APPENDIX

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 116,446

[Filed July 27, 2018]

STATE OF KANSAS, *Appellant*,	)
v.	)
CHARLES GLOVER, *Appellee*.	)

SYLLABUS BY THE COURT

1.

A routine traffic stop is a warrantless seizure under the Fourth Amendment to the United States Constitution and is therefore unreasonable unless the officer who initiates the stop has a reasonable and articulable suspicion, based on facts, that the person stopped has committed, is committing, or is about to commit a crime.

2.

Courts evaluate the existence of a reasonable suspicion under a totality-of-the-circumstances analysis that requires a case-by-case assessment.

3.

The State bears the burden to justify a warrantless seizure, and it must do so with actual evidence. In determining whether the State has met its burden, a court cannot draw inferences in favor of the State from a lack of evidence in the record. Doing so impermissibly relieves the State of its burden.

4.

An officer cannot begin a traffic stop to investigate whether the driver of a vehicle has a valid license based solely on the fact the vehicle's registered owner has a suspended or revoked driver's license. The officer must be able to point to specific and articulable facts from which the officer can rationally infer that the driver of the vehicle—not just the registered owner—has a suspended driver's license.

Review of the judgment of the Court of Appeals in 54 Kan. App. 2d 377, 400 P.3d 182 (2017). Appeal from Douglas District Court; PAULA B. MARTIN, judge. Opinion filed July 27, 2018. Judgment of the Court of Appeals reversing the district court is reversed. Judgment of the district court is affirmed.

Andrew Bauch, assistant district attorney, argued the cause, and *John Grobmyer*, legal intern, *Charles E. Branson*, district attorney, and *Derek Schmidt*, attorney general, were with him on the brief for appellant.

Elbridge Griffy IV, of Lawrence, argued the cause and was on the brief for appellee.

The opinion of the court was delivered by

LUCKERT, J.: The United States Supreme Court has determined that the Fourth Amendment to the United States Constitution allows a law enforcement officer to initiate a traffic stop only when the officer has an articulable and reasonable suspicion, based on fact, that the person stopped has committed, is committing, or is about to commit a crime. Here, the officer stopped a vehicle simply because he assumed the driver was the registered owner, whose driver's license had been revoked. The officer had no information to support the assumption that the owner was the driver.

The driver moved to suppress evidence obtained during the stop, arguing the officer did not have reasonable suspicion of illegal activity when he stopped the car. The district court agreed, finding unreasonable the officer's assumption that the car's driver was the registered owner. The State appealed that ruling, and the Court of Appeals reversed. *State v. Glover*, 54 Kan. App. 2d 377, 400 P.3d 182 (2017). On review of that decision, we reverse the Court of Appeals and affirm the district court. We hold the officer lacked an articulable and reasonable suspicion that the unidentified driver did not have a valid driver's license; the officer's assumption was only a hunch and was unsupported by a particularized and objective belief.

FACTS AND PROCEDURAL HISTORY

While on routine patrol, Douglas County Sheriff's Deputy Mark Mehrer observed a 1995 Chevrolet pickup truck and ran the truck's license plate number through the Kansas Department of Revenue's database. Deputy Mehrer learned Charles Glover, Jr., had registered the vehicle and Glover's Kansas driver's license had been revoked. Deputy Mehrer did not

observe any traffic violations but initiated a traffic stop based on his assumption that Glover was driving the vehicle. He did not try to confirm the identity of the driver before initiating the traffic stop.

The State charged Glover with driving as a habitual violator. He filed a motion to suppress evidence, arguing the officer lacked reasonable suspicion to initiate the traffic stop. The parties entered into the following stipulation of facts on which the district court decided the motion:

> "1. Deputy Mark Mehrer is a certified law enforcement officer employed by the Douglas County[,] Kansas Sheriff's Office.
>
> "2. On April 28, 2016, Deputy Mehrer was on routine patrol in Douglas County when he observed a 1995 Chevrolet 1500 pickup truck with Kansas plate 295ATJ.
>
> "3. Deputy Mehrer ran Kansas plate 295ATJ through the Kansas Department of Revenue's file service. The registration came back to a 1995 Chevrolet 1500 pickup truck.
>
> "4. Kansas Department of Revenue files indicated the truck was registered to Charles Glover Jr. The files also indicated that Mr. Glover had a revoked driver's license in the State of Kansas.
>
> "5. Deputy Mehrer assumed the registered owner of the truck was also the driver, Charles Glover Jr.

> "6. Deputy Mehrer did not observe any traffic violations, and did not attempt to identify the driver [of] the truck. Based solely on the information that the registered owner of the truck was revoked, Deputy Mehrer initiated a traffic stop.
>
> "7. The driver of the truck was identified as the defendant, Charles Glover Jr."

The district court granted Glover's suppression motion, finding it was not "reasonable for an officer to infer that the registered owner of a vehicle is also the driver of the vehicle absent any information to the contrary." The district court judge relied on personal experience, stating she has "three cars registered in [her] name. [Her] husband drives one every day; [her] daughter [is] in [Washington D.C.] with one every day, and [she] drive[s] the other." The judge believed her situation was much like many other families.

The State filed an interlocutory appeal. The Court of Appeals reversed, holding:

> "a law enforcement officer has reasonable suspicion to initiate a stop of a vehicle to investigate whether the driver has a valid driver's license if, when viewed in conjunction with all of the other information available to the officer at the time of the stop, the officer knows the registered owner of the vehicle has a suspended license and the officer is unaware of any other evidence or circumstances from which an inference could be drawn that the registered owner is not the driver of the vehicle." *Glover*, 54 Kan. App. 2d at 385.

We granted Glover's petition for review. Our jurisdiction arises under K.S.A. 20-3018(b) (petition for review of Court of Appeals decision).

ANALYSIS

Glover correctly notes the State bears the burden of proving the lawfulness of a warrantless seizure. See *State v. Morlock*, 289 Kan. 980, 985, 218 P.3d 801 (2009). And he argues the Court of Appeals' owner-is-the-driver presumption impermissibly relieves the State of its burden of proof and shifts the burden to the driver. He argues that without the presumption the State did not sustain its burden to justify the traffic stop—a warrantless seizure—because the stipulation of facts showed no attempt by the officer to identify the driver or otherwise obtain corroborating information to show he was driving. We essentially agree with Glover's arguments. To explain that conclusion, we begin with some general principles about reasonable searches and seizures.

The Fourth Amendment requires law enforcement officers who seize an individual or who conduct a search to have either a warrant or a basis for relying on one of the specific and well-recognized exceptions to the warrant requirement. *Riley v. California*, 573 U.S. ___, ___, 134 S. Ct. 2473, 2482, 189 L. Ed. 2d 430 (2014); *State v. Neighbors*, 299 Kan. 234, 239, 328 P.3d 1081 (2014). One exception allows an officer to stop and briefly detain an individual without a warrant when the officer has an articulable and reasonable suspicion, based in fact, that the detained person is committing, has committed, or is about to commit a crime. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); *State v. Epperson*, 237 Kan. 707, 712, 703 P.2d

761 (1985). A warrantless traffic stop can fall within this exception if the officer has reasonable suspicion of a traffic violation or other criminal activity. See *State v. Smith*, 286 Kan. 402, 406, 184 P.3d 890 (2008).

To have reasonable suspicion to detain an individual, "[a] police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21. The suspicion must have "'a particularized and objective basis'" and be something more than "an unparticularized suspicion or hunch." *State v. DeMarco*, 263 Kan. 727, 735, 952 P.2d 1276 (1998) (quoting *Ornelas v. United States*, 517 U.S. 690, 696, 116 S. Ct. 1657, 134 L. Ed. 2d 911 [1996], and citing *United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 104 L. Ed. 2d [1989]). Although the United States Supreme Court has recognized that "the concept of reasonable suspicion is somewhat abstract," it has "deliberately avoided reducing it to '"a neat set of legal rules."'" *United States v. Arvizu*, 534 U.S. 266, 274, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002).

The United States Supreme Court applied these principles in the context of a case in which a law enforcement officer initiated a traffic stop to check the driver's license and registration. The officer did not know who was driving and had not observed any traffic violations before the stop. The Court held: "[E]xcept in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed[,] . . . stopping an automobile and detaining the driver in order to check his driver's license . . . [is] unreasonable under the Fourth Amendment."

Delaware v. Prouse, 440 U.S. 648, 663, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

In essence, according to the district court, that is what Deputy Mehrer did. Thus, the district court granted Glover's motion to suppress. Generally, to review such a conclusion, an appellate court would review the district court's ruling on a suppression motion to determine whether the district court's factual findings are supported by substantial competent evidence and would review the ultimate legal conclusion drawn from those factual findings de novo. *State v. Cleverly*, 305 Kan. 598, 604, 385 P.3d 512 (2016). But when, as here, the parties submit the case to the district court on stipulated facts, appellate courts need determine only the question of law of whether the district court should have suppressed the evidence. This presents an issue subject to unlimited review. *State v. Porting*, 281 Kan. 320, 324, 130 P.3d 1173 (2006).

Here, the stipulated facts are somewhat distinguishable from *Prouse*. Deputy Mehrer knew the vehicle was properly registered in Glover's name but was also aware Glover did not possess a valid license. Deputy Mehrer did not know whether Glover was driving but "assumed the registered owner of the truck was also the driver, Charles Glover Jr." In other words, Deputy Mehrer had some suspicion of a specific crime—driving while revoked. But Deputy Mehrer, who had not observed a traffic violation, needed *reasonable* suspicion Glover was driving, not just *some* suspicion. See *Prouse*, 440 U.S. at 663; *Smith*, 286 Kan. at 407.

Deputy Mehrer did not seek to confirm the identity of the driver, and the stipulation provides no additional

facts supporting an inference that Glover was driving. Under these limited facts, the district court had to determine whether spotting a vehicle owned by an unlicensed driver provides reasonable suspicion that an unlicensed motorist is driving the car. Under the totality of the circumstances, we note that a person with a revoked driver's license commits no crime by simply owning and registering a vehicle. Nor does that person commit a crime by allowing another licensed driver to use the registered vehicle. The crime occurs if an unlicensed driver operates the vehicle, making the determinative question whether *the driver* of the vehicle, not its *owner*, has a revoked license.

The State asserts, and the Court of Appeals held, reasonable suspicion can arise because an officer may presume the owner is the driver absent contrary information. We find this presumption legally erroneous for two reasons. First, the owner-is-the-driver presumption implicitly requires applying and stacking unstated assumptions that are unreasonable without further factual basis. Second, the presumption rests, in part, on what the officer *does not* know. And in evaluating whether the State has met its burden to prove the lawfulness of a search or seizure, courts cannot "draw inferences from the lack of evidence in the record" because doing so may relieve the State of its burden and shift the burden to the defendant to establish why reasonable suspicion did not exist. *Porting*, 281 Kan. at 327-28. To explain, we will discuss in more detail the reasons we reject the Court of Appeals holding.

Applying and Stacking Assumptions

Here, the parties presented narrow, stipulated facts. One of those stipulations stated: "Deputy Mehrer *assumed* the registered owner of the truck was also the driver, Charles Glover Jr." (Emphasis added.) Notably, the stipulation did not speak of an inference. And, as our discussion will show, assumed is an accurate word for what Deputy Mehrer did here. A distinction exists between an assumption and an inference, and this distinction is especially significant in the context of determining whether an officer had reasonable suspicion. See *Terry*, 392 U.S. at 21 (reasonable suspicion requires specific and articulable facts from which rational inferences can be drawn); *DeMarco*, 263 Kan. at 735 (citing *Sokolow*, 490 U.S. at 7, for the principle that an officer cannot rely on an "unparticularized suspicion or hunch").

According to a dictionary published about the time of the United States Supreme Court's decision in *Terry*, an assumption is "[a] statement accepted or supposed true without proof or demonstration." American Heritage Dictionary, 80 (1969). In contrast, an inference is "[s]omething inferred; a conclusion based on a premise," and to infer is "[t]o conclude from evidence; deduce" or "[t]o have as a logical consequence." American Heritage, 673. This means, by definition, a true inference fits with the *Terry* standard—it is a conclusion or deduction based on an evidentiary premise, i.e., specific and articulable facts. See *Terry*, 392 U.S. at 21; American Heritage, 673. An assumption has no basis in proof or demonstration, so it is only an inarticulate hunch or an unparticularized suspicion. See American Heritage, 80. Accordingly, an

assumption will not satisfy reasonable suspicion under the *Terry* standard. See *DeMarco*, 263 Kan. at 735.

Here, the panel overlooked the assumption and held:

> "[A] law enforcement officer has reasonable suspicion to initiate a stop . . . if, when viewed in conjunction with all of the other information available to the officer at the time of the stop, the officer knows the registered owner of the vehicle has a suspended license and the officer is unaware of any other evidence or circumstances from which an inference could be drawn that the registered owner is not the driver of the vehicle." *Glover*, 54 Kan. App. 2d at 385.

Although the panel used the phrase "when viewed in conjunction with all of the other information available to the officer at the time of the stop," Deputy Mehrer had no information beyond the fact that Glover, the registered owner, had a revoked driver's license. For example, Deputy Mehrer did not have personal knowledge of Glover or his driving habits. See *Glover*, 54 Kan. App. 2d at 385. Given the lack of other evidence, to accept the owner-is-the-driver presumption as valid, the panel necessarily had to accept two unstated assumptions.

First, it had to assume the registered owner was likely the primary driver of the vehicle. As the district court stated, however, common experience in Kansas communities suggests families may have several drivers sharing vehicles legally registered in the names of only one or two of the family members. See *Ornelas*, 517 U.S. at 695 ("Articulating precisely what

'reasonable suspicion' and 'probable cause' mean is not possible. They are commonsense, nontechnical conceptions that deal with "'the factual and practical consideration of everyday life on which reasonable and prudent men, not legal technicians, act.'"'"). Unless the officer is familiar with the registered owner and his or her driving habits or has another factual foundation, the officer can only *assume*, not infer, the owner is the driver. And an assumption does not satisfy the *Terry* standard. See *DeMarco*, 263 Kan. at 735.

