No. 18-556

In The
Supreme Court of the United States

STATE OF KANSAS,

Petitioner,

v.

CHARLES GLOVER,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Kansas

BRIEF OF OKLAHOMA AND 16 OTHER STATES AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTERESTS OF AMICI CURIAE

Amici curiae are the States of Oklahoma, Alabama, Arkansas, Connecticut, Georgia, Indiana, Kentucky, Nebraska, New Jersey, New Mexico, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, and West Virginia.[1] They operate motor vehicle licensing agencies and ensure the safety of motorists, passengers, and pedestrians, as well as enforce the criminal laws of their state. Drivers' license and registration requirements "are essential elements in a highway safety program," and "the States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles." *Delaware v. Prouse*, 440 U.S. 648, 658 (1979).

This case involves a challenge to the constitutionality of a useful practice of state law enforcement officers: stopping motor vehicles known to be registered to individuals with suspended licenses, or having outstanding arrest warrants, to verify whether the driver is committing or has committed a crime. Studies show that despite having their license suspended, many drivers continue to drive their vehicles. Because unlicensed drivers account for a disproportionate share of fatal motor vehicle accidents, such stops are often the sole, indispensable means available to officers to police against this important public safety hazard.

The decision below undermines the ability of state officers to keep their streets safe. This jeopardizes the lives of lawful drivers, passengers, and pedestrians

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[1] Amici submit this brief pursuant to Sup. Ct. Rule 37.4.

everywhere. Accordingly, amici states have a substantial interest in this Court's disposition of the case.

SUMMARY OF THE ARGUMENT

Sufficient probability is the touchstone of reasonableness under the Fourth Amendment. This Court has identified two standards under the Fourth Amendment for a law enforcement officer's search or seizure to be reasonable: probable cause and reasonable suspicion. Neither standard requires an officer's certainty, but both deal with probabilities. Probable cause to conduct a search or make an arrest requires enough evidence to establish a "fair probability" that a crime has occurred or evidence of a crime will be found. Reasonable suspicion to conduct a limited, investigatory stop, on the other hand, is less stringent on the amount and quality of the evidence. And reasonable suspicion is considerably less than a preponderance of the evidence.

These Fourth Amendment standards, accordingly, are probabilistic. While not always possible, common police practices can be evaluated against statistical correlations drawn from sound empirical data to inform the reasonableness of an officer's decision to conduct a brief investigatory stop. This case is amenable to empirical and statistical data that can aid this Court's determination of reasonable suspicion. Oklahoma's statewide crash data shows the inference at issue in this case—whether the driver of the vehicle is the registered owner—is true more than 70 percent of the time. This would be unsurprising to most patrol

officers based on their experience and common sense. Furthermore, national studies show that drivers with suspended licenses often keep driving, contrary to the assumptions of the court below and Respondent. The decision below jeopardizes public safety and must be overturned.

ARGUMENT

I. Reasonable suspicion is a probabilistic standard that can be informed by empirical and statistical data.

The Fourth Amendment does not forbid all searches and seizures, only those that are unreasonable. U.S. CONST. AMEND. IV; *see also Terry v. Ohio*, 392 U.S. 1, 9 (1968) (quoting *Elkins v. United States*, 364 U.S. 206, 222 (1960)). Thus, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006). Meanwhile, "sufficient probability . . . is the touchstone of reasonableness under the Fourth Amendment." *Hill v. California*, 401 U.S. 797, 804 (1971). Both reasonable suspicion and probable cause, then, ultimately "deal with . . . probabilities." *United States v. Cortez*, 449 U.S. 411, 418 (1981).

