[Cite as *State v. Robertson*, 2023-Ohio-2746.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 22AP-227 (C.P.C. No. 20CR-3824)
v.	:	(REGULAR CALENDAR)
Melvin Robertson,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 8, 2023

On brief: *G. Gary Tyack*, Prosecuting Attorney, and *Paula M. Sawyers* for appellee. **Argued:** *Paula M. Sawyers*.

On brief: *Yeura R. Venters*, Public Defender, and *Francisco E. Luttecke* for appellant. **Argued:** *Francisco E. Luttecke*.

APPEAL from the Franklin County Court of Common Pleas

MENTEL, J.

{¶ 1} Defendant-appellant, Melvin Robertson, appeals from a March 22, 2022 judgment entry, pursuant to a no contest plea,[1] of one count of having weapons under disability in violation of R.C. 2923.13, a felony of the third degree.

[1] As an initial matter, we note that the March 22, 2022 judgment entry erroneously stated that appellant entered a "guilty" plea to the one count of having weapons under disability in violation of R.C. 2923.13. As acknowledged by the state, appellant entered a "no contest" plea at the March sentencing hearing. (Appellee's Brief at 1.) On January 11, 2023, the trial court filed an amended judgment entry that stated at the March 21, 2022 sentencing hearing, appellant, after being advised of his rights pursuant to Crim.R. 11, entered a "no contest" plea. On January 30, 2023, appellant filed a motion to supplement the record with the amended entry. This court, without objection from the state, granted the motion.

Pursuant to Crim.R. 36, "[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time." Generally, once a trial court has ordered execution of a valid sentence, it may no longer amend or modify the sentence outside

{¶ 2} For the reasons that follow, we reverse.

I. FACTS AND PROCEDURAL HISTORY

{¶ 3} On August 18, 2020, appellant was indicted on one count of having weapons while under disability in violation of R.C. 2923.13, a felony of the third degree. Appellant entered a not guilty plea on September 3, 2020. On August 7, 2021, appellant filed a motion to suppress all evidence obtained in violation of the Fourth Amendment as made applicable to the states by the Fourteenth Amendment to the United States Constitution and by the Constitution of the State of Ohio, Article I, Section 14. Specifically, appellant argued that law enforcement had no cause to initiate a traffic stop of his vehicle as, per Am.Sub.H.B. No. 197 ("H.B. 197"), which temporarily suspended the expiration of vehicle registrations, his vehicle registration was not expired at the time of the stop. On August 24, 2021, the state filed a memorandum in opposition arguing that Officer Kyle Jacobs made a reasonable mistake of law and the good-faith exception should preclude the suppression of any evidence derived from the initial stop. The trial court held a suppression hearing on October 12, 2021. Officer Jacobs was the sole witness to provide testimony in this matter. (Oct. 12, 2021 Tr. at 5.)[2] The following evidence was adduced at the hearing.

{¶ 4} Officer Jacobs has been a patrol officer with the City of Whitehall for over seven years. According to Officer Jacobs, he is proficient in Ohio traffic law through his initial training with the Highway Patrol as well as ongoing training and self-study. (Tr. at

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very limited circumstances. *State v. Clark*, 8th Dist. No. 82519, 2003-Ohio-3969, ¶ 20, citing *State v. Garretson*, 140 Ohio App.3d 554, 558 (12th Dist.2000). One such circumstance is when the trial court corrects a clerical error. *Clark* at ¶ 20, citing Crim.R. 36. Clerical errors are generally defined as mistakes of transcription or omission in the order. *Id.*; *Garretson* at 559; *see also State v. Miller*, 127 Ohio St.3d 407, 2010-Ohio-5705, ¶ 15 (writing clerical errors are mechanical in nature and apparent in the record). At least one other Ohio court has found that the trial court committed a clerical error, which could be corrected by a nunc pro tunc entry, when it stated that the defendant pleaded "guilty" to charges when the record was undisputed that the defendant pleaded "no contest." *State v. Willis*, 12th Dist. No. CA2012-08-155, 2013-Ohio-2391. Here, consistent with *Willis*, the trial court's entry was an obvious clerical error that could be corrected with a nunc pro tunc entry. Accordingly, the trial court had jurisdiction under Crim.R. 36 to amend the judgment entry. This court has consistently found that it may review a matter on appeal yet remand the matter for the trial court to correct a clerical error. *State v. Griffith*, 10th Dist. No. 10AP-94, 2010-Ohio-5556, ¶ 27, citing *State v. Hollingsworth*, 10th Dist. No. 07AP-863, 2008-Ohio-2424, ¶ 16, citing *State v. Brown*, 10th Dist. No. 03AP-130, 2004-Ohio-2990, *discretionary appeal denied*, 103 Ohio St.3d 1481, 2004-Ohio-5405; *State v. Silguero*, 10th Dist. No. 02AP-234, 2002-Ohio-6103, ¶ 14, *discretionary appeal not allowed*, 98 Ohio St.3d 1490, 2003-Ohio-1189. Because the trial court has already filed an amended judgment entry in this case, which the appellant supplemented into the record, there is no need to remand the matter back to the trial court to correct the clerical error. Therefore, we will review the appeal as if the clerical error had not occurred.

[2] On October 13, 2021, the parties stipulated to the identification, authenticity, and contents of Officer Jacobs' body-worn camera and cruiser camera footage.

5.) Prior to the incident at issue in this case, Officer Jacobs would make traffic stops based on expired vehicle registrations "fairly often." (Tr. at 6.)

{¶ 5} On August 11, 2020, Officer Jacobs was driving his patrol route, in a marked Whitehall police cruiser, when he first observed a vehicle near the intersection of Yearling and Main Street.[3] (Tr. at 7.) According to Officer Jacobs, he randomly runs vehicle tags when "there is not much going on." (Tr. at 7.) Officer Jacobs described the process of running tags as follows: "I have a computer in the cruiser with me and I just type in the plate number. It goes to the LEADS terminal which pops up with everybody's information and will show basically all of the vitals for the BMV and any other information that people put in." (Tr. at 8.) Officer Jacobs testified that when he ran the tag on appellant's vehicle, he concluded that appellant's vehicle registration was expired. (Tr. at 8.) When asked if LEADS provided the exact date of expiration or generally that the vehicle registration was expired, Officer Jacobs responded, "[i]t will show the exact date of vehicle expiration." (Tr. at 8.) Believing that appellant's vehicle registration had expired, Officer Jacobs initiated a traffic stop. According to Officer Jacobs, when he approached the window, he "saw the [appellant] reach over the passenger seat, like extensively reach over," and he could smell the odor of raw marijuana coming from the vehicle. (Tr. at 8-9.) After smelling the odor of marijuana, Officer Jacobs asked appellant to exit the vehicle. Officer Jacobs searched the vehicle and discovered rounds of ammunition, marijuana, and a handgun. (Tr. at 9.)

{¶ 6} Officer Jacobs testified that he is familiar with H.B. 197 and that it concerns registration and licensing requirements. (Tr. at 9-10.) Officer Jacobs denied that, on or before August 11, 2020, he knew the implications of H.B. 197. Officer Jacobs stated that he was only given "limited" direction on H.B. 197 and, to his knowledge, he was not given any information regarding the change in protocol concerning licenses or vehicle registrations. (Tr. at 10.) The only information he was provided was a document from the BMV, marked as Exhibit A. (Tr. at 10-12.)[4] According to Officer Jacobs, he was provided the BMV memorandum around March 19, 2020. When asked if the document distinguishes "between license and vehicle registration?," he responded, "No - - yes - - I think? I believe

[3] Officer Jacobs testified the incident took place in Franklin County, Ohio. (Tr. at 7.)
[4] Officer Jacobs testified that he was provided the BMV memorandum by one of Whitehall's dispatchers. (Tr. at 13-14.)

it would distinguish - - I don't know." (Tr. at 11.) Officer Jacobs, "interpreted [the BMV memorandum] as the Highway Patrol will not issue tickets to drivers, and then furthermore it says, 'recommended that other law enforcement agencies in Ohio do the same thing.' " (Tr. at 11-12.) Officer Jacobs believed, based on the information provided, he was "still able to essentially stop for expired vehicle registration." (Tr. at 12.)

