No. 13-604

In the
Supreme Court of the United States

NICHOLAS BRADY HEIEN,
Petitioner,

v.

NORTH CAROLINA,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of North Carolina

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a police officer's objectively reasonable mistake of law can provide reasonable suspicion sufficient to justify a traffic stop under the Fourth Amendment.

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CITATION TO OPINION BELOW

The opinion of the Supreme Court of North Carolina is reported at *State v. Heien*, 737 S.E.2d 351 (N.C. 2012), and is reproduced in the appendix to the petition.

JURISDICTION

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a) to review the opinion of the Supreme Court of North Carolina.

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. IV.

STATEMENT

The Fourth Amendment permits a law enforcement officer to stop a motor vehicle when there is reasonable suspicion that a law has been violated. The North Carolina Supreme Court held in this case that a reasonable mistake of law, like a reasonable mistake of fact, can provide reasonable suspicion.

1. Early one morning in 2009, Sergeant Matt Darisse of the Surry County Sheriff's Department was observing traffic on Interstate 77 when he saw a Ford Escort in which petitioner was a passenger approach a slower moving vehicle. When the driver of the Escort

applied the car's brakes, the right rear brake light failed to illuminate. (Pet. App. 2a)

2. Sergeant Darisse stopped the Escort and informed the driver, Maynor Javier Vasquez, that he stopped the car "for a nonfunctioning brake light." Sergeant Darisse ultimately issued Vasquez a warning ticket for the brake light. (Pet. App. 2a)

3. During the stop, Sergeant Darisse apparently began to suspect the Escort could contain contraband. Because petitioner and Vasquez gave Sergeant Darisse conflicting information, Sergeant Darisse asked Vasquez if he could search the vehicle. Vasquez had no objection, but he said that Sergeant Darisse should ask petitioner because the vehicle belonged to him. Petitioner consented to the search. (Pet. App. 2a-3a)

4. A search of the Escort revealed cocaine. Both petitioner and Vasquez were charged with trafficking in cocaine. (Pet. App. 3a)

5. Petitioner filed a pretrial motion to suppress the evidence. The trial court denied the motion. (Pet. App. 3a-5a)

6. Petitioner, while reserving his right to appeal from the denial of his motion to suppress, pleaded guilty to two counts of attempted trafficking in cocaine and was sentenced to consecutive terms of ten to

twelve months imprisonment. On the same date, he gave notice of appeal. (Pet. App. 31a)

7. The North Carolina Court of Appeals reversed the denial of petitioner's motion to suppress, holding the officer's basis for stopping petitioner was not objectively reasonable because North Carolina law requires only one functioning brake light. *State v. Heien*, 714 S.E.2d 827, 831 (N.C. Ct. App. 2011).

8. The North Carolina Supreme Court subsequently granted discretionary review and reversed the decision of the North Carolina Court of Appeals, holding there was reasonable suspicion to stop petitioner's vehicle. *State v. Heien*, 737 S.E.2d 351, 359 (N.C. 2012).

9. On remand, the North Carolina Court of Appeals held petitioner's consent to search was valid. *State v. Heien*, 741 S.E.2d 1, 5-6 (N.C. Ct. App. 2013).

10. The North Carolina Supreme Court then affirmed the decision of the North Carolina Court of Appeals. *State v. Heien*, 749 S.E.2d 278 (N.C. 2013).

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioner contends a police officer's mistake of law can never be objectively reasonable or serve as the

basis for reasonable suspicion. Because this case is not an appropriate vehicle for resolving this relatively rare issue, petitioner has failed to show a compelling reason for this Court to grant certiorari.

I. THERE IS NOT A SIGNIFICANT CONFLICT AS TO THIS ISSUE.

Petitioner cites to a number of cases from various jurisdictions to support the existence of a conflict in the lower courts. Although there is a conflict, petitioner overstates the degree of that conflict.

