DePaul Law Review

Volume 62
Issue 4 *Summer 2013*

Article 6

Must Officers Be Perfect?: Mistakes of Law and Mistakes of Fact during Traffic Stops

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MUST OFFICERS BE PERFECT?: MISTAKES OF LAW AND MISTAKES OF FACT DURING TRAFFIC STOPS

INTRODUCTION

Officer Pearce saw an improper turn signal.[1] Officer Hiland observed an obstructed front windshield.[2] Sergeant Drown and Trooper Cason noticed obscured license plates.[3] Officer Nicolino stopped the vehicle because both license plates were missing.[4] The common thread in each of these situations is that the officer made a mistake of law. Each thought they saw a traffic violation when no violation actually occurred.

Experts estimate that there are roughly one hundred million traffic stops each year.[5] Once the police have initiated a stop, it is easy for them to broaden their investigation, including a warrantless search of the vehicle.[6] While the threshold for justifying the initial stop is not high, officers often still make mistakes when stopping drivers. These mistakes can be born of either fact or law.[7] Courts allow mistakes of fact to be objectively reasonable.[8] Moreover, a majority of courts distinguish mistakes of law from mistakes of fact, only applying a reasonableness standard to the latter—these courts assert that an officer's mistake of law can never be objectively reasonable. In these jurisdictions, traffic stops and subsequent searches based on mistakes of law

1. United States v. McDonald, 453 F.3d 958, 959 (7th Cir. 2006).

2. People v. Cole, 874 N.E.2d 81, 83 (Ill. App. Ct. 2007).

3. *See* United States v. DeGasso, 369 F.3d 1139, 1141 (10th Cir. 2004); Hinojosa v. State, 319 S.W.3d 258, 260 (Ark. 2009).

4. United States v. Smart, 393 F.3d 767, 769 (8th Cir. 2005).

5. Illya Lichtenberg, *Police Discretion and Traffic Enforcement: A Government of Men?*, 50 CLEV. ST. L. REV. 425, 429 (2003) ("Since there are roughly fifty to sixty million traffic filings each year in state courts, and not all traffic stops result in the issuance of summons, it is reasonably estimated that there are over one hundred million traffic stops each year." (footnotes omitted)).

6. *See id.* at 430; *see also* WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 7.1 (4th ed. 2004) ("There are a number of different bases upon which a warrantless search of a vehicle may be upheld."); Keith S. Hampton, *Stranded in the Wasteland of Unregulated Roadway Police Powers: Can "Reasonable Officers" Ever Rescue Us?*, 35 ST. MARY'S L.J. 499, 506 (2004) ("Once validly stopped, the police have broad authority to continue the detention and search the vehicle . . . .").

7. United States v. Miguel, 368 F.3d 1150, 1152 (9th. Cir 2004) (stating that officers committed a mistake of fact when they failed to understand whether the vehicle was properly registered); *DeGasso*, 369 F.3d at 1144 (stating that an officer's misinterpretation of the fog lamp statute was a mistake of law).

8. *See infra* notes 26–44 and accompanying text.

are illegal and evidence will be excluded in accordance with the exclusionary rule. However, a minority of courts assert that mistakes of law can be objectively reasonable. These courts state that an objectively reasonable mistake of law does not void the justification of a traffic stop. Consequently, any evidence uncovered as a result of the stop and search will not be excluded.

These differences in courts' approaches to mistakes of law result in a number of inconsistencies. First, different courts in the same state produce different results. In Iowa, for example, state courts have held that traffic stops cannot be premised on mistakes of law, whereas the Eighth Circuit has held the opposite.[9] The opposite occurs in Mississippi, where the Fifth Circuit has held that officers cannot make mistakes of law, whereas Mississippi state court allows mistakes of law.[10] Second, many cases end up being decided purely on the narrow distinction of whether the officer's mistake was one of fact or one of law.[11] Because mistakes of law and mistakes of fact are interdependent, the type of mistake made can be difficult to differentiate.[12] This difficultly further contributes to conflicting outcomes.[13]

This Comment argues that instead of a different standard, courts should consider both mistakes of law and fact under the objectively reasonable standard. Moreover, even if an officer makes an objectively reasonable mistake of law, the exclusionary rule should not automatically apply. Part II of this Comment examines the relevant case law behind allowing an officer to make mistakes of fact and mistakes of law.[14] It will discuss the reasoning for not allowing mistakes of law by focusing on an Eleventh Circuit case, *United States v.*

9. *Compare Smart*, 393 F.3d at 770 ("[T]he distinction between a mistake of law and a mistake of fact is irrelevant to the [F]ourth [A]mendment inquiry."), *with* State v. Louwrens, 792 N.W.2d 649, 652–54 (Iowa 2010) (declining to adopt the Eighth Circuit's approach to mistakes of law).

10. *Compare* United States v. Miller, 146 F.3d 274, 279 (5th Cir. 1998) (holding that mistakes of law do not provide probable cause for a stop), *with* Harrison v. State, 800 So. 2d 1134, 1139 (Miss. 2001) ("[W]e find that the deputies had sufficient probable cause to stop Harrison, even in light of the mistake of law.").

11. *See* United States v. Tibbetts, 396 F.3d 1132, 1139 (10th Cir. 2005).

12. State v. Horton, 246 P.3d 673, 676 (Idaho Ct. App. 2010) ("The parties, in essence, disagree whether the officer's mistake here was one of fact or law, and the line between the two is not always easy to draw. . . . [T]he two types of mistakes [may be] 'inextricably connected' . . . ." (quoting State v. McCarthy, 982 P.2d 954, 959 (Idaho Ct. App. 1999))).

13. *Compare* United States v. Pena-Montes, 589 F.3d 1048, 1054 (10th Cir. 2009) (holding that a misunderstanding concerning dealer plates was a mistake of law), *with Horton*, 246 P.3d at 676–77 (finding that the confusion regarding repossession plates was a mistake of fact). *See also* Wayne A. Logan, *Reasonableness as a Rule: A Paean to Justice O'Connor's Dissent in* Atwater v. City of Lago Vista, 79 MISS. L.J. 115, 144 (2009) ("Even though the law–fact distinction is not always clear-cut, police are forgiven reasonable mistakes of fact, on which probable cause is based." (footnotes omitted)).

14. *See infra* notes 19–114 and accompanying text.

Chanthasouxat.[15] Part II then details the minority view by examining federal law in the Eighth Circuit and state law in California. Part III first argues that the reasoning for the majority view is uncompelling and strict application of the exclusionary rule lacks merit.[16] Part III then argues that allowing mistakes of law that are objectively reasonable and not automatically applying the exclusionary rule adheres more closely to Supreme Court precedent.[17] Part IV asserts that the distinction between mistakes of fact and law is not always clear, which often creates uncertain outcomes.[18] Lastly, Part IV argues that the public policy reasons for allowing mistakes of fact apply equally to mistakes of law.[19]

II. BACKGROUND

This Part first examines the reasoning behind allowing officers to make mistakes of fact. It then illustrates why the majority of courts do not permit an officer's mistakes of law, using *United States v. Chanthasouxat* to detail the principles that justify this position. This Part concludes by reviewing the minority reasoning, primarily developed in the Eighth Circuit, as to why officers should be allowed to make reasonable mistakes of law and how courts apply this doctrine.

While officers are afforded deference when determining probable cause, their judgment is still subject to judicial review.[20] In *Whren v. United States*, the U.S. Supreme Court indicated that a stop is "reasonable where the police have probable cause to believe that a traffic violation has occurred."[21] But most courts agree that the lesser standard of reasonable suspicion set forth in *Terry v. Ohio*[22] is also permissible.[23] Under *Terry*, a court should not look at the subjective motivations of the officer; instead, it should use an objectively reasonable standard to evaluate the stop.[24] If the officer did not act reasona-

15. United States v. Chanthasouxat, 342 F.3d 1271 (11th Cir. 2003).

16. *See infra* notes 115–45 and accompanying text.