While this Court has never fixed a "numerically precise degree" to the minimal level of probability to be sufficient under these standards, *Illinois v. Gates*, 462 U.S. 213, 235 (1983), rough approximations have a sound basis in this Court's case law. For example, "'reasonable suspicion' is a less demanding standard than

probable cause." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). That is, while probable cause to search requires "a fair probability" that evidence of a crime will be found, reasonable suspicion needs only a "minimal level of objective justification." *United States v. Sokolow*, 490 U.S. 1, 7 (1989). Moreover, the "level of suspicion" required to meet the reasonable suspicion standard "is *considerably less* than proof of wrongdoing by a preponderance of the evidence." *Id.* (emphasis added). And preponderance of the evidence means the probability of the event is "more likely than not"—or, expressed as a percentage, 51%. *See*, *e.g.*, *Cooper v. Oklahoma*, 517 U.S. 348, 350 (1996). Thus, in terms of probabilities, reasonable suspicion that criminal activity is taking place does not require even a "fair probability" of criminal activity and does not have to be anywhere near a fifty-fifty proposition. *See* Neil Ackerman, *Considering the Two-Tier Model of the Fourth Amendment*, 31 AM. U. L. REV. 85, 112 (1981) (Explaining that, under *Gerstein v. Pugh*, 420 U.S. 103, 121 (1975), "probable cause [constitutes] less than a preponderance of the evidence"—say "between forty and fifty percent probability"—so "it can be assumed that . . . reasonable suspicion[] consists of a probability somewhere between five and forty percent" and concluding that the minimum threshold for reasonable suspicion fell on the lower end of that spectrum).

To be sure, on-the-ground law enforcement decisions "are not technical; they are the factual and practical considerations of everyday life." *Brinegar v. United States*, 338 U.S. 160, 175 (1949). Often "what cause is sufficient to authorize police to stop a person"

may be an "elusive concept," *United States v. Cortez*, 449 U.S. 411, 417 (1981), and "the standards are 'not readily, or even usefully, reduced to a neat set of legal rules,'" *Ornelas v. United States*, 517 U.S. 690, 695-96 (1996). This is sometimes because in law enforcement situations too many variables are at play or the various combinations of facts observed by officers are not readily subjected to quantitative and statistical analysis to determine probabilities. *See*, *e.g.*, *United States v. Arvizu*, 534 U.S. 266, 268-73 (2002) (describing reasonable suspicion developed after complex investigative work involving at least 10 factors).

But that is not this case: at issue here is the probabilities associated with a simple, but frequently recurring set of facts confronting officers: when a vehicle on the road is registered to someone without a valid license to drive or with an outstanding arrest warrant, is an officer reasonable when she suspects that driver is the registered owner? In other words, with no other information, what is the probability that a vehicle on the road is being driven by the registered owner? If that probability is exceedingly low (say, 1% or 2%), suspicion is unlikely to be reasonable. Meanwhile, if that probability approaches anywhere near 50%—though certainly it need not be that high—the conclusion that suspicion is reasonable will be hard to escape.

So in a case such as this, empirical and statistical data can aid this Court's determination of reasonable suspicion. In other contexts, this Court has recognized the importance of "empirical data and national experience." *Kimbrough v. United States*, 552 U.S. 85, 109 (2007) (allowing a district court to deviate from

sentencing guidelines due in part to the lack of empirical support for the cocaine/crack disparity); *Graham v. Florida*, 560 U.S. 48, 63 (2010), as modified (July 6, 2010) (examining actual juvenile sentencing practices to determine constitutionality of certain juvenile life without parole sentences). So too in the Fourth Amendment context, where this Court has extolled the virtues of "provid[ing] law enforcement officers with the tools to reach correct determinations beforehand." *Arvizu*, 534 U.S. at 275. A law enforcement officer may therefore use data on "the modes or patterns of operation of certain kinds of lawbreakers." *Cortez*, 449 U.S. at 418. And "[f]rom these data, a trained officer [may draw] inferences and make[ ] deductions." *Id*.