Many jurisdictions reject the distinction between a mistake of law and a mistake of fact, directing their focus solely on the objective reasonableness of the officer's conduct. *See, e.g., United States v. Smart*, 393 F.3d 767, 770 (8th Cir.), *cert. denied*, 545 U.S. 1121 (2005); *United States v. Ramirez*, 115 F. Supp. 2d 918, 923 (W.D. Tenn. 2000), *aff'd sub nom. United States v. Moreno*, No. 01-5321, 2002 U.S. App. LEXIS 15398 (6th Cir. 2002); *Travis v. State*, 959 S.W.2d 32, 34 (Ark. 1998); *Stafford v. State*, 671 S.E.2d 484, 485 (Ga. 2008); *Moore v. State*, 986 So. 2d 928, 935 (Miss. 2008); *City of Bowling Green v. Godwin*, 850 N.E.2d 698, 702 (Ohio 2006); *State v. Wright*, 791 N.W.2d 791, 798-99 (S.D. 2010); *DeChene v. Smallwood*, 311 S.E.2d 749, 751 (Va.), *cert. denied*, 469 U.S. 857 (1984). On the other hand, there also are jurisdictions that distinguish between mistakes of law and mistakes of

fact, holding certain mistakes of law objectively unreasonable. *See, e.g.*, *United States v. Valadez-Valadez*, 525 F.3d 987, 991 (10th Cir. 2008); *United States v. Coplin*, 463 F.3d 96, 101 (1st Cir. 2006), *cert. denied*, 549 U.S. 1237 (2007); *United States v. Chanthasouxat*, 342 F.3d 1271, 1276 (11th Cir. 2003).

Some decisions finding Fourth Amendment violations based on mistakes of law rest, however, on circumstances that are not present in the instant case, and their logic does not conflict significantly with the holding of the North Carolina Supreme Court. For example, some courts have found no objective basis for a stop where stops were based on an officer's mistaken belief that a state law existed covering the conduct when no such law existed. *See, e.g.*, *United States v. Lopez-Soto*, 205 F.3d 1101, 1106 (9th Cir. 2000); *United States v. Miller*, 146 F.3d 274, 278 (5th Cir. 1998). Other courts have found a lack of reasonable suspicion when stops were based on a mistaken and *unreasonable* reading of a valid state law. *See, e.g.*, *United States v. McDonald*, 453 F.3d 958, 960 (7th Cir. 2006); *United States v. Tibbetts*, 396 F.3d 1132 (10th Cir. 2005); *United States v. Twilley*, 222 F.3d 1092 (9th Cir. 2000); *United States v. Lopez-Valdez*, 178 F.3d 282, 288-89 (5th Cir. 1999). These courts simply

require that the legal justification for a traffic stop be objectively grounded. *See Miller*, 146 F.3d at 279.[1]

In the present case, the legal justification for the stop was objectively grounded. The North Carolina Supreme Court determined that, despite the mistake of law, an objectively reasonable officer would or could have stopped petitioner's vehicle for an apparent violation.

To the extent that there remains a conflict, this Court has not previously found this conflict to be sufficiently compelling to merit review. This Court has declined to review the Eighth Circuit's holdings in *United States v. Smart*, 393 F.3d 767 (8th Cir.), *cert. denied*, 545 U.S. 1121 (2005), and more recently in *United States v. Hastings*, 685 F.3d 724 (8th Cir. 2012), *cert. denied*, 133 S. Ct. 958 (2013). *See also United States v. Southerland*, 486 F.3d 1355, 1358-59 (D.C. Cir.) (declining to review the holding that "the

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[1] Contrary to petitioner's representation, the *Miller* Court did not consider the mistaken interpretation of law one that any objectively reasonable officer would make when interpreting the statute; the Court simply noted that the prosecution argued a "reasonable person" would think the conduct *should* violate the law because the public would otherwise be endangered if such a law did not exist. *Miller*, 146 F.3d at 279. That is markedly different from the circumstances of this case.

question to be answered is whether it was objectively reasonable for the officers who observed his vehicle to conclude that a traffic violation had occurred"), *cert. denied*, 552 U.S. 965 (2007) .

Petitioner has failed to show any substantial conflict warranting this Court's review.

II. THE QUESTION PRESENTED IS NOT CRITICALLY IMPORTANT TO THE SOUND ADMINISTRATION OF CRIMINAL JUSTICE.

Petition contends the question presented is critically important to the sound administration of justice. However, each of petitioner's rationales or justifications for this proposition are unsupported.

A. Petitioner Has Failed To Show This Is Anything Other Than A Rare Case.

Although petitioner asserts that there were 11.7 million traffic stops in the last decade in North Carolina, he has not shown how many of those stops concern mistakes at all, let alone alleged mistakes of law. Even more rare is a case in which a mistake of law – here, a mistaken interpretation of an existing statute – has been deemed objectively reasonable by a reviewing court. Indeed, given those 11.7 million stops, it appears the appellate courts of North Carolina have found such a mistake to be reasonable only once

in that time. Assuming a similar level of rarity across the country, petitioner's citation to the number of traffic stops hardly supports review.