17. *See infra* notes 146–70 and accompanying text.

18. *See infra* notes 171–95 and accompanying text.

19. *See infra* notes 195–99 and accompanying text.

20. *See, e.g.*, United States v. Cortez, 449 U.S. 411, 417–18 (1981).

21. Whren v. United States, 517 U.S. 806, 810 (1996).

22. Terry v. Ohio, 392 U.S. 1, 22 (1968).

23. Wayne R. LaFave, *The "Routine Traffic Stop" from Start to Finish: Too Much "Routine," Not Enough Fourth Amendment*, 102 MICH. L. REV. 1843, 1848 (2004) ("Most courts have assumed . . . that traffic stops as a class are permissible without probable cause if there exists reasonable suspicion, that is, merely equivocal evidence.").

24. Ornelas v. United States, 517 U.S. 690, 696 (1996) ("The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the stand-

bly, the court can use the exclusionary rule to prevent the admission of evidence.[25]

A. Mistakes of Fact Are Objectively Reasonable

While on patrol, officers encounter a multitude of situations that are ambiguous and require split-second decision making.[26] In *Brinegar v. United States*, the Supreme Court stated, "Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes [on their part]. But the mistakes must be those of reasonable men."[27] The key to mistakes of fact is determining whether the officer's actions were reasonable—if the officer acted in an objectively reasonable manner, the evidence is admissible.[28]

The Supreme Court further explained this standard in *Illinois v. Rodriguez*.[29] In *Rodriguez*, the officers seized drugs after entering the

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point of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.").

25. THOMAS K. CLANCY, THE FOURTH AMENDMENT: ITS HISTORY AND INTERPRETATION § 13.1 (2008) ("The chief enforcement mechanism to insure compliance with the Fourth Amendment is the exclusionary rule, which prohibits the introduction of illegally obtained evidence in the government's case-in-chief.").

26. *See* Marc McAllister, *What the High Court Giveth the Lower Courts Taketh Away: How to Prevent Undue Scrutiny of Police Officer Motivations Without Eroding* Randolph*'s Heightened Fourth Amendment Protections*, 56 CLEV. ST. L. REV. 663, 699 (2008) ("Because police often confront ambiguous situations when executing their duties, courts must allow room for honest mistakes."); *see also* Maryland v. Garrison, 480 U.S. 79, 87 (1987) ("[T]he court has also recognized the need to allow some latitude for honest mistakes that are made by officers in the dangerous and difficult process of making arrests and executing search warrants.").

27. Brinegar v. United States, 338 U.S. 160, 176 (1949).

28. *See* Illinois v. Rodriguez, 497 U.S. 177, 185–86 (1990); United States v. Coplin, 463 F.3d 96, 101 (1st Cir. 2006) ("Stops premised on mistakes of fact, however, generally have been held constitutional so long as the mistake is objectively reasonable."); United States v. Jenkins, 452 F.3d 207, 212 (2d Cir. 2006) ("The constitutional validity of a stop is not undermined simply because the officers who made the stop were mistaken about relevant facts."); United States v. Tibbetts, 396 F.3d 1132, 1138 (10th Cir. 2005) ("We have consistently held that an officer's mistake of fact, as distinguished from a mistake of law, may support probable cause or reasonable suspicion necessary to justify a traffic stop."); United States v. Flores-Sandoval, 366 F.3d 961, 962 (8th Cir. 2004) ("[A] mistake of fact does not automatically negate the validity of the stop. [The officer] was justified in making the stop if he had an objectively reasonable basis for believing that the vehicle was not in conformity with Nebraska's traffic laws."); United States v. Mariscal 285 F.3d 1127, 1131 (9th Cir. 2002) ("[A] mere mistake of fact will not render a stop illegal, if the objective facts known to the officer gave rise to a reasonable suspicion that criminal activity was afoot."); United States v. Cashman, 216 F.3d 582, 587 (7th Cir. 2000) ("[T]he Fourth Amendment requires only a reasonable assessment of the facts, not a perfectly accurate one."); People v. Cole, 874 N.E.2d 81, 88 (Ill. App. Ct. 2007) ("[T]raffic stops based on an officer's objectively reasonable mistake of fact rarely violate the [F]ourth [A]mendment."); State v. Louwrens, 792 N.W.2d 649, 652 (Iowa 2010) ("[A]n officer's reasonable mistake of fact supporting his belief that a traffic violation . . . is underway will suffice as probable cause for a stop.").

29. *Rodriguez*, 497 U.S. at 185–88.

defendant's residence with the consent of the defendant's girlfriend.[30] However, the officers acted under the mistaken belief that the girlfriend had the authority to grant access when, in fact, she did not.[31] The Court held that although the officers entered under a mistaken belief, the evidence was still admissible.[32] It reasoned that the basis for the search does not need to be factually correct; instead, the officers only needed a reasonable belief that the girlfriend had authority to grant access.[33]

Though *Rodriguez* stands for the concept that officers can make reasonable mistakes of fact without triggering the exclusionary rule, the decision was not made in the context of a traffic stop.[34] The Seventh Circuit case *United States v. Cashman* demonstrates the reasoning for extending officer mistakes of fact to traffic stops.[35] In *Cashman*, the officer stopped an automobile after observing what he believed to be an "excessive" crack in the windshield.[36] During the stop, the officer received consent to search the vehicle and discovered methamphetamines and a notebook containing notes of drug deals.[37] The defendant argued that the officer lacked probable cause to stop the vehicle because the crack was not excessive.[38] But the Seventh Circuit held that the stop was permissible because the excessiveness of the crack was not at issue.[39] The court explained that the "pertinent question instead is whether it was reasonable for [the officer] to *believe* that the windshield was cracked to an impermissible degree."[40] Because the officer "could readily and reasonably think that the crack met the administrative criteria for excessive cracking," the fruits of the search were not excluded.[41] In other words, as long as the officer's

30. *Id.* at 179.

31. *Id.* at 180.

32. *Id.* at 183–84.

33. *Id.* at 184 ("But 'reasonableness,' with respect to this necessary element, does not demand that the government be factually correct in its assessment that that is what a search will produce."). "It is apparent that in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable." *Id.* at 185.

34. *Id.* at 179–80.

35. *See* United States v. Cashman, 216 F.3d 582 (7th Cir. 2000).

36. *Id.* at 584.

37. *Id.* at 584–85.

38. *Id.* at 586–87.

39. *Id.* at 587.

40. *Id.*

41. *Cashman*, 216 F.3d at 587.

mistake was objectively reasonable, the mistake of fact did not impact the search.[42]

In *Illinois v. Gates*, the Supreme Court summarized the reasonable officer standard by stating that the "evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement."[43] The main thrust for allowing mistakes of fact is that the officer's lapse in judgment was reasonable, and given the difficult situations officers confront, courts must allow for mistakes.[44]

B. A Mistake of Law: Split Between the Circuits

While the standard for mistakes of fact is clear, courts are split on whether a mistake of law in the context of a traffic stop and seizure can ever be reasonable. A majority of courts do not allow officers to make a mistake of law when executing a traffic stop, while a minority of courts hold the opposite as long as the mistake was reasonable. This Part details both positions.

1. The Majority of Courts Do Not Allow for Mistakes of Law

The majority of courts assert that a mistake of law does not support probable cause because it can never be objectively reasonable.[45] In

42. *Id.*

43. Illinois v. Gates, 462 U.S. 213, 232 (1983).

44. *See* McAllister, *supra* note 26, at 699; *see also* Maryland v. Garrison, 480 U.S. 79, 87 (1987).

