156)				
	B	S.E.	Wald	OR
Heien-based Scenario	-0.03	0.21	0.02	0.97
If Mistake of Law, Subjective Understanding Must Be Examined	0.56	0.39	2.08	1.75
Heard of *Heien v. NC*	1.58	0.58	7.43 **	4.86
Legal Training Offered by Department	-0.36	0.81	0.20	0.70
Highest Education Level	0.40	0.18	5.13 *	1.49
Years of Service	0.36	0.16	4.77 *	1.43
Constant	-4.20	1.69	6.16	0.02
-2 Log likelihood	1777.17			

* $p < .05$; ** $p < .01$.

As shown in Table 9, two measures of officers' knowledge of the *Heien* decision did not predict officers' performing a search/seizure based on potentially unclear or ambiguous law. Officers' knowledge concerning the ruling, or holding, of *Heien* in the *Heien*-based scenario question had a negative impact on officers' performance, but it was not statistically significant (b= -0.03, OR=0.97, N/S). Officers' knowledge on whether a mistake of law must be examined by a court in light of their subjective understanding of the law, also had a non-significant relationship with officers' performance (b=0.56, OR=1.75, N/S).

The strongest and most significant effect on officers' performance of a search/seizure based on potentially unclear or ambiguous law was familiarity with the *Heien* case. The odds of officers performing a search and seizure based on an unclear or ambiguous law were 4.86 times higher for officers who had heard of *Heien* (b=1.58, OR=4.86, p<.01). In contrast to the Perrin et al. (1998) study, which finds extensive training leads to improving officer performance,[132] the legal training program or workshop offered by the police department in the current study did not have a significant impact on officers' performance of searches and seizures based on unclear or ambiguous law (b=-0.36, OR=0.70, N/S). The officers' highest levels of education (b=0.40, OR=1.49, p<0.05) and years of service (b=0.36, OR=1.43, p <0.05) positively and significantly influenced officers' performance. Police officers who have a higher degree and more

[132] *See* Perrin et al., *supra* note 8, at 724–25, 735.

experience in law enforcement are more likely to perform a search and seizure based on law that could be considered unclear or ambiguous.[133]

Table 10. Logistic Regression on Officers' Knowledge of the *Heien* Decision[a]

	Heien-based Scenario		For Mistake of Law to be Reasonable, Law Must Be Ambiguous		For Mistake of Law to be Reasonable, Law Could Be Unambiguous		If Mistake of Law, Judge Will Evaluate for Reasonableness		Reasonable Mistake of Law Can Support Reasonable Suspicion for Stop	
	Wald	Exp(B)	Wald	Exp(B)	Wald	Exp(B)	Wald	Exp(B)	Wald	Exp(B)
Heard of Heien v. NC	0.09	0.83	1.97	0.46	0.09	0.85	0.95	0.56	1.97	0.83
Legal Training Offered by Dept	0.27	0.57	0.19	1.38	0.12	1.29	0.10	1.30	0.19	1.25
Highest Education Level	0.08	0.95	0.29	1.09	0.06	0.96	0.06	0.96	0.29	1.04
Years of Service	0.14	1.07	0.63	1.12	1.18	0.85	1.56	0.81	0.63	0.88
Constant	2.37	6.92	0.31	0.61	0.29	1.61	2.74	5.70	0.31	3.67
-2 Log likelihood	158.12		206.73		207.14		162.18		160.26	

[a] For the logistice regression analysis, the levels of agreement in officers' knowlede of the Heien decision measures were split into dichotoous categories (Strongly Disagree and Disagree =0, Stronly Agree and Agree = 1)

Multivariate analyses were also conducted to determine if other significant relationships existed between police officer respondents' knowledge of *Heien*/*Heien*-related principles and their respective training, years in law enforcement, education levels, and familiarity with *Heien* (See Table 10). None of the officers' background information measures were found to have any statistically significant effect on knowledge-based questions related to *Heien*. In other words, an officer's training, years in law enforcement, and highest education levels cannot be used to directly predict knowledge of *Heien*. Neither can familiarity with *Heien* (i.e., whether the officer has heard of *Heien*) be relied upon to directly predict knowledge of *Heien* or its related principles.