{¶ 7} On cross-examination, Officer Jacobs acknowledged an important part of his job is knowing the laws of the State of Ohio and that, pursuant to H.B. 197, there were no expired registrations. (Tr. at 13.) On re-direct examination, Officer Jacobs testified that he believed at the time of the stop that he was abiding by the law of the State of Ohio.

{¶ 8} On March 4, 2022, the trial court issued findings of fact and conclusions of law denying appellant's motion to suppress.[5] The trial court provided no discussion of the language of H.B. 197, or whether it determined the uncodified provision was ambiguous. Instead, the trial court began its analysis concluding that Officer Jacobs was not "properly informed about [H.B.] 197, as the information given was unclear as to how agencies and officers should respond." (Mar. 4, 2022 Findings of Fact and Conclusions of Law at 5.) The trial court wrote that the BMV memorandum was sent before H.B. 197 went into effect and "stated that the Ohio State Highway Patrol would not issue tickets for expired licenses, it did not say anything about other law enforcement agencies." *Id.* Despite concluding that Officer Jacobs made a mistake of law, the trial court found the mistake was reasonable as H.B. 197 was new and the language at issue was in an uncodified portion of the law. "These facts and circumstances assign no fault to the officer." *Id.* Finally, the trial court stated that the LEADS printout only tells officers the date of expiration but not the reason for the expiration. "Thus, the LEADS printout at the very least gave Officer Jacobs reasonable suspicion to pull the (sic.) Mr. Robertson over to investigate the reason his registration was expired." *Id.* at 6.[6]

[5] The parties submitted joint findings of facts, which the trial court adopted as part of its decision. Relevant to the instant case, the trial court concluded that "[b]oth parties agree that on August 11, 2020, Officer Jacobs pulled over Melvin Robertson for having an expired registration." (Mar. 4, 2022 Findings of Fact and Conclusions of Law at 1-2.)

[6] Curiously, the state made a near identical point in its August 24, 2021 memorandum in opposition writing, "[t]hus, the LEADS printout at the very least gave Officer Jacobs reasonable suspicion to pull the Defendant over to investigate the reason his registration was expired." (Aug. 24, 2021 State's Memo at 6-7.)

{¶ 9} On March 21, 2022, appellant entered a plea of "no contest" to having weapons under disability in violation of R.C. 2923.13, a felony of the third degree. The trial court sentenced appellant to two years of community control.

{¶ 10} Appellant filed a timely appeal.

II. ASSIGNMENTS OF ERROR

{¶ 11} Appellant assigns the following as trial court error:

> [1] The trial court erred when it failed to analyze Officer Jacobs' mistake of law for reasonableness.
>
> [2] The trial court erred when it applied the good faith exception to the exclusionary rule and determined the evidence gathered from the illegal seizure and eventual search of Mr. Robertson's car was admissible.

III. LEGAL ANALYSIS

A. Appellant's First Assignment of Error

{¶ 12} In appellant's first assignment of error, he argues that the trial court erred when it failed to examine Officer Jacobs' mistake of law for reasonableness.

1. Standard of Review

{¶ 13} Appellate review of a trial court's decision to deny a motion to suppress presents a mixed question of law and fact. *State v. Harrison*, 166 Ohio St.3d 479, 2021-Ohio-4465, ¶ 11, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. In a suppression hearing, the trial court acts as the trier of fact, and as such, is best positioned to resolve questions of fact and determine the credibility of the witnesses. *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). Accordingly, a reviewing court should defer to the trial court's factual determinations when supported by "competent, credible evidence." *Burnside* at ¶ 8, citing *State v. Fanning*, 1 Ohio St.3d 19 (1982).

{¶ 14} Upon accepting the factual determinations of the trial court, a reviewing court, "without deference to the [trial] court's legal conclusions," must then independently resolve whether the facts satisfy the applicable legal standard. *Harrison* at ¶ 11, citing *Burnside* at ¶ 8. A reviewing court must consider the trial court's legal conclusions de novo. *State v. Turner*, 163 Ohio St.3d 421, 2020-Ohio-6773, ¶ 14.

2. The Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution

{¶ 15} The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution preclude unreasonable searches and seizures. *State v. Massey*, 10th Dist. No. 12AP-649, 2013-Ohio-1521, ¶ 18, citing *State v. Kinney*, 83 Ohio St.3d 85, 87 (1998); *Katz v. United States*, 389 U.S. 347 (1967). Subject to only a few established and well-delineated exceptions, warrantless searches are per se unreasonable. *Los Angeles v. Patel*, 576 U.S. 409, 419 (2015), citing *Arizona v. Gant*, 556 U.S. 332, 338 (2009).

{¶ 16} A law enforcement officer's stop of a motor vehicle constitutes a substantial intrusion, which requires justification as a "seizure" within the meaning of the Fourth Amendment. *State v. Chapa*, 10th Dist. No. 04AP-66, 2004-Ohio-5070, ¶ 7, citing *Delaware v. Prouse*, 440 U.S. 648 (1979).[7] A police officer may stop a motorist upon observing that their vehicle committed a traffic violation. *Dayton v. Erickson*, 76 Ohio St.3d 3, 11-12 (1996). "The validity of a non-investigatory traffic stop turns not on whether a traffic violation, in fact, occurred, but rather, on whether an objectively reasonable police officer would believe it did based on the totality of the circumstances." *Oliver* at ¶ 44, citing *Columbus v. Gullick*, 10th Dist. No. 07AP-520, 2008-Ohio-3168, ¶ 12; *State v. Cronin,* 1st Dist. No. C-100266, 2011-Ohio-147, ¶ 11. Even a de minimis traffic violation provides the requisite probable cause for a non-investigatory traffic stop even if the officer may have an ulterior motive for making the stop. *State v. Fisk*, 12th Dist. CA2020-11-016, 2021-Ohio-2989, ¶ 25.

{¶ 17} Indeed, to be reasonable is not to be perfect, and the Fourth Amendment permits some mistakes by law enforcement in the interest of the community's protection. *Heien v. North Carolina*, 574 U.S. 54 (2014), citing *Brinegar v. United States*, 338 U.S. 160, 176 (1949). However, this objective standard requires law enforcement to have reasonable knowledge of what the law prohibits. *State v. Ware*, 4th Dist. No. 18CA3669, 2019-Ohio-3885, ¶ 41, citing *State v. Rees*, 4th Dist. No. 88 CA 17, 1989 Ohio App. LEXIS 4501, *7 (1989).

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[7] In *State v. Oliver*, 10th Dist. No. 21AP-449, 2023-Ohio-1550, ¶ 42-46, this court discussed the difference between an investigative and a non-investigative stop. As the analysis was extensive, and for ease of discussion, we incorporate it by reference. While we will review this matter as a non-investigative stop, the outcome of this case would remain the same under either standard.