Here, "[i]t is fair to infer that the registered owner of a car is in the car absent information that defeats the inference." *United States v. Pyles*, 904 F.3d 422, 424-25 (6th Cir. 2018) (Sutton, J.) (citing 11 cases).[2] That is, "common sense and ordinary experience suggest that a vehicle's owner is, while surely not always, very often the driver of his or her own car." *United States v. Cortez-Galaviz*, 495 F.3d 1203, 1207 (10th Cir. 2007) (Gorsuch, J.). Although common sense may be enough, where possible common police practices can be evaluated against statistical correlations drawn from sound empirical data to inform the reasonableness of an officer's decision to conduct a search under the Fourth Amendment.

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[2] Civil law cases similarly countenance the inference that a vehicle is being driven by its owner. *Village of Lake in the Hills v. Lloyd*, 591 N.E.2d 524, 526 (Ill. App. 2d Dist. 1992); *see, e.g.*, CONN. GEN. STAT. §§ 7-152b & 14-107 (providing that vehicle registration is prima facie evidence that the vehicle owner was the operator).

II. Robust statistical data based on empirical observations support the commonsense inference that the driver of a vehicle is likely the registered owner.

Empirical data demonstrates that a vehicle's registered owner is likely the driver of that vehicle. To support this commonsense conclusion, Oklahoma analyzed its statewide collision data containing over 100,000 records and found, in general, that a vehicle is being driven by its registered owner over 70% of the time. The conclusion that the driver of a vehicle is more likely than not the registered owner remains true across many situations and driving circumstances. Thus, the data firmly supports the reasonableness of Deputy Mehrer's suspicion that Mr. Glover's car was being driver by Mr. Glover.

A. The Data Set

It is possible to determine the likelihood a vehicle's driver is its registered owner with a data set containing a more or less random sample of on-the-road drivers. Short of randomly stopping several vehicles on the road to obtain a statistically significant sample, existing data sets are likely to provide the most utility. One such source is the database of vehicle crashes kept by the Oklahoma Department of Public Safety, which collects collision data from across the state and stores it in a centralized electronic repository.[3] This data set

[3] 2017 Oklahoma Crash Facts, Okla. Dep't of Pub. Safety at 9 (Jan. 2019), *available at* http://ohso.ok.gov/crash-data2.

contains information about all collisions where law enforcement officers are called to the scene. For example, it includes information about the severity of the crash, the location of the crash, the primary contributing factor leading to the incident, and the ownership status of the respective drivers. Thus, an officer at the scene of a crash will record on a form various details of the crash, including confirming the identity of the driver (using the driver's license) and whether the driver is the owner as recorded on the vehicle's registration.

To attempt to answer the empirical question here, the records for commercial vehicles involved in collisions were excluded because those vehicles are likely to be registered to a company or other incorporated entity, not the driver, causing an unwarranted skew in the data. That is, including commercial vehicles will make it appear that the probability that a driver is not the registered owner is higher than it otherwise would be, even though that situation will not arise in a case such as this because an officer running a vehicle's plate and discovering the vehicle is registered to an LLC or a corporation will not suspect the vehicle is being driven by an unlicensed driver. After all, an incorporated entity cannot obtain a driver's license let alone have one that is suspended or revoked. Similarly, incorporated entities don't tend to have outstanding arrest warrants.

The collision reporting form only provides law enforcement officers with a binary option, asking whether the driver is the registered owner of the vehicle. This requires an affirmative response from the

officer for it to be logged in the data as a collision where the registered owner is the driver. So when it is unknown whether the driver is the owner, as in the case with the at-fault driver in a hit-and-run collision, the form appears as it would if the driver was not the owner. Including all of these unknown drivers in the data set would also cause an unwarranted skew, so all records with an unknown driver (*i.e.*, hit-and-run drivers) were removed from the data set.

This leaves the data set with roughly 117,000 crash records in 2017. These records are compiled from across the state and provide a reasonably random sampling of the driving population. Logically, there can be little to connect traffic accidents with ownership status. This is especially true about those who are not at fault in an accident—folks who are not more dangerous drivers, but the victims of an unhappy and essentially random circumstance—and the data set includes more than 56,000 records of such drivers.