V. DISCUSSION AND CONCLUSIONS

Part V contains a detailed evaluation of this study's results. In addition, this Part compares this study's findings to earlier studies where possible. The Part begins with a discussion of the descriptive findings, or data, including the results of the scenario questions and non-scenario questions. A summary evaluation of all the descriptive data is also presented. Next, the Part turns to an evaluation of the multivariate and bivariate data from the study. Various implications and recommendations based on this study's findings are provided for law enforcement, legal actors (e.g., legislators), and Fourth Amendment privacy.

[133] *See generally* Heffernan & Lovely, *supra* note 8.

A. Evaluation: Descriptive Data

1. 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.[134] For example, over 80% 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.[135] Similar to results from the scenario question based on *Heien*, police officers demonstrated adequate levels of agreement and knowledge of the *Abercrombie* case.[136] 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*.[137] For example, over seventy-six percent (76%) of officers reported agreement with the court's ruling in *Abercrombie*.[138] *Abercrombie* held 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.[139] 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.[140]

However, for the scenario based on *United States v. Diaz*, officers did not demonstrate adequate agreement or knowledge.[141] *Diaz* held that an officer did have probable cause to arrest defendant Diaz for a legal violation and conduct a lawful search incident to arrest.[142] The United States District Court for the Southern District of New York in *Diaz* reasoned that any potential officer's mistake of law regarding whether the underlying statute applied to the stairwell where the defendant was arrested was objectively reasonable under *Heien*.[143] Less than half (47%) of police officers demonstrated adequate levels of agreement or

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[134] *See supra* Table 3.

[135] *See supra* Table 3; *see also* Heien v. North Carolina, 574 U.S. 54 (2014).

[136] *See supra* Table 3.

[137] *See generally* Abercrombie v. State, 808 S.E.2d 245, 246 (2017).

[138] *See supra* Table 3.

[139] *See Abercrombie*, 808 S.E.2d at 249–50.

[140] *Id*. at 251–53.

[141] *See* United States v. Diaz, 122 F. Supp. 3d 165, 180–81 (S.D.N.Y. 2015), *aff'd*, 854 F.3d 197 (2d Cir. 2017).

[142] *See id.* at 173.

[143] *See generally id.*; *see also* Abercrombie, 808 S.E.2d at 247; *see also supra* Table 3; *see also supra* Part II.B for a detailed discussion of *Diaz*. *See also* Totten & De Leo (2017), *supra* note 3.

knowledge concerning the *Diaz* case.[144] 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. Moreover, this scenario-question implicates law that is later determined to be somewhat unclear or ambiguous.[145] 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 include Georgia.[146] Accordingly, it may be somewhat understandable if law enforcement officers in Georgia are not adequately knowledgeable on this particular case. While police officers did perform somewhat 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 legal scenarios and their associated judicial cases outcomes or rulings can be considered adequate.[147]

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.[148] For example, Perrin et al. 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., only about fifty percent of the time).[149] These questions were also based upon United States Supreme Court cases and "well recognized legal principles."[150] Heffernan & Lovely also utilized

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[144] *See generally Diaz*, 122 F. Supp. 3d 165; *see also supra* Table 3; *see also supra* Part II.B for a detailed discussion of *Diaz*.

[145] *See generally Diaz*, 122 F. Supp. 3d 165; *see also supra* Part II.B for a detailed discussion of *Diaz*.

[146] *Diaz* is a decision from the Second Circuit and the state of Georgia falls within the Eleventh Circuit. *See id*.

[147] *See supra* Table 3.