B. The "Good Faith Exception" Is Inapplicable Only As To Some State Constitutions.

Contrary to petitioner's contentions, the answer to the question presented would have no bearing on "the admissibility of evidence seized . . . in as many as sixteen states" (Pet. 13) because the only issue before this Court concerns the Constitution of the United States. Inasmuch as the good faith exception applies to the Fourth Amendment – and is inapplicable only in these states only under their state constitutions – this Court's review of the question is not warranted.

Petitioner appears to acknowledge[2] that under this Court's previous decisions concerning the Fourth Amendment, this same "good faith" mistake would not

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[2] Because petitioner believes this issue is outcome determinative and accepts the mistake of law as "understandable" (Pet. 16, 21), it appears he has conceded that regardless of whether a violation occurred, ordinarily the evidence would not be suppressed under the Fourth Amendment. If he has not conceded that the officer acted in objective "good faith," then the distinction he offers as "outcome determinative" cannot be correct.

warrant suppression if the good faith exception applies. *See also Davis v. United States*, 180 L. Ed. 2d 285, 293-95 (2011). He notes, however, that fourteen states have rejected, to some degree, this Court's application of the good faith exception. He further notes the reliance of the dissent at the North Carolina Supreme Court on the lack of the good faith exception in North Carolina. *See Heien*, 737 S.E.2d at 361 (Hudson, J., dissenting). What he ignores, however, is that North Carolina and other states can only prohibit application of this exception under their state constitutions. *See State v. Carter*, 370 S.E.2d 553, 554 (N.C. 1988) (holding there is no good faith exception as applied to violations of the North Carolina constitution).

This Court is not concerned with what states choose to do under their constitutions; states always remain free to broaden the rights guaranteed to their citizens beyond what the United States Constitution demands. *See Danforth v. Minnesota*, 552 U.S. 264, 288 (2008) (recognizing that a state may give its citizens broader protection than the Federal Constitution by judicial interpretation of its own constitution). Whether they have done so, however, should have no bearing on this Court's decision to grant review.

While it is true that the same fourteen state courts may continue to find that reasonable errors by the

police, other public employees, or by court officials, do not warrant the application of the good faith exception, this is not a basis for review. Those same fourteen state courts could also hold that those rare mistakes of law that might be objectively reasonable, as here, would nevertheless violate the respective provisions of their individual state constitutions, even if they did not violate the Fourth Amendment. Here, the North Carolina Supreme Court could have chosen to so hold, but it did not.

As for petitioner's citation to federal courts that may have rejected this Court's good faith exception as applied to reasonable mistakes of law, that issue is not before this Court. If this issue – whether the good faith exception can nevertheless apply to an objectively reasonable, but mistaken, statutory interpretation of law – was the issue before this Court, there might be more compelling grounds for review. The issue that is before this Court, however, has no bearing on whether the evidence is to be suppressed under federal law.

Any "odd consistency" that might arise because a state court chooses to broaden the scope of its own constitution beyond that required by the federal constitution also is not an inconsistency for this Court's consideration. This argument does not support review by this Court.

III. This Is Not An Appropriate Vehicle To Resolve The Issue.

This is not an appropriate vehicle to resolve or develop this issue further.

A. The Trial Court Did Not Rule Upon This Issue Or Resolve Facts Necessary To Its Determination.

Petitioner offers that "the State has never suggested that petitioner violated any other traffic law, [and] this mistake of law was the only possible basis for the stop." (Pet. 15) However, petitioner failed to raise this issue before the trial court either in his motion to suppress or by any argument advanced below at the pretrial hearing. Rather, petitioner appeared to concede the validity of the initial stop at the hearing.[3] (Tr. 47-53)

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[3] Petitioner's sole claim in the trial court regarding the brake light was whether it was factually operable at the time of the stop. He abandoned this claim at the hearing and conceded that any malfunction of the brake light prior to the activation of the blue lights would satisfy the stop; his only legal challenge to the stop was that it was improperly extended without his consent. (Tr. 48-50) He never argued that the officer was mistaken about the law or its interpretation or application to petitioner.

While evidence was presented that the officer activated his blue lights after observing petitioner "approach a slower moving vehicle, apply its brakes, and the right side brake light was out" (Tr. 6) and that the officer told the driver he "pulled him over for the brake light" (Tr. 9), the record is silent as to whether this was the sole basis for the stop because petitioner never challenged the legal basis for the stop. And, in fact, the officer here did not offer why, or even that, he believed petitioner had violated a specific statutory provision for that same reason.