B. What the Data Shows

Of the 117,167 collision records in the analysis, 71% of those records involved drivers who were the vehicle owner. That the driver is more likely than not the owner remains true even after controlling for several different variables.

For example, these numbers do not significantly change when the data set is separated by the collision

contributing factor.[4] A sample of the different possible contributing factors and their effect on whether the driver is the owner is summarized below:

Factor	Records	% Owner
Failed to Yield	12,582	71.00
Followed too Closely	8,403	68.10
Inattention	9,928	65.90
Unsafe Speed	7,246	60.90
DUI-Drugs	680	55.00
No Improper Action	56,671	75.50
Total of all Factors	117,167	71.30

Again, the data tells a remarkably consistent story: It is more likely than not a vehicle driver is the owner, including in the category with the lowest owner-is-the-driver percentage, "DUI-Drugs." The standard deviation across all categories is 5.46%, even when including the statistical outlier of DUI-Drugs at 55%. Note also the "No Improper Action" category—*i.e.*, drivers who were not at fault in the collision—involves a driver-ownership rate of 75.5%, showing that this set of drivers who share no trait except that they were the victim of a collision (that is, a highly randomized

[4] The contributing cause variable has 18 distinct options from which to choose: Changed Lanes Unsafely; Failed to Stop; Failed to Yield; Followed too Closely; Improper Overtaking; Improper Parking; Improper Start; Improper Turn; Inattention; Left of Center; Other Improper Act/Movement; Stopped in Traffic Lane; Unsafe Speed; Unsafe Vehicle; Wrong Way; DUI-Alcohol; DUI-Drugs; and No Improper Action by Driver.

sample) are very likely the registered owners of the vehicle they were driving.

When the data set is controlled for severity of the collision, we see similar results. For example, 71.5% of non-injury collisions occurred with the owner of the vehicle behind the wheel while 57.6% of fatal injuries occurred with the owner of the vehicle behind the wheel, which is the lowest ownership percentage based on the injury severity category.

The location of the collision does not meaningfully affect the truth that drivers are likely the registered owner. Specifically, the registered owner was the driver in 73.6% of the collisions occurring in urban areas and 60.7% in collisions occurring in rural settings.[5]

Time of day also affects the ownership rate of drivers, but at no time of day does that rate dip below 50%. Between the hours of 7am and 7pm, the ownership percentage is about 70%. After 7pm, that number steadily declines, reaching about 50% between the hours of 3am and 4am, at which point the numbers rapidly climb back to the approximate 70% observed at 7am. Of course, it is possible that explanations and rationalizations can chip away at the findings presented above. But reasonable suspicion is a low hurdle and a 71% chance that a driver is the registered owner clears it

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[5] Urban and rural areas are defined for the purposes of this data using the Census Bureau's definition, which defines a location as urban if it is within a city with a population of 5,000 or more.

by a wide margin, even if it could be weighed down with statistical nitpicks.

In summary, the collision data analyzed establishes that, more often than not, the driver of a vehicle is the registered owner. This is true 71% of the time. This more than meets the probabilistic standard of "reasonable suspicion," which, again, "is considerably less than proof of wrongdoing by a preponderance of the evidence." *Sokolow*, 490 U.S. at 7. And it is far from *Prouse*, when the Court held that pulling over vehicles at random to check license status was unreasonable because it is "common sense that the percentage of all drivers on the road who are driving without a license is very small," 440 U.S. at 559-660. In fact, unlicensed drivers are only 2.6% of all motorists on the road—orders of magnitude apart from the 71% figure here. *See* AAA Foundation for Traffic Safety, *Unlicensed to Kill* 2 (Nov. 2011). Unlike in *Prouse*, law enforcement have a statistically sound "reason . . . to pluck this needle from the haystack of cars." *Cortez-Galaviz*, 495 F.3d at 1206.

III. Forbidding officers from basing inferences on the empirically-sound belief that the registered owner is driving a vehicle undermines efforts to promote public safety.