Even if, for the sake of argument, we accept that it is reasonable to believe the registered owner is likely the primary driver of a vehicle, we cannot accept the owner-is-the-driver presumption because it ultimately turns on the second assumption that the owner will likely disregard the suspension or revocation order and continue to drive. This assumption is flawed because it presumes a broad and general criminal inclination on the part of suspended drivers. Yet officers cannot assume criminal conduct is taking place and detain someone without "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21. The clear implication of *Terry* is that absent specific and articulable facts rationally suggesting criminal activity, officers and courts should presume that citizens are engaged in lawful activities and have a right to remain free from police interference. In this way, this case varies from *State v. Hamic*, 35 Kan. App. 2d 202, 129 P.3d 114 (2006), a case cited by the State and relied on by the panel.

In *Hamic*, before initiating a traffic stop, the officer remembered his prior contact with the vehicle owner.

He knew she had been stopped twice in the previous two months for driving while suspended—once by him and once by another officer. Thus, the facts established the unlicensed owner drove the vehicle and had repeatedly disregarded her suspension order. In other words, the officer had specific and articulable facts to *infer* the owner was likely driving the vehicle in violation of her suspension order.

In contrast, Deputy Mehrer merely assumed Glover was driving while revoked. He did not corroborate the identity of the driver and had no knowledge of Glover having previously disregarded the revocation order. Without this information (or other facts), Deputy Mehrer should have presumed Glover was obeying the revocation order and was therefore not the driver. See *Prouse*, 440 U.S. at 663; *Terry*, 392 U.S. at 21. The fact Glover's vehicle was being driven was not readily indicative of a crime because Glover could legally allow another licensed driver to operate his vehicle. Without further factual support, it was not reasonable for Deputy Mehrer to believe Glover was disregarding the revocation order simply because his vehicle was being driven.

Even if we were to accept the two assumptions as valid inferences, the State's theory requires one assumption to be stacked on another. The assumption that an unlicensed driver is likely to continue driving supports the presumption that it is the registered owner who is driving the vehicle. Kansas law does not allow this type of inference stacking. As we held in *State v. Banks*, 306 Kan. 854, 859, 397 P.3d 1195 (2017): "Where the State relies on such inference stacking, i.e., where the State asks the jury to make a

presumption based upon other presumptions, it has not carried its burden to present sufficient evidence." The same logic applies when an officer must state facts to support an articulable and reasonable suspicion.

In summary, we explicitly reject the owner-is-the-driver presumption because it assumes the registered owner is likely disregarding his or her suspension or revocation order based on only the *general* fact his or her vehicle is being driven. Yet the determinative question is not the status of the registered owner's license; it is the status of the *actual* driver's license. Thus, we find the officer must have *specific and articulable* facts suggesting the owner is driving the vehicle or is otherwise likely to violate the suspension order based on other corroborating information, such as the officer's prior encounters in *Hamic*. See *Prouse*, 440 U.S. at 663; *Terry*, 392 U.S. at 21.

Impermissible burden shifting

The owner-is-the-driver presumption is also invalid because it relieves the State of its burden by eliminating the officer's need to develop specific and articulable facts to satisfy the State's burden on the determinative issue of whether the registered owner is driving the vehicle, not whether the vehicle is being driven. By creating a bright-line rule, the State no longer has to prove the officer had particular and individualized suspicion that the registered owner was *driving* the vehicle. Instead, in a sense, the rule motivates officers to avoid confirming the identity of the driver because learning facts that suggest the registered owner is not driving undermines reasonable suspicion. Such an application is far afield from the reasonableness requirements of *Terry* and its progeny.

As we already discussed, the underlying assumptions are a necessary component of the presumption. But without appropriate factual foundation, they are only that—assumptions akin to unparticularized suspicions or inarticulate hunches and thus invalid for purposes of reasonable suspicion. The owner-is-the-driver presumption is a form of judicial gap-filling where courts use a lack of contrary evidence to convert an assumption to an inference. This is a result we cannot accept because an assumption is something without basis in fact or proof. A lack of proof to the contrary does not prove something that lacked proof to begin with. Simply put, absence of evidence is not evidence of absence.

This court has repeatedly held the State has the burden to justify a warrantless seizure. See *Morlock*, 289 Kan. at 985. In determining whether the State has met its burden, "[i]t [is] improper [for a court] to draw inferences from the lack of evidence in the record." *Porting*, 281 Kan. at 328. In *Porting*, we held an inference based on a lack of evidence improperly relieves the State of its burden of proof and shifts it to the defendant to disprove the inference. 281 Kan. at 327-28.

Porting dealt with a warrantless search of a home based on the third-party consent of a parolee, Eugene Hanson, who had just been released from an 18-month prison sentence. Before his imprisonment, he and his former girlfriend, Sandra Porting, resided in his mother's home. Porting continued to live with Hanson's mother while he served his prison sentence. After he was released but before going to his mother's home, Hanson asked a parole officer to sweep the house for

drugs because he had heard rumors Porting was using drugs in the house. The parole officer accompanied Hanson to the home, and Hanson gave the officer permission to search. Although Hanson's mother was present, the officer did not request her additional consent. During the search, the officer found methamphetamine and drug paraphernalia in the home and in Porting's pockets.

Porting moved to suppress, arguing Hanson lacked authority to consent to the search. The trial court denied her motion, finding Hanson had authority because he was a resident of the home based on his physical presence and intent to remain there permanently. On appeal, Porting argued that although Hanson was a former and prospective resident of the home, he was not a resident at the time of the search. The Court of Appeals found Hanson had authority to consent based on a *lack* of evidence that he had permanently surrendered control of the residence, his mother had restricted his access, or he was otherwise not welcome. See *State v. Porting*, 34 Kan. App. 2d 211, 214-15, 116 P.3d 728 (2005). This court reversed, holding the facts did not show Hanson had authority and the inferences drawn from a lack of evidence in the record impermissibly shifted the burden of proof to Porting. See *Porting*, 281 Kan. at 326-28.

The Court of Appeals' reasoning here is highly analogous to its reasoning in *Porting*. An inference is being drawn that Glover was the driver based on a lack of evidence that he was not. See *Glover*, 54 Kan. App. 2d at 385. And while *Porting* related to a warrantless search and this case involves a warrantless seizure, the State has the burden of proof to justify both. See

Morlock, 289 Kan. at 985; *Porting*, 281 Kan. at 324; *DeMarco*, 263 Kan. at 732. In both cases, the inferences drawn based on a lack of evidence constitute improper burden shifting. See *Porting*, 281 Kan. at 327-28.

While these reasons cause us to reject the panel's position, we note that the panel supported its holding by citing several out-of-state decisions. See *Glover*, 54 Kan. App. 2d at 382-83 (citing *Armfield v. State*, 918 N.E.2d 316, 321-22 [Ind. 2009]; *State v. Vance*, 790 N.W.2d 775, 781 [Iowa 2010]; *State v. Tozier*, 905 A.2d 836, 839 [Maine 2006]; *State v. Pike*, 551 N.W.2d 919, 922 [Minn. 1996]); *State v. Neil*, 350 Mont. 268, 271, 207 P.3d 296 [2009]; *State v. Richter*, 145 N.H. 640, 641-42, 765 A.2d 687 [2000];. *State v. Edmonds*, 192 Vt. 400, 404, 58 A.3d 961 [2012]). In our reading of these decisions, none of them discuss the underlying assumptions that the district court needed to make here nor do they discuss the problems with inference stacking or with the lack of evidence being produced by the State. Nor do those decisions justify the reasonableness of the assumptions.

Instead, many of the decisions rest on the conclusion that common sense tells us that a registered owner is the primary driver of all vehicles registered in his or her name. But as the district court indicated, common experience suggests otherwise. And, as we have discussed, even if we accept that assumption, common sense does not say that someone who cannot legally drive will continue to do so. We cannot assume someone is breaking the law. Finally, we note that some decisions rest on public policy. But we cannot set aside principles of Kansas law simply because valid policy reasons exist for a course of conduct. As a result,

we find these decisions unpersuasive, at least as applied to this case.

CONCLUSION

We reject the Court of Appeals' bright-line, owner-is-the-driver presumption because reasonable suspicion must be based on specific and articulable facts from which rational inferences can be drawn that the detained individual is committing, has committed, or is about to commit a crime. The State has the burden to prove the officer had reasonable suspicion, and this burden cannot be shifted to the defendant. When a court draws inferences in favor of the State based on a lack of evidence in the record, it impermissibly relieves the State of its burden.

To be clear, reasonable suspicion is a low burden. The State does not need overwhelming evidence to satisfy its burden, but it must affirmatively produce evidence showing the officer rationally inferred criminal activity based on specific and articulable facts. See *Terry*, 392 U.S. at 21; *Morlock*, 289 Kan. at 985; *Porting*, 281 Kan. at 327-28. Here, the problem is not that the State necessarily needs significantly more evidence; it needs *some* more evidence. What more is required turns on the totality of the circumstances, which courts must determine case by case. See *DeMarco*, 263 Kan. at 734-35. In plain terms, it does not matter if the evidentiary gap is an inch or a mile; if the State has the burden to fill it, it must do so *with evidence*. A court cannot engage in judicial gap-filling based on a *lack* of evidence. See *Porting*, 281 Kan. at 327-28.

Today, we decline to delineate the type of corroborating evidence that will satisfy the State's burden. We cannot imagine all the ways the gap could be filled. But we recognize that in other cases, the State, by presenting some more evidence, may meet its burden.

But the State did not present any such evidence here, so the question of what evidence is necessary is not before us. Also, we stress that the reasonable suspicion analysis is not amenable to checklists. Courts must determine the quantity and quality of the evidence supporting an officer's actions on a case-by-case basis under a totality-of-the-circumstances analysis. See *DeMarco*, 263 Kan. at 734-35. "Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result [the United States Supreme] Court has consistently refused to sanction." *Terry*, 392 U.S. at 22.

The judgment of the Court of Appeals is reversed. The judgment of the district court is affirmed.

APPENDIX B

Court: Supreme Court

Case Number: 116446

Case Title: STATE OF KANSAS, APPELLANT,
V.
CHARLES GLOVER, APPELLEE.

Type: Petition for Review (re: Opinion) by Appellee, Charles Glover.

Considered by the Court and granted.

SO ORDERED.

/s/Lawton R. Nuss
/s/ Lawton R. Nuss, Chief Justice

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APPENDIX C

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

No. 116,446

[Filed June 30, 2017]

STATE OF KANSAS, *Appellant*,	)
v.	)
CHARLES GLOVER, *Appellee*.	)

SYLLABUS BY THE COURT

A law enforcement officer has reasonable suspicion to initiate a stop of a vehicle to investigate whether the driver has a valid driver's license if, when viewed in conjunction with all of the other information available to the officer at the time of the stop, the officer knows the registered owner of the vehicle has a suspended license and the officer is unaware of any other evidence or circumstances from which an inference could be drawn that the registered owner is not the driver of the vehicle.

Appeal from Douglas District Court; PAULA B. MARTIN, judge. Opinion filed June 30, 2017. Reversed and remanded with directions.

John Grobmyer, legal intern, *Andrew Bauch* and *Kate Duncan Butler*, assistant district attorneys, *Charles E. Branson*, district attorney, and *Derek Schmidt*, attorney general, for appellant.

Elbridge Griffy IV, of Lawrence, for appellee.

Before STANDRIDGE, P.J., MCANANY, J., and HEBERT, S.J.

STANDRIDGE, J.: The State takes this interlocutory appeal challenging the suppression of evidence obtained after a law enforcement stop of Charles Glover's vehicle. The district court found that the initial stop was unlawful because it was not supported by reasonable suspicion. The State contends the district court erred in finding a lack of reasonable suspicion because the officer obtained a report that the registered owner of Glover's vehicle had a suspended driver's license and the officer reasonably inferred that Glover, the owner of the vehicle, was driving. Based on the particular facts presented in this case, we find the law enforcement officer had reasonable suspicion to initiate a stop of a vehicle to investigate whether Glover had a valid driver's license: the evidence established that the officer knew the registered owner of Glover's vehicle had a suspended driver's license and there was no evidence from which the officer could have inferred that anyone but the registered owner was the driver of the vehicle.

FACTS

The parties stipulated to the facts of this case. On April 28, 2016, Douglas County Deputy Mark Mehrer was on routine patrol when he observed a 1995 Chevrolet 1500 pickup truck. Mehrer ran the truck's

license plate number through the Kansas Department of Revenue's file service, which confirmed that the plate was registered to the truck and indicated that the truck was registered to Glover. The report also stated that Glover had a revoked Kansas driver's license. Although Mehrer did not observe the driver of the truck commit any traffic infractions, Mehrer initiated a traffic stop based solely on the information that the driver's license of the truck's registered owner was revoked. Mehrer identified Glover as the driver of the truck. Glover was charged with driving without a license as a habitual violator under K.S.A. 2016 Supp. 8-287, which is a class A nonperson misdemeanor.

Glover filed a motion to suppress the evidence obtained as a result of the traffic stop, arguing that Deputy Mehrer initiated the stop without the necessary reasonable suspicion to believe a crime had been, was being, or was going to be committed. Specifically, Glover argued the existence of evidence to show that the registered owner of a vehicle has a suspended driver's license is insufficient, without more, to support a reasonable inference that the owner of the vehicle is the person driving the vehicle. The State filed a response in opposition to the motion to suppress, arguing that Mehrer had a reasonable suspicion that Glover was the driver of the truck because it was reasonable for the officer to infer that the registered owner of a vehicle was also the driver of the vehicle in this case because there was no evidence from which a contrary inference could be made. The district court ultimately granted Glover's motion to suppress, holding that the officer did not have reasonable suspicion to initiate the stop. The court reasoned:

> "I mean, just as a personal observation, I have three cars registered in my name. My husband drives one every day; my daughter's in [Washington, D.C.] with one every day, and I drive the other. And I think that's true for a lot of families that if there are multiple family members and multiple vehicles, that somebody other than the registered owner often is driving that vehicle."

The State timely filed an interlocutory appeal seeking review of the district court's decision on the motion to suppress.