[148] *See generally* Perrin et al., *supra* note 8; Heffernan & Lovely, *supra* note 8; Myron W. Orfield, *The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 U. CHI. L. REV. 1016, 1022 (1987) [hereinafter Orfield (1987)]; Myron W. Orfield, *Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts*, 63 U. COLO. L. REV. 75 (1992) [hereinafter Orfield (1992)]; Christopher Totten & Sutham Cobkit, *The Knock-and-Announce Rule and Police Arrests: Evaluating Alternative Deterrents to Exclusion for Rule Violations*, 48 U.S.F. L. REV. 71, 87–88 (2013) [hereinafter Totten & Cobkit (2013)]; Christopher Totten & Sutham Cobkit, *Police Vehicle Searches Incident to Arrest: Evaluating Chief's Knowledge of* Arizona v. Gant, 11 N.Y.U. J. L. & LIBERTY 257, 278 (2017) [hereinafter Totten & Cobkit (2017)].

[149] *See* Perrin et al., *supra* note 8, at 724–25, 735.

[150] *See id.* at 714–15.

short scenario questions based on United States Supreme Court cases.[151] Officers in Heffernan & Lovely's 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).[152] Overall, Perrin et al.'s and Heffernan and Lovely's findings indicate that police officers had only low to moderate knowledge of important Fourth Amendment laws.[153] 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.[154] Totten and Cobkit's 2017 study on police chief knowledge of the *Arizona v. 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.[155] 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.[156] In addition, only about half of the chiefs were correct in their responses regarding the basic content of the evidentiary prong; however, most chiefs recognized or knew the proper criteria underlying the prong.[157] 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.[158] 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.[159]

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[151] *See* Heffernan & Lovely, *supra* note 8, at 333–34.

[152] *See id.* at 334; *see also* Table 3.

[153] *See* Heffernan & Lovely, *supra* note 8, at 333–34; *see also supra* Table 3.

[154] *See* Totten & Cobkit (2013), *supra* note 148, at 99–100, 108. *See generally* Hudson v. Michigan, 547 U.S. 586 (2005).

[155] *See* Totten & Cobkit (2013), *supra* note 148, at 283; *see generally* Arizona v. Gant, 556 U.S. 332 (2009).

[156] *See Gant*, 556 U.S. at 335.

[157] *See* Totten & Cobkit (2013), *supra* note 148, 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*, 556 U.S. at 336.

[158] *See* Orfield (1987), *supra* note 148, at 1017–18, 1024–25, 1027–29, 1033–35, 1036.

[159] *See* Orfield (1992), *supra* note 148, at 92.

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).[160] 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).[161] 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).[162] 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).[163]

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, such as 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 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, police chiefs may have certain advantages over lower-ranking officers in the context of legal knowledge. These considerations help to contextualize the current study's findings regarding patrol officer knowledge.

2. 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 12% of participating officers reported that they had heard of the *Heien v. North Carolina* case.[164] In contrast, Totten and Cobkit (2017) found that about 88% of police chiefs had heard of the *Gant* case.[165] In addition, just over 54% of

[160] *See generally* Orfield (1987), *supra* note 148; Totten & Cobkit (2013), *supra* note 148, at 71.

[161] *See* Totten & Cobkit (2013), *supra* note 148, at 96.

[162] *See* Orfield (1987), *supra* note 148, at 1024–25.

[163] *See generally id.*; Totten & Cobkit (2013), *supra* note 148.

[164] *See supra* Table 6.

[165] Totten & Cobkit (2017), *supra* note 148, at 274. Totten and Cobkit's 2017 study evaluated police chiefs as opposed to this current study which evaluated lower ranking officers. *Id*. at 271.

officers indicated that they *are* familiar with the concept of reasonable mistakes of law.[166]

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 77% of officers demonstrated adequate knowledge of this general outcome or holding from *Heien*.[167] Similarly, in response to a short question regarding officer decision-making ("Officers sometimes have to make quick decisions regarding unclear laws and should be allowed a certain margin of error"), officers again demonstrated adequate knowledge with 88% of officers reporting some level of agreement.[168]

It is possible that this discrepancy between officers' adequate knowledge and perception of *Heien* could be the result of an ever-changing legal landscape for police officers. For example, courts may frequently issue rulings which expand permissible police behaviors (e.g., *Heien* permitting reasonable mistakes of law to support traffic stops), or further restrict police conduct.[169] Officers may simply not have the time or energy in their busy professional lives to be familiar with every new court case by name. Furthermore, police officers cannot be expected to also be legal experts, and thus cannot be expected to know every applicable law in every complicated situation. Legal training, or legal updates, for officers may not keep up with newly decided court cases, changes in departmental policies and/or changing laws (i.e., legislation and regulations). Overall, the officer responses on knowledge of *Heien* may reflect inconsistent training whereby some officers are exposed to these legal concepts and others are not.