45. *See* Wayne A. Logan, *Police Mistakes of Law*, 61 EMORY L.J. 69, 79 (2011) ("More recently, police mistakes of law have been deemed unreasonable under the Fourth Amendment. While police are forgiven for their reasonable mistakes of fact, they are not forgiven for their mistakes of substantive law—even if reasonable." (footnote omitted)); *see also* United States v. Gross, 550 F.3d 578, 584 n.2 (6th Cir. 2008) ("[W]e note that the vast majority of our sister circuits to decide this issue have concluded that an officer's mistake of law, even if made in good faith, cannot provide grounds for reasonable suspicion or probable cause, because an officer's mistake of law can never be objectively reasonable."); United States v. McDonald, 453 F.3d 958, 962 (7th Cir. 2006) ("Even though [the officer] may have acted in good faith, there is no good faith exception to the exclusionary rule when, as here, an officer makes a stop based on a mistake of law and the defendant is not violating the law."); United States v. Coplin, 463 F.3d 96, 101 (1st Cir. 2006) ("Stops premised on a mistake of law, even a reasonable, good-faith mistake, are generally held to be unconstitutional."); United States v. DeGasso, 369 F.3d 1139, 1144 (10th Cir. 2004) ("An officer's reasonable mistake of fact, as distinguished from a mistake of law, may support the probable cause or reasonable suspicion necessary to justify a traffic stop."); United States v. Chanthasouxat, 342 F.3d 1271, 1276 (11th Cir. 2003) ("[A]n officer's reasonable mistake of fact may provide the objective grounds for reasonable suspicion or probable cause required to justify a traffic stop, but an officer's mistake of law may not."); United States v. King, 244 F.3d 736, 741 (9th Cir. 2001) ("[A]n officer's mistake of law cannot form the basis for reasonable suspicion to initiate a traffic stop . . . ."); United States v. Miller, 146 F.3d 274, 279 (5th Cir. 1998) ("[G]iven that having a turn signal on is not a violation of Texas law, no objective basis for probable cause justified the stop . . . ."); Gordon v. State, 901 So. 2d 399, 405 (Fla. Dist. Ct. App.

United States v. Chanthasouxat, the Eleventh Circuit summarized the argument for excluding evidence obtained following an officer's mistake of law.[46] In *Chanthasouxat*, the officer stopped the defendant for not having a rearview mirror.[47] The officer had previously written tickets for the offense based on his police academy training and a magistrate's interpretation of the regulation.[48] However, the regulation the officer cited did not actually apply to driving without a rearview mirror.[49] During the stop, the officer obtained consent to search the vehicle and discovered cocaine.[50]

The search was suppressed on appeal because the stop was based on a mistake of law.[51] The court conceded that the officer had acted reasonably because of his training, previously issued tickets, and the magistrate's previous interpretation.[52] But the court stated that "a mistake of law cannot provide reasonable suspicion or probable cause to justify a traffic stop."[53] Therefore, the stop was illegal and the court excluded the fruits of the search.[54]

There are four justifications for rejecting mistakes of law and applying the exclusionary rule: (1) officers should know the law, therefore not knowing the law is unreasonable;[55] (2) the court should apply the

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2005) ("[The] Deputies' misapprehension of the law did not establish the existence of probable cause . . . ."); People v. Cole, 874 N.E.2d 81, 88 (Ill. App. Ct. 2007) ("We agree with the majority of federal courts of appeal that a traffic stop based on a mistake of law is generally unconstitutional, even if the mistake is reasonable and made in good faith."); State v. Louwrens, 792 N.W.2d 649, 652 (Iowa 2010) ("[W]e are ultimately persuaded that the approach acknowledging a fundamental distinction between an officer's mistake of fact and mistake of law is better-reasoned."); People v. Smith, 767 N.Y.S.2d 327, 328 (N.Y. App. Div. 2003) ("A mistake of fact, but not a mistake of law, may be used to justify a search and seizure." (citations omitted)).

46. *Chanthasouxat*, 342 F.3d at 1279–80.

47. *Id.* at 1272.

48. *Id.* at 1274.

49. *Id.*; BIRMINGHAM, ALA., CITY CODE § 10-11-5 ("No person shall drive on any street of the city a motor vehicle which is so constructed or loaded as to prevent the driver from obtaining a view of the street to the rear by looking backward from the driver's position unless that vehicle is equipped with a mirror so located as to reflect to the driver a view of the streets for a distance of at least 200 feet of the rear of the vehicle.").

50. *Chanthasouxat*, 342 F.3d at 1273.

51. *See id.* at 1279–80.

52. *Id.* at 1279.

53. *Id.*

54. *Id.* at 1280.

55. *See* Justin F. Marceau, *The Fourth Amendment at a Three-Way Stop*, 62 ALA. L. REV. 687, 743 (2011) ("It is a hallmark of substantive criminal law that ignorance of the law is no defense. The rationale most commonly advanced for this seemingly harsh result is that the refusal to reward ignorance is necessary 'so that the proper standard of conduct will be learned and respected by others.'" (quoting Robert L. Misner, *Limiting* Leon*: A Mistake of Law Analogy*, 77 J. CRIM. L. & CRIMINOLOGY 507, 509 (1986); *see also* Logan, *supra* note 45, at 91 ("Reciprocal expectations of law-abidingness between government and citizens can scarcely be expected to

exclusionary rule so that officers will have an incentive to actually learn the law;[56] (3) allowing officers to make stops based on a mistake of law will provide them with wide latitude to abuse their authority;[57] and (4) allowing officers to make mistakes of law violates the separation of powers.[58]

The first of these justifications contends that as enforcers of the law, it is unreasonable for officers to not know the law.[59] The Eleventh Circuit stated that there is a "fundamental unfairness of holding citizens to 'the traditional rule that ignorance of the law is no excuse,' while allowing those 'entrusted to enforce' the law to be ignorant of it."[60]

The second justification argues that the exclusionary rule applies because if courts allow mistakes of law, police will have no incentive to learn the law.[61] The exclusionary rule is "designed to deter police misconduct."[62] By not allowing mistakes of law, the court provides incentives to improve officer knowledge.[63] Thus, the argument speculates that allowing mistakes of law removes this incentive, which may lead to illegal stops and searches.[64]

The third justification is based on the fear that allowing mistakes of law will promote pretextual stops.[65] Police have broad discretion to stop vehicles,[66] and allowing mistakes of law widens the latitude of

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endure if one party—the government—need not uphold its end of the bargain." (footnotes omitted)).

56. Marceau, *supra* note 55, at 744.

57. United States v. Lopez-Valdez, 178 F.3d 282, 289 (5th Cir. 1999) ("But if officers are allowed to stop vehicles based upon their subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred, the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive.").

58. *See* Logan, *supra* note 45, at 95.

59. Marceau, *supra* note 55, at 743; *see also* United States v. Tibbetts, 396 F.3d 1132, 1138 (10th Cir. 2005) ("[F]ailure to understand the law by the very person charged with enforcing it is not objectively reasonable." (emphasis omitted)).

60. *Chanthasouxat*, 342 F.3d at 1280 (citation omitted) (quoting Bryan v. United States, 524 U.S. 184, 196 (1998)).

61. Marceau, *supra* note 55, at 744; *see also* United States v. Lopez-Soto, 205 F.3d 1101, 1106 (9th Cir. 2000).

62. United States v. Leon, 468 U.S. 897, 916 (1984).

63. *Lopez-Soto*, 205 F.3d at 1106 ("To create an exception here would defeat the purpose of the exclusionary rule, for it would remove the incentive for police to make certain that they properly understand the law that they are entrusted to enforce and obey.").

64. *See* Logan, *supra* note 13, at 144 n.198.

65. *See* United States v. Lopez-Valdez, 178 F.3d 282, 289 (5th Cir. 1999); *see also* Logan, *supra* note 13, at 146 ("[Police] have the concomitant power to detain individuals for behavior never even legislatively proscribed.").