The record also is silent as to: (1) whether there was any additional objective basis for the stop – that petitioner was following too closely, or exceeding the speed limit, *see* N.C. Gen. Stat. §§ 20-141, -152 – regardless of the officer's subjective reasons for the stop; (2) whether the officer stopped petitioner simply to inform him his brake light was out as a safety concern; or (3) whether and to what degree the officer in this case even understood, interpreted, or weighed the three existing statutes examined by the North Carolina Court of Appeals and the North Carolina Supreme Court.

Although the trial court made some findings that pertain to this issue, *see Heien*, 737 S.E.2d at 353, petitioner's failure to raise this issue to the trial court in the first instance has left the record incomplete as to a number of other facts that may be relevant to

discuss the objective basis for the stop, or whether the totality of the circumstances supported reasonable suspicion.

Because of the deficiencies in the record and lack of specific findings, this case is not an appropriate vehicle to resolve the issue before the Court.

B. The Question Presented Is Not "Outcome Determinative."

Even though North Carolina does not apply a good faith exception to its constitution, the North Carolina Supreme Court addressed only whether there was a Fourth Amendment violation. While the court did not reach the issue of whether the good faith exception applied because it found no violation, that issue would remain if this Court were to disagree.

IV. THE NORTH CAROLINA SUPREME COURT DID NOT ERR IN ITS HOLDING OR ANALYSIS.

Petitioner believes that no matter how objectively reasonable, a mistaken interpretation of a state statute can never serve as part of the totality of the circumstances justifying reasonable suspicion. In other words, any error in hindsight renders the stop per se unreasonable, and the Fourth Amendment is thus violated.

"An automobile stop is . . . subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." *Whren v. United States*, 517 U.S. 806, 810 (1996). Even a mistaken premise – a mistake of fact – can furnish grounds for a stop, if the officers do not know that it is mistaken and are objectively reasonable in acting upon it. *See Illinois v. Rodriguez*, 497 U.S. 177, 184-86 (1990). Under *Terry v. Ohio*, 392 U.S. 1 (1968), all that is required is that an officer have a "reasonable articulable suspicion that a traffic or equipment violation has occurred or is occurring." *United States v. Castillo*, 76 F.3d 1114, 1117 (10th Cir. 1996).

Reasonable suspicion is based on "commonsense, nontechnical conceptions" that are to be construed by "reasonable and prudent men, not legal technicians." *Ornelas v. United States*, 517 U.S. 690, 695 (1996). In applying this standard, this Court has consistently adopted common-sense readings and rejected hyper-technical and highly scrutinizing approaches. *Id.* at 696. This Court also has "consistently eschewed bright-line rules" like petitioner's desired per se rule, "instead emphasizing the fact-specific nature of the reasonableness inquiry." *Ohio v. Robinette*, 519 U.S. 33, 39 (1996).

And while "reasonable suspicion" demands more than "an inchoate and unparticularized suspicion or hunch," *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000)

(quotation marks omitted), "some minimal level of objective justification" is all that is required, *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quotation marks omitted). Taken together, this Court's jurisprudence stands for the proposition that an officer need not be correct in his belief that a traffic law has been violated but, instead, need only establish that his belief was objectively reasonable at the time.

As one court has noted, a per se rule

> under which the stop is invalid and the evidence suppressed if a judge later disagrees with the officer's interpretation of the law – injects too much hindsight into the process. There is no good reason to require a traffic officer to have guessed correctly in advance whether a judge will later find the officer's interpretation to have been correct, at least when we are trying to regulate what is done with evidence discovered as a result of the stop, rather than the primary conduct of the purported offender. It is enough to require the officer's interpretation to have been objectively reasonable.

United States v. Washabaugh, 2008 U.S. Dist. LEXIS 4334, *4-5 (S.D. Ohio 2008).

In contrast to the per se rule, the North Carolina Supreme Court's general approach to mistakes applies the reasonableness doctrine throughout the analysis to sort through the facts and circumstances of the case to determine if a stop tainted with mistaken impressions of the law by the police officer could nevertheless be objectively reasonable. The North Carolina Supreme Court stated:

> To require our law enforcement officers to accurately forecast how a reviewing court will interpret the substantive law at issue would transform this "commonsense, nontechnical conception" into something that requires much more than "some minimal level of objective justification." We would no longer merely require that our officers be reasonable, we would mandate that they be omniscient.

Heien, 737 S.E.2d at 357-58.