3. Reasonable Mistakes by Law Enforcement

{¶ 18} The United States Supreme Court has recognized—and accepted—that police officers will make mistakes. Beginning with *Brinegar*, the Supreme Court addressed the limitations of the probable cause standard writing that when "deal[ing] with probabilities," police officers should have "fair leeway" in enforcing the law. *Id*. at 175-76. The *Brinegar* court found there must be some room for mistakes of "reasonable and prudent men." *Id*. This principle evolved to permit, under certain circumstances, a law enforcement officer's reasonable mistake of fact. *See Hill v. California*, 401 U.S. 797 (1971) (finding that when a police officer has probable cause to arrest one individual, and reasonably mistakes a second individual for the first individual, neither the seizure nor accompanying search was unlawful.). In *Illinois v. Rodriquez*, 497 U.S. 177, 183-86 (1990), the Supreme Court found law enforcement could rely on a third party's consent to enter a home when a reasonable police officer would believe that the individual had authority over the residence. The *Rodriquez* court found the Fourth Amendment did not require officers to "always be correct, but that they always be reasonable." *Id*. at 185. Even in cases where a statute was later found to be unconscionably vague, the Supreme Court concluded an officer's reliance on said statute constituted a reasonable mistake. *See Michigan v. DeFillippo*, 443 U.S. 31 (1979). The *DeFillippo* court explained that "there was no controlling precedent that this ordinance was or was not constitutional, and hence the conduct observed violated a presumptively valid ordinance." *Id*. at 37. As such, under the facts, there was probable cause to comport with the "constitutional prerequisite for an arrest." *Id*.

{¶ 19} Prior to *Heien*, the prevailing view among federal circuit courts was that while probable cause to justify a traffic stop could be based on a police officer's reasonable mistake of fact, it could not be based upon an officer's mistake of law. *See, e.g*., *United States v. Nicolson*, 721 F.3d 1236, 1238 (10th Cir.2013) ("[a]lthough an officer's mistake of fact can still justify a probable cause or reasonable suspicion determination for a traffic stop, an officer's mistake of law cannot"); *United States v. Tibbetts*, 396 F.3d 1132, 1138 (10th Cir.2005) ("failure to understand the law by the very person charged with enforcing it is <u>not</u> objectively reasonable") (emphasis sic.); *United States v. Chanthasouxat*, 342 F.3d 1271, 1279 (11th Cir.2003) ("a mistake of law cannot provide reasonable suspicion or

probable cause to justify a traffic stop"); *United States v. Lopez-Soto*, 205 F.3d 1101, 1106 (9th Cir.2000); *United States v. Miller*, 146 F.3d 274, 279 (5th Cir.1998) (finding there was no probable cause to stop the defendant's vehicle because a flashing turn signal, without turning or changing traffic lanes, did not violate Texas law).

4. *Heien v. North Carolina*, 574 U.S. 54 (2014)

{¶ 20} In 2014, the United States Supreme Court's decision in *Heien* marked a significant shift in the mistake of law analysis. A brief review of the facts and decision is instructive.

{¶ 21} In *Heien*, a North Carolina law enforcement officer observed a vehicle traveling on the highway. *Id.* at 57. The officer, finding that the vehicle had one operational brake light, initiated a traffic stop. *Id.* While issuing a warning ticket for the broken brake light, the police officer received consent to search the vehicle and discovered cocaine in a side compartment of a duffle bag located in the vehicle. *Id.* Heien was arrested and charged with attempted trafficking of cocaine. *Id.* at 58. Heien moved to suppress the evidence derived from the search contending that the initial traffic stop violated his Fourth Amendment rights. *Id.* Heien argued the North Carolina statute, N.C.Gen.Stat. 20-129(g), only required a single stop lamp and therefore the justification for the stop was objectively unreasonable.

{¶ 22} During the suppression hearing, the officer testified the statute required two working brake lights, and Heien's faulty brake light gave him reasonable suspicion to initiate the stop. *Id.* The trial court agreed with the officer and denied Heien's motion to suppress. The North Carolina Court of Appeals reversed the trial court's ruling finding the stop objectively unreasonable as N.C.Gen.Stat. 20-129(g) required only one stop lamp, which the vehicle had at the time of the stop. The Supreme Court of North Carolina took up the case. As a preliminary matter, the court found that because the state failed to seek a review of the appellate court's interpretation of the vehicle code, it was assumed for the purposes of its decision that the faulty brake light was not a violation of the statute. *Id.* Nonetheless, the court found the officer's mistake of law was reasonable citing another provision of the statute, which provided "all originally equipped rear lamps" must be functional. *Id.* at 59. The Supreme Court of North Carolina reversed the appellate court

concluding that because the officer's mistaken understanding of the vehicle code was reasonable, the initial traffic stop was valid. *Id.*

{¶ 23} In an 8-1 decision, the United States Supreme Court found the officer's traffic stop did not violate the defendant's Fourth Amendment rights as the officer's mistake of law was objectively reasonable. While the word "ambiguous" was not used in the majority opinion, the court grappled with how to address the varying interpretations of N.C.Gen.Stat.Ann. 20-129.[8] The *Heien* court even acknowledged that both the majority and the dissent in the Supreme Court of North Carolina concluded that there were multiple reasonable interpretations of the statute. *Id.* The majority in *Heien* explained that while one provision of the statute suggested a "stop lamp" was a type of "rear lamp," requiring only a single working brake light, another provision read, "[t]he stop lamp may be incorporated into a unit with one or more *other* rear lamps." (Emphasis sic.) (Internal quotation omitted.) *Id.* at 67, quoting N.C.Gen.Stat.Ann. 20-129(g). The *Heien* court wrote, "[t]he use of 'other' suggests to the everyday reader of English that a 'stop lamp' is a type of 'rear lamp.' And another subsection of the same provision requires that vehicles 'have all originally equipped rear lamps or the equivalent in good working order,' §20-129(d), arguably indicating that if a vehicle has multiple 'stop lamp[s],' all must be functional." *Id.* at 67-68. The *Heien* court ultimately concluded that "[w]hether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: The facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law." *Id.* at 61. The court cautioned that "[t]he Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable." (Emphasis sic.) *Id.* at 66.

{¶ 24} Justice Kagan, joined by Justice Ginsburg, filed a separate decision concurring with the majority as to why certain mistakes of law support the reasonable suspicion needed to initiate a traffic stop under the Fourth Amendment but emphasized

[8] We note despite the lack of explicit language in the decision, courts have interpreted the *Heien* majority to have found the North Carolina statute to be ambiguous. *See, e.g.*, *United State v. Diaz*, 854 F.3d 197, 203-04 (2d Cir.2017) ("[T]hat was so in *Heien* because, at the time of the stop, the North Carolina tail-light law was ambiguous, and the state's appellate courts had not previously resolved the ambiguity.").

that the mistake of law principle is only applied when "the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work." *Id.* at 70. Justice Kagan explained that "[a]s the Solicitor General made the point at oral argument, the statute must pose a 'really difficult' or 'very hard question of statutory interpretation.' Tr. of Oral Arg. 50. And indeed, both North Carolina and the Solicitor General agreed that such cases will be 'exceedingly rare.' Brief for Respondent 17; Tr. of Oral Arg. 48." (Internal citation sic.) *Id.* (Kagan, J., concurring.) The following paragraph in Justice Kagan's concurrence describing objectively reasonable mistakes of law is particularly prescient as to the instant case:

> First, an officer's "subjective understanding" is irrelevant: As the Court notes, "[w]e do not examine" it at all. *Ante*, at 66. That means the government cannot defend an officer's mistaken legal interpretation on the ground that the officer was unaware of or untrained in the law. And it means that, contrary to the dissenting opinion in the court below, an officer's reliance on "an incorrect memo or training program from the police department" makes no difference to the analysis. 366 N.C. 271, 284, 737 S.E.2d 351, 360 (2012) (Hudson, J., dissenting). Those considerations pertain to the officer's subjective understanding of the law and thus cannot help to justify a seizure.