66. *See* Hampton, *supra* note 6, at 504 ("[P]olice have a wide array of laws to justify automobile stops based on admittedly ambiguous behavior.").

police power, which increases the possibility of abuse.[67] Not only will officers be able to stop individuals based on actual traffic infractions, they will be able to stop individuals even when they comply with the law.[68] This new power would enable officers to abuse their authority and invade a driver's right to privacy.[69]

Lastly, the majority view's final justification for exclusion is that allowing officers to make mistakes of law is akin to allowing an officer to interpret the law.[70] Permitting mistakes of law damages the separation between the executive and judicial branches[71] by removing the judiciary's power to properly interpret and enforce the laws that check executive powers.[72]

2. *A Minority of Courts View Officer Mistakes of Law as Being Objectively Reasonable*

In a minority of courts, an officer's mistake of law can be objectively reasonable.[73] The minority view is best illustrated through cases from the Eighth Circuit[74] and the California case of *People v. Glick*.[75]

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67. *See Lopez-Valdez*, 178 F.3d at 289.

68. Logan, *supra* note 13, at 146.

69. *Lopez-Valdez*, 178 F.3d at 289.

70. *See* Logan, *supra* note 45, at 95 ("When courts forgive mistaken police constructions of laws, a problem akin to that attending judicial approval of vague laws arises . . . . [A]llowing police to make reasonable mistakes of law, as the Eleventh Circuit has observed, serves to 'sweep behavior into [a] statute which the authors of the statute may have had in mind but failed to put into the plain language of the statute.'" (alteration in original) (quoting United States v. Chanthasouxat, 342 F.3d 1271, 1278 (11th Cir. 2003))).

71. *See* Logan, *supra* note 45, at 96 ("The allowance, however, does more than augment executive power and undercut legislative primacy; it functions as an abdication of judicial authority.").

72. *Id.* ("Courts find it 'unnecessary' to interpret statutory language or content themselves with generalized assessments of whether an officer's interpretation was reasonable." (footnotes omitted)).

73. United States v. Delfin-Colina, 464 F.3d 392, 397 (3d Cir. 2006) ("[Defendant] argues that even under the permissive reasonable suspicion standard, a mistake of law by the seizing officer will render a traffic stop *per se* unreasonable under the Fourth Amendment. . . . [W]e do not agree."); United States v. Smart, 393 F.3d 767, 770 (8th Cir. 2005) ("[T]he distinction between a mistake of law and a mistake of fact is irrelevant to the [F]ourth [A]mendment inquiry."); Hinojosa v. State, 319 S.W.3d 258, 262–64 (Ark. 2009); Moore v. State, 986 So. 2d 928, 935 (Miss. 2008) ("[The officer] had sufficient probable cause to pull [defendant] over although, as it turns out [the officer] based his belief of a traffic violation on a mistake of law."); State v. Barnard, 658 S.E.2d 643, 645 (N.C. 2008) ("It is irrelevant that part of [the officer's] motivation for stopping defendant may have been a perceived, though apparently non-existent, statutory violation . . . ."); *see also* Logan, *supra* note 45, at 79–82.

74. United States v. Washington, 455 F.3d 824 (8th Cir. 2006); United States v. Martin, 411 F.3d 998 (8th Cir. 2005); *Smart*, 393 F.3d 767; United States v. Sanders, 196 F.3d 910 (8th Cir. 1999).

75. People v. Glick, 250 Cal. Rptr. 315 (Cal. Ct. App. 1988).

a. *United States v. Sanders* and *United States v. Smart*

In *Sanders*, the officer stopped a vehicle towing a trailer in which one of the two taillights was missing a red cover and emitting a white light.[76] During the stop, an assisting officer asked the defendant, who was a passenger, to exit the vehicle.[77] When the defendant exited, the officer found a package containing methamphetamine and marijuana on the seat.[78] South Dakota law, however, provided that trailers built before 1973 only needed one working taillight,[79] and the defendant argued that because the trailer was manufactured pre-1973, the stop was based on a mistake of law and the search was invalid.

The court held that "[r]egardless of whether or not the trailer actually was in violation of the South Dakota statute, [the officer] was justified in making the stop."[80] The court reasoned that "[t]he determination of whether probable cause existed is not to be made with the vision of hindsight, but instead by looking to what the officer reasonably knew at the time."[81] Because the officer "could have reasonably believed" that "the trailer was subject to the two taillight requirement" the stop was justified.[82] The court further noted that officers should not be held to a standard in which they "have to interpret the traffic laws with the subtlety and expertise of a criminal defense attorney."[83]

The reasoning in *Sanders* was affirmed in *United States v. Smart*, in which evidence recovered during a stop based on a mistake of law was admitted.[84] In *Smart*, the officer stopped a vehicle that did not have a front license plate.[85] In Iowa, vehicles were required to have both plates, but the vehicle was registered in Georgia and complied with the requisite Georgia statute, which only required one plate.[86] At the time of the stop, the officer could not tell whether the plate was an Iowa or Georgia plate and was unfamiliar with Georgia law.[87] After stopping the vehicle, the car was searched and a handgun was found, the possession of which was a violation of the driver's parole.[88] The

76. *Sanders*, 196 F.3d at 912.
77. *Id.*
78. *Id.*
79. *Id.* at 912–13; *see also* S.D. CODIFIED LAWS § 32-17-8 (2002).
80. *Sanders*, 196 F.3d at 912–13.
81. *Id.*
82. *Id.*
83. *Id.*
84. *See* United States v. Smart, 393 F.3d 767, 770–71 (8th Cir. 2005).
85. *Id.* at 769.
86. *Id.*
87. *Id.*
88. *Id.*

court allowed the search to stand even though the car had not violated the law by having only one plate.[89] The court stated that "the distinction between a mistake of law and a mistake of fact is irrelevant to the [F]ourth [A]mendment inquiry." Instead, "the validity of a stop depends on whether the officer's actions were objectively reasonable in the circumstances, and in mistake cases the question is simply whether the mistake, whether of law or of fact, was an objectively reasonable one."[90] Here, it was permissible to stop the vehicle because the officer had an objectively reasonable belief that the missing license plate violated Iowa law, and he was unfamiliar with Georgia law.[91]

b. *United States v. Martin* and *United States v. Washington*

Although both *Sanders* and *Smart* used the objectively reasonable standard, neither case provided guidance on its application.[92] In *United States v. Martin*,[93] and continuing in *United States v. Washington*,[94] the Eighth Circuit established guideposts for reviewing an officer's mistake of law. In *Martin*, tribal police stopped and searched a vehicle on the Pine Ridge Indian Reservation because one of the two brake lights was out.[95] Tribal law, however, did not require that both brake lights be operational because the statute used the term "stop light," as opposed to "stop lights."[96] The court, after considering several factors—the ambiguity of the statute, prior interpretations, previous judicial rulings and common usage in adjoining states—ultimately determined that the officer acted reasonably and held that the search was legal, though it was based on a mistake of law.[97]

The *Martin* factors were then applied in *United States v. Washington*, in which an officer's stop was held unreasonable.[98] In *Washington*, the officer stopped a vehicle for a crack in the windshield that he deemed obstructed the view of the driver.[99] Because Nebraska law contained no such provisions there was no violation.[100] Nonetheless, during the stop the officer searched car and found a firearm, which

89. *Id.* at 770.
90. *Smart*, 393 F.3d at 770.
91. *Id.*
92. *See id.*; United States v. Sanders, 196 F.3d 910, 913 (8th Cir. 1999)
93. United States v. Martin, 411 F.3d 998 (8th Cir. 2005).
94. United States v. Washington, 455 F.3d 824 (8th Cir. 2006).
95. *Martin*, 411 F.3d at 1000.
96. *Id.* at 1000–01.
97. *Id.* at 1001.
98. *Washington*, 455 F.3d at 827.
99. *Id.* at 826.
100. *Id.*

violated the defendant's probation.[101] The court excluded the gun, stating that "the government has not presented any evidence of police manuals or training materials, state case law, legislative history, or any other state custom or practice that would create some objectively reasonable basis for the traffic stop."[102] For an officer to act reasonably there must be "a basis in state law for an officer's action and some ambiguity or state custom that caused the officer to make the mistake."[103] Importantly, the court limited the standard by stating that even though the officer's "own past practices were based on the same mistake of law they did not justify future stops."[104]

c. *People v. Glick*

Outside of the Eighth Circuit, the California case *People v. Glick* adds an additional wrinkle for courts to consider when determining whether an officer's mistake of law was reasonable.[105] In *Glick*, the California officer stopped a vehicle because its New Jersey license plate did not display a vehicle renewal sticker.[106] Under California law, the sticker was required to be on the plate itself, whereas in New Jersey it was not.[107] During the stop, the officer determined that the automobile had been stolen.[108] He then searched the car and seized contraband.[109] The court reasoned that the "New Jersey Vehicle Code is not something the officer is reasonably expected to know" in California.[110] Though the officer made a mistake of law when he stopped the vehicle, his mistake could have been reasonable because the law was foreign.[111] But the officer's actions may be unreasonable "if the vehicle was from a contiguous sister state or if that state's motorists routinely drive along" California's roads.[112] Further, the court reasoned that it must consider the officer's conduct in light of two competing considerations: Fourth Amendment protections and governmental interests.[113]

