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U.S. Supreme Court case tests balance between privacy and law enforcement

By John H. Tucker
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Ignorance of the law is no excuse." It's a legal maxim every criminal defendant should know. But should police officers be held to the same standard?

This week in Washington, the U.S. Supreme Court sought to answer that question in *Heien v. North Carolina*, a case that tests Fourth Amendment protections against unconstitutional searches. At issue: whether a law enforcement officer's mistake in interpreting a law—even if the mistake is reasonable—can justify a traffic stop.

The case carries big stakes for civil liberties advocates, who worry that if police have unlimited discretion to misinterpret a law, illegal traffic stops could spike across the country. During Monday's hearing, that argument was not lost on Chief Justice John Roberts, who declared that giving qualified immunity to police officers—in other words, shielding them from liability for violating someone's constitutional rights—would be "troubling."

Early one morning in 2009 in the Appalachian foothills of Surry County, a highway-interdiction sheriff's deputy stationed on Interstate 77 pulled over a car with a broken taillight. (Deputies working interdiction are trained to look for vehicles carrying drugs, cash and other smuggled goods.)

The deputy mistakenly believed that North Carolina law requires two functioning taillights, when in fact it requires just one. During the ensuing conversation, the deputy grew suspicious. He asked the car's owner, Nicholas Heien, for consent to search the vehicle. Heien obliged, and the deputy discovered a sandwich bag containing cocaine. Heien filed a motion to suppress the evidence, arguing that the traffic stop violated the Fourth Amendment. The trial judge denied it, and Heien was sentenced to a prison for 20 to 24 months for drug trafficking.

The state Court of Appeals reversed the ruling, but in a 4–3 decision, the North Carolina Supreme Court reversed it back. The majority argued that law enforcement officers sometimes make reasonable mistakes, and that the courts shouldn't demand that police be "omniscient."

Federal circuit courts are split on the issue, which is among the reasons the U.S. Supreme Court agreed to hear the case.

To justify a traffic stop, an officer must have "reasonable suspicion" that a law has been violated. Because police officers often find themselves in ambiguous situations requiring on-the-spot judgments, reasonable suspicion is a lower standard than the "probable cause" needed to charge someone with a crime.

Police officers, therefore, are not required to get all their facts right. If, for example, a police officer pulls over a motorist because he believed the driver was not wearing a seat belt—when in fact the motorist was buckled up—the stop still would be justified.

But the *Heien* case distinguishes an officer's mistake of *fact* with a mistake of *law*. Heien's supporters, including an array of liberal and libertarian groups, such as the Gun Owners Foundation and the Cato Institute, argue that police officers should be familiar with the law before hitting the roads.

They contend that permitting an officer's misinterpretation of a law, even if it were based on common-sense, would confuse judges, discourage police departments from educating officers about statutes and allow law enforcement to stop motorists for virtually any reason.

If the U.S. Supreme Court were to side with the N.C. Supreme Court, police officers would be required to know less about the law than the general public, which would undermine law enforcement credibility, Heien's supporters argue.

"The North Carolina Supreme Court decision both encourages ignorance of the law amongst law enforcement, and encourages them to feign ignorance of the law if necessary," said Christopher Brook, legal director of the American Civil Liberties Union of North Carolina.

But the N.C. Attorney General's Office—with the U.S. government, the Association of Prosecuting Attorneys and 19 individual states, which submitted friend-of-the-court briefs in the *Heien* case—counter that in order to control crime, police must have leeway to respond to situations in which a crime may have been committed, even if it's not certain. The law, they argue, only requires that police act reasonably and in good faith.

The Fourth Amendment "does not require police officers to be perfect," said Robert Montgomery, deputy special attorney general for North Carolina, who argued in front of the justices on Monday.

Justice Elena Kagan questioned Montgomery on how much discretion an officer should have in interpreting a statute. Montgomery replied that officers should not feel forced to "turn a blind eye" to potential wrongdoing.

Heien's attorney, Jeffrey Fisher, opened by stating that "governmental officers should be presumed to know the law as least as much as citizens do." Almost immediately, he was hammered with questions from both liberal and conservative justices.

What is the definition of what is "reasonable?" Justice Samuel Alito wanted to know.

Justice Ruth Bader Ginsburg suggested that the Fourth Amendment argument might be "a moot question," considering that Heien gave the sheriff's deputy consent to search the car.

Fisher argued that the traffic stop should never have been made, and that the cocaine discovered in the car was "the fruit of the poisonous tree."

Traffic stops are the most common reason for citizens to have contact with the police, and account for nearly 50 percent of face-to-face interactions, according to a recent Bureau of Justice statistics study. In North Carolina, police have carried out an average of 1.17 million stops per year during the past decade. Minorities face higher rates of vehicle searches.

Perhaps aware of those statistics, Justice Sonia Sotomayor pointed out that if Heien wasn't stopped by a highway-interdiction officer, his car would likely not have been searched, and the case would not be before the Supreme Court.

"How many citizens have been stopped for one brake light and been asked to have their car searched," she asked. "And is that something that we as a society should be encouraging?"

The Court is expected to deliver its opinion on the case during this term.