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[166] *See supra* Table 6.

[167] *See supra* Table 4; *see also* Heien v. North Carolina, 574 U.S. 54, 60 (2014) ("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.").

[168] *See supra* Table 5; *see also Heien*, 574 U.S. at 66 (". . . [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.").

[169] *See generally Heien*, 574 U.S. 54. 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 id.* at 57. *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 (i.e., *Hudson* could be read as 'expanding' permissible police conduct.). *See id.* at 599; *but see* Arizona v. Gant, 556 U.S. 332, 335–36, 341–43 (2009) (rejecting the majority of lower courts' expansive interpretative reading of the *Belton* rule (i.e., police behavior in the context of searches incident to arrests at vehicles was restricted)); *see also generally* New York v. Belton, 453 U.S. 454 (1981).

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; etc.). 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 officers view legal trainings and updates as inadequate because laws and related policies change frequently and these trainings and updates do not reflect the latest changes. . Finally, it could be possible that officers want to be afforded the largest possible margin of error for mistakes of law because being a police officer is not an easy occupation, can require difficult decisions to be made quickly, and results 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 87% 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."[170] 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.[171]

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, which is essential if the mistake of law is to be found reasonable.[172] One of these two questions indicates that the law being applied *must be* ambiguous or vague and officers were correct approximately 55% of the time with regard to this question.[173] The other question indicates that the law being applied *could be* clear or unambiguous and officers here were correct only about

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[170] *See supra* Table 4.

[171] *See Heien*, 574 U.S. at 66–67 ("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)). Justice Kagan's concurrence in Heien reiterated this point: "[T]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." *Id.* at 68–69 (Kagan, J., concurring).

[172] *See supra* Table 4; *see also supra* notes 126–30 and accompanying text.

[173] *See supra* Table 4.

forty-three percent (43%) of the time.[174] Overall, these questions reflect lower officer knowledge on this nuanced, but important, legal issue.[175]

Importantly, the concurrence written by Justice Kagan in *Heien*, in part, states:

> 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.[176]

Additionally, the majority of state and federal lower courts have found that officer mistakes of law are only reasonable when the law or statute being applied is ambiguous or vague.[177] Accordingly, the law or statute being applied by an officer must generally be truly ambiguous or unclear for a mistake of law to be deemed reasonable. In sum, many officers do not exhibit adequate knowledge regarding the more 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.[178]

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.[179] Only about 32% 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.[180] However, this finding may be disconcerting, because nearly one-third of police officers have engaged in this type of search and/or seizure behavior, which could lead to Fourth Amendment violations and concern for citizens' privacy rights.[181]

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[174] *See supra* Table 4.

[175] *See supra* Table 4. *See also supra* notes 126–29 and accompanying text.

[176] *See Heien*, 574 U.S. at 70 (Kagan, J., concurring); *see also* Totten & De Leo (2017), *supra* note 3; *see also* Totten & De Leo (2018), *supra* note 3. 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.

[177] *See supra* Table 4; *see also supra* notes 126–29; *see also* Part II.

[178] *See supra* Table 4; *see also supra* notes 126–29.

[179] *See supra* Table 7.

[180] *See supra* Table 7.

[181] *See supra* Table 7.

In addition, of the officers who did report having engaged in such behavior based on unclear or confusing laws, traffic stops was the most frequently reported contexts.[182] This is perhaps partially promising for multiple reasons: first, it bears reiterating 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 32% 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 potential 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 may be more likely that most people would want that law to lead to police behavior that is potentially less intrusive in nature (i.e., being pulled over as part of a traffic stop may be viewed as potentially less intrusive than being placed under arrest or having one's house or other personal property searched).