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101. *Id.* at 826–27.
102. *Id.* at 828.
103. *Id.*
104. *Washington*, 455 F.3d at 828.
105. *See* People v. Glick, 250 Cal. Rptr. 315, 319 (Cal. Ct. App. 1988); *see also* Logan, *supra* note 45, at 81–82.
106. *Glick*, 250 Cal. Rptr. at 316.
107. *Id.*
108. *Id.*
109. *Id.*
110. *Id.* at 319.
111. *Id.* at 317–19.
112. *Glick*, 250 Cal. Rptr. at 319.
113. *Id.*

Thus, the minority view does not differentiate between mistakes of law and mistakes of fact. Instead, mistakes of law are allowed provided that the mistake is reasonable.[114] This standard considers a number of factors, including police training, previous rulings, ambiguity in the law, legislative history, and state custom and practices to review the officers' behavior. However, courts have made it clear that previous mistakes by the officer do not make future stops based on the same mistake objectively reasonable. In sum, if the court can determine that the officer acted reasonably, the fruits of the search are admissible.

III. ANALYSIS

This Comment argues that all courts should allow reasonable mistakes of law. Further, even if a mistake of law is not objectively reasonable, the exclusionary rule should not automatically apply. Because the exclusionary rule is an extreme remedy, its use should be limited, consistent with the Supreme Court's guidance in *Davis v. United States*. This Part first argues that the justifications for the majority view, which prohibits mistakes of law, lack merit. It then proposes that the minority view more closely adheres to Supreme Court precedent.

A. The Majority View's Reasoning Lacks Merit

The majority view makes four assertions for why mistakes of law lead to the application of the exclusionary rule—none of these stands up to scrutiny.

1. An Officer Should Know the Law

The first assertion argues that officers should know the law, and, therefore, mistakes of law are not objectively reasonable.[115] This argument is weak given the complexity of laws across the states.[116] Even the Supreme Court expressed its concerns about an officer's

114. United States v. Smart, 393 F.3d 767, 770 (8th Cir. 2005); United States v. Sanders, 196 F.3d 910, 913 (8th Cir. 1999).

115. United States v. Chanthasouxat, 342 F.3d 1271, 1280 (11th Cir. 2003).

116. Professor Wayne Logan noted:

> A prime justification for forgiving police mistakes of law lies in the enormous number and often-technical nature of low-level offenses that commonly serve as bases to stop and arrest individuals. The expectation that the law is "definite and knowable" is no more tenable for police today than it is for the lay public. State, local, and federal codes overflow with provisions—often of a *malum prohibitum* or regulatory nature—prescribing what individuals must or must not do. For police, as noted at the outset, the profusion has coalesced with decisional law, which, in broadening the gamut of positive

ability to handle the complexities of the law in *Atwater v. City of Lago Vista.*[117] In *Atwater*, the court stated that it "is not merely that we cannot expect every police officer to know the details of frequently complex penalty schemes . . . but that penalties for ostensibly identical conduct can vary on account of facts difficult (if not impossible) to know at the scene of an arrest."[118] And in *Virginia v. Moore*, the Court reiterated its concern that state law can be vague and complicated.[119]

Opponents argue that officers can learn the law through advances in technology, especially dashboard computer systems.[120] However, this request is unrealistic, which can be illustrated with a simple vehicle registration mistake regarding an out of state license plate. Opponents seem to want officers to recognize the violation, check the license plate, look up the law in that state, interpret that law, and then make the stop. But, given the split-second nature of law enforcement, officers cannot be expected to take such measures. Moreover, the opponents seem to want officers to not only know the out-of-state law, but also to interpret it, which is outside the realm of even experienced attorneys.

2. *The Exclusionary Rule Encourages Officers to Learn the Law*

The majority view argues that if courts exclude evidence due to an officer's mistake, officers will be encouraged to learn the law to prevent future exclusions. The problem with this line of reasoning is that in many of the cases the officers made a reasonable effort to learn the law, but simply misapplied it.[121] In addition, when officers make a

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law justifying seizures, has had the ancillary effect of increasing the substantive knowledge demands imposed on police.

Logan, *supra* note 45, at 83.

117. Atwater v. City of Lago Vista, 532 U.S. 318 (2001).

118. *Id.* at 348

119. Virginia v. Moore, 553 U.S. 164, 175 (2008) ("Incorporating state-law arrest limitations into the Constitution would produce a constitutional regime no less vague and unpredictable than the one we rejected in *Atwater*. The constitutional standard would be only as easy to apply as the underlying state law, and state law can be complicated indeed.").

120. *See* Logan, *supra* note 45, at 84. ("The volume-and-complexity argument, however, collapses under its own weight. . . . Such a view, even if not rejected on democratic-governance concerns alone, would appear especially unjustified given unprecedented improvements in the educational backgrounds of police and ready access to substantive law, including via dashboard computers." (footnotes omitted)).

121. *See, e.g.*, United States v. McDonald, 453 F.3d 958, 959–60, 962 (7th Cir. 2006) (stating that the officer consulted his "Offense Code Book"); United States v. Chanthasouxat, 342 F.3d 1271, 1278 (11th Cir. 2003) (noting that both training and a magistrate had informed the officer of the law); United States v. Lopez-Soto, 205 F.3d 1101, 1103 (9th Cir. 2000) (stating that the officer's knowledge came from police academy training).

reasonable attempt to learn and apply the law, excluding the evidence interrupts important policing functions. Officers serve to protect society and excluding evidence of crimes interrupts this function, which in turn hinders the ability of officers to keep the public safe from violent criminals.[122] Supreme Court precedent mandates that the exclusionary rule should be used sparingly and must balance the rights of the accused against society.[123] A blanket rule that excludes the fruits of a search is an unnecessarily harsh burden on society when officers make reasonable mistakes of law.

Furthermore, the majority view's approach of applying the exclusionary rule is inconsistent with Supreme Court jurisprudence. In *Herring v. United States*, the Court indicated its unwillingness to apply the exclusionary rule to officer errors when it reviewed whether a mistake in a police database could support a search and seizure.[124] Though *Herring* does not refer to mistakes of law, it demonstrates the Court's restraint in applying the exclusionary rule, as well as the rule's ability, or lack thereof, to curtail officer misbehavior.[125] Specifically, the court stated that the "fact that a Fourth Amendment violation occurred . . . does not necessarily mean that the exclusionary rule applies"; in fact, this view has been "repeatedly rejected."[126] Further, the court reasoned that when applying the rule "deterrence must outweigh the costs" because of the "'rule's costly toll upon truth-seeking and law enforcement objectives.'"[127] Thus, automatically applying the exclusionary rule is incorrect and courts need to weigh deterrence versus the important policing functions officers perform.

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122. Davis v. United States, 131 S. Ct. 2419, 2427 (2011) ("And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment. Our cases hold that society must swallow this bitter pill when necessary, but only as a 'last resort.' For exclusion to be appropriate, the deterrence benefits of suppression must outweigh its heavy costs." (citations omitted)).