Every day, law enforcement officers patrol America's streets to protect ordinary citizens from fleeing criminals, drunk drivers, and unsafe motorists. When a lawbreaker is ensconced in a vehicle, officers often do

not have the benefit of examining facial expressions, spoken words, or furtive gestures. Instead, they must rely on what evidence remains visible to them: the external appearance of cars, their movements, and their license plate numbers. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884-85 (1975); *see also*, *e.g.*, *Brendlin v. California*, 551 U.S. 249, 252 (2007).

Many times this is enough for officers to develop reasonable suspicion of a crime. Police can investigate specific vehicles that match a witness's description. *See*, *e.g.*, *Alabama v. White*, 496 U.S. 325, 327 (1990). They can pull over swerving cars to stop suspected drunk drivers. *See*, *e.g.*, *Missouri v. McNeely*, 569 U.S. 141, 145 (2013). And in most jurisdictions, they can stop vehicles registered to unlicensed drivers to investigate whether the driver is in fact licensed to operate the vehicle. Relatedly, they can investigate whether the person driving has an outstanding arrest warrant based on the identifying information broadcasted by a license plate. This forms a critical responsibility of police officers across the country, given the significant hazards unlicensed drivers and those with outstanding warrants pose to the public.

A. Unlicensed drivers present a significant risk to public safety.

Almost forty years ago, this Court suggested that "drivers without licenses are presumably the less safe drivers." *Prouse*, 440 U.S. at 659. Data again confirms this commonsense conclusion: although unlicensed

drivers account for only 2.6% of all motorists on the road, they are responsible for 18.2% of fatal crashes. AAA Foundation for Traffic Safety, *Unlicensed to Kill* 2 (Nov. 2011); *see also* Driver License Compliance Status in Fatal Crashes, NHTSA (Oct. 2014) (also finding 18 percent). These crashes lead to roughly 7,000 deaths each year. NHTSA, *Trends in Fatal Crashes Among Drivers With Invalid Licenses* (Dec. 2009). And in 43.0% of these cases, the drivers are both unlicensed and under the influence. *Unlicensed to Kill*, *supra*, at 2.

Numerous studies have concluded that "[u]nlicensed drivers are a high risk group for car crash injury after taking other crash-related risk factors into account." Stephanie Blows et al., *Unlicensed Drivers and Car Crash Injury*, 6(3) TRAFFIC INJURY PREVENTION 230, 230 (2005). For example, suspended, revoked, and unlicensed drivers are 3.7 to 4.9 times more likely to have caused fatal crashes in which they are involved. Sukhvir S. Brar, *Estimating the over-involvement of suspended, revoked, and unlicensed drivers as at-fault drivers in California fatal crashes*, 50 J. SAFETY RESEARCH 53, 53 (2014). Not only that, "their crashes" also "tend to be more severe." Barry Watson, *The Crash Risk of Disqualified/Suspended and Other Unlicensed Drivers*, PROCEEDINGS OF ROAD SAFETY RESEARCH, POLICING & EDUC. CONF. 181 (2002).

This is a particularly pressing issue in Kansas, which has the fifth highest rate of drivers with

suspended licenses.[6] In the state, 14% of child fatalities from motor vehicle accidents occur where the driver was not licensed. K. James Kallail et al., *The influence of license status on Kansas child fatalities due to motor vehicle crashes*, 15(2) INT'L J. OF INJURY CONTROL & SAFETY PROMOTION 77 (2008).

Empirical data also shows that drivers with suspended driving privileges continue to drive. "There have been a number of studies conducted during the past three decades which show that most suspended/revoked drivers violate their license action and continue to drive during their period of disqualification." David J. DeYoung et al., *Estimating the exposure and fatal crash rates of suspended/revoked and unlicensed drivers in California*, 29(1) ACCIDENT ANALYSIS & PREVENTION 17 (1997) (formatting altered).[7] In the words of one researcher at the Texas Transportation Institute of Texas A&M University: "It's like a revolving door. These people are being suspended and suspended and suspended again, and still, they're driving."[8] "Drivers in the American heartland . . . are

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[6] *The States with the Most Suspended/Revoked Licenses*, INSURIFY (June 4, 2018), *available at* https://insurify.com/insights/the-10-states-with-the-most-suspended-revoked-licenses/.