STANDARD OF REVIEW

On appeal of a district court's ruling on a motion to suppress, the ultimate determination of suppression is a question of law over which this court has unlimited review where, as here, the parties have stipulated to the material facts. See *State v. Ramirez*, 278 Kan. 402, 404, 100 P.3d 94 (2004). "Whether reasonable suspicion exists is a question of law and is reviewed de novo." *State v. Coleman*, 292 Kan. 813, Syl. ¶ 4, 257 P.3d 320 (2011).

REASONABLE SUSPICION

The Fourth Amendment to the United States Constitution and Section 15 of the Kansas Constitution Bill of Rights prohibit unreasonable government searches and seizures. A seizure occurs when an officer has restrained the liberty of a person by means of physical force or show of authority. *State v. Greever*, 286 Kan. 124, 135, 183 P.3d 788 (2008) (citing *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S. Ct. 1868, 20 L. Ed. 2d 889 [1968]). A law enforcement officer who stops a

vehicle on a public roadway has effected a seizure. *State v. Marx*, 289 Kan. 657, 661, 215 P.3d 601 (2009).

To comply with the Fourth Amendment, a law enforcement officer conducting a vehicle stop must "know of specific and articulable facts that create a reasonable suspicion the seized individual is committing, has committed, or is about to commit a crime or traffic infraction." *State v. Jones*, 300 Kan. 630, 637, 333 P.3d 886 (2014); see K.S.A. 22-2402(1) (codifying requirement that law enforcement officer may stop any person in a public place whom the officer reasonably suspects "is committing, has committed or is about to commit a crime"). The inquiry into the reasonableness of searches and seizures balances the State's interests against an individual's right to be secure from unwarranted governmental intrusion. *Terry*, 392 U.S. at 20-21. The reasonableness of an officer's suspicion depends on the totality of circumstances in the view of a trained law enforcement officer. *State v. Martinez*, 296 Kan. 482, 487, 293 P.3d 718 (2013).

> "Reasonable suspicion means a particularized and objective basis for suspecting the person stopped is involved in criminal activity. Something more than an unparticularized suspicion or hunch must be articulated. Reasonable suspicion can arise from information that is less reliable than that required to show probable cause. Both reasonable suspicion and probable cause are dependent upon the content of information possessed by the detaining authority and the information's degree of reliability. Quantity and quality are considered

> in the totality of the circumstances—the whole picture that must be taken into account when evaluating whether there is reasonable suspicion." *State v. Toothman*, 267 Kan. 412, Syl. ¶ 5, 985 P.2d 701 (1999).

The appellate court is "called upon to employ common sense and ordinary human experience" in evaluating whether the circumstances justify the detention. *Jones*, 300 Kan. at 647. "'[R]easonable suspicion represents a "minimum level of objective justification" which is "considerably less than proof of wrongdoing by a preponderance of the evidence."'" *City of Atwood v. Pianalto*, 301 Kan. 1008, 1011, 350 P.3d 1048 (2015). The burden is on the State to demonstrate the lawfulness of the stop. See K.S.A. 22-3216(2).

ANALYSIS

The question presented on appeal is whether Deputy Mehrer had reasonable suspicion to initiate a stop of Glover's vehicle to investigate whether the driver had a valid driver's license based solely on the fact that Mehrer knew that Glover, the registered owner of the observed vehicle, had a suspended license.

In support of its argument that Mehrer had reasonable suspicion, the State relies on *State v. Hamic*, 35 Kan. App. 2d 202, 129 P.3d 114 (2006), for guidance. In *Hamic*, an officer observed a green Jeep Cherokee, which he believed was owned by Jena Hamic-Deutsch. The officer had personal knowledge of two previous instances in which Hamic-Deutsch operated the Jeep with a suspended license and without proof that the vehicle was covered with liability insurance: once approximately 2 months before

the stop, and once approximately 1 month later. The officer also knew that a warrant had been issued for Hamic-Deutsch's arrest for a probation violation and that Hamic-Deutsch was a registered coowner of the Jeep. The officer did not observe a traffic violation and did not visually confirm that Hamic-Deutsch was operating or occupying the Jeep. Upon stopping the vehicle, the officer learned that the driver was Hamic-Deutsch's mother and that Hamic-Deutsch was an occupant. After investigation, the officer arrested both women on several charges. The defendants moved to suppress the evidence obtained as a result of the traffic stop.

The *Hamic* court analyzed the totality of the information known to the officer at the time of the vehicle stop and ultimately determined that it supported a reasonable inference that Hamic-Deutsch was either the driver or occupant of the vehicle. 35 Kan. App. 2d at 210 ("The officer personally knew that Hamic-Deutsch had been driving the Jeep on two separate occasions within the past 2 months, supporting a reasonable presumption that Hamic-Deutsch was the Jeep's principal operator."). On the issue of whether a law enforcement officer is justified in suspecting that the registered owner of a vehicle is the driver of that vehicle, the court stated as follows:

> "Perhaps it is more a matter of common experience than a profound legal maxim to declare that a law enforcement officer is reasonable in suspecting that the registered owner of a vehicle is the driver of the owned vehicle, absent evidence to the contrary. One presumes that it is common for a reasonably

> cautious citizen to honk or wave at a moving vehicle that is owned by a friend without first having identified the vehicle's occupants, and in doing so, rationally expect that the friend will receive the greeting. Further, the caveat, that the owner-is-the-driver inference may lose its rationality where the officer possesses contrary information, is simply another way of saying that we must look at the whole picture." 35 Kan. App. 2d at 209.

The court specifically noted that any inference drawn from the fact that the registered owner of a vehicle is the driver of the owned vehicle "must be viewed in conjunction with all of the other information available to the officer" and that "it will not always be determinative." 35 Kan. App. 2d at 210. As such, the court used the officer's inference as one point in its analysis of the totality of the circumstances to determine that the officer had reasonable suspicion to initiate a vehicle stop. So while the court in *Hamic* ultimately concluded under the facts presented that officers may reasonably infer the registered owner of a vehicle is the driver, it did not create a bright-line rule for the question presented here: whether a law enforcement officer's knowledge that the vehicle owner's license is revoked *alone* provides reasonable suspicion to initiate a vehicle stop.

Although Kansas courts have not yet confronted this narrow issue, courts in other jurisdictions have provided helpful guidance. State supreme courts that have considered this issue have consistently held that an officer has reasonable suspicion to initiate a vehicle stop when (1) the officer knows that the registered

owner of a vehicle has a suspended license and (2) the officer is unaware of any evidence or circumstances which indicate that the owner is not the driver of the vehicle. See *Armfield v. State*, 918 N.E.2d 316, 321-22 (Ind. 2009) ("[A]n officer has reasonable suspicion to initiate a *Terry* stop when [1] the officer knows that the registered owner of a vehicle has a suspended license and [2] the officer is unaware of any evidence or circumstances which indicate that the owner is not the driver of the vehicle."); *State v. Vance*, 790 N.W.2d 775, 781 (Iowa 2010) ("[A]n officer has reasonable suspicion to initiate an investigatory stop of a vehicle to investigate whether the driver has a valid driver's license when the officer knows the registered owner of the vehicle has a suspended license, and the officer is unaware of any evidence or circumstances indicating the registered owner is not the driver of the vehicle."); *State v. Tozier*, 905 A.2d 836, 839 (Maine 2006) ("[I]t is reasonable for an officer to suspect that the owner is driving the vehicle, absent other circumstances that demonstrate the owner is not driving."); *State v. Pike*, 551 N.W.2d 919, 922 (Minn. 1996) ("[T]he knowledge that the owner of a vehicle has a revoked license is enough to form the basis of a 'reasonable suspicion of criminal activity' when an officer observes the vehicle being driven."); *State v. Neil*, 350 Mont. 268, 271, 207 P.3d 296 (2009) ("'[A]n officer may rationally infer the driver of a vehicle is the vehicle's registered owner unless the officer is aware of any facts that would render that inference unreasonable.'"); *State v. Richter*, 145 N.H. 640, 641-42, 765 A.2d 687 (2000) ("It was reasonable for the officer to infer that the driver was the owner of the vehicle. . . . Such an inference gave rise to a reasonable suspicion that the driver was committing a violation of [the law]."); *State v.*

Edmonds, 192 Vt. 400, 404, 58 A.3d 961 (2012) ("[R]easonable suspicion lay in the troopers' knowledge that the owner of [the] car was under license suspension, and the reasonable inference that the driver of a car could be its owner.").

Some state courts that have adopted the rule have relied on policy reasons to support their conclusion that the inference is reasonable. For example, the Indiana Supreme Court reasoned that requiring law enforcement to verify the driver of the car matches a physical description of the owner would strike "'against basic principles of safety [because it] puts the onus on the officer to maneuver himself [or herself] into a position to clearly observe the driver in the midst of traffic.'" *Armfield*, 918 N.E.2d at 322. Similarly, courts have found requiring the police to verify the driver's identity as the owner would be impractical in some cases, such as in heavy traffic, at night, or where the vehicle has dark-tinted windows. See *Vance*, 790 N.W.2d at 782; *Armfield*, 918 N.E.2d at 322. The *Vance* court concluded that "to forbid the police from relying on [an inference that the owner of the vehicle is the driver] 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." 790 N.W.2d at 782.

In response to the public policy concerns set forth by other state courts as noted above, Glover contends in his brief that Deputy Mehrer could have investigated the identity of the vehicle's driver further before initiating a vehicle stop: Mehrer "could have obtained

a description of the owner of the vehicle and compared the description with the driver," or he "could have found out whether the owner of the vehicle had prior convictions for driving while suspended[,] which would have offered additional justification for the stop." Like the Vermont Supreme Court held in response to a similar contention, we find requiring the officer to gather the additional evidence set forth by Glover to confirm driver identification prior to a vehicle stop essentially raises the evidentiary standard from one of reasonable suspicion to the more demanding standard of probable cause. See *Edmonds*, 192 Vt. at 404. Our courts have held that reasonable suspicion requires only a "'minimum level of objective justification'" that is "'considerably less than proof of wrongdoing by a preponderance of the evidence.'" *Pianalto*, 301 Kan. at 1011.

Raising his own public policy concerns, Glover contends that allowing law enforcement to stop any vehicle when the officer has knowledge that the owner's license is suspended would give the State an unwarranted right to stop persons who are not breaking the law, such as co-owners of the vehicle or persons who are driving the owner's vehicle to assist the owner with transportation. Glover also contends that driving with a suspended license does not harm the safety of the public, so "[t]he need to stop motorists who might be driving on a suspended license is not so urgent as to grant the [S]tate's request for a bright line rule." And Glover argues that such a rule is susceptible to being applied in a racially disparate manner, citing an ACLU of Illinois report detailing data that the Chicago Police Department utilized stop and frisk disproportionately in the black communities of Chicago.

But Glover's concerns that police may initiate seizures of persons other than the vehicle's owner should be alleviated by the fact that the reasonable suspicion inquiry considers the totality of the circumstances. *Martinez*, 296 Kan. at 487. If an officer is aware of any information suggesting that the inference is not valid in a particular case, for example that the vehicle's driver appears to be much older, much younger, or of a different gender or race than the vehicle's registered owner, reasonable suspicion would dissipate.

Finally, Glover cites several out-of-state intermediate appellate court decisions that support the requirement that police officers conduct additional investigations to confirm a vehicle owner's identity prior to conducting a vehicle stop. See, *e.g.*, *State v. Cerino*, 141 Idaho 736, 738, 117 P.3d 876 (2005) ("Officers could run owner registration and driver's license checks for any vehicle they see in operation, seeking an owner without [a] license and a driver of the same gender, and would be authorized to stop any vehicle meeting these criteria. In our judgment, the Fourth Amendment safeguard requires more particularized suspicion to justify the 'constitutionally cognizable intrusion' of stopping a motorist."); *State v. Parks*, 288 N.J. Super. 407, 412, 672 A.2d 742 (1996) ("When there is additional evidence of defendant's identity as the driver of his vehicle at a particular time, it may be inferred that the owner was the driver."); *Worley v. Commonwealth*, No. 1913-94-2, 1996 WL 31949, at *1 (Va. Ct. App. 1996) (unpublished opinion) ("Nonetheless, to hold that a police officer has a reasonable suspicion to conduct a *Terry* stop where the officer has determined only that the vehicle's owner has a suspended operator's license would justify the

indiscriminate stop of every vehicle owned by an individual with a suspended license. The Fourth Amendment does not countenance such an intrusive violation of privacy."). While the cases cited by Glover demonstrate that intermediate courts of appeal of other states have held officers must rely on additional investigation to confirm a vehicle owner's identity prior to conducting a vehicle stop, we do not find those cases persuasive.

In sum, we agree with the consensus of state supreme courts that have considered this issue and hold that a law enforcement officer has reasonable suspicion to initiate a stop of a vehicle to investigate whether the driver has a valid driver's license if, when viewed in conjunction with all of the other information available to the officer at the time of the stop, the officer knows the registered owner of the vehicle has a suspended license and the officer is unaware of any other evidence or circumstances from which an inference could be drawn that the registered owner is not the driver of the vehicle. Here, the undisputed evidence establishes that Deputy Mehrer observed the pickup being driven on a public roadway. He determined the pickup to be registered to Glover, who had a suspended driver's license. There were no facts or circumstances suggesting that the owner was not the driver. Considering the totality of the information available to the officer at the time of the stop, we find it was reasonable for Mehrer to infer that the driver was the owner of the vehicle; in other words, there were specific and articulable facts from which the officer's common-sense inference gave rise to a reasonable suspicion that the driver was committing a violation of K.S.A. 2016 Supp. 8-287. Therefore, Mehrer

properly initiated a traffic stop to investigate whether Glover was driving his vehicle in violation of the law.

The district court's decision to grant Glover's motion to suppress the evidence is reversed, and the matter is remanded for further proceedings.