123. *See* Craig M. Bradley, *Criminal Law: Is the Exclusionary Rule Dead?*, 102 J. CRIM L. & CRIMINOLOGY 1, 3–4 (2012) ("[T]he Court, per Justice Scalia, held that the exclusionary rule should only apply in cases 'where its deterrent benefits outweigh it substantial costs.'" (quoting Hudson v. Michigan, 547 U.S. 586, 591 (2006)). "In a later case, the Court agreed that the evidence found should not have been suppressed [and] reiterated *Hudson*'s unfounded statement that 'exclusion "has always been our last resort, not our first impulse."'" *Id.* at 5 (quoting Herring v. United States, 555 U.S. 135, 140 (2009)).

124. *See* Herring v. United States, 555 U.S. 135, 137–40 (2009); *see also* Logan, *supra* note 45, at 85.

125. *See Herring*, 555 U.S. at 143; *see also* Logan, *supra* note 45, at 86 ("While *Herring* did not involve a mistake of law, its rationale aligns with judicial inclination to forgive police mistakes of law. Early expression of the view is found in the Fifth Circuit's en banc decision in *United States v. Williams*, cited by the *Leon* majority." (footnotes omitted)).

126. *Id.* at 140–41.

127. *Id.* at 141 (quoting Pennsylvania Bd. of Probation & Parole v. Scott, 524 U.S. 357, 364–365 (1998)).

Although a main point of support for the majority view is that it encourages officers to learn the law, this argument flies in the face of Supreme Court precedent.[128] The Court stated that "the abuses that gave rise to the exclusionary rule featured intentional conduct that was patently unconstitutional."[129] According to the Court, "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system."[130] Further, the Court stated that the exclusionary rule "serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systematic negligence,"[131] and concluded that mere negligence by an officer does not justify invoking the exclusionary rule.[132]

Lastly, there is concern as to whether the exclusionary rule is even an effective deterrent and shaper of officer behavior.[133] Professor Thomas K. Clancy examined the empirical evidence and determined that "there has been no convincing studies on the matter."[134] Though the majority of lower courts look to use the exclusionary rule to deter officer behavior, there are doubts about the exclusionary rule's effect.[135] Therefore, a primary justification for the majority view is undermined by the empirical evidence on the issue.

In sum, the majority view's use of the exclusionary rule does not adhere to Supreme Court precedent. The rule excludes evidence without weighing it against the officers' actions, which has great consequences to the justice system. Given that the exclusionary rule itself may not be an effective deterrent, the minority rule more accurately reflects Supreme Court guidance by weighing the circumstances surrounding the stop and determining whether the officer's conduct requires the application of the exclusionary rule.

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128. Orin S. Kerr, *Good Faith, New Law, and the Scope of the Exclusionary Rule*, 99 GEO. L.J. 1077, 1087 (2011) ("In every Supreme Court good faith case, the Supreme Court has found the claim of nonpolice deterrence unpersuasive and ruled in favor of the government . . . .").

129. *Herring*, 555 U.S. at 143.

130. *Id.* at 144.

131. *Id.*

132. *Id.* at 147–48.

133. CLANCY, *supra* note 25, § 13.1.

134. *Id.*

135. *Id.*

3. *Allowing Mistakes of Law Will Create Abuse*

The third argument made by the majority view is that allowing mistakes of law provides an opportunity for abuse.[136] The minority view, however, prevents abuse as effectively as the majority view. If an officer makes a stop based on a mistake of law, the onus is on the officer to demonstrate that the mistake was reasonable.[137] During this process, the court will have a number of opportunities to determine whether the officer acted reasonably.[138] If the officer fails to make an appropriate demonstration, the court can rule that the mistake was not reasonable and exclude the evidence.[139] This additional inquiry will not burden the court; the court is familiar with reviewing police activity under the mistake of fact construct and can easily extend that to mistake of law. Analyzing mistakes of law under the familiar reasonableness standard used for mistakes of fact would actually reduce the threat of pretextual stops because courts can exclude evidence based on an unreasonable mistake of law.

4. *Allowing Mistakes of Law Undermines the Separation of Powers*

The majority view's fourth concern is that allowing mistakes of law will reduce judicial authority and undermine the separation of powers.[140] It is the legislature's responsibility to write laws and courts' responsibility to interpret them.[141] By providing officers in the executive branch the opportunity to expand laws by changing their interpretation, the roles of both the legislature and the executive are supposedly infringed.[142] However, courts that allow mistakes of law have not abdicated this power and continue to review the officer's actions for reasonableness.[143] The Eighth Circuit has not offered a blank check to officers; in fact, in *United States v. Washington*, the

136. United States v. Lopez-Valdez, 178 F.3d 282, 289 (5th Cir. 1999) ("But if officers are allowed to stop vehicles based upon their subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred, the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive.").

137. United States v. Washington, 455 F.3d 824, 828 (8th Cir. 2006) (stating the court did not find the officer's actions to be reasonable because "the government has not presented any evidence of police manuals or training materials, state case law, legislative history, or any other state custom or practice that would create some objectively reasonable basis for the traffic stop").

138. *See* United States v. Martin, 411 F.3d 998, 1000 (8th Cir. 2005) (reviewing the code to determine whether the officer's interpretation was reasonable).

139. *Id.*

140. *See* Logan, *supra* note 45, at 95–96.

141. *Id.*

142. *Id.*

143. *See, e.g.*, Hinojosa v. State, 319 S.W.3d 258, 262 (Ark. 2009); State v. Horton, 246 P.3d 673, 675–76 (Idaho Ct. App. 2010).

court held that the stop was unreasonable.[144] As illustrated above, though the majority asserts that allowing mistakes of law damages the separation of powers, there is no evidence that this is in fact occurring.

B. Allowing Mistakes of Law Comports with U.S. Supreme Court Jurisprudence

The Supreme Court has not ruled on whether the exclusionary rule should be applied when an officer stops a vehicle based on a mistake of law. However, allowing mistakes of law and limiting the exclusionary rule fits within Supreme Court precedent. The majority view conflicts with *United States v. Arvizu*, which uses a totality-of-the-circumstances test when judging reasonable suspicion and curtailing the use of the exclusionary rule. Moreover, following *Arvizu*, the Court further limited the use of the exclusionary rule in *Davis v. United States*.

1. United States v. Arvizu

The majority view's approach regarding mistakes of law does not comport with the Supreme Court's reasoning in *United States v. Arvizu*.[145] In *Arvizu*, the Court reviewed an officer's stop and subsequent seizure of drugs from a vehicle near the United States–Mexico border.[146] Although the driver did not break any traffic laws, the officer believed that the driver was smuggling drugs.[147] The Ninth Circuit reversed the trial court and suppressed the evidence, reasoning that the officer lacked reasonable suspicion for the stop.[148] However, the Supreme Court held that the search was reasonable.[149] The Court reiterated that courts should apply a totality-of-the-circumstances test from the standpoint of an objective officer when determining the reasonableness of a search.[150] The Court further stated that the factors should not be weighed separately, but rather should be taken together as a "mosaic."[151] In addition, the Court stated that lower courts should not break reasonable suspicion into "a neat set of legal

144. United States v. Washington, 455 F.3d 824, 828 (8th Cir. 2006).

145. United States v. Arvizu, 534 U.S. 266 (2002).

146. *Id.* at 268.

147. *See id.* at 269–71.

148. *Id.* at 272.

149. *Id.* at 277–78.

150. *Id.* at 273 ("[W]e have said repeatedly that [courts] must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for a suspecting legal wrongdoing." (quoting United States v. Cortez, 449 U.S. 411, 417–18 (1981))).