[7] Available at https://www.sciencedirect.com/science/article/abs/pii/S0001457596000565.

[8] *Report: Beware of Unlicensed Drivers*, ABC NEWS (July 13, 2018), available at https://abcnews.go.com/Travel/story?id=118913&page=1.

the most likely to face recurring license suspensions."[9] Staggeringly, North Dakota has a 57 percent suspension repeat rate.[10] Contrary to the assertions by Respondent and the court below, patrol officers have little reason to think that drivers quit driving once suspended.

B. Police officers will have limited means to combat motorists driving without valid licenses absent the investigatory practice at issue in this case.

Police officers have a circumscribed toolkit to combat unlicensed drivers. Under *Prouse*, officers generally cannot "stop[] an automobile and detain[] the driver in order to check his driver's license," absent more reason to suspect that criminal activity may be afoot. *Prouse*, 440 U.S. at 663. Officers do, however, have access to government databases that link license plate numbers to driver's information. That is, after all, the principal expressive purpose of license plates. *See Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2249 (2015) ("[L]icense plates are, essentially, government IDs."). But it is not as simple as checking tags. In Oklahoma, for example, a patrol officer may run a license plate tag in the law enforcement tracking system to determine the owner. Then, the officer must separately access driver's license data

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[9] Danger on the Roads? States with the Most Repeat Driving Offenses, INSURIFY (Feb. 27, 2019), *available at* https://insurify.com/insights/states-with-most-repeat-driving-offenses/.

[10] *Id.*

of the registered owner from another system to check whether the owner's driving privilege had been suspended. It requires yet another step to check the National Crime Information Center (NCIC) for possible warrants.

In any case, even if officers were able to quickly complete or even automate this process, it may do little good. The officer often will not be provided a photograph of the registered owner and maybe not even obtain the owner's race. *See*, *e.g.*, *State v. Donis*, 157 N.J. 44, 47, 723 A.2d 35, 36 (1998). The age, height, and weight of a driver sitting enclosed in a moving vehicle provide too limited a description to distinguish one driver from another. Moreover, a rule requiring such reconnaissance is counterproductive. "[R]equiring the officer to verify the driver of the vehicle strikes against basic principles of safety [because it] puts the onus on the officer to maneuver himself into a position to clearly observe the driver in the midst of traffic." *United States v. Armfield*, 918 N.E.2d 316, 322 (Ind. 2009) (internal quotation omitted). This becomes especially problematic in small or rural communities, where it is difficult to imagine how an officer would ever be able to view the driver of a car ahead of it on a one-lane road—or even a two-lane road, other than by driving at an elevated speed in the opposite direction of traffic, overtaking the vehicle while taking eyes off the road to study the driver. *See*, *e.g.*, *United States v. Chartier*, 772 F.3d 539, 543 (8th Cir. 2014) ("[T]here was no passing lane that [the officer] could use to pull up safely alongside the vehicle to identify the driver.").

All this while vehicles travel at high speeds, with tinted windows or cabins high off the ground. "At best," an officer may "ha[ve] only a fleeting glimpse of the persons in the moving car, illuminated by headlights." *Brignoni-Ponce*, 422 U.S. at 886; *see*, *e.g.*, *Armfield*, 918 N.E.2d at 317 (officer "did not have the opportunity to verify anything about the identity of the driver in the short time it took for him to pass the [defendant's car]"). At worst, officers will be unable to safely view the identity of the driver at all.