APPENDIX D

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

Case Number 2016 TR 1431

[Dated July 22, 2016]

STATE OF KANSAS,	)
	)
Plaintiff,	)
	)
vs.	)
	)
CHARLES GLOVER,	)
	)
Defendant.	)
	)

Before
THE HONORABLE PAULA B. MARTIN
District Court Judge
Division V

MOTION TO SUPPRESS
July 22, 2016

A P P E A R A N C E S

For the State:

Mr. Andrew D. Bauch
Assistant District Attorney

111 E. 11th Street
Lawrence, Kansas 66044

For the Defendant:

Mr. Elbridge Griffy
Attorney at Law
901 Kentucky Street
Suite 107
Lawrence, Kansas 66044

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THE COURT: State of Kansas vs. Charles W. Glover. 16 TR 1431 and 14 TR 3087.

MR. BAUCH: State by Andrew Bauch.

MR. GRIFFY: And, Your Honor, Mr. Glover appears in person and he's by and through his counsel, Elbridge Griffy.

THE COURT: And we're here on your motion, Mr. Griffy, correct?

MR. GRIFFY: That is correct, Your Honor.

THE COURT: Any preliminary matters?

MR. BAUCH: Judge, we have signed a stipulation between the parties, so on stipulated facts, if I can approach.

MR. GRIFFY: And I may need to eat a little bit of crow or at least stub my toe to make some clarifications on my motion.

THE COURT: Let me read this first.

MR. GRIFFY: All right.

THE COURT: All right. That's what I understood them to be as I read your motion and response.

MR. GRIFFY: Correct, Your Honor. The only thing that I wanted to advise the Court of at this point is at the end of my motion I

[p.3]

listed authorities. I've been told by a lot of attorneys who have a lot more experience than I do that I shouldn't do that. Maybe I limit myself or I create problems. I think I may have created a little bit of a problem here because I did cite 22-2501 that's been repealed as part of that whole subsequent to an arrest issue, I think. It didn't dawn on me until this morning.

THE COURT: Okay.

MR. GRIFFY: That what I was not relying on was the statutory language in that but, in fact, the same case law that the State's -- State argues and points out in their response in that -- under *Terry v. Ohio* and *Delaware v. Prouse* that there has to be a reasonable, articulable suspicion that the person has committed a crime, is committing a crime or is about to commit a crime, and I've discussed that with Mr. Bauch. I don't think that that would change the nature of their response, but we just want to make sure that if, in fact, there needs to be a continuance based on the change of authorities that I've listed.

THE COURT: Mr. Bauch.

MR. BAUCH: I don't think so, Judge.

THE COURT: Do you want to make oral

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arguments?

MR. BAUCH: You know what, Your Honor, I'm comfortable -- if the brief is clear, I'm comfortable standing on the brief and the stipulation of the parties.

THE COURT: Mr. Griffy?

MR. GRIFFY: Well, if I wasn't before such a learned Judge, I might have some oral argument to be made, but I think that Your Honor is quite capable and experienced at looking at the briefs that have been filed and making the right decision.

THE COURT: Off the record for a minute.

(Off the record.)

THE COURT: All right. I have read everything that you have provided to me, and the issue is, is it reasonable for an officer to infer that the registered owner of a vehicle is also the driver of the vehicle absent any information to the contrary. And I know other courts that have been cited by Mr. Bauch have said yes. Those other cases did have other factors present that were not present in this case, and I don't think it's reasonable.

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I mean, just a personal observation, I have three cars registered in my name. My husband drives one every day; my daughter's in DC with one every day, and I drive the other. And I think that's true for a lot of families that if there are multiple family members and

multiple vehicles, that somebody other than the registered owner often is driving that vehicle.

And so this Court holds that that is not a reasonable inference and the motion to suppress is granted.

MR. GRIFFY: Thank you, Your Honor.

MR. BAUCH: And, Judge, based on that ruling, the State intends to file an interlocutory appeal. And I think procedurally we need to make sure that Mr. Glover is not held on any kind of a bond during the pending, that pending matter. So if he is on any type of a bond on this case, I would ask that it would be returned to him. I believe he's not supposed to be held on any kind of a bond.

THE COURT: Okay. I haven't had this come up before.

MR. BAUCH: It's pretty rare but I dealt with it once in Division 3. Actually, if I

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recall, and maybe Mr. Griffy can -- he'll correct me if I'm wrong, but in this case normally the driver would be arrested because he was charged as a habitual violator, but he was given a citation and the deputy did not take him into custody. And I don't show -- and so Mr. Glover appeared on the date on the citation and I don't have any indication that he's ever failed to appear.

THE COURT: Let me just see. A lot of times when you come in on a summons they'll have you go through booking but that did not occur here.

MR. BAUCH: Okay.

THE COURT: So he's not being held on any kind of bond and -- but there is still a probation violation case pending. Because there were allegations other than this violation for or the alleged violation for driving while being a habitual violator, so we do need to set that for a hearing.

MR. BAUCH: Okay.

MR. GRIFFY: Thank you, Your Honor. And I would concur with Mr. Bauch's version. The officers did not arrest him. He was issued a citation. He was allowed to go on about his

[p.7]

business. I think the officer was mostly interested in not being around when he drove the car again. But, yeah, let's --

(Off the record.)

THE COURT: You want to just state something before I set the probation violation?

MR. GRIFFY: Just, Your Honor, in terms of Mr. Bauch had said on the record that he didn't think there had been any failures to appear. My notes indicate Mr. Glover failed to appear on the 31st of May. At that time he had gotten a hold of me and advised me he was involved in a car accident. Because of that information, we continued the case to June 7th and Mr. Glover did appear at that time, so I don't think there are any bonds.

THE COURT: That's a different case. In 16 TR 1431 where the State's going to file their interlocutory appeal, he has no bond.

In 14 TR 3087, here for probation violations, an affidavit was filed by Mr. Chance on May the 31st. A bench warrant was issued by the Court on June 1st. He was arrested on June 7th and posted his bond.

MR. GRIFFY: Okay.

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THE COURT: So he is on bond in this case but that has no bearing on the interlocutory appeal issue.

MR. GRIFFY: Thank you, Your Honor.

THE COURT: All right. So when would you like me to set the hearing?

MR. GRIFFY: Well, I'd like --

THE COURT: How about September 2nd in the afternoon?

MR. GRIFFY: That could work.

THE COURT: Let's see, you are here at 9:30 the day before. Let me see if I can fit it in -- I really can't, I'm sorry. But I could do 9:00 on September 1st.

MR. GRIFFY: I can do 9:00 on September 1st. That would be fine.

THE COURT: Mr. Bauch.

MR. BAUCH: Yes, ma'am. Thank you.

THE COURT: All right. And then Mr. Griffy can just stay on for his 9:30.

MR. GRIFFY: Thank you, Your Honor.

THE COURT: September 1, 9:00, Mr. Glover, and you are continued on your bond.

DEFENDANT GLOVER: Thank you.

MR. BAUCH: Thanks, Judge.

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CERTIFICATE

STATE OF KANSAS)
) ss
DOUGLAS COUNTY)

I, Shelee K. Shafer, a Certified Shorthand Reporter do hereby certify that I am the regularly appointed, qualified, and acting Official Reporter for Division No. V of the 7th Judicial District, Douglas County, Kansas, duly certified under and by virtue of the laws of the State of Kansas. I further certify that on the 22nd day of July, 2016, I was present at and reported in machine shorthand the proceedings in the aforementioned case before the Honorable Paula B. Martin, Judge of Division No. V of the District Court of Douglas County, Kansas, and that the foregoing transcript is a true and correct transcript of the proceedings as revealed by my stenotype notes so taken.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Lawrence, Douglas County, Kansas, this 31st day of August, 2016.

/s/Shelee K. Shafer
SHELEE K. SHAFER, CSR #884
Official Court Reporter

APPENDIX E

LOCKWOOD CO., INC., ATCHISON, KANSAS

UNIFORM NOTICE TO APPEAR AND COMPLAINT

COUNTY SHERIFF'S OFFICE
COMPLAINT
D# D16-09394

Case no. 16tr1431 Name no. 20257 Vehicle no. 18169

State of Kansas
County of DOUGLAS } ss. 1 of 1
Number Charges

in the DISTRICT Court of DOUGLAS
the Undersigned, Being Duly Sworn, Upon Their Oath, Deposes and Says:

On the 28 day of April, 2016 at 0740
(Time)

Name	G	L	O	V	E	R			JR.
				(Last)					

Charles W.
(First) (Initial)

Street Address 1504 W. 22ND St.

City LAWRENCE State KS Zip 66044

Birth Date					6	3	Race	Sex	Ht	Wt
	■	■	■	■			B	M	509	180

Driv. Lic. State KS No. K00-07-7690

Did Upon Public Highway No. _____

At Milepost | | | |

(or other location) 23RD St & Iowa (WB)

Did unlawfully Operate a Yr. 1995 Make Chevy Type 1500

Year 16 State KS License No. 295ATJ

and did then and there commit the following:

Speeding Alleged Speed ___ M.P.H.	Radar– Stopwatch Legal Speed ___ M.P.H.	Aircraft– Pace M.P.H.
Fail to Yield Right of Way	Drove Left of Center	Log Book Violation
Illegal Registration	Driver's License Violation	Equipment to wit:

	Yes	No
Is vehicle commercial vehicle?	☐	☒
Were hazardous materials being transported?	☐	☒
Did accident occur?	☐	☒

Operate a Vehicle While Under the influence of Alcohol and/or Drugs

Other Violations:
Habitual Violator

1	Section No. 08-287	□ Infraction ⊠ Misdemeanor
	K.A.R. No. _____	□ Accident
2	Section No. _____	□ Infraction □ Misdemeanor
	K.A.R. No. _____	□ Accident

Officer's Signature /s/_____ No. 212/447 Co. 23

Appear before DISTRICT COURT at LAWRENCE
(Name of Court) (City)

On 20 day of May 2016 at 0815
(Time)

I promise to appear in said court at said time and place above for arraignment.

Signature /s/_____

Bond Posted □ Cash □ D.L. □ Bond Card No.____

Amount $ _____ Location _____

I, the above officer, served a copy of the infraction citation upon the defendant. ⊠

SF-116-A Spec.

152833 152834

Name Glover Jr. Charles W.
(Last) (First) (Initial)

APPENDIX F

Elbridge Griffy IV
ATTORNEY AT LAW
901 Kentucky, Suite 107
Lawrence, KS 66044
785-842-0040

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

Case No. 16 TR 1431
Div. No. 5

[Filed June 30, 2016]

STATE OF KANSAS, Plaintiff,
vs.
CHARLES GLOVER JR, Defendant.

MOTION TO SUPPRESS

COMES NOW the Defendant, Charles Glover Jr, by and through his attorney, Elbridge Griffy IV, and request this court to enter an order suppressing evidence seized, and as grounds therefore, states as follows:

1. On April 28, 2016, at approximately 7:40 a.m. Douglas County Sheriff Deputy Mark Mehrer #212/447

observed the defendant as he was driving westbound on 23rd St. near the intersection with Iowa Street. The officer gathered information that the tag on the vehicle returned to an individual who had a suspended driver's license.

2. Without further investigation or additional information the officer stopped the automobile west of the intersection of 23rd and Iowa Street and requested identification from the defendant. Defendant stated his name was Charles Glover Jr and that he did not have a valid driver's license.

3. The officer ran the name, "Charles Glover Jr" through dispatch and determined that the physical description oil record matched the defendant and indicated that driver's license was suspended.

4. At that time the defendant was cited with driving while and habitual violator, a class A nonperson misdemeanor. This was based on an illegal stop in violation of his 4th Amendment rights.

5. The stop of the defendant's automobile was illegal and without reasonable suspicion. Any and all evidence seized should be suppressed.

WHEREFORE, based upon the illegal stop and seizure of evidence the Defendant requests that an order be entered suppressing all evidence seized, and for any further relief that the Court deems appropriate.

Authorities:

K.S.A. 22-2501

Prepared By:

/S/ Elbridge Griffy IV
Elbridge Griffy IV #18207
901 Kentucky STE 107
Lawrence, Ks 66044
Attorney for Defendant

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

APPENDIX G

IN THE DISTRICT COURT OF
DOUGLAS COUNTY, KANSAS
Seventh Judicial District

Case No. 2016-TR-001431
Division 3

[Filed July 21, 2016]

STATE OF KANSAS,	)
Plaintiff,	)
	)
vs.	)
	)
CHARLES GLOVER, JR.,	)
Defendant.	)
	)

RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

COMES NOW the State of Kansas by and through legal intern John Grobmyer and Assistant District Attorney Andrew D. Bauch, in response to Defendant's motion to suppress. In support of this response, the court is shown the following:

FACTS

Mark Mehrer is a certified law enforcement officer in the State of Kansas, employed by the Douglas County, Kansas Sheriff's Office. On April 28, 2016, Deputy Mehrer was on routine patrol in Douglas

County, Kansas when he observed a 1995 Chevy 1500 truck. Deputy Mehrer observed the Kansas license plate 295ATJ was attached to the truck. Deputy Mehrer ran the plate number through the Kansas Department of Revenue's file service. The information showed that the registered owner, Charles Glover Jr., of the 1995 Chevy 1500 with license plate 295ATJ had a revoked Kansas driver's license. Deputy Mehrer did not observe any traffic infractions. Based solely on the fact that Glover was the registered owner of the truck and had a revoked driver's license, Deputy Mehrer made a traffic stop. Deputy Mehrer contacted the driver, and identified him as the registered owner, Charles Glover Jr. The defendant was issued a citation for driving while habitual.

ARGUMENTS AND AUTHORITIES

The Defendant argues that an officer does not have reasonable suspicion to initiate a stop of a vehicle based solely on the fact that the registered owner has a suspended driver's license. Therefore, Deputy Mehrer's investigatory stop of the Defendant was an unreasonable seizure under the Fourth Amendment, and all evidence gathered as a result of the stop should be suppressed.

This is a case of first impression for the Kansas courts. The question before this Court is twofold. Is an officer's conduct of stopping a vehicle for an investigatory stop solely on the information the vehicle's registered owner is suspended, without knowledge as to the identity of the driver, reasonable? And, is it reasonable for an officer to infer that the registered owner of a vehicle is also the driver of the vehicle, absent any information to the contrary? Here,

the State believes it is reasonable for an officer to infer, absent any contrary information, that a vehicle is being operated by the vehicle's registered owner. The State contends an officer can use this inference to conduct an investigatory stop of a vehicle based solely on valid and reliable information the registered owner of the vehicle has a suspended driver's license.