151. *See Arvizu*, 534 U.S. at 275–78.

rules."[152] In fact, one of the primary purposes of *Arvizu* was to reject the rules appellate courts created to review officer stops.[153]

When comparing *Arvizu* and the majority view, inconsistencies arise. The first is that a strict standard treating all mistakes of law as unreasonable fails to follow the totality-of-the-circumstances approach. By considering only the category of the officer's mistake, the court does not consider the "mosaic" and places undue weight on the officer's error. Second, the majority view is a "neat set of legal rules," which the court warned against in *Arvizu*.[154] Indicating that mistakes of law cannot be objectively reasonable turns the fluid reasonable suspicion standard into a bright line rule—a view the U.S. Supreme Court rejects in similar contexts.[155]

2. Davis v. United States

After *Arvizu*, the Court decided *Davis v. United States*,[156] which addressed whether the fruits of a search could be used following the Eleventh Circuit's incorrect interpretation of *New York v. Belton*.[157] Two years before *Arizona v. Gant*, the officer in *Davis* relied on *Belton* and searched the defendant's entire car after a traffic stop.[158] The defendant was convicted because "the Eleventh Circuit had long read *Belton* to establish a bright-line rule authorizing substantially contemporaneous vehicle searches incident to arrests of recent occupants."[159] However, while *Davis* was pending on appeal to the Eleventh Circuit, the Supreme Court in *Arizona v. Gant* limited the scope of *Belton*, which made the scope of search in *Davis* illegal.[160]

The Eleventh Circuit then upheld the defendant's conviction because, although the Supreme Court had limited *Belton* with the recent *Gant* decision, "penalizing the officer" for relying on appellate precedent would not deter future violations."[161] The case was then appealed to the Supreme Court where the ruling was upheld.[162] The Court stated that "[e]vidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclu-

152. *Id.* at 274 (internal quotations omitted).

153. *Cf.* Jennifer Pelic, Note, United States v. Arvizu: *Investigatory Stops and the Fourth Amendment*, 93 J. CRIM. L. & CRIMINOLOGY 1033, 1037 (2003).

154. *Arvizu*, 534 U.S. at 274.

155. *Id.* at 275–78.

156. Davis v. United States, 131 S. Ct. 2419, 2428 (2011).

157. New York v. Belton, 453 U.S. 454, 460 (1981).

158. *Davis*, 131 S. Ct. at 2426.

159. *Id.*

160. *Id.*

161. United States v. Davis, 598 F.3d 1259, 1265–66 (2010).

162. *Davis*, 131 S. Ct at 2429.

sionary rule."[163] The Court reasoned that when an officer relies on a judicial decision and that judicial decision is overruled, the officer, though operating under a mistake, should not be penalized.[164] In addition, the Court took the opportunity to reiterate that "[e]xclusion exacts a heavy toll on both the judicial system and society at large [because] its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community."[165] The Court concluded by stating that exclusion was a "last resort" and that "the deterrence benefits of suppression must outweigh its heavy costs."[166]

The *Davis* ruling was unsurprising in light of *Arvizu* and *Gant*.[167] What *Davis* provided was a reinforcement of the sentiment expressed in *Herring*: that the use of the exclusionary rule should be limited and the benefits of deterrence must be weighed against societal costs.[168] Simple negligence by officers is insufficient to invoke the exclusionary rule and, given the societal impact of excluding evidence of criminal activity, courts should be careful with its application.[169] Through the blanket use of the exclusionary rule, the majority view fails to reflect the Supreme Court's restrained application of the rule, which balances the rights of the accused against the benefits to society.

IV. IMPACT

Allowing officers to make reasonable mistakes of law and fact is advantageous in two ways: (1) courts no longer need to distinguish between mistakes of law and fact, and (2) societal interests are fully protected. These advantages weaken the majority view and provide a more workable solution.

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163. *Id.*

164. *Id.* at 2429–30.

165. *Id.* at 2428.

166. *Id.*

167. James J. Tomkovicz, Davis v. United States*: The Exclusion Revolution Continues*, 9 OHIO ST. J. CRIM. L. 381, 392 (2011) ("This good faith exception for Fourth Amendment errors by judges and faultless law enforcement conduct—i.e., officers lacking even negligence—was consistent with precedent.").

168. *See id.* at 393 ("In sum, *Davis* delivered an unmistakable doctrinal message: the culpability threshold announced in *Herring* was no passing fancy or trial balloon. It is a serious and demanding prerequisite precluding suppression in the absence of a sufficiently blameworthy Fourth Amendment violation by law enforcement.").

> The basic insight of the *Leon* line of cases is that the deterrence benefits of exclusion "var[y] with the culpability of the law enforcement conduct" at issue . . . . [W]hen the police act with an objectively "reasonable good-faith belief" that their conduct is lawful, *or* when their conduct involves only simple, "isolated" negligence, the "deterrence rationale loses much of its force," and exclusion cannot "pay its way."

See Bradley, *supra* note 123, at 8 (alteration in original) (quoting *Davis*, 131 S. Ct. at 2427–28).

169. *Davis*, 131 S. Ct. at 2428–29.

A. *Mistakes of Law and Fact Are Difficult to Differentiate*

One flaw of the majority view is that it assumes mistakes of law and mistakes of fact are easily differentiated, when in reality they are interrelated.[170] By allowing both mistakes of law and mistakes of fact, the underlying reasonableness of the officer's actions become easier to evaluate. Because there are no clear rules to determine which type of mistake the officer made, the seizure is not reviewed on the merits of the stop and whether the officer acted reasonably.[171] Instead, the court rules on which mistake the officer made, which is not easy to differentiate.[172] This difficulty in distinguishing the two errors leads to inconsistent or incorrect outcomes.[173] The Tenth Circuit case *United States v. Pena-Montes* and the Idaho Supreme Court case of *State v. Horton* demonstrate this concern.[174]

In *Pena-Montes*, an officer stopped the vehicle because he did not see a license plate.[175] During the stop, the officer discovered permits in the window, but was unable to discern what type they were because of the window's tint, so he extended the stop to ensure the tags were proper.[176] Although the car had registration permits, the officer thought he saw dealer plates that were restricted to demonstration purposes,[177] and because it was past 9:00 PM, he believed the driver was violating the statute governing the use of dealer plates.[178] In New Mexico, dealers are given dealer plates for demonstration purposes. On the other hand, temporary registration permits, which are similarly issued to dealers, are also used by car purchasers until they acquire permanent license plates.[179] The officer's understanding of the dealer plate statute was correct in that they were restricted to demonstration purposes. However, the vehicle did not have dealer plates; rather, the defendant had the appropriate registration permits.

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170. Michael L. Seigel, *Bringing Coherence to Mens Rea Analysis for Securities-Related Offenses*, 2006 WIS. L. REV. 1563, 1565 ("Courts, however, have neither consistently applied nor fully developed these doctrines; confusion on the precise distinction between the two has reigned." (footnotes omitted)).

171. *Id.* at 508 (noting that in *Regina v. Morgan* the House of Lords was "far from alone in stumbling over the distinction between mistake of fact and mistake of law.").

172. *Id.*

173. *See* United States v. Arias, 213 F. App'x 230, 232–33 (4th Cir. 2007) (stating that the defendant did not violate the law, but incorrectly classifying the officer's mistake as one of fact not law). *Compare* United States v. Pena-Montes, 589 F.3d 1048 (10th Cir. 2009) (O'Brien, J., concurring), *with* State v. Horton, 246 P.3d 673 (Idaho Ct. App. 2010).

174. *See Pena-Montes*, 589 F.3d 1048; *Horton*, 246 P.3d 673.

175. *Pena-Montes*, 589 F.3d 1048.

176. *Id.*

177. *Id.*

178. *See id.* at 1051, 1053.

179. *Id.* at 1063 (O'Brien, J., concurring).

During the extended search, the officer discovered a handgun that was in the car and learned that one of occupants was an illegal immigrant.[180] The court held that the officer prolonged the stop based on a mistake of law and excluded the evidence.[181] The court reasoned that if the officer had known the law, once he saw that the vehicle had proper registration permits, and not dealer plates, he should have stopped his investigation and allowed the occupants to leave.[182] The court held that the suspicion about the incorrect use of dealer plates would have been resolved and, therefore, there was no longer a reasonable suspicion.