Id. at 69.[9]

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[9] The reception to *Heien*, to say the least, has been mixed. In *State v. Sanders*, Franklin C.P. No. 19CR-687, 2020 Ohio Misc. LEXIS 25, *11 (Mar. 31 2020), Judge Richard Frye cited one law review article that expounded on those critiques:

> The holding and legal reasoning of the *Heien* majority have been widely criticized. "*Heien* is a riches of embarrassment," one scholar has said. Critics faulted the majority's analysis at a number of points, from its depth of analysis to its use of authorities (drawing on old cases that were not even construing the Fourth Amendment). *Id.* at 11. Many warned that the holding in *Heien* poses substantial risks. Scholars have argued that it "substantially, and unjustifiably," expands the opportunities for law enforcement abuse and legislative sloppiness, and that it flipped the normal (sensible) view that ignorance of the law generally is not an excuse. *Id.* The commentators argue that, if one were to distinguish regular citizens and police, one should expect the standard to be more demanding of police — not less. Commentators have argued that the decision hurts the legitimacy of the police, and even of the Supreme Court.

(Certain internal citations omitted.) *Sanders* at *11-12, quoting Lael Weinberger, "Making Mistakes about the Law: Police Mistakes of Law between Qualified Immunity and Lenity," 84 Univ. Chicago L. Rev. 1561, 1569 (2017).

5. H.B. 197

{¶ 25} On March 9, 2020, Governor Mike DeWine issued Executive Order 2020-01(D) declaring a state of emergency to protect the citizens of Ohio from the "dangerous effects of COVID-19." On March 27, 2020, the General Assembly passed H.B. 197, an uncodified law, to offer emergency relief to Ohioans during the COVID-19 pandemic. Relevant to the present case, H.B. 197 provides:

> Except as provided in division (E) of this section, if a person is required by law to take action to maintain the validity of a license during the period of the emergency declared by Executive Order 2020-01D, issued March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, notwithstanding the date by which action with respect to that license is required to be taken in accordance with that law, the person shall take that action not later than the sooner of either ninety days after the date the emergency ends or December 1, 2020.
>
> Except as provided in division (E) of this section, a license otherwise expiring pursuant to law during the period of the emergency declared by Executive Order 2020-01D, issued March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, notwithstanding the date on which the license expires in accordance with that law, remains valid until the earlier of either ninety days after the date the emergency ends or December 1, 2020, unless revoked, suspended, or otherwise subject to discipline or limitation under the applicable law for reasons other than delaying taking action to maintain the validity of the license in accordance with division (C)(1) of this section.

H.B. 197 Section 11(C)(1)-(2).[10] Section 11(A)(1) defined, "[l]icense" to include "any license, permit, certificate, commission, charter, *registration*, card, or other similar authority that is issued or conferred by a state agency, a political subdivision of this state, or an official of a political subdivision of this state." (Emphasis added.)

6. Uncodified Law

{¶ 26} At the outset, we must address whether H.B. 197, an uncodified law, carries the same weight as a codified statute. In Ohio, an "uncodified law" is distinct from other

[10] On November 22, 2020, the General Assembly enacted Am.Sub.H.B. No. 404, Section 1 (C)(1)-(2), which extended these provisions until July 1, 2021.

statutory provisions as it is of a " ' "limited duration or operation and is not assigned a permanent Ohio Revised Code section number." ' " *Professionals Guild of Ohio v. Lucas Cty. Corr. Treatment Faciliatory Governing Bd.,* 10th Dist. No. 17AP-885, 2019-Ohio-2522, ¶ 20, quoting *Maynard v. Eaton Corp.*, 119 Ohio St.3d 443, 2008-Ohio-4542, ¶ 7, quoting A Guidebook for Ohio Legislators, 145 (10th Ed.2007-08). Uncodified provisions, however, are legally binding and have the same force and effect as codified legislation. *Am. Assn. of Univ. Professors v. Cent. State Univ.*, 2d Dist. No. 96-CA-21, 1997 Ohio App. LEXIS 554 (Jan. 31, 1997), *rev'd on other grounds*, 87 Ohio St.3d 55 (1999), citing *Voinovich v. Bd of Park Commrs*, 42 Ohio St.2d. 511 (1975). *See also In re McCrary*, 75 Ohio App.3d 601, 607 (12th Dist.1991) (finding the court had a "duty to enforce uncodified provision of [a bill] with the same vigor as a codified statutory provision.").

7. Statutory Interpretation

{¶ 27} While the majority opinion in *Heien* provided little exposition for how a court should resolve when a police officer's mistake of law is objectively reasonable, the prevailing view among federal and state courts is that to even engage in a mistake of law analysis, the statute must be ambiguous. *See, e.g., United States v. Stanbridge*, 813 F.3d 1032, 1037 (7th Cir.2016) (concluding that ambiguity in a statute is a prerequisite to any determination that an officer's mistake of law was objectively reasonable); *United States v. Alvarado-Zarza*, 782 F.3d 246, 250 (5th Cir.2015); *State v. Cremeans*, 4th Dist. No. 21CA3741, 2022-Ohio-3932, ¶ 43.

{¶ 28} Federal circuit courts have found that if the statutory language at issue is unambiguous, the trial court need not examine whether the officer's actions were objectively reasonable. *See, e.g.*, *Stanbridge* at 1037 ("*Hei*[*e*]*n* does not support the proposition that a police officer acts in an objectively reasonable manner by misinterpreting an *unambiguous* statute.") (Emphasis sic.); *Diaz*, 854 F.3d 197 at 204; *Northrup v. City of Toledo Police Dept.*, 785 F.3d 1128, 1132 (6th Cir.2015) ("[i]f it is appropriate to presume that citizens know the parameters of the criminal laws, it is surely appropriate to expect the same of law enforcement officers—at least with regard to unambiguous statutes."); *Sinclair v. Lauderdale Cty., Tennessee*, 652 Fed.Appx. 429 (6th Cir.2016)*; Alvarado- Zarzo* at 250.

{¶ 29} Ohio appellate courts have adopted a similar approach. When examining an officer's mistake of law, a reviewing court must first examine the relevant statute to evaluate

whether there is any ambiguity, or if it requires judicial construction to determine its scope of meaning. *Cremeans* at ¶ 43. If a statute is unambiguous, the analysis ends as it is objectively unreasonable for a law enforcement officer to charge an individual for a violation of that statute. *Id.* at ¶ 43; *see also State v. Trout*, 5th Dist. No. 18-CA-00043, 2019-Ohio-124, ¶ 22 (if a statute "is not ambiguous * * * the trial court did not need to address the question of whether the troopers acted in an objectively reasonable manner."); *State v. Ware*, 4th Dist. No. 18CA3669, 2019-Ohio-3885, ¶ 42[11] ("[c]ourts applying *Heien* have recognized that if a statute is unambiguous in the scope of its application, it is not objectively reasonable for an officer to charge an individual with a violation of that statute within the context of the Fourth Amendment."); *State v. Lane*, 6th Dist. No. E-18-008, 2018-Ohio-5284, ¶ 18 (finding the trial court erred when it denied a motion to suppress as the statute was clear, and therefore, the officer's actions were objectively unreasonable when he initiated a stop of the defendant's vehicle).