A. This Is Not Simply A Matter Of The Officer's Subjective Belief.

The mistake of law here is not simply a subjective[4] one. Rather, the North Carolina Supreme Court considered it a mistake of law which was objectively reasonable – i.e., under the totality of the circumstances, an objectively reasonable officer would have considered that same conduct under state statutes as an equipment violation. No one, and certainly not the North Carolina Supreme Court, has suggested the stop was valid because this individual officer alone subjectively believed petitioner's driving with one brake light violated the law. As petitioner recognizes, "'as long as the circumstances, viewed objectively, justify [the police officer's] action,' the officer's subjective state of mind is irrelevant." (Pet. 17 (citing *Whren*, 517 U.S. at 813)). That is precisely what the North Carolina Supreme Court held.

Petitioner also argues that reasonable suspicion is met *only* when "the facts observed by the officer establish a sufficient likelihood that a law was broken." (Pet. 17) On the contrary, reasonable

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[4] Again, there is no record evidence of the subjective knowledge or reasoning of the officer in this case, or even if he was aware of each of the three state statutes reviewed by the appellate courts, as petitioner did not challenge the stop under this legal basis in the trial court below.

suspicion does not equate to "sufficient likelihood." While certain evidence that a law has been broken would assuredly provide reasonable suspicion, an officer never needs to establish that a law was in fact, or was even likely broken, before conducting a *Terry* stop. *See also Michigan v. DeFillippo*, 443 U.S. 31, 37-40 (1979).

There is no doubt that a subjective mistake of law that is not also objectively reasonable would not satisfy reasonable suspicion. But that is not what this case concerns.

B. Petitioner Is Not Being Punished For The Officer's "Ignorance Of The Law."

Petitioner contends that "ignorance of the law is no excuse." (Pet. 18) This Court's language in *Bryan v. United States*, 524 U.S. 184, 196 (1998), has nothing to do with the law on reasonable suspicion.

While it may be true that ignorance of the law does not insulate a citizen from conviction under that law, this case does not concern petitioner's conviction for the law the officer reasonably believed was being broken. To be sure, petitioner cannot now be convicted of a rear brake light violation under the general statutes of North Carolina. As with any *Terry* stop, the analysis does not rest upon whether a conviction must follow. *Sokolow*, 490 U.S. at 7 (holding

reasonable suspicion requires "considerably less than proof of wrongdoing by a preponderance of the evidence").

There are obviously mistaken interpretations – or types of "ignorance" – of the law that could not support reasonable suspicion. In those cases in which no statute existed at all, the mistaken belief of the police officer that the conduct violated the law would not be objectively reasonable under the North Carolina holding. *See United States v. Washington*, 455 F.3d 824, 827-28 (8th Cir. 2006) (holding an officer's mistake of law was not objectively reasonable where there were no counterintuitive and confusing statutes that might support the officer's belief that a law had been broken). Where the conduct of a defendant did not violate the plain and easily understood language of a statute, a mistake of law also would not be objectively reasonable. And where there was already case law on an issue, decisively addressing the matter at issue, a mistake of law would hardly be excusable. Yet, these are not the circumstances of the case before this Court.

C. The Reasonable Suspicion Standard Is Not Confined To Incorrect Factual Suppositions.

There is nothing in the reasonable suspicion standard that confines itself to incorrect factual

suppositions. And there is nothing in the holdings of *Rodriguez* or *Terry* that supports this proposition. To the contrary, in *Terry*, there could be no certainty that any of the defendants were committing a crime, let alone that their conduct unquestionably violated a specific statute. *See Terry*, 392 U.S. at 22 (noting that the officer only observed each of the defendants "go through a series of acts, each of them perhaps innocent in itself"). And, again, an officer never needs to establish that a specific law or statute was in fact, or was even likely broken, before conducting a *Terry* stop, as petitioner demands here.

D. The Ruling Does Not Place Officers in the Role of Legislatures and Courts.

Petitioner argues the ruling in this case would permit the consideration of policy manuals and customs and allow officers to usurp the role of legislatures and courts. Were a mistake to be supported only by the consideration of "local manuals [or] customs," (Pet. 23), it may very well not be objectively reasonable. But those are not the circumstances of the case before this Court.

The reasonable suspicion analysis is always applied on a case-by-case basis. The mere fact that a reviewing court must consider each of the circumstances that make up the totality and that a number of different circumstances might come into

play in a variety of cases has little do with whether review is appropriate or, in this case, whether the North Carolina Supreme Court erred.

* * *

Petitioner has failed to show there is a significant conflict as to the issue before this Court and has failed to show this case is an appropriate vehicle to resolve the issue. Certiorari review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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