The concurring opinion, however, asserted that the mistake was not one of law, but one of fact.[183] The concurrence reasoned that the officer correctly understood the law concerning dealer plates, but misidentified the type of plate the defendant was using.[184] As the officer approached the vehicle he saw the permit but the tinting made the plate hard to discern.[185] This misunderstanding of what type of plate or permit the vehicle had constituted a mistake of fact and could have extended the stop.[186]

Similarly, in *State v. Horton*, the officer mistook the proper use of a special license plate.[187] The officer stopped the vehicle on suspicion of improper license plates, but, in fact, the driver had repossession plates and was not violating the law.[188] During the stop, the officer searched the vehicle and seized drugs.[189] At trial, the officer testified that "although he was aware that Idaho repossession plates existed, he had never seen one and was unaware" of their designation.[190] The trial court admitted the evidence after finding that the officer committed a reasonable mistake of fact.[191] The appellate court agreed, holding that the officer was not mistaken about the law, but about whether the plate "was a designated repossession plate."[192] The appellate

180. *See id.* at 1051 (majority opinion).
181. *Pena-Montes*, 589 F.3d at 1053–58.
182. *Id.* at 1057–58.
183. *Id.* at 1059 (O'Brien, J., concurring).
184. *Id.* at 1064.
185. *Id.* at 1061–63.
186. *Id.*
187. State v. Horton, 246 P.3d 673, 674–75 (Idaho Ct. App. 2010).
188. *Id.*
189. *Id.* at 674.
190. *Id.* at 676.
191. *Id.* at 677.
192. *Id.* at 676–77.

> Here, the officer did not know that the lettering designation "RPO" was used for an Idaho repossession plate. While the officer had heard of repossession dealer plates, he had never seen one and was unable to distinguish or identify its designation. His mis-

court reasoned that because the officer was unfamiliar with repossession plates and the controlling statute, the mistake was more akin to one of fact instead of law.[193]

In both *Horton* and *Pena-Montes*, the officers misunderstood whether the driver was using a valid license plate. However, each court classified the mistake differently. *Horton* framed the case as whether the officer thought the plate was a repossession plate, but *Pena-Montes* relied on whether the officer correctly understood the dealer tag regulations. In addition, the concurrence in *Pena-Montes* believed the mistake was one of fact, not law. Both cases demonstrate how mistakes of fact and law are intertwined.

Instead of applying the confusing fact–law distinction, courts should use the objectively reasonable standard for all mistakes. The advantage to this analysis is that all officer mistakes are judged by one standard: reasonableness. This will increase the predictably of outcomes for all parties.

Importantly, the court is already familiar with the objectively reasonable analysis because it uses it for mistakes of fact. Both parties would be able to aid the court's analysis by introducing evidence and testimony about whether the mistake was objectively reasonable.[194] The court would then apply a familiar test and determine whether the officer acted reasonably, thus avoiding the pitfalls of the mistake of law–fact distinction.

B. The Majority View Fails to Protect Society's Interests

By bifurcating officer mistakes of law and fact, courts fail to consider society's interest and create unnecessary ambiguity, making it difficult for officers to do their job. This Comment has focused solely on traffic stops because the jurisprudence on this topic is all traffic-stop related. However, if the scenario moves beyond traffic stops, does the majority view's reasoning still apply? For example, assume that an officer is walking a beat in Chicago a day after *McDonald v. Chicago*, which invalidated Chicago's handgun ordinance.[195] Assume that the officer sees an individual carrying a handgun and stops him. Upon searching that individual he finds drugs and later discovers that

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take was not the law generally regarding a repossession agent plate or its legal existence, but whether, in fact, the plate on this vehicle was a designated repossession plate. *Id.*

193. *Horton*, 296 P.3d at 676–77.

194. *See, e.g.*, United States v. Washington, 455 F.3d 824, 827 (8th Cir. 2006); United States v. Martin, 411 F.3d 998, 1000–01 (8th Cir. 2005).

195. McDonald v. City of Chicago, 130 S. Ct. 3020, 3050 (2010).

the gun was used in homicide. Using the majority analysis, the officer made a mistake of law; the Chicago ordinance no longer applies and the officer should have known. Per the majority, this mistake is unreasonable and the exclusionary rule must be applied. Here two harms occur. First, the defendant walks and society as a whole suffers. Second, the officer may question his actions next time he sees another violation of the law.

First, the majority fails to recognize the need to balance society's interest against the rights of the defendant. When officers make mistakes they are performing important police functions that benefit society.[196] In *United States v. Leon*, the Supreme Court stated that "when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system."[197] The need to balance society's interest is supported in *Illinois v. Krull*, *Herring v. United States*, and *Davis v. United States*.[198] In an effort to protect both society and the individual, it is optimal to allow a court to balance the rights of individuals and the importance of law enforcement. This balancing only occurs when courts allow mistakes of law to be objectively reasonable.

Secondly, the primary reasoning for allowing mistakes of fact is that officers on the streets encounter numerous ambiguous situations every day. Officers are forced to make split-second decisions on whether to stop an individual that they perceive is about to commit a crime. Courts recognize this by allowing officers to make reasonable errors in good faith. If the court did not allow officers to make these reasonable mistakes, it would force them to second guess both their training and instincts.[199]

The same reasoning should apply to mistakes of law. The same concerns about split-second decision making and the importance of police functions apply to mistakes of fact apply to mistakes of law. When officers see a possible violation, they should stop the individuals to

196. Davis v. United States, 131 S. Ct. 2419, 2427 (2011); *see also* People v. Glick, 250 Cal. Rptr. 315, 319 (Cal. Ct. App. 1988) (discussing the balancing of the Fourth Amendment rights of individuals with the important governmental interest in keeping unsafe and stolen vehicles off the road).

197. United States v. Leon, 468 U.S. 897, 908 (1984).

198. Herring v. United States, 555 U.S. 135, 141 (2009) ("[T]he benefits of deterrence must outweigh the costs. . . . '[T]o the extent that application of the exclusionary rule could provide some incremental deterrent, that possible benefit must be weighed against [its] substantial social costs.'" (alteration in original)).

199. *See, e.g.*, Michigan v. Long, 463 U.S. 1032, 1048–50 (1983); State v. Miglavs, 63 P.3d 1202, 1210 (Or. Ct. App. 2003).

clear up any confusion instead of having to think about what type of mistake they are making. By treating all mistakes the same, officers no longer need to worry about the type of mistake, but only whether the mistake is reasonable. Officers can continue to perform important police functions without second guessing their actions.

V. CONCLUSION

Courts should adopt the minority approach and allow officers to make reasonable mistakes of law. By allowing reasonable mistakes of law courts will be using one standard, rather than relying on the subtle difference between mistakes of law and fact. Also, an officer will be able to do his job without worrying about whether his mistake will be fatal.

Allowing officers to make objectively reasonable mistakes of law will protect constitutional rights while enhancing overall protection for society. The majority view's primary argument is that allowing mistakes of law will discourage officers from learning the law and create opportunities for abuse. The minority's view, however, offers the same protections as the majority view. When an officer makes a mistake of law, the court reviews the officer's conduct and excludes evidence if the mistake was unreasonable. This balancing already occurs under the mistake of fact analysis and has proven successful in the Eighth Circuit. This judicial review will provide the protections the majority desires.

Additionally, the minority view provides the added benefit of both societal and officer protection. First, by allowing objectively reasonable mistakes of law, officers can continue to provide important policing functions that protect society as a whole. Instead of the automatic exclusion, the court is able to review the officer's actions and make a determination on whether they were reasonable and if the fruits of the search should be admitted. Secondly, officers are protected by allowing mistakes of law. Similar to mistakes of fact, officer's encounter ambiguous situations on a daily basis that require split-second decision making. By allowing objectively reasonable mistakes of law, the court enables the officer to make decisions without having to second guess their actions.

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* Thanks to Professor Linus Chan for his assistance with the article. This is for Renée and Madeleine.