{¶ 30} Thus, the question becomes whether H.B. 197 is "genuinely ambiguous and whether the officer's judgment requires hard interpretative work." *United States v. Potter*, 610 F. Supp.3d 402, 418 (D.N.H.2022); *see also Ware* at ¶ 45, citing *Harris v. Georgia*, 344 Ga. App. 572, 575 (2018), quoting *Heien* at 541 (Kagan, J., concurring). As the First Circuit Court of Appeals put it, "a statute is not ambiguous simply because litigants (or even an occasional court) question its interpretation." *United States v. Dwinells*, 508 F.3d 63, 69-70 (1st Cir.2007). (Citations omitted.) To be sure, the application of the mistake of law is considered a " 'high bar.' " *Sanders*, 2020 Ohio Misc. LEXIS 25 at *18, quoting *Zullo v. State*, 2019 Vt. 1, 65 (2019), fn. 17.

{¶ 31} Upon review, H.B. 197 is unambiguous in its terms. The uncodified provision makes clear that an individual does not need to take any action to renew their registration if it expired between March 9, 2020 to December 1, 2020, and any registrations that were set to expire during that period remained valid under the law. This moratorium was rather limited as it did not include licenses or registrations that were "revoked, suspended, or otherwise subject to discipline or limitation under the applicable law for reasons other than

[11] *Ware* cites several other state courts that have adopted an analogous approach. *See id.* at ¶ 42, citing *State v. Eldridge*, 249 N.C. App. 493, 497 (N.C.App.2016); *State v. Cortez*, 512 S.W.3d 915, 924-25 (Tex.App.2017); *State v. Rand*, 209 So.3d 660, 665-66 (Fla.App.2017); *see also State v. Stoll*, 239 Ariz. 292, ¶ 20 (Ariz.App.2016).

delaying taking action to maintain the validity of the license in accordance with division (C)(1) of this section." Section 11(C)(2). Put another way, the plain language of H.B. 197 provides that, outside the several well-delineated exceptions, any vehicle registration that was "otherwise expiring" during the period of emergency—March 9, 2020 through December 1, 2020—"remain[ed] valid" under the law. *Id.*

{¶ 32} The state argues that H.B. 197 is ambiguous because the words "driver's" and "vehicle" were not included in Section 11 of H.B. 197. (Appellee's Brief at 10.) We find this argument without merit. H.B. 197 defines "[l]icense" as "*any* * * * *registration* * * * that is issued or conferred by a state agency, a political subdivision of this state, or an official of a political subdivision of this state." (Emphasis added.) *Id.* at 11(A). Based on the plain, everyday meaning of the word "any," it is apparent that the General Assembly intended to provide a broad protection for citizens with various licenses or registrations that were set to expire during the period of emergency. *See State ex rel. Bratenahl v. Village of Bratenahl*, 157 Ohio St.3d 309, 2019-Ohio-3233 (writing that when a statute does not define a term, the court provides the term its plain, everyday meaning, looking to how those words are typically used). A vehicle registration issued by the Ohio Bureau of Motor Vehicles, a division of the Ohio Department of Public Safety, would fall squarely within the language of H.B. 197. This case is distinct from *Heien* on this point as there is no other provision in H.B. 197 that would create an alternative interpretation of "registration" in this context. *United States v. Jimenez*, 507 F.3d 13, 21 (1st Cir.2007) ("genuine ambiguity requires more than a possible alternative construction.").

{¶ 33} There was some discussion during oral arguments as to whether H.B. 197 was ambiguous regarding vehicle registrations that expired before or after the period of emergency.[12] Pursuant to H.B. 197, an individual that is "*required by law to take action to*

[12] We note that there was also some debate during oral arguments whether appellant's vehicle registration expired during the period of emergency. Upon review, whether appellant's vehicle registration expired during the period of emergency does not appear at issue between the parties. In the filings at the trial court level, briefs with this court, as well as statements during oral arguments, the parties have operated with the belief that appellant's registration was set to expire during the period of emergency. Appellant's own statements during the interaction with Officer Jacobs confirms this fact as he stated the vehicle registration had expired the week before the stop. Officer Jacobs testified that he knew the date of expiration on appellant's vehicle registration, and the state presented no evidence that Officer Jacobs believed that the vehicle's registration expired outside the period of emergency. If the state had believed that appellant's registration expired outside the period allowed under H.B. 197, it would not have needed to argue the stop was a reasonable mistake of law, as Officer Jacobs would not have made a mistake in the first instance.

maintain the validity of a license [*or vehicle registration*] *during the period of emergency* * * *, issued March 9, 2020, but not beyond December 1, 2020 * * * shall take that action not later than the sooner of either ninety days after the date the emergency ends or December 1, 2020." (Emphasis added.) H.B. 197 Section 11(C)(1). The subsequent section of H.B. 197 provides that "a license [or vehicle registration] *otherwise expiring pursuant to law during the period of the emergency* * * *, issued March 9, 2020, but not beyond December 1, 2020 * * * remains valid until the earlier of either ninety days after the date the emergency ends or December 1, 2020." (Emphasis added.) *Id.* at (C)(2). H.B. 197 means what it says. Any vehicle registration that was set to expire "during the period of emergency" remained valid under the law. Because we find the language of H.B. 197 unambiguous, we need not examine whether Officer Jacobs' mistake of law was reasonable as *Heien* does not support the proposition that a police officer acts in an objectively reasonable manner by misinterpreting an unambiguous law.

{¶ 34} Arguendo, even if there was some ambiguity in the uncodified provision, Officer Jacobs' stop was objectively unreasonable as he had no knowledge of H.B. 197 or the change in law concerning vehicle registrations. (Oct. 12, 2021 Tr. at 10); *State v. Stadelmann*, 1st Dist. No. C-130138, 2013-Ohio-5035, ¶ 4 (concluding that when a statute is vague or ambiguous, "the test is whether an objectively reasonable officer" could have concluded the driver's actions violated a traffic law). (Citations omitted.) During the suppression hearing, Officer Jacobs testified that, on or before August 11, 2020, he did not know the implications of H.B. 197, and he was only given "limited" direction on H.B. 197. Officer Jacobs acknowledged that under H.B. 197, vehicle registrations set to expire during the period of emergency remained valid under the law. (Tr. at 13.) When asked if he was provided "any information regarding the change of protocol in regard to license or vehicle registration?," Jacobs responded, "[n]ot to my knowledge." (Tr. at 10.)

{¶ 35} According to Jacobs, the only information he was provided was a memorandum from the BMV titled, "ALERT." (Tr. at 10-12.)[13] When asked if the document

[13] The BMV "ALERT," amounted to a brief memorandum that, in relevant part, reads as follows:

> In response to the COVID-19 outbreak, BMV Deputy Registrar license agencies and Driver Examination services will be closed until further notice. The closure went into effect at close of business on March 18, 2020.

distinguishes "between license and vehicle registration?," Jacobs responded, "No - - yes - - I think? I believe it would - - I don't know." (Tr. at 11.) Based on the BMV memorandum, Officer Jacobs testified that while he believed he could not issue tickets for expired licenses, he was "still able to essentially stop for expired vehicle registration." (Tr. at 12.) Officer Jacobs' actions were objectively unreasonable in several ways. First, Officer Jacobs had no knowledge of the language of H.B. 197 and his opinion was solely informed on the BMV memorandum. "A view that a statute affords law enforcement unbridled discretion—controlled solely by their 'opinion'—to decide if a traffic violation has occurred amounts to no law at all." *Sanders* at *17. Moreover, Officer Jacobs' interpretation that he was "still able to essentially stop for expired vehicle registration" is contradicted by the plain language of H.B. 197 that defined "licenses" to also include "registration." (Tr. at 12.) Unlike the officer in *Heien* who relied on his reasonable, yet erroneous, interpretation of North Carolina traffic law, Officer Jacobs had no knowledge of H.B. 197 and failed to cite any provision of the uncodified law that supported his interpretation. As Officer Jacobs' mistake of law was objectively unreasonable, the traffic stop constituted a violation of appellant's rights.