American courts are filled with cases documenting the various reasons why: It is difficult to see at night. *See*, *e.g.*, *Chartier*, 772 F.3d at 543; *State v. Hess*, 648 S.E.2d 913, 915 (N.C. App. 2007); *State v. Martinez-Arvealo*, 797 S.E.2d 181, 183 (Ga. App. 2017). Heavy traffic may render further investigation difficult, if not impossible. *See*, *e.g.*, *State v. Vance*, 790 N.W.2d 775, 782 (Iowa 2010). Tinted windows can mask the driver's identity. *See*, *e.g.*, *Vance* 790 N.W.2d at 782; *Armfield*, 918 N.E.2d at 317 n.1. Weather, too, can impede the officer's visibility. *See*, *e.g.*, *Vance* 790 N.W.2d at 782. And objects within the driver's vehicle may block the officer's line of sight. *See*, *e.g.*, *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (defendant "testified that his truck was elevated on over-sized tires and the headrest on the back of the seat covered the back of his head"). Any one of these factors or combination thereof could render it "impossible for an officer to verify that a driver of a vehicle fits the description of the registered owner." *Vance*, 790 N.W.2d at 782.

Without the ability to conduct a brief, limited investigatory stop, officers in these situations may lack any independent means to protect the public safety when a vehicle's license tag suggests the possibility that a crime is being or has been committed. For these reasons, the decision below will have a debilitating effect on law enforcement officers' ability to keep our streets safe. As the Iowa Supreme Court warned, "to forbid the police from relying on such an inference to form reasonable suspicion for an investigatory stop would seriously limit an officer's ability to investigate suspension violations because there are few, if any, additional steps the officer can utilize to establish the driver of a vehicle is its registered owner." *Vance*, 790 N.W.2d at 782.

Despite these realities, the court below claimed that the Fourth Amendment requires officers who run upon suspects like Glover to take further steps to confirm identity before they may conduct an investigatory stop. Pet. App. 18a. In so holding, the Kansas Supreme Court flouted this Court's specific directive that "[t]he reasonableness of the officer's decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques." *Sokolow*, 490 U.S. at 11. Moreover, while this argument has a superficial appeal, as a practical matter officers may be unable to obtain any corroborating evidence absent the authority to pull motorists over. *See*, *e.g.*, Pet. App. 30a; *State v. Neil*, 207 P.3d 296, 296-97 (Mont. 2009) (officer "was unable to determine [passengers'] gender, race, or any other obvious characteristics"); *State v. Richter*, 765

A.2d 687, 689 (N.H. 2000) ("The officer observed nothing that would indicate that the driver was not the owner."); *State v. Seward*, No. 43658, 2016 WL 5266624, at *1 (Idaho App. Sept. 22, 2016) ("Later that same evening, the vehicle drove past the officer but the officer could not see who the occupants were."); *Hess*, 648 S.E.2d at 915 (officer "could not determine anything about the driver from behind that vehicle" including "the sex or the race of the" driver).

As noted above, nightfall, traffic, weather conditions, and other obstacles will often impede any attempt at identification. These obstacles notwithstanding, the sheer distance between the officer and the driver will rarely permit anything beyond a rough demographic identification: perhaps the driver's sex and race, and maybe whether the driver is old or young. *See*, *e.g.*, *Pike*, 551 N.W.2d at 921 (officer "testified that he saw a 'lone male occupant in the vehicle that [he] believed to be th[e] right age category,' by which he meant 'about the age that the registered owner was' "); *State v. Tozier*, 905 A.2d 836, 837 (ME 2006) ("trooper . . . noticed that the driver . . . was male").

The rule laid down by the court below would force officers to place themselves in harm's way, which would only stand to jeopardize, rather than "ensure[] the safety of the roadways and of law enforcement," *Vance*, 790 N.W.2d at 782. "Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties." *Terry*, 392 U.S. at 23; *see also Navarette v. California*, 572 U.S. 393, 403-04 (2014) (officer receiving tip of erratic driving

"might eventually dispel a reasonable suspicion of intoxication" by undertaking "[e]xtended observation of an allegedly drunk driver," but "[t]his would be a particularly inappropriate . . . because allowing a drunk driver a second chance for dangerous conduct could have disastrous consequences"). Suspicion does not become any more or less reasonable based on the happenstance of whether the officer can conduct more investigation before conducting the stop.