The purpose of the Fourth Amendment is to protect individuals against arbitrary invasions of privacy by imposing a standard of "reasonableness" upon the conduct of law enforcement officers. *Delaware v. Prouse,* 440 U.S. 648, 653, 99 S.Ct. 1391, 1396 (1977), *quoting Marshall v. Barlow's, Inc.,* 436 U.S. 307, 312, 98 S.Ct. 3074 (1976). The reasonableness of an officer's conduct is judged by the balancing of the legitimate interest of the government with the intrusion on the individual's Fourth Amendment protection of privacy. *Id.* at 654. The interest of the state in ensuring only those properly licensed are operating motor vehicles on the roadways is a vital state interest. *Id.* at 658.

The United States Supreme Court cases of *Terry v. Ohio* and *Delaware v. Prouse* are instructive. The Court in *Terry* outlined what constitutes the reasonable conduct of police officers for investigatory stops by requiring officers have reasonable suspicion of criminal activity. *Terry v. Ohio,* 392 U.S. 1, 21 (1968). Reasonable suspicion requires specific and articulable facts that, under the totality of the circumstances, the person stopped has committed, is committing, or will commit a crime. *Id.* However, rational inferences from those specific and articulable facts are also necessary. *Id.* Reasonable suspicion was meant to be a low burden, lower than preponderance of the evidence or probable

cause. *Id.* at 33 (J. Harlan concurring); *see also United States v. Kitchell,* 653 F.3d 1206, 1217-18 (10th Cir. 2011) (held "reasonable suspicion is not, and is not meant to be, an onerous standard").

The Court again addressed what constitutes reasonable conduct of police officers in *Delaware v. Prouse,* expanding reasonable suspicion outlined in *Terry* to include investigatory stops of automobiles. *Prouse,* 440 U.S. at 648. In *Prouse,* an officer stopped a vehicle only for the purpose of checking the driver's license and registration. *Id.* at 650. The officer had no suspicion of criminal activity to justify the stop, had no knowledge of who the registered owner of the vehicle was, and was just performing a "spot check." *Id.* at 650-51. Delaware argued the state's interest in public safety on roadways required a driver to have a valid license and registration; therefore, spot checks outweighed an intrusion into a person's privacy. *Id.* at 655. The Court disagreed, and held such stops as unconstitutional because the state's interest, while valid, did not outweigh a person's protection from unwarranted intrusions by law enforcement. *Id.* at 662-63. Instead, the Court required, using the *Terry* standard, "at least articulable and reasonable suspicion that a motorist is unlicensed... or that either the vehicle or an occupant is otherwise subject to seizure for violation of law," for an investigatory stop of an automobile. *Id.*

Therefore, under *Prouse,* an officer has reasonable suspicion to conduct an investigatory stop based on nothing more than information the driver is unlicensed, or by implication the driver has a suspended licensed. Thus, the determinative issue

before this Court is whether the inference of a registered owner of a vehicle being the driver of the vehicle is reasonable.

In 2006, the Kansas appellate case of *State v, Hamic* addressed the issue of an inference that a vehicle is being operated by the vehicle's registered owner. 35 Kan.App.2d 202 (Kan.Ct.App. 2006). In *Hamic,* an officer observed a vehicle he had previously contacted. *Hamic,* 35 Kan.App.2d at 203. In the prior contacts, the officer discovered the driver, who was also the registered owner, had a suspended license and the vehicle did not have liability insurance. *Id.* The officer suspected the vehicle still did not have insurance, ran a license plate check, and the information confirmed the vehicle was the same one the officer had previously stopped. *Id.* The license plate check also gave information the registered owner had an outstanding warrant. *Id.* The officer could not positively identify the driver prior to the stop, and stopped the vehicle on the inference the driver of the vehicle was also the registered owner. *Id.* The vehicle had committed no traffic violations that would have otherwise justified the stop. *Id.* The driver of the vehicle was indeed the registered owner. *Id.*

Hamic challenged the stop, arguing the officer lacked reasonable suspicion to pull her over. *Id.* The magistrate granted the motion to suppress, and the district court upheld the suppression on the grounds the officer failed to observe a traffic violation, so the officer had no reasonable suspicion regardless of the officer's other suspicions. *Id.* at 204. However, the district court failed to address the registered owner's outstanding warrant. *Id.* at 208. The Kansas Court of

Appeals reversed. The Court pointed to several facts the officer knew that, when taken under the totality of the circumstances, gave the officer sufficient justification for the stop. *Id.* at 207. Those facts were the officer's two prior stops of the vehicle, the officer's discovery that Hamic had a suspended license on those stops, the vehicles lack of insurance on both prior stops, Hamic's outstanding warrant, and the fact that Hamic was the registered owner of the vehicle. *Id.* at 207. (The Court declined to determine whether the arrest warrant gave the officer independent justification for the stop.) *Id.* at 206.

The Court in *Hamic* did not explicitly hold an officer is justified in inferring the owner of a vehicle is likely the driver. However, the Court's ruling the stop was justified rests entirely on such an inference. All of the factors the Court used to justify the stop, with the exception of the officers suspicion the vehicle was uninsured, rested on the assumption that Hamic was the driver of the vehicle. The warrant was for Hamic, the officer's prior contact with the vehicle was with Hamic, and it was Hamic who had the suspended license. Prior to the stop, the officer did not know it was Hamic driving the vehicle, meaning the officer made the assumption that Hamic was indeed the driver prior to conducting the stop. The Court in *Hamic*, by holding the stop was valid, implicitly approves of such an assumption. Moreover, the Court itself recognizes that it is reasonable for an officer to suspect that the registered owner is also the driver, absent any information that would dispel that suspicion; though, it declined to recognize it as a determinative factor. *Id.* at 209.

While Kansas has not squarely decided this issue, other states have. *See State v. Howard,* 146 Ohio.App.3d 335, 340-41, 766 N.E.2d 179 (2001); *State v. Panko,* 101 Or.App. 6, 9, 788 P.2d 1026 (1990); *People v. Barnes,* 152 Ill.App.3d 1004, 1006, 505 N.E.2d 427 (1987) (held when a car owner is known to possess a suspended driver's license it is reasonable to infer the owner is driving because the owner does the vast amount of driving). *See also State v. Mills,* 458 N.W.2d 395, 397 (Iowa App. 1990); *Trujillo v. Chavez,* 93 N.M. 626, 631, 603 P.2d 736 (N.M. Ct.App. 1979) (held it was reasonable to infer a vehicle is being driven by its owner absent evidence to the contrary); *State v. Pike,* 551 N. W.2d 919, 922 (Minn. 1996); *State v. Hess,* 185 N.C.App. 530, 534-35, 648 S.E.2d 913 (N.C. Ct App. 2007); *State v. Richter,* 145 N.H. 640, 765 A.2d 687, 689 (N.H. 2000) (held an officer with knowledge an owner of a vehicle has a suspended license has reasonable suspicion to conduct a stop to ascertain the status of the license of the driver, and officer was reasonable in inferring registered owner was driver absent contrary information).

Here, Deputy Mehrer ran a license plate check of the Defendant's vehicle through the official Kansas Department of Revenue file service. The information gathered from the license plate check indicated the registered owner of the vehicle had a suspended driver's license. Deputy Mehrer had no physical information about the driver; therefore, had no information to suggest the driver was anyone but the registered owner of the vehicle. As stated in *Hamic,* and held in other states, it was a common sense, rational inference for Deputy Mehrer to assume the registered owner of the vehicle, who had a suspended

license, was also the driver. Therefore, at this point, as alluded to in *Prouse,* Deputy Mehrer had "articulable and reasonable suspicion that a motorist was unlicensed," making the investigatory stop of the Defendant a reasonable seizure under the Fourth Amendment.

WHEREFORE, the State respectfully requests this Court to deny the Defendant's motion to suppress and for such other relief as the Court deems appropriate.

Respectfully submitted,

/s/ John Grobmyer
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APPENDIX H

IN THE DISTRICT COURT OF DOUGLAS COUNTY KANSAS
Seventh Judicial District

Case No. 2016 TR 1431
Div. 3

[Filed July 25, 2016]

State of Kansas,	)
Plaintiff,	)
	)
v.	)
	)
Charles Glover,	)
Defendant.	)
	)

NOTICE OF STATE'S INTERLOCUTORY APPEAL

The State of Kansas, by and through Natalie Yoza, Assistant District Attorney, appeals the district court's order granting defendant's motion to suppress evidence entered on July 22, 2016, to the Court of Appeals of the State of Kansas. Appeal is taken pursuant to K.S.A. 22-3601(a), based on authority of K.S.A. 22-3601(b)(1).

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* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

APPENDIX I

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS SEVENTH JUDICIAL DISTRICT CRIMINAL DIVISION

Case No. 2016-TR-1431
DIV 5

[Filed July 26, 2016]

STATE OF KANSAS, Plaintiff	)
CHARLES GLOVER JR. Defendant	)

STIPULATION OF THE PARTIES

The parties hereby stipulate to the following facts as true and accurate facts in the above captioned case:

1. Deputy Mark Mehrer is a certified law enforcement officer employed by the Douglas County Kansas Sheriff's Office.

2. On April 28, 2016, Deputy Mehrer was on routine patrol in Douglas County when he observed a 1995 Chevrolet 1500 pickup truck with Kansas plate 295ATJ.

3. Deputy Mehrer ran Kansas plate 295ATJ through the Kansas Department of Revenue's file service.

The registration came back to a 1995 Chevrolet 1500 pickup truck.

4. Kansas Department of Revenue files indicated the truck was registered to Charles Glover Jr. The files also indicated that Mr. Glover had a revoked driver's license in the State of Kansas.

5. Deputy Mehrer assumed the registered owner of the truck was also the driver, Charles Glover Jr.

6. Deputy Mehrer did not observe any traffic infractions, and did not attempt to identify the driver the truck. Based solely on the information that the registered owner of the truck was revoked, Deputy Mehrer initiated a traffic stop.

7. The driver of the truck was identified as the defendant, Charles Glover Jr.

/s/Andrew D. Bauch	Elbridge Griffy #18207
Andrew D. Bauch #20998	Elbridge Griffy

APPENDIX J

IN THE COURT OF APPEALS
OF THE STATE OF KANSAS

No. 16-116,446-A

[Filed October 21, 2016]

STATE OF KANSAS	)
Plaintiff-Appellant	)
	)
vs.	)
	)
CHARLES GLOVER	)
Defendant -Appellee	)
	)

BRIEF OF APPELLANT

Appeal from the District Court of Douglas County, Kansas
Honorable Paula Martin, District Court Judge
District Court Case No. 2016 TR 1431

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NATURE OF THE CASE

An officer stopped a vehicle after discovering the vehicle's registered owner, Glover, had a revoked license. The officer observed no information that would identify the driver prior to the stop. Glover filed a motion to suppress arguing the officer lacked reasonable suspicion for the stop and the district court granted the motion. The State appeals the district court's decision to suppress evidence.

STATEMENT OF THE ISSUES

I. Did the district court err in finding the officer lacked reasonable suspicion to initiate a traffic stop when the officer inferred the registered owner of the vehicle was also the vehicle's driver?

STATEMENT OF THE FACTS

Both parties have stipulated to the facts in this case. (R. I, 23.) Deputy Mark Mehrer is a certified law enforcement officer employed by the Douglas County Sheriff's Office. (R. I, 23.) On April28, 2016, Deputy Mehrer was on routine patrol in Douglas County when he observed a 1995 Chevrolet 1500 pickup truck with Kansas plate 295ATJ. (R. I, 23.) Mehrer ran Kansas plate 295ATJ through the Kansas Department of Revenue's (KDOR's) file service. (R. I, 23.) The registration came back to a 1995 Chevrolet 1500 pickup truck. (R. I, 23.) KDOR files indicated the truck was registered to Charles Glover Jr. (R. I, 23.) The files also indicated that Glover had a revoked driver's license in the State of Kansas. (R. I, 23.) Mehrer assumed the registered owner of the vehicle was also the driver. (R. I, 23.) Mehrer did not observe any traffic infractions

and did not attempt to identify the driver of the truck. (R. I, 23.) Based solely on the information that the registered owner of the truck had a revoked driver's license, Mehrer initiated a traffic stop. (R. I, 23.) The driver of the truck was identified as Glover. (R. I, 23.) Glover was charged as a habitual violator. (R. I, 3).

ARGUMENTS AND AUTHORITIES

I. The district court erred in finding an officer lacks reasonable suspicion to initiate a traffic stop when the officer infers the registered owner of the vehicle is also the vehicle's driver, thereby suppressing evidence of the stop

Standard of Review

When there is no dispute in facts material to a decision on a motion to suppress, review of a suppression order is a question of law where this court has unlimited review. *State v. Hamic,* 35 Kan. App. 2d 202, 204, 129 P.3d 114 (2006); citing *State v. Ramiez,* 278 Kan. 402, 404, 100 P.3d 94 (2004). The existence of reasonable suspicion is a question of law and is reviewed de novo. *State v. Coleman,* 292 Kan. 813, 818, 257 P.3d 320 (2011).

Here, Glover filed a motion to suppress arguing Mehrer lacked reasonable suspicion because Mehrer did not identify the driver prior to the stop. (R. I, 7-8.) The State filed a written response to Glover's motion arguing it is reasonable for an officer to infer the owner of a vehicle is also the driver. (R. I, 14-16.) Both the State and Glover forewent oral arguments, and the court made its ruling on the briefs. (R. II, 4.) The court ruled that it was not reasonable to infer the owner of

the vehicle is also the driver, finding that one could own multiple vehicles and may not be the primary driver of all of them. (R. II, 5.) Thus, Glover's motion to suppress was granted. (R. II, 5.) The State filed a timely interlocutory appeal pursuant to K.S.A. 22-3601(a) and 22-3603. (R. I, 21.)