3. Evaluation Summary: Descriptive Statistics

An overall evaluation of law enforcement officers' perceptions and knowledge gleaned from this study supports the notion that police officers have demonstrated adequate knowledge (moderate to higher levels of knowledge) of *Heien* itself and related principles. 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").[183] Officers also demonstrated adequate knowledge for a question regarding *Heien*'s basic holding (an officer's reasonable mistake of law can support reasonable suspicion for a traffic stop). In particular, over three-quarters (76.8%) of police officers reported either agreement or strong agreement with *Heien*'s basic holding.[184] However, only a little more than half (54.4%) of law enforcement officers reported that they were familiar the concept of reasonable mistakes of law.[185] Finally, the vast majority of police officers (80.3%) agreed or strongly agreed with the scenario question based entirely on the *Heien* case itself.[186]

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[182] *See supra* Table 7.
[183] *See supra* Table 5; *see also infra* Part V.
[184] *See supra* Table 4; *see also supra* Table 3.
[185] *See supra* Table 6.
[186] *See supra* Table 3.

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 underlying 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.[187] 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.[188] Another more technical question which revealed lower levels of officer 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.[189] In short, this study found that overall, law enforcement officers appear to possess greater levels of knowledge and hold aligned, accurate perceptions of more general Fourth Amendment law related to the Court's ruling in *Heien*; however, officers seem to possess lower levels of knowledge and do not hold as aligned, accurate perceptions regarding the more specific or technical Fourth Amendment legal concepts underlying the law related to *Heien*.

B. Evaluation: Multivariate and Bivariate Data: The Effects of Police Officer's Background Information on Officers' Performing a Search/Seizure Based on Unclear Law, and Officers' Knowledge/Perceptions of the Heien *Decision*

In the multivariate logistic regression analyses, we examined whether that the officers' decision to perform a search and/or seizure based on unclear law could be influenced by officers' knowledge and perceptions on *Heien*, their respective training, years in law enforcement, and levels of education.[190] Furthermore, we evaluated whether officers' knowledge of the *Heien* decision would be predicted by their respective training, years in law enforcement, and levels of education.[191]

Police officers who have heard of the case of *Heien* are almost five (5) times more likely than those who have never heard of it to perform a search and/or seizure based on the law(s) they believe could be ambiguous, confusing or unclear.[192] This was also found in the bivariate analysis.[193]

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[187] *See supra* Table 4; *see also* Heien v. North Carolina, 574 U.S. 54, 68 (2014).
[188] *See supra* Table 4; *see also Heien*, 574 U.S. at 68.
[189] *See supra* Table 4; *see also Heien*, 574 U.S. at 68.
[190] *See supra* Table 9; *see generally Heien*, 574 U.S. at 68.
[191] *See supra* Table 10; *see generally Heien*, 574 U.S. at 68.
[192] *See supra* Table 9.
[193] *See supra* Table 8.

These findings support the notion that police may be gaining superficial familiarity with landmark United States Supreme Court Fourth Amendment decisions such as *Heien*, and adjusting their search and seizure behaviors accordingly. In the case of a crime-control oriented decision such as *Heien*, this study's findings lend support to the concern that the decision may be having deleterious impacts in the community on Fourth Amendment rights and privacy. For example, a *Heien*-induced search based on an unclear law may very well turn out to be an improper search (albeit based at times on a "reasonable mistake"), and this study's findings show that officers who have heard of *Heien* are performing these types of searches based on unclear laws at high rates, compared to officers who are unfamiliar with the decision.

Police officers' educational level and experience as years of service impact their likelihood to perform a search and/or seizure based on potentially unclear law(s).[194] In particular, the veteran officers, who have a higher educational degree, are more likely to perform a search and/or seizure based on unclear law.[195] This was also found, in part, in the bivariate analysis; that is, officers who served in law enforcement longer were more likely to perform a search and/or seizure based on unclear laws.[196] Officers with higher levels of education and experience may have been exposed to *Heien* and are calibrating their search and seizure behavior to align with the decision. These officers may also simply feel more emboldened and/or capable of performing these types of searches and seizures based on unclear laws. Regardless of the explanation or source of the behavior, it may be problematic from the standpoint of individual Fourth Amendment privacy.