Ultimately, the suggestion by the court below about alternative means of investigation only underscores the existence of reasonable suspicion in cases such as this. Why would an officer go through such investigative efforts, prolonging the public endangerment in a mere attempt to increase certainty about the driver's identity? It is because the officer reasonably suspects unlawful behavior that warrants investigation—justifying precisely the type of limited, investigatory stop this Court has approved in *Terry* and its progeny. *See Wardlow*, 528 U.S. at 126 (A *Terry* stop is a "far more minimal intrusion" than arrest and "simply allow[s] the officer to briefly investigate further."); *see also Vance*, 790 N.W.2d at 780; *State v. Turner*, 416 P.3d 872, 873 (Ariz. Ct. App. 2018).

C. Permitting stops of vehicles registered to those without valid licenses adequately protects the rights of law-abiding citizens.

The court below and Respondent are both wrong to focus on the possibility of innocent conduct, arguing that the officer lacked reasonable suspicion because "a person with a revoked driver's license commits no crime by simply owning and registering a vehicle" or "by allowing another licensed driver to use the registered vehicle." Pet. App. 9a. That is precisely the type of reasoning this Court has rejected. *Cortez*, 449 U.S. at 416-17 (overturning decision that found Fourth Amendment violation because officers made "far too many innocent inferences to make the officers' suspicions reasonably warranted").

This Court has long recognized that lawful behavior may still support a reasonable suspicion that criminal activity is afoot. Innocent acts may "warrant[] further investigation." *Arvizu*, 534 U.S. at 274; *see also id.* at 277 (although the facts could have "suggested a family in a minivan on a holiday outing," "[a] determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct"); *Reid v. Georgia*, 448 U.S. 438, 441 (1980) ("[T]here could, of course, be circumstances in which wholly lawful conduct might justify the suspicion that criminal activity was afoot."). "[T]he relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts." *Sokolow*, 490 U.S. at 10.

"In allowing such detentions, *Terry* accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent." *Wardlow*, 528 U.S. at 126. Thus, although observing a vehicle on the road that is registered to an unlicensed driver "is not necessarily indicative of wrongdoing, . . . it is certainly suggestive of such." *Id.* at 124.

The court below also failed to acknowledge the protections to lawful citizens built into existing jurisprudence. This Court has consistently maintained that an officer's authority to conduct a *Terry* stop is only coextensive with the suspicion: once an officer determines that the suspected criminal activity is not afoot, the investigation ceases. *Terry*, 392 U.S. at 30. For this reason, courts recognize that if an officer pulls over a motorist and observes the driver does not match the description of the registered owner, the officer has lost any reasonable suspicion and the seizure must end.

If "for example . . . the vehicle's driver appears to be much older, much younger, or of a different gender than the vehicle's registered owner, reasonable suspicion would, of course, dissipate" because "[t]here would simply be no reason to think that the nonowner driver had a revoked [or suspended] license." *Vance*, 790 N.W.2d at 782 (citations omitted). So "if the officer knows that the owner of a vehicle has a revoked license and further, that the owner is a 22-year-old male, and the officer observes that the person driving the vehicle

is a 50- or 60-year-old woman, any reasonable suspicion of criminal activity evaporates." *Pike*, 551 N.W.2d at 922.

For that reason, law-abiding motorists enjoy adequate protection against unreasonable searches and seizures, because reasonable suspicion dissipates upon sufficiently contrary observations. If this recognition occurs from a distance, the officer may not stop the driver in the first place. If the officer only recognizes his statistically-unlikely mistake upon approaching the driver during a stop, and no other reason exists to continue the stop, the officer must let the inconvenienced driver go. That is the end of the matter.

CONCLUSION

The Court should reverse the decision below.

Respectfully submitted,

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