Introduction

This court previously held in *State v. Hamic* that it is a reasonable inference for an officer to suspect a vehicle's registered owner is also the driver, absent contrary information. 35 Kan. App. 2d at 209-10. However, this court has yet to explicitly decide whether that rational inference may be used as the basis for an investigatory stop when an officer has only one objective fact of criminal activity. Therefore, the current appeal presents an issue of apparent first impression in Kansas.

The State contends that such an investigatory stop is indeed reasonable when considering Fourth Amendment jurisprudence and this court's implicit holding of *Hamic.* Therefore, the State requests this court adopt the standard held by a vast majority of states that have addressed the issue: an officer has reasonable suspicion to stop a vehicle when the officer has information the registered owner has committed, is committing, or will commit criminal activity, and that the officer can base the stop on the rational inference the vehicle's registered owner is also the driver unless the officer has information indicating otherwise.

Fourth Amendment Jurisprudence on Reasonable Suspicion

The Fourth Amendment to the United States Constitution and Section 15 of the Kansas Bill of Rights guarantees one's right against unreasonable searches and seizures. U.S. Const. amend. IV; Kan. Const. Bill of Rights, § 15. Generally, seizures conducted without a warrant are per se unreasonable unless they fall into one of the well-delineated exceptions. *Illinois v. Rodriguez,* 497 U.S. 177, 191, 110 S. Ct. 2793, 111 L. Ed. 2d 148 (1990).

One well-defined exception to the warrant requirement allows an officer to conduct a brief investigatory stop of a person when the officer has reasonable suspicion that the person seized has committed, is committing, or will commit criminal activity. See *Illinois v. Wardlow,* 528, U.S. 119, 119, 120 S. Ct. 673, 145 L .Ed. 2d 570 (2000); see also *Delaware v. Prouse,* 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1977) (expanded investigatory stops to include automobiles). Reasonable suspicion requires specific and articulable facts, together with rational inferences, that lead an officer to believe criminal activity is afoot. *Terry v. Ohio,* 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Reasonable suspicion was meant to be a low burden, lower than probable cause. 392 U.S. at 33 (Harlan, J., concurring); see also *United States v. Simpson,* 609 F.3d 1140, 1153 (10th Cir. 2010) (holding "reasonable suspicion is not, and is not meant to be, an onerous standard").

The fine distinction between a reasonable and an unreasonable investigatory stop of an automobile was addressed by the United States Supreme Court in

Prouse. There, an officer stopped a vehicle for the purpose of checking the driver's license and registration. 440 U.S. at 650. The officer was simply performing a "spot check" and had no suspicion of criminal activity to justify the stop and no knowledge of who owned the vehicle. 440 U.S. at 650-51. The Court held that such stops were unconstitutional and required officers conducting automobile investigatory stops to have the *Terry* standard of reasonable suspicion. 440 U.S at 662-63. However, the Court also held the burden of reasonable suspicion could be met with "at least articulable and reasonable suspicion that a motorist is unlicensed . . . or that either the vehicle or an occupant is otherwise subject to seizure for violation of law." 440 U.S at 663.

Therefore, under *Prouse,* an officer has reasonable suspicion to conduct an investigatory stop based on nothing more than information a motorist is subject to seizure for criminal activity. This is consistent with Kansas law allowing an officer to stop an individual in a public place if the officer reasonably suspects that individual; is committing, has committed, or will commit a crime. K.S.A. 22-2402(1); see also *State v. DeMarco,* 263 Kan. 727, 734, 952 P.2d 1276 (1998) (holding an officer "must have reasonable and articulable suspicion, based on fact, that the person stopped has committed, is committing, or is about to commit a crime). This would certainly include objective information available to an officer, from a state agency, of a motorist having an invalid driver's license, no driver's license, or even an outstanding warrant.

Here, Mehrer had objective information from the KDOR that the registered owner of the 1995 Chevrolet

1500 pickup truck, Glover, had a revoked driver's license. This information is sufficient under K.S.A. 22-2402(1), *DeMarco,* and *Prouse* to meet the "specific and articulable facts" of reasonable suspicion. Mehrer then made an inference that Glover was also the driver of the pickup. Therefore, the question before this court is whether Mehrer's inference was rational and, if so, whether the information known to Mehrer plus this inference reaches the burden for reasonable suspicion.

Assuming a vehicle's registered owner is also the driver is a rational inference absent information to the contrary

Reasonable suspicion requires only a reasonable belief of criminal activity based on articulable facts and reasonable inferences. *Wardlow,* 528 U.S. at 119. Those inferences should be based on commonsense judgments and typical human behavior. 528 U.S. at 119. Reasonable suspicion is not reliant on certainty, and officers need not always be correct in their suspicions so long as they acted reasonably. *Rodriguez,* 497 U.S. at 185.

This court tangentially addressed the issue of whether it is reasonable for an officer to infer that a vehicle's registered owner is also the driver in *Hamic.* There, an officer observed a vehicle with which he had previous contacts. 3 5 Kan. App. 2d at 203. In the prior contacts, the officer discovered the driver, who was a registered co-owner, had a suspended license and that the vehicle did not have liability insurance. 35 Kan. App. 2d at 203. The officer suspected the vehicle still lacked insurance and ran a license plate check. 35 Kan. App. 2d at 203. The information confirmed the vehicle was the same one he previously stopped, and the officer

also discovered Hamic had an outstanding warrant. 35 Kan. App. 2d at 203. The officer could not positively identify the driver prior to the stop, and stopped the vehicle on the inference the driver of the vehicle was also the registered owner. 35 Kan. App. 2d at 203. The officer observed no traffic violations that would have otherwise justified the stop. 35 Kan. App. 2d at 203.

Hamic filed a motion to suppress and argued, among other things, that because she was only a co-owner of the vehicle it was not reasonable for the officer to infer she was the driver. 35 Kan. App. 2d at 209. The district court granted Hamic's motion to suppress, finding the officer lacked reasonable suspicion for the stop. 35 Kan. App. 2d at 204. However, this court reversed, pointing to several facts the officer knew that, when taken under the totality of the circumstances, gave the officer reasonable suspicion to initiate the stop. 35 Kan. App. 2d at 207. Those facts ,included: (1) the officer's two prior stops of the vehicle, (2) Hamic's suspended license, (3) the vehicle's previous lack of insurance, (4) Hamic's outstanding warrant, and (5) the fact that Hamic was the registered owner of the vehicle. 35 Kan. App. 2d at 207. This court declined to determine whether the arrest warrant alone gave the officer justification for the stop. 35 Kan. App. 2d at 206.

This court did not explicitly hold an officer is justified in initiating an investigatory stop based on the inference the owner of a vehicle is likely the driver. However, the justification for the stop in *Hamic* rested almost entirely on such an inference. All of the facts known to the officer, with the exception of the officer's suspicion that the vehicle was uninsured, rested on the

assumption that Hamic was the driver of the vehicle. The warrant was for Hamic, the officer's prior contact with the vehicle was with Ramie, and it was Hamic who had the suspended license. Prior to the stop, the officer did not know Hamic was driving the vehicle. Therefore, the officer in *Hamic* had to make the assumption that Hamic was indeed the driver prior to conducting the stop.

Moreover, this court recognized it is reasonable to infer that the registered owner of a vehicle is also the driver absent any information that would dispel that suspicion. 35 Kan. App. 2d at 209-10. This court stated:

> "Perhaps it is more a matter of common experience than a profound legal maxim to declare that a law enforcement officer is reasonable in suspecting that the registered owner of a vehicle is the driver of the owned vehicle, absent evidence to the contrary." 35 Kan. App. 2d at 209.

However, the decision in *Hamic* declined to recognize such an inference as determinative. 35 Kan. App. 2d at 210. Instead, this court held that the "rationality of any inferences" should be viewed "in conjunction with all the other information available to the officer." 35 Kan. App. 2d at 210.

Here, the facts are distinguished from *Hamic* in that Mehrer had no prior knowledge of the pickup or Glover before running the license plate or conducting the traffic stop. Instead, Mehrer only had then present knowledge from the KDOR that the owner of the pickup had a revoked license. Mehrer then inferred that the Glover was the driver of the pickup and

observed no facts that would dispel that assumption. As this court observed in *Hamic,* an officer is reasonable in suspecting a vehicle's registered owner is also the driver so long as the officer does not have information that would dispel that suspicion. Thus, under this court's rationale in *Hamic,* Mehrer's inference that Glover was also the driver is reasonable.

The State requests this court adopt the standard it touched on in *Hamic* and explicitly hold that it is reasonable for an officer to make the owner-as-driver inference, unless the officer has information otherwise. Moreover, that an officer may rely on this inference to conduct a traffic stop if the officer also has knowledge of criminal activity associated with the owner. By adopting this standard, it eliminates ambiguity and creates a bright-line rule that is consistent with jurisprudence concerning reasonable suspicion for investigatory stops.

Other jurisdictions

Glover's argument that the stop was unlawful rests on the owner-as-driver inference being unreasonable. While Kansas has not squarely decided the issue presented in this appeal, many other jurisdictions have. Of those jurisdictions, Glover will likely only be able to cite to one published case that finds the inference unreasonable. See *State v. Parks,* 288 N.J. Super. 407, 672 A.2d 742 (1996) (requiring officers to obtain additional information on the identity of the driver before any reasonable inference can be made).

The vast majority of jurisdictions that have decided the issue have adopted the same or similar standard to the one the State is requesting today: an officer has

reasonable suspicion to initiate an investigatory stop of a vehicle when the officer has information the registered owner has committed, is committing, or will commit criminal activity, and that an officer can base the stop on the rational inference the vehicle's registered owner is also the driver unless the officer has information indicating otherwise.

For example, the Indiana Supreme Court case of *Armfield v. State,* 918 N.E.2d 316 (Ind. 2009), presented that court with almost exactly the same facts as the case at hand. There, an officer ran a routine license plate check of a vehicle and discovered the registered owner, Armfield, had a lifetime-suspended driver's license. 918 N.E.2d at 317. Based on this information, a traffic stop was initiated. 918 N.E.2d at 318. Prior to the stop, the officer had no information indicating Armfield was the driver. 918 N.E.2d at 319. Armfield challenged the stop, but the trial court found the stop lawful and Armfield was convicted of having operated a motor vehicle with a forfeited driver's license. 918 N.E.2d at 318. Armfield appealed and the Indiana appellate court affirmed. 918 N.E.2d at 318.

The Indiana Supreme Court held that an officer has reasonable suspicion to conduct a traffic stop when the officer knows the owner has a suspended drivers license and there is no information that would suggest the owner is not the driver. 918 N.E.2d at 320-21. The Indiana Supreme Court recognized that such a bright line standard ensures the safety of state roadways and of law enforcement; otherwise, it "puts the onus on the officer to maneuver himself into position to clearly observe the driver in the midst of traffic." 918 N.E.2d at 322.

Similarly, in the Iowa Supreme Court case *State v. Vance,* 790 N.W.2d 775, 781 (Iowa 2010), the court held that an officer may conduct an investigatory stop of a vehicle when the officer has knowledge the registered owner is suspended and the officer has no information indicating the registered owner is not the driver. There, an officer ran the license plate of a car and discovered the registered owner had a suspended license. 790 N.W.2d at 778. The officer also recalled several prior interactions with the car and its owner, one of which involved drugs. 790 N.W.2d at 778. Having observed no traffic violations, and having no identifiable information on the driver, the officer initiated a stop of the vehicle. 790 N.W.2d at 778. The driver of the vehicle was not the vehicle's registered owner but an acquaintance of the owner. 790 N.W.2d at 778. The vehicle was searched and contraband was found. 790 N.W.2d at 778. The driver challenged the validity of the stop arguing the officer lacked reasonable suspicion because the officer did not identify the driver prior to the stop. 790 N.W.2d at 781.

The Iowa Supreme Court held the stop was supported by reasonable suspicion despite the fact the driver was not the registered owner. 790 N.W.2d at 781. The decision rested on the reasoning of *Prouse* as well as the reasonableness of the inference the registered owner of the vehicle is likely the driver. 790 N.W.2d at 781. The Iowa Supreme Court also recognized that requiring officers to take additional steps to indentify the driver prior to the stop puts an undue burden on police. 790 N.W.2d at 782. It simply may not be possible for an officer to identify the driver, or to see if the driver matches the description of the registered owner, in situations such as heavy traffic, a

car with tinted windows, or a stop at night. 790 N.W.2d at 782.

Indiana and Iowa are not outliers. At least fifteen states have adopted the same or similar standard as the one the State is asking this court to adopt. See; *State* v. *Tozier,* 905 A.2d 836, 839 (Me. 2006) (holding it is "reasonable for an officer to suspect that the owner is driving the vehicle, absent other circumstances that demonstrate the owner is not driving"); *State v. Pike,* 551 N.W.2d 919, 922 (Minn. 1996) (holding it is rational for an officer to infer the owner of a vehicle is current operator); *City of Billings v. Costa,* 333 Mont. 84, 90, 140 P.3d 1070 (2006) (holding an officer may make a reasonable inference that a vehicle's registered owner is likely the vehicle's driver, unless the officer has information to the contrary); *State v. Richter,* 145 N.H. 640, 641-42, 795 A.2d 687 (2000) (holding it is "reasonable for the officer to infer that the driver was the owner of the vehicle"); *State v. Edmonds,* 192 Vt. 400, 405-06, 58 A.3d 961 (2012) (same, and held requiring certainty of the identity of the driver prior to the stop is closer to probable cause, not reasonable suspicion); *Village of Lake in the Hills v. Lloyd,* 591 N.E.2d 524, 525-26 (Ill. App. 1992) (same); *Commonwealth v. Deramo,* 792 N.E.2d 815, 818 (Mass. App. 2002) (same); *People v. Jones,* 678 N.W.2d 627, 631 (Mich. App. 2004) (same); *State v. Hess,* 648 S.E.2d 913, 917 (N.C. App. 2007) (same); *State v. Howard,* 766 N.E.2d 179, 183 (Ohio App. 2001) (same); *State v. Panko,* 788 P.2d 1026, 1027 (Or. App. 1990) (same); and *State v. Newer,* 742 N.W.2d 923, 925-26 (Wis. App. 2007) (same). The State asks Kansas to adopt the standard held by the majority of states that have addressed this issue.