Perrin et al. (1998) concluded that training and education contribute to a better understanding of the law.[197] In this study, however, officers' training, education and experience are not related in either the multivariate or bivariate analysis to various measures of officers' legal knowledge of the *Heien* decision.[198]

C. Implications and Analysis

Several policy implications can be drawn based on the findings of this study. Police departments may want to consider more frequent and revised or targeted legal training sessions for their officers. Such training may be necessary because only 12% had heard of the *Heien* case, and just over half (54.4%) were familiar with the concept of reasonable mistakes

[194] *See supra* Table 9; *see also* Perrin, et al., *supra* note 8, at 735.
[195] *See supra* Table 9; *see also* Perrin, et al., *supra* note 8, at 735.
[196] *See supra* Table 8.
[197] *See* Perrin et al., *supra* note 8, at 735.
[198] *See generally id.*

of law. In addition, based on the multivariate analysis, existing training approaches do not appear to be having any significant impact on legal knowledge related to *Heien.* For example, 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, and has the potential to lead to unjustified intrusions on individual privacy under the Fourth Amendment.[199] More detailed and targeted legal training could also help to limit perceived officer discretion in these areas and in the process further protect individual privacy.

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.[200] For example, in the past fifteen years preceding Linetsky's study, police officers' required training hours have only increased modestly by about 260 hours across the United States.[201] However, by way of reference, in 1993 the national average of state required training was a minimum of 400 hours, and approximately twenty-five years later in 2018, the jurisdiction where the survey took place, the state of Georgia, required only 408 hours of training.[202] Accordingly, Georgia appears to be behind the national average in terms of increasing police training hours over the course of the past 15 years (and possibly longer).[203] However, Georgia requires about 27% of total hours to be used for legal topics, among the highest percentage in this area of all reported states.[204]

Several additional findings merit further discussion and analysis in light of their potential implications. The bivariate and multivariate analyses 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.[205] Accordingly, law enforcement

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[199] *See generally* Heien v. North Carolina, 574 U.S. 54, 67–68 (2014). *Heien* held that an officer's objectively reasonable mistake of law can support the reasonable suspicion required for a traffic stop; however, *Heien* did not address or explicitly allow an officer's objectively reasonable mistake of law to support searches or arrests. *See Heien*, 574 U.S. at 60–61, 67–68.

[200] *See* Yuri R. Linetsky, *What the Police Don't Know May Hurt Us: An Argument for Enhanced Legal Training of Police Officers*, 48 N.M. L. REV. 1, 16 (2018).

[201] *See id.* at 9.

[202] *See id.* at 17–18, 57.

[203] *Id.* at 26–28, 57.

[204] *Id*.

[205] *See supra* Tables 8 and 9.

officers may be molding their behavior to take the *Heien* decision into account. To an extent, this conduct reflects the new legal landscape following *Heien*; in particular, the altered 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), including instances where officers potentially apply *Heien* beyond the allowable context of traffic stops. Also, when officers perform searches or seizures based on unclear laws, there is the potential for officers to misinterpret the law and in the process violate individual Fourth Amendment privacy rights. Thus, additional legal training, including educational training and initiatives aimed at improving officer decision-making skills, may help 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 bears mentioning 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).[206] In contrast, this finding may show the potential for officers to protect citizens' constitutional privacy rights. On the other hand, it is possible officers' belief on what is—and is not –an unclear law may be impacted by their continuous interaction with the law in their job. For example, this lived experience may create the skewed perception that fewer laws are unclear than in actuality. Overall, 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 from the bivariate and multivariate analyses showed that compared to police officers with less experience and educational degree attainment, more experienced and educated police officers reported they are more likely to perform "searches and seizures" potentially based on unclear or confusing law(s) more frequently.[207] Additionally, as an officer's rank and years of service increase, so does the likelihood that the officer may conduct "searches" based upon unclear or ambiguous law(s).[208] This finding supports the notion that targeted and more frequent legal training should be directed to all police officers, including officers who have been in law enforcement longer and/or who have attained higher levels of educational degrees. These types of officers should therefore be required to participate in regular legal training and educational sessions. Finally, this study revealed that on more technical, or specific, legal concepts of Fourth Amendment law pertaining to *Heien*,