{¶ 36} The trial court concluded that while Officer Jacobs "was mistaken in believing that [appellant] was committing a traffic offense," Jacobs, had "no fault" under the facts and circumstances of the case. (Mar. 4, 2022 Findings of Fact and Conclusions of Law at 5.) The trial court wrote that, based on the timing and "ambiguity of the information given

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> In the meantime, the Ohio State Highway Patrol will not issue tickets to drivers whose licenses expire while BMV's services are unavailable. Governor DeWine recommended that other law enforcement agencies in Ohio do the same.
>
> Five Deputy Registrars and Driver Examination stations will remain open for commercial driver license (CDL) services only, which include CDL renewal, TIPIC, HAZMAT endorsement, and knowledge testing. The Frequently Asked Questions attachment provides the five DR/DX locations as well as additional information in reference to this closure and the effect on BMV-issued credentials.
>
> The public can call the BMV at 844-644-6268 or visit the website at bmv.ohio.gov.
>
> Law Enforcement can continue to contact the Ohio BMV Investigations Section at (614) 752-4885 for assistance.

(Emphasis sic.) (Ex. A.)

to Whitehall police officers," the mistake of law was reasonable. *Id*. at 5. We agree with the trial court insofar as Officer Jacobs received no training on the uncodified provision. The BMV memorandum, issued over a week before H.B. 197 went into effect, makes no mention of H.B. 197, imminent changes in the law concerning vehicle registration, the scope and timeline of changes to license or vehicle registration requirements, or applicable exceptions to the uncodified provisions, i.e. if a driver's license or registration is revoked, suspended, or subject to discipline.

{¶ 37} The trial court, however, misconstrues the test under *Heien* finding that Officer Jacobs had "no fault" in failing to stay informed on the passage of H.B. 197. The mistake of law standard excuses an officer's reasonable, yet erroneous, interpretation of a statute. *Heien* in no way supports an officer's complete ignorance of the law or condones an officer's poor training. In fact, Justice Kagan's concurrence addresses this exact scenario writing "an officer's reliance on 'an incorrect memo or training program from the police department' makes no difference to the analysis. Those considerations pertain to the officer's subjective understanding of the law and thus cannot help to justify a seizure." (Internal citations omitted.) *Heien*, 574 U.S. 54 at 69 (Kagan, J., concurring), citing *State v. Heien*, 366 N.C. 271, 284 (2012) (Hudson, J., dissenting). The majority in *Heien* also rejected the contention that poor training of a law enforcement officer would affect the mistake of law analysis. "Because the Fourth Amendment tolerates only objectively reasonable mistakes, an officer can gain no advantage through poor study." (Internal citations omitted.) *Heien*, 574 U.S. 54, syllabus.[14] Therefore, the failure of the Whitehall Police Department to adequately train its officers does not make Officer Jacobs' mistake of law objectively reasonable. *Sanders* at *17; *see also Abercrombie v. Georgia*, 343 Ga. App.

[14] *Sanders* examined some of the legal scholarship that considered the social cost of providing law enforcement more opportunities to stop drivers for traffic offenses. "As a former Ohio police officer who is now a law professor writes, '[p]oor legal training leads to strained relations between police officers and members of the communities they serve - - especially minority communities. * * * [P]oorly trained officers are more likely to make unnecessary mistakes of law that will contribute to strained community relations.' " *Sanders* at *21. quoting Linetsky, "What the Police Don't Know May Hurt Us: An Argument for Enhanced Legal Training of Police Officers," 48 N.M.L.Rev. 1, 23 (2018). Additional legal scholarship concludes that the social cost of unnecessary mistakes of law by police will be felt predominantly in minority communities. Karen Henning's article, *"Reasonable" Police Mistakes: Fourth Amendment Claims and The "Good Faith" Exception After Heien*, 90 St. John's.L.Rev. 271, 315, cited several studies that have found minority groups are disproportionately more likely to be stopped by police than white drivers. *Id.* at 311, fn. 229. As such, reserving the application of reasonable mistakes of law to only the "rare" cases will protect Ohioans from abuses by law enforcement.

774, 783 (2017) ("To be an *objectively reasonable* mistake of law, because the officer's subjective understanding is irrelevant, it is no defense that an officer was unaware of or untrained in the law or that the officer relied upon improper training or departmental direction."). (Emphasis sic.)

{¶ 38} The state raises several arguments in support of its contention that Officer Jacobs acted in an objectively reasonable manner, none of which are persuasive. First, the state posited that the chaos during the period of emergency and the age of the uncodified provision provide a reasonable basis for the mistake of law. We disagree. The General Assembly took significant steps to ease the burden on Ohioans during the COVID-19 pandemic, and it relied on law enforcement to adjust their procedures accordingly. The seriousness of the COVID-19 pandemic makes it more, not less, important that law enforcement stay informed of changes in the law. There was also ample opportunity for Officer Jacobs to familiarize himself with H.B. 197 as the uncodified provision was in effect for over four months before he initiated the stop in this case.

{¶ 39} The state next contends that appellant failed to question the officer as to whether he had watched the governor's news conference. (Appellee's Brief at 11.) This argument is without merit. Once a defendant has demonstrated a warrantless seizure has occurred, and the grounds that it challenges the legality of the stop, the state bears the burden to demonstrate the validity of the traffic stop. *Xenia v. Wallace*, 37 Ohio St.3d 216 (1988), paragraph two of the syllabus; *see also State v. Bui*, 6th Dist. No. L-19-1028, 2021-Ohio-362, ¶ 29, citing *State v. Foster*, 11th Dist. No. 2003-L-039, 2004-Ohio-1438, ¶ 6. It was the state, not appellant, that had the burden to demonstrate that the stop was lawful. Regardless, it is ultimately irrelevant whether the officer watched Governor DeWine's news conference. The General Assembly regularly enact new laws without fanfare. It is the duty of law enforcement to stay informed of those changes. Despite the many arguments presented by the state, this case is straightforward, a law enforcement officer did not know about a change to the traffic law in Ohio.

{¶ 40} Appellant argues that the trial court erred by finding that Officer Jacobs' reliance on the LEADS data provided reasonable suspicion to "investigate the reason his registration was expired" as there was no evidence produced at the hearing concerning what was included in the LEADS printout. We generally agree. (Mar. 4, 2022 Findings of Fact

& Conclusion of Law at 6.) The only information in the record as to what was included in the LEADS printout was that Officer Jacobs knew the "exact date" appellant's vehicle registration was set to expire. However, appellant is correct that there was no testimony at the hearing that Officer Jacobs believed that appellant's registration was revoked, suspended, or subject to discipline. The body camera footage, entered into the record as Joint Exhibit 1, informs Jacobs' testimony at the hearing. The body camera footage revealed that, upon approaching appellant's vehicle, Officer Jacobs informed appellant that "the reason I stopped you is because the license plates expired." (Joint Ex. 1.) Moreover, the parties stipulated in their findings of fact, which were adopted by the trial court, that Officer Jacobs initiated the traffic stop based on appellant's expired registration. While there was some discussion of the LEADS report in closing, "it is well established that closing arguments are not evidence." *Hunley v. Hunley*, 12th Dist. No. CA2019-12-101, 2020-Ohio-5053, ¶ 58, citing *Nagel v. Nagel*, 9th Dist. No. 09CA009704, 2010-Ohio-3942, ¶ 16; *Ernsberger v. Ernsberger*, 8th Dist. No. 100675, 2014-Ohio-4470, ¶ 35. To claim that Jacobs was investigating appellant for any reason besides the expiration of his vehicle registration is baseless and outside the evidence in the record.