CONCLUSION

Under the present Kansas standard, Mehrer's stop was lawful. Thus, the district court erred in finding the stop illegal and granting the motion to suppress. The State respectfully requests this court reserve the district court's ruling and remand for further proceedings.

Respectfully Submitted,

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Douglas County District Attorney

* * *

[*Certificate of Service Omitted from the Printing of this Appendix*]

APPENDIX K

IN THE COURT OF APPEALS
OF THE STATE OF KANSAS

No. 16-116,446-A

[Filed November 23, 2016]

STATE OF KANSAS	)
Plaintiff-Appellant	)
	)
vs.	)
	)
CHARLES GLOVER	)
Defendant -Appellee	)
	)

BRIEF OF APPELLEE

Appeal from the District Court of Douglas County, Kansas
Honorable Paula Martin, District Court Judge
District Court Case No. 2016 TR 1431

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Nature of the Case

This is a state's appeal from the Douglas County District Court's decision to suppress evidence obtained from a Terry stop and seizure of a vehicle and the driver. This is the Defendant-Appellee response brief

Statement of the Issue

The officer lacked reasonable suspicion justifying the stop of the vehicle based solely upon information from the Kansas Department of Revenue file service that the owner of the vehicle had a suspended license. In the absence of any attempt by the officer to obtain corroborating evidence that the owner was the driver, the stop of vehicle and seizure of Mr. Glover violated the Fourth Amendment.

Statement of Facts

The parties agreed to a stipulation of facts. On April 28, 2016, officer Mark Mehrer ran a check on the plates 295ATJ on a 1995 Chevrolet 1500 pickup truck. The plates on truck matched the plates and truck described in the mobile computer database accessed by the officer in his car. The database also indicated that the truck was registered to Charles Glover Jr. and that he had a suspended license in Kansas. (R.I, 23, Stipulation).

The officer inferred that the owner, Charles Glover Jr., was also the driver of the car. He did not observe Mr. Glover, or have any description of him prior to the stop. The driver was committing no traffic violation. After stopping the truck, the officer determined that the driver was the owner, Mr. Glover. He was arrested

on driving on a suspended license. (R.I, 23, Stipulation).

Defense counsel filed a motion to suppress seeking suppression of evidence obtained from the stop. (R.I, 78). After reviewing the cases and argument of counsel, the District Court concluded that the state lacked reasonable suspicion to stop the vehicle. In particular, the court noted that the cases cited by the state had additional grounds to justify the stop of the vehicle. Additionally, the court stated that any person could have been driving the car, particularly family members. The court granted the motion to suppress. (R.II, Sentencing Transcript, 4-5). The state appealed the court's decision to the Court of Appeals. (R. I, 21-22).

Arguments and Authorities

Issue: The officer lacked reasonable suspicion justifying the stop of the vehicle based solely upon information from the Kansas Department of Revenue file service that the owner of the vehicle had a suspended license. In the absence of any attempt by the officer to obtain corroborating evidence that the owner was the driver, the stop of vehicle and seizure of Mr. Glover violated the Fourth Amendment.

Standard of Review

In *Delaware v. Prouse,* 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979), the Supreme Court held that stopping a vehicle and detaining the driver to check his driver's license and registration is unreasonable under the Fourth Amendment, unless there exists an articulable and reasonable suspicion that the driver is

unlicensed, the vehicle is unregistered, or the driver [or occupant] or vehicle is otherwise subject to seizure for violation of the law. The stopping of a moving vehicle by law enforcement is always considered a seizure. *City of Norton v. Stewart,* 31 Kan. App. 2d 645, 647, 70 P.3d 707 (2003).

In order for a law enforcement officer's seizure of a citizen to be constitutionally reasonable, "the officer must know of specific and articulable facts that create a reasonable suspicion the seized individual is committing, has committed, or is about to commit a crime or traffic infraction." *State v. Garza,* 295 Kan. 326, 331-332, 286 P.3d 554 (2012)(citing K.S.A. 22-2402[1]; *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 [1968]).

On a motion to suppress evidence, the State bears the burden of proving to the district court the lawfulness of the search and seizure by a preponderance of the evidence. *State v. Garcia,* 250 Kan. 310, 318, 827 P.2d 727 (1992). See also K.S.A. 22-3216 (2). "On appeal of a trial court's ruling on the motion to suppress, where the material facts are not in dispute, such as in this case where the parties stipulated to the facts, the ultimate determination of suppression is a question of law over which this court has unlimited review." *State v. Ramirez,* 278 Kan. 402, 404, 100 P.3d 94 (2004).

Here, the facts in the stipulation are not disputed; whether they amount to reasonable suspicion is a question of law. De novo appellate determination of whether an officer had a reasonable suspicion of illegal activity rests on the same standard as the one that applies when a district judge makes the same

determination. *State v. Jones,* 300 Kan. 630, 637, 333 P. 3d 886, 896 (2014). An appellate court is "called upon to employ common sense and ordinary human experience in evaluating the totality of the circumstances. See *United States v. Wood,* 106 F.3d 942, 946 (10th Cir.1997)." *State v. Jones,* 333 P. 3d at 898. Both factors quantity and quality are considered in the 'totality of the circumstances the whole picture' [citation omitted] that must be taken into account when evaluating whether there is reasonable suspicion" *State v. Slater,* 267 Kan. 694,697, 986 P.2d 1038 (1999) quoting *Alabama v. White,* 496_U.S._325, 330, 110_L. Ed. 2d_301, 110_S. Ct._2412 (1990). This would include the absence of corroborating evidence.

Argument and Authorities

The officer's opinion that there was reasonable suspicion to stop and seize Mr. Glover based upon the information that the owner's license was suspended does not support the inference that the owner is driving the car. Courts do "not advocate a total, or substantial, deference to law enforcement's opinion concerning the presence of reasonable suspicion. The officers may possess nothing more than an 'inchoate and unparticularized suspicion' or 'hunch' of criminal activity. [Citation omitted.]" *State v. Jones,* 333 P. 3d at 898. Such a level of deference would be an abdication of our role to make a de novo determination of reasonable suspicion." Id. at 898 citing *State v. Moore,* 283 Kan. 344, 359-60, 154 P.3d 1 (2007).

Here, the state failed to sustain its burden of proof by a preponderance of the evidence that the officer had reasonable suspicion to stop the vehicle and question Mr. Glover. The parties stipulated that the officer

stopped the driver after confirmation that the owner of the vehicle had a suspended license. The stipulation did not contain facts that, prior to the stop, the officer recognized the driver, had prior contact with the driver, or whether he had a prior convictions for driving while suspended. There may have been multiple owners. The vehicle was being driven in compliance with the traffic code. The stipulation lacks facts as to the distance between the officer and the car, the direction of the vehicle or the time of day. There was no evidence as to whether the database relied upon was up to date or any foundation that the database was reliable. The District Court ruled that the stop of the vehicle based on suspension of the owner's license alone, was insufficient to justify the stop. It was reasonable to assume that other people were driving Glover's vehicle, including family members.

Absent some corroboration by police officers, the stipulated facts alone do not support the existence of reasonable suspicion to stop the car, and question the driver, Mr. Glover. See *Florida v. J. L.,* 529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000) (Anonymous tip that a black male wearing a plaid shirt standing in front of a certain pawnshop is carrying a concealed firearm, is not sufficiently reliable, absent some corroboration by police officers, to justify investigatory detention and frisk).

It was not reasonable for the officer to infer that that because the owner of the vehicle had a suspended license, the driver of the vehicle was the owner driving on a suspended license. The state had to present corroborating evidence to support the inference that the driver was the owner. The state's burden of proof

cannot be shifted to the defendant. See *State v. Porting,* 281 Kan. 320, 328, 130 P.3d 1173 (2006) (Court of Appeals "impermissibly shifted the burden of proof to the defendants when it relied on the defendants' failure to prove that they lacked authority to consent.") In the present case, Mr. Glover did not have to present evidence contradicting the officer's inference that driver was, in fact, the unlicensed owner.

Other state cases have required the officer to conduct further investigation to justify the stop of the vehicle. In California, the failure to investigate whether a vehicle had a temporary registration tag in the window resulted in the reversal of a conviction based upon an illegal stop. *People v. Dean,* 69 Cal.Rptr.3d 770, 158 Cal.App.4th 377 (2007); See also *People v. Nabong* 9 Cal.Rptr.3d 854, 115 Cal.App.4th Supp. 1, 2-3 (2004). In *Nabong,* the California appellate court noted that the officer "made no effort to ascertain if in fact the temporary sticker was invalid by checking with his dispatcher" and did not have any particularized suspicion about the defendant committing a crime, regardless of his experience. Id. at 115 Cal.App.4th Supp.4, 9 Cal.Rptr.3d 854. The *Nabong* court quoted favorably from an old, out of state case that "'[a]n officer is not warranted in relying upon circumstances deemed by him suspicious, when the means are at hand of either verifying or dissipating those suspicions without risk, and he neglects to avail himself of those means.'" Id. at 115 Cal.App.4th Supp. 45, fn. 12, 9 Cal.Rptr.3d 854 quoting *Filer v. Smith* 96 Mich. 347, 355, 55 N.W. 999 (1893). Here, the means were at hand to investigate further. The officer could have obtained a description of the owner of the vehicle and compared the description with the driver. The

stipulation contained no evidence that the officer attempted to obtain that information or that it would have been unsafe to compare a description, if obtained, to the driver. Further, the officer could have found out whether the owner of the vehicle had prior convictions for driving while suspended which would have offered additional justification for the stop or whether there were warrant for his arrest.

In *State v. Cerino,* 141 Idaho 736, 117 P.3d 876 (Ct. App. 2005), all that was known to the detective prior to the stop, was that the vehicle was registered to a male and a female, that the male registrant did not possess an Idaho driver's license, and that a male was presently driving the vehicle. Although the state argued that this information constituted reasonable suspicion, the Court concluded otherwise. Id. at 738, 117 P.3d at 878. The Court noted that the detective knew only that the registrant did not have an Idaho driver's license, but did not know whether the registrant had a license from another jurisdiction. In addition, the detective had never seen the registrant and had no physical description of him; thus, nothing but the driver's gender "matched" the officer's information about the registration. Therefore, the Court held "that the mere observation of a vehicle being driven by someone of the same gender as the unlicensed owner is insufficient to give rise to a reasonable suspicion of unlawful activity." Id at 738.

The *Cerino* decision was followed in a 2014 unpublished opinion, *State of Idaho v. Pendergrass,* (Docket No 40914, Opin. No. 653, filed August 8, 2014) which upheld a stop based on corroborating evidence. An officer with the Garden City Police Department was

on patrol when he saw a vehicle and proceeded to do a search of the vehicle's license plate number using his in-car computer. Before initiating the traffic stop, the officer was able to determine that Pendergrass' driving privileges were suspended and was also able to locate a booking photograph of Pendergrass. The officer's testimony was that he was able to identify Pendergrass as the driver of the vehicle coming towards him before the officer turned his vehicle around and initiated the traffic stop. Therefore, the stop was legal. Here, the stipulation fails to include any information at to the officer's location in relation to the vehicle or whether he could have obtained a booking photo.

In *State v. Parks,* the New Jersey Appellate Court required additional information before an officer could infer that the driver was the owner whose license had expired. 288 N.J. Super. 407, 672 A.2d 742 (App. Div. 1996). The appellate division held that for an officer to stop a vehicle, more information is needed than a report from the MDT that the vehicle's owner does not have a valid license. Rather, the officer must have additional evidence of defendant's identity as the driver of the vehicle at that particular time. The Court held that "when the officer's observation of the driver indicates that the driver could reasonably be the person described in the DMV records, then the dictates of *Delaware v. Prouse, supra,* and *State v. Davis, supra* are satisfied." 288 N.J. Super. 407, 412.

In *Worley v. Commonwealth,* an unreported decision from Virginia cited by the state, the Court found that there was no reasonable suspicion of wrongdoing where police knew only that the car's owner had a suspended license, and "did not determine whether the driver was

the owner" before making the stop. No. 1913-94-2, 1996 WL 31949 (Va.Ct.App. Jan. 30, 1996) at 1. The Court noted that a reasonable and articulable suspicion existed when an officer, alerted to the registered owner of a vehicle being under suspension, confirmed that the driver's physical description matched the owner's "gender and approximate height, weight, and hair color." *Id.* (quotation omitted). The Court in *Worley* did not require, contrary to the state's argument, that all these specific factors had to be confirmed before stopping all driver; but that some further investigation was needed to justify the stop beyond the belief that the owner of the vehicle had a suspended license.

The state asks for a bright line rule that when owner of a vehicle is unlicensed, any driver of the vehicle is subject to stop and seizure. (State's brief at 3). This does not comport with Supreme Court law. The United States Supreme Court has explained that courts "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu,* 534 U.S. 266, 273-74, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002) (quoting *United States v. Cortez,* 449 U.S. 411, 417-18, 101 S.Ct. 690, 66 L.Ed.2d 621 [1981]). Even the Court in *State v. Hamic,* a case relied on by the state "decline[d] to suggest any temporal bright lines on the question of whether knowledge that a driver had a suspended driver's license a month before the stop creates an objectively reasonable suspicion that the driver's license is currently suspended." *State v Hamic,* 35 Kan. App. 2d 202, 209-210, 129 P.3d 114 (2006)

Assuming that millions of car owners have a suspended license, a bright line gives police carte blanche to stop a huge proportion of the population without further evidence of wrong doing. Common sense dictates that people with suspended licenses who own vehicles, have other people drive the vehicle for errands, transportation to work, doctor's appointments, grocery shopping and all the other daily tasks that require a vehicle to complete. Also the owner may give the vehicle to his family members to use, since he or she can't drive, as noted by the District Court. (Volume II, 1-9). There may be family co owners of the car. A bright line rule requested by the state gives the police the authority to stop the driver of the owner's vehicle repeatedly, if not daily, by multiple officers. An owner's license suspension would give the police the right to stop members of his family repeatedly, a punishment by association not warranted by a license suspension.