[206] *See supra* Table 7.
[207] *See supra* Tables 8 and 9.
[208] *See supra* Tables 8 and 9.

police officers demonstrated moderate to lower levels of agreement and knowledge.[209]

Notably, 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.[210] These officers' increased education may provide them with the perceived 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 skills to better understand and learn the law. Accordingly, in addition to enhanced training, officers should be encouraged to further their formal education, including on criminal justice and related legal topics.

Indeed, Linetsky (2018) proposes that law enforcement officers should have at least a two-year degree specializing in criminal justice.[211] Importantly, police officers are duty-bound to enforce the law and cannot gain any "Fourth Amendment advantage through a sloppy study of the law(s)."[212] 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 a minimum an Associate's Degree (or its equivalent) in policing or criminal justice.[213] 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 to police officers or policing in general.[214] In sum, 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 and clarity of the law. Thus, it would seem to be important for legislators to focus on writing laws that use more precise language, leading to greater understanding, without requiring a court to construe what a given law truly means or requires. For example, more clearly written laws could result in fewer situations where police officers have to apply and enforce confusing, unclear, or vague laws. At the same time, clarity could

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[209] *See supra* Table 4; *see* Heien v. North Carolina, 574 U.S. 54, 67–68 (2014).

[210] *See supra* Tables 8 and 9.

[211] Linetsky, *supra* note 200, at 39.

[212] *See Heien*, 574 U.S. at 67.

[213] *See* Linetsky, *supra* note 200, at 32–33.

[214] *Id*. at 37.

also help protect Fourth Amendment privacy rights for citizens by reducing officer "leeway" in interpreting ambiguous or vague laws in ways that ultimately infringe upon these rights. In addition, many courts have interpreted *Heien* in a strict manner, such as 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.[215] 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 and even violating 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. State legislation and even local, departmental police policy can also play a role in limiting the application of *Heien* and its accompanying, deleterious impacts for individual privacy.

APPENDIX

Police Officer Perceptions and Knowledge: Traffic Stops, Arrests, and Officer Decision-Making

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	Strongly Agree Disagree Strongly Agree Disagree ☐ ☐ ☐ ☐

[215] *See also* Totten & De Leo (2018), *supra* note 3, at 964–95.

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.	
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 Disagree Strongly Agree Disagree ☐ ☐ ☐ ☐
SURVEY CONTINUES ON OTHER SIDE OF PAGE **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	Strongly Agree Disagree Strongly Agree Disagree

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.	☐ ☐ ☐ ☐

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 Disagree Strongly Agree Disagree ☐ ☐ ☐ ☐
2. If an officer happened to make a mistake of law, his/her subjective understanding of the law must be examined.	Strongly Agree Disagree Strongly Agree Disagree ☐ ☐ ☐ ☐
3. For any officer mistake of law to be reasonable, the law the officer is applying **must be** ambiguous or vague.	Strongly Agree Disagree Strongly Agree Disagree ☐ ☐ ☐ ☐
4. For any officer mistake of law to be reasonable, the law the officer is applying could be clear or unambiguous.	Strongly Agree Disagree Strongly Agree 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 Disagree Strongly Agree Disagree ☐ ☐ ☐ ☐

6. An officer's reasonable mistake of law **can** support reasonable suspicion for a traffic stop.	Strongly Agree Disagree Strongly Agree Disagree ☐ ☐ ☐ ☐
7. Are you familiar with the concept of *reasonable mistakes of law*?	Yes No ☐ ☐
SURVEY CONTINUES ON NEXT PAGE	
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
i. **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
        i. **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:_____

SURVEY CONTINUES ON OTHER SIDE OF PAGE

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!