{¶ 41} Even if there was evidence to support the claim that Officer Jacobs was investigating whether appellant's vehicle registration was valid for some general, unknown reason those types of spot checks are prohibited. *State v. Orr*, 91 Ohio St.3d 389, 394 (2001), citing *Delaware v. Prouse*, 440 U.S. 648, 650 (1979), syllabus ("Police officers on roving patrol cannot pull over a vehicle for the sole purpose of checking the driver's license and registration."). A police officer must have specific, articulable facts that a crime has occurred, or is imminent, to constitute reasonable suspicion to initiate an investigative stop. *State v. Chapa*, 10th Dist. No. 04AP-66, 2004-Ohio-5070, ¶ 7, citing *Terry v. Ohio*, 392 U.S. 1, 21 (1968). The type of broad investigative stop espoused by the trial court lacks the requisite particularity to constitute a valid stop under the law.

{¶ 42} Accordingly, under the totality of the circumstances, even if the uncodified provision was ambiguous, Officer Jacobs' mistake of law was unreasonable as an objectively reasonable police officer would not have believed that appellant's conduct constituted a traffic violation as they would have known H.B. 197 created a moratorium on the expiration of vehicle registrations.

{¶ 43} Appellant's first assignment of error is sustained.

B. Appellant's Second Assignment of Error

{¶ 44} In appellant's second assignment of error, he argues that the trial court erred by applying the good-faith exception to the exclusionary rule and determining the evidence gathered from the illegal seizure, and eventual search of appellant's vehicle, was admissible.

{¶ 45} It is well-settled law that if a traffic stop is deemed unlawful, the evidence gained from the unlawful stop may be excluded as fruit of the poisonous tree. *See, e.g.*, *State v. Gray*, 6th Dist. No. WD-18-067, 2019-Ohio-2662, ¶ 40-41, citing *State v. Lu*, 6th Dist. No. WD-18-040, 2018-Ohio-5009, ¶ 15, citing *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). "Evidence will not be excluded, however, if a good faith exception applies." *Gray* at ¶ 40, citing *United States v. Leon*, 468 U.S. 897, 918-23 (1984). In *Leon*, the United States Supreme Court considered whether the exclusionary rule should be imposed when evidence was obtained from a search warrant, issued by a detached and neutral magistrate, that was later found to lack probable cause. The *Leon* court found that evidence derived from the search warrant was admissible as the officer acted in good faith and within the scope of the search warrant. "[The] good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." *Id.* at 922, fn 23. The good-faith exception has also been applied when an officer has relied on a law that was later deemed unconstitutional. *Illinois v. Krull*, 480 U.S. 340, 359-69 (1987).

{¶ 46} While *Heien,* 574 U.S. 54, addressed whether an officer's erroneous interpretation of a statute violated a defendant's rights under the Fourth Amendment, it did not examine whether the good-faith exception could be applied to reasonable mistakes of law as, unlike most states, North Carolina did not provide a good-faith exception. *Id.* at 60, 75, citing *State v. Carter*, 322 N.C. 709, 721-24 (1988).[15] However, federal district and circuit courts have considered the interplay between the mistake of law principle and the good-faith exception. The overwhelming sentiment among federal courts is that the

[15] The state argues in its brief that "[i]n *Heinen* (sic), the Court found that, under the circumstances of that case, an officer's mistake regarding the need for a vehicle to have two brake lights, instead of one, was a reasonable mistake of law, and found that the good faith exception applied and upheld the search." (Appellee's Brief at 6.) As set forth above, this argument is incorrect as *Heien* did not address the applicability of the good-faith exception to mistakes of law, outside a brief comment in the dissent, since North Carolina, as matter of state law, did not have a good-faith exception.

good-faith exception is not available when a law enforcement officer makes an unreasonable mistake of law. As one legal scholar explained:

> Unreasonable legal errors generally result, as the *Heien* court quipped, from "a sloppy study of the laws" by officers. As such, they are exactly the sort of culpable conduct the exclusionary rule is meant to deter. The good-faith exception applies in cases in which the law enforcement officer responsible for the Fourth Amendment violation was unknowingly relying on errors *made by others*, such as warrants obtained using erroneous information. Evidence should thus be suppressed when an officer conducts a search or seizure predicated on the officer's erroneous and unreasonable understanding of the law.

(Emphasis sic.) Joel S. Johnson, *Vagueness Attacks on Searches and Seizures*, 107 Va.L.Rev. 347, 389-90 (2021).

{¶ 47} In order for the good-faith exception to apply to the exclusionary rule, the officer's mistake must be objectively reasonable. The test, as stated in *Leon*, 468 U.S. 897, requires an examination of, based on a totality of the circumstances, "whether a reasonably well trained officer would have known that the search [or seizure in this case] was illegal." *Id.* at 992, fn. 23. It should be pointed out there is a noticeable overlap in the mistake of law and good-faith exception analysis as, in a mistake of law context, a reviewing court only reaches the objectively reasonable inquiry if the statute is ambiguous.[16] Federal case law supports this point as not only have federal courts not

[16] Professor Nadia Banteka wrote:

> If an officer's reliance on a statute is sufficiently reasonable to establish reasonable suspicion, it is now compliant with the Fourth Amendment even if this reliance ultimately turns out to be in error. This reasonable mistake triggers no question of evidence suppression. If, however, the police's mistake of law is unreasonable so that the search or seizure violates the Fourth Amendment, this original assessment that the mistaken reliance on the law was constitutionally unreasonable also answers the question of reasonableness for the purposes of the exclusionary rule. This is so especially since the two standards for what constitutes a reasonable mistake of law—as a matter of Fourth Amendment right and exclusion remedy—are objective and thus overlap. Instead of ruling that the exclusionary rule does or does not apply in one instance or another, courts in these good faith exclusionary rule cases can simply hold that an unreasonable search did or did not take place at all. Thus, certain good faith exclusionary rule categories of cases can now be best understood not as decisions that involve the exclusionary rule but rather as Fourth Amendment holdings.

Banteka, *Police Ignorance and (Un)Reasonable Fourth Amendment Exclusion*, 75 Vand.L.Rev. 365, 386 (2022).

applied the good-faith exception in cases where there was an unreasonable mistake of law, the state has rarely even presented the argument. In fact, of the hundreds of cases that have cited *Heien*, it appears that only a handful of cases even acknowledged that the state argued that the good-faith exception applied.[17] In Professor Karen Henning's article, *"Reasonable" Police Mistakes: Fourth Amendment Claims and The "Good Faith" Exception After Heien*, 90 St. John's L. Rev. 271, 315, she examined why the state rarely raised the good-faith exception in the mistake of law context writing, "[t]he simple answer appears to be that once the determination is made that the officer's mistake of law was unreasonable, then the good-faith exception is not—and should not be—available to the government. That is, a failure on the part of a law enforcement agent to understand the scope of a legal prohibition is the type of culpable conduct that justifies the invocation of the exclusionary rule." One legal scholar concluded, in the years since *Heien*, no federal court has found the good-faith exception applies to an officer's unreasonable mistake of law.[18]

{¶ 48} Likewise, Ohio courts have also grappled with whether to apply the good-faith exception in cases involving an officer's mistake of law. Similar to the federal case law, Ohio appellate courts have rarely considered the good-faith exception in cases involving a mistake of law. When the state has argued that the good-faith exception should apply, Ohio courts have begun their analysis by considering the threshold question of whether the statutory language is ambiguous. *State v. Barnett*, 7th Dist. No. 17 MA 0055, 2018-Ohio-2486, ¶ 31 (finding that because the statute was unambiguous the good-faith exception was not applicable); *State v. Kotouch*, 7th Dist. No. 21 HA 0012, 2022-Ohio-3421, ¶ 32 (writing "*Barnett* applies where officers are mistaken about an unambiguous law."); *State v. Gies*, 1st Dist. No. C-180597, 2019-Ohio-4249, ¶ 13, quoting *Stadelmann*, 2013-Ohio-5035 at ¶ 4,

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[17] Johnson, *Vagueness Attacks on Searches and Seizures* at 389, fn. 234. Professor Johnson's article was published in April 2021. At that time, roughly 800 cases had cited *Heien*. Henning reached a similar conclusion writing "[i]n every case between December 2014 and December 2015 in which the courts have concluded that the stop violated the Fourth Amendment because the mistake of law was an unreasonable one, the courts have suppressed the evidence without considering the good-faith exception. In fact, of the almost 150 cases that cite *Heien* during this time period, only three state courts have acknowledged a good-faith exception argument by the government." *Id.* at 314-15.