Driving while suspended is not a crime which harms the safety of the public. Many suspensions are for unpaid traffic tickets, falling behind on child support, getting caught with drugs, bouncing checks, failure to pay fines on nondriving traffic violations, not paying parking tickets; or minor juvenile offenses like missing school, using false identification to buy alcohol, or shoplifting. The need to stop motorists who might be driving on a suspended license is not so urgent so as to grant the state's request for a bright line rule.

Further, a bright line rule could be applied arbitrarily to minorities in the population. ACLU of Illinois (2015) pp 8-23) (Stop and frisk is disproportionately concentrated in the black community). Requiring specific, individualized facts to

support the stop of driver of a vehicle owned by a person whose license has been suspended would help limit the arbitrary stop and seizures of members of the public.

While the state argues that the creation of a bright line rule will eliminate ambiguity, some ambiguity is necessary in order to satisfy the test that the officer must know of specific and articulable facts that create a reasonable suspicion the seized individual is committing, has committed, or is about to commit a crime or traffic infraction." *State v.* Garza, 295 Kan. at 332, 286 P.3d 554 (2012) (citing K.S.A. 22-2402[1]). The use of the terms "specific" and "individual" imply that corroborating evidence specific to each person seized is necessary to justify the stop in each case.

Police should conduct additional investigation, which does not involve a threat to their personal safety, in order to support reasonable suspicion to justify a stop based upon the fact that the owner of vehicle is the driver. However, the police should not be permitted to put on blinders, so they will not find evidence to undermine the validity of the stop. Further investigation may show that the driver does not match the description of the owner, or the age of the driver does not match the age of the owner or the date of the suspension is old or that the records are not up to date. Here, there was no evidence that the officer even attempted to obtain a description of the owner of the vehicle. With increasingly advanced technology, an officer can obtain sufficient information from state and federal databases which will give him or her enough information to justify a vehicle stop.

As noted by the District Court, some of the cases cited by the state are distinguishable. In *State v Hamic,* 35 Kan. App. 2d 202, supra, the officer had prior contact with the owner/driver and there was an arrest warrant. The Court of Appeals noted that the fact that an owner has a suspended license or a warrant must be viewed in combination with all of the other information available to the officer. Knowing that the owner has a suspended license or a warrant is a factor, but is not necessarily determinative.

In another Kansas case, *Butcher* v. *Ks. Dept. of Revenue* 34 KanApp2d 826, 124 P.3d 1078 (2005), the officer witnessed Alan Butcher driving a vehicle during a period his license was known to be suspended. He knew what Butcher looked like. The officer found the vehicle 14 minutes later with a different driver and Butcher in the passenger seat. The officer pulled over the vehicle. Butcher appeared intoxicated, and refused all tests. Butcher's license was suspended based on his refusal, and he appealed based on the fact he was not driving when the officer stopped his vehicle. The District Court reversed his suspension. The Court of Appeals reinstated the suspension, reasoning the officer had probable cause for the stop. The officer witnessed Butcher driving, knew what he looked like, noticed the persons in the vehicle switched position after seeing the officer and knew Butcher's license was suspended.

Several of the out of state cases cited by the state, while stating the general principle that an officer can stop a vehicle if the owner has a suspended license nonetheless have additional facts to support the stop. Some are also intermediate appellate court decision. In

State v. Armfield, 918 N.E.2d 316, 322 (Ind, 2009), the officer had knowledge that Armfield was the registered owner of the vehicle and that Armfield had a lifetime suspension of driving privileges. After initiating the stop but before he approached the vehicle, he ascertained the registered owner's name, address, and physical description and only then verified that the name of the driver matched that of the registered owner. Based on his investigation, the stop was upheld.

In *State v. Pike,* 551 N.W.2d 919 (Minn.1996), the truck stopped was traveling unusually slow and was being driven as though the driver wanted the trooper "out of there"; the license of the registered owner was revoked; and the driver of the truck appeared to be of the same age and sex as the registered owner. The stop was upheld. In *Commonwealth v. Deramo,* 436 Mass. 40, 42-43, 762 N.E.2d 815 (2002) based on the officer's observation of the defendant's vehicle and his knowledge that the defendant's license had, as of two months earlier, still been subject to two lengthy periods of revocation, and that the officer knew the defendant, the officer reasonably suspected that the defendant was committing the crime of operating a motor vehicle without a valid license. In *People v. Jones,* 260 Mich. App. 424, 678 N.W.2d 627 (2004), the police officer's computer check of the vehicle license number returned information that there were two outstanding warrants for the registered owner of the vehicle providing the justification for the investigatory stop of the driver. In *People v. Close,* 939 N.E.2d 463, 471, 238 Ill. 2d 497 (2010) the officer was aware that the license of the registered owner of the vehicle had been revoked and the person driving the vehicle strongly resembled the photograph of the owner. Viewed objectively, the facts

available to the officer were sufficient to create the reasonable, articulable suspicion necessary to effect a *Terry* stop.

In *State v. Howard,* 766 N.E. 2d 179, 183 (Ohio app. Ct., 2007) appellant stopped at a Shell station to get some gasoline. Beside the Shell station was a parking lot, which separates the station from a McDonald's restaurant. Appellant paid for the gasoline in side. But left his vehicle running and unattended in front of the gas pumps, and went next door to McDonald's. During appellant's absence, a state trooper came to the station to get coffee. The attendant indicated that appellant had left his vehicle unattended in front of the gas pump and the attendant was not sure where appellant went. The trooper took the license plate number, called his dispatcher, and asked for a check of the plate. He was informed by the dispatcher that the owner of the vehicle was Malachi Anthony, and there was felony warrant out for his arrest. At this point in time, the trooper observed an individual running towards the car, carrying a McDonald's bag. The individual, who the trooper later determined to be appellant, jumped into his car, and left the gas station after seeing the trooper. The trooper got into his patrol car, and followed appellant east on U.S. 40. He activated his lights, and stopped appellant's vehicle. He found marijuana and a large amount of cash in the car. The driver was not the owner of the car. However, given a combination of factors such as leaving the running car unattended and appearing to evade the trooper, the stop of the vehicle was upheld.

"Investigative methods employed should be the least intrusive means reasonably available to verify or dispel

the officer's suspicion in a short period of time." *United States v. Sharpe,* 470 U.S._675, 686, 105_S. Ct.1568, 1575, 84_L. Ed. 2d_605, 615-16 (1985). Here, the officer simply checked the computer database for driver information and then resorted to the most intrusive means to verify the officer's suspicion by seizing the person driving the vehicle. It was unreasonable to infer that the owner of the car was the driver without some corroborating evidence. The officer lacked reasonable suspicion to stop of vehicle in violation of the Fourth Amendment.

Conclusion

This Court should uphold the District Court's decision that the officer lacked reasonable suspicion to stop the vehicle and detain and question Mr. Glover in violation of the Fourth Amendment.

Respectfully Submitted By:

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* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

APPENDIX L

IN THE SUPREME COURT
OF THE STATE OF KANSAS

No 16-116,446-S

[Filed July 31, 2017]

STATE OF KANSAS)
Plaintiff-Appellant)
)
vs.)
)
CHARLES GLOVER,)
Defendant-Appellee)
)

PETITION FOR REVIEW OF
DEFENDANT - APPELLEE

District Court of Douglas County, Kansas,
Honorable Paula Martin, District Court Judge
District Court Case No. 2016 TR 1431

Elbridge Griffy IV #18207
Attorney at Law
901 Kentucky STE 107
Lawrence, Ks 66044
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785-550-4454

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Prayer for Review

This is a petition for review by the Defendant-Appellee, Charles Glover. The District Court of Douglas County found that the initial stop of Charles Glover's vehicle was not supported by reasonable suspicion. The State filed an interlocutory appeal challenging the suppression of evidence. The Court of Appeals reversed the District Court holding that law enforcement officer has reasonable suspicion to stop of a vehicle to investigate whether the driver has a valid driver's license if the officer knows the registered owner of the vehicle has a suspended license and is unaware any other circumstances from which an inference could be drawn that the registered owner is not the driver of the vehicle. (*State v. Glover,* No. 116,446, syl, published opinion filed June 30, 2017.) Mr. Glover requests that this Court grant his petition for review.

Date of Opinion: June 30, 2017

Statement of the Issue

The officer lacked reasonable suspicion justifying the stop of the vehicle based solely upon information from the Kansas Department of Revenue file service that the owner of the vehicle had a suspended license. In the absence of any attempt by the officer to obtain corroborating evidence that the owner was the driver, the stop of the vehicle and seizure of Mr. Glover violated the Fourth Amendment.

Statement of Facts

The parties agreed to a stipulation of facts. On April 28, 2016, Officer Mark Mehrer ran a check on the

plates 295ATJ on a 1995 Chevrolet 1500 pickup truck. The plates on truck matched the plates and truck described in the mobile computer database accessed by the officer in his car. The database also indicated that the truck was registered to Charles Glover Jr. and that he had a suspended license in Kansas. (R.I, 23, Stipulation).

The officer inferred that the owner, Charles Glover Jr., was also the driver of the car. He did not observe Mr. Glover, or have any description of him prior to the stop. The driver was committing traffic violation. After stopping the truck, the officer determined that the driver was the owner, Mr. Glover. He was arrested on driving on a suspended license. (R.I, 23, Stipulation).

Defense counsel filed a motion to suppress seeking suppression of evidence obtained from the stop. (R.I, 78). After reviewing the cases and argument of counsel, the District Court concluded that the state lacked reasonable suspicion to stop the vehicle. (R.II, Sentencing Transcript, 4-5). The state appealed the court's decision to the Court of Appeals. (R. I, 21-22). The Court of Appeals reversed the District Court's decision that the stop was not legal. (*State v. Glover,* No. 116,446, published opinion filed June 30, 2017.)

Arguments and Authorities

Issue: The officer lacked reasonable suspicion justifying the stop of the vehicle based solely upon information from the Kansas Department of Revenue file service that the owner of the vehicle had a suspended license. In the absence of any attempt by the officer to obtain corroborating evidence that the owner was the driver, the stop

of vehicle and seizure of Mr. Glover violated the Fourth Amendment.

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In *Delaware v. Prouse,* 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979), the Supreme Court held that stopping a vehicle and detaining the driver to check his driver's license and registration is unreasonable under the Fourth Amendment, unless there exists an articulable and reasonable suspicion that the driver is unlicensed, the vehicle is unregistered, or the driver [or occupant] or vehicle is otherwise subject to seizure for violation of the law. The stopping of a moving vehicle by law enforcement is always considered a seizure. *City of Norton v. Stewart,* 31 Kan. App. 2d 645, 647, 70 P.3d 707 (2003).

In order for a law enforcement officer's seizure of a citizen to be constitutionally reasonable, "the officer must know of specific and articulable facts that create a reasonable suspicion the seized individual is committing, has committed, or is about to commit a crime or traffic infraction." *State v. Garza,* 295 Kan. 326, 331-332, 286 P.3d 554 (2012) (citing K.S.A. 22-2402[1]; *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

On a motion to suppress evidence, the State bears the burden of proving to the district court the lawfulness of the search and seizure by a preponderance of the evidence. *State v. Garcia,* 250 Kan. 310, 318, 827 P.2d 727 (1992). See also K.S.A. 22-3216 (2). "On appeal of a trial court's ruling on the motion to suppress, where the material facts are not in dispute, such as in this case where the parties

stipulated to the facts, the ultimate determination of suppression is a question of law over which this court has unlimited review." *State v. Ramirez,* 278 Kan. 402, 404, 100 P.3d 94 (2004).

Argument and Authorities

Issue: The officer lacked reasonable suspicion justifying the stop of the vehicle based solely upon information from the Kansas Department of Revenue file service that the owner of the vehicle had a suspended license. In the absence of any attempt by the officer to obtain corroborating evidence that the owner was the driver, the stop of the vehicle and seizure of Mr. Glover violated the Fourth Amendment.

The Court of Appeals held that law enforcement officer has reasonable suspicion to stop of a vehicle to investigate whether the driver has a valid driver's license if the officer knows the registered owner of the vehicle has a suspended license and is unaware any other circumstances from which an inference could be drawn that the registered owner is not the driver of the vehicle. (*State v. Glover,* No. 116,446, syl, published opinion filed June 30, 2017.)

The officer's opinion that there was reasonable suspicion to stop and seize Mr. Glover based upon the information that the owner's license was suspended does not support the inference that the owner is driving the car. Courts do not advocate a total, or substantial, deference to law enforcement's opinion concerning the presence of reasonable suspicion. Such a level of deference would be an abdication of our role to make a

de novo determination of reasonable suspicion. *State v. Moore,* 283 Kan. 344, 359-60, 154 P.3d 1 (2007).

Here, the state failed to sustain its burden of proof by a preponderance of the evidence that the officer had reasonable suspicion to stop the vehicle and question Mr. Glover. *State v. Garcia,* 250 Kan. 310, 318, 827 P.2d 727 (1992). The parties stipulated that the officer stopped the driver after confirmation that the owner of the vehicle had a suspended license. The stipulation did not contain facts that, prior to the stop, the officer recognized the driver, had prior contact with the driver, or whether he had a prior convictions for driving while suspended. There may have been multiple owners. The vehicle was being driven in compliance with the traffic code. The stipulation lacks facts as to the distance between the officer and the car, the direction of the vehicle or the time of day. There was no evidence as to whether the database relied upon was up to date or any foundation that the database was reliable.

The District Court ruled that the stop of the vehicle based on suspension of the owner's license alone, was insufficient to justify the stop. It was reasonable to assume that other people were driving Glover's vehicle, including family members.

Absent some corroboration by police officers, the stipulated facts alone do not support the existence of reasonable suspicion to stop the car, and question the driver, Mr. Glover. See *Florida v. J. L.,* 529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000) (Anonymous tip that a black male wearing a plaid shirt standing in front of a certain pawnshop is carrying a concealed firearm, is not sufficiently reliable, absent some corroboration by police officers, to justify investigatory

detention and frisk.) Without corroboration, the state did not sustain its burden of proof that the vehicle stop was reasonable.

It