[18] Johnson at 389, fn. 233, citing *United States v. Flores*, 798 F.3d 645, 650 (7th Cir.2015); *United States v. Alvarado-Zarza*, 782 F.3d 246, 250 (5th Cir.2015); *United States v. Mota*, 155 F. Supp.3d 461, 475 (S.D.N.Y.2016); *United States v. Black*, 104 F. Supp.3d 997, 1006 (W.D.Mo.2015); *United States v. Sanders*, 95 F. Supp.3d 1274, 1286 (D.Nev.2015).

quoting *State v. Reedy*, 5th Dist. No. 12-CA-1, 2012-Ohio-4899, ¶ 19. Prior to *Heien,* Ohio courts had found that " '[w]here a statute is vague or ambiguous, or requires judicial construction to determine its scope of meaning, exceptional circumstances exist which permit courts to extend the good-faith exception to the exclusionary rule to not only mistakes of fact but also mistakes of law.' " *Stadelmann* at ¶ 4, quoting *Reedy* at ¶ 19, citing *State v. Greer*, 114 Ohio App.3d 299, 303 (2d Dist.1996). However, the application of the good-faith exception in those cases turned on whether the officer's erroneous interpretation of a "vague or ambiguous" statute was "objectively reasonable." *Reedy* at ¶ 18-19.

{¶ 49} In the case sub judice, we find that the language of H.B. 197 makes clear that vehicle registrations that were "otherwise expiring" between March 9, 2020 to December 1, 2020 remained valid as a matter of law. As such, consistent with federal and state precedent, the good-faith exception is not applicable. Even if there was some ambiguity in the uncodified provision, we still cannot find that the good-faith exception should apply as the officer's actions were objectively unreasonable. Officer Jacobs testified to his lack of familiarity with the statute, and the only training he received was a brief memorandum issued weeks before the uncodified provision went into effect. Outside the BMV memorandum, there was no evidence that Officer Jacobs made any effort to stay informed on changes to the law. "[A]n officer can gain no Fourth Amendment advantage through sloppy study of the laws he is duty bound to enforce." *Heien*, 574 U.S. 54 at 67 (Kagan, J., concurring). The state cites no case—and we could find none—that has found an officer's complete ignorance of the law was objectively reasonable warranting the application of the good-faith exception.

{¶ 50} To be sure, the police department shares much of the responsibility in this matter. Officer Jacobs testified that the Whitehall Police Department failed to provide him any training on the uncodified provision. There was also no testimony regarding supervisory personnel monitoring developments in the law to inform its officers as to changes that might occur. The state conceded this point in its brief writing, "Am. Sub. HB 197 was an attempt to provide a temporary solution to some of the consequences derived from the pandemic. However, based upon the evidence at the hearing, detailed information was not provided to law enforcement regarding implementing the bill, or how to handle situations that arose from it." (Emphasis deleted.) (Appellee's Brief at 14.) The lack of

training, however, does not excuse the officer's failure to stay informed of the change in the law as a reasonably well trained officer would have known the deadline for renewing vehicle registration in Ohio was extended. The enactment of H.B. 197 was not a secret. At least one other court has noted that the arresting officer in that case understood that Ohio had extended the deadline for vehicle registration renewal. *See State v. Triplett*, 5th Dist. No. 21 CAA 06 0031, 2022-Ohio-1371, ¶ 7, 32.

{¶ 51} The trial court relied on United States Supreme Court precedent in *Herring v. United States*, 555 U.S. 135, 143 (2009); *Arizona v. Evans*, 514 U.S. 1, 15 (1995), in support of its conclusion that the good-faith exception should apply in this case. In *Herring*, the police arrested a defendant based on inaccurate information from a neighboring police department that the individual had an outstanding warrant. *Id.* at 135, syllabus. The neighboring police department, however, had failed to update its database to reflect the recall of the arrest warrant. *Id.* The *Herring* court found that assuming there was a Fourth Amendment violation, the exclusionary rule did not apply as the arresting officer's mistake was made in good faith. The *Herring* court wrote, "[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." *Id.* at 144. In *Evans*, the defendant was arrested for an outstanding misdemeanor warrant that was later discovered to have been quashed prior to the arrest. *Id.* at 6. At the time of the arrest, however, the defendant was found with a bag of marijuana under the passenger seat of the vehicle. The defendant was then charged with marijuana possession. *Id.* at 7. The defendant moved to suppress the evidence based on the unlawful arrest. The *Evans* court found that the exclusionary rule did not require the suppression of evidence based on the Fourth Amendment violation because the erroneous information that the police relied on was based on clerical errors by court employees.

{¶ 52} There are several important distinctions between *Herring*, *Evans*, and the instant case. In *Herring* and *Evans*, the law enforcement officer mistakenly believed that there was an active warrant in place based on outside sources. Here, there is no mistake of fact, or claim by Officer Jacobs that LEADS provided incorrect information. In fact, LEADS provided the necessary information, i.e., the exact date appellant's vehicle registration was set to expire, for Officer Jacobs to determine whether to initiate the traffic stop. The issue

is that Officer Jacobs did not know H.B. 197 extended the deadline for Ohioans to renew their vehicle registrations.

{¶ 53} While this court has not directly addressed whether the good-faith exception should be applied to an officer's mistake of law, we have found that the good-faith exception is inapplicable in certain cases where the information is based on the officer's own mistake and not from outside sources. *See State v. Sears*, 10th Dist. No. 19AP-372, 2020-Ohio-4654. This court has repeatedly found the good-faith exception does not apply when an officer "relied on their own belief that they were acting in a reasonable manner, as opposed to relying on anothers representations." *Id.* at ¶ 31, citing *State v. Dickman*, 10th Dist. 14AP-597, 2015-Ohio-1915; *State v. Thomas*, 10th Dist. No. 14AP-185, 2015-Ohio-1778. In the present case, the good-faith exception is inapplicable as the officer's mistake was based on his own ignorance of the law and not from incorrect information in the LEADS report.

{¶ 54} It is our hope that the suppression of evidence in this case will result in appreciable deterrence of Fourth Amendment violations going forward. There will come a time sometime in the future when the General Assembly will have to enact an uncodified law to provide emergency relief to Ohioans. It is incumbent upon law enforcement, in turn, to make reasonable efforts to stay informed of changes in the law. Here, suppression of the evidence derived from the initial traffic stop would "pay its way" by requiring law enforcement to make reasonable efforts to know the law they are duty bound to enforce. *Herring* at 147-48.

{¶ 55} Accordingly, appellant's second assignment of error is sustained.

IV. CONCLUSION

{¶ 56} Having sustained appellant's first and second assignments of error, we reverse and remand the judgment of the Franklin County Court of Common Pleas.

Judgment reversed and remanded.

BEATTY BLUNT, P.J. and DORRIAN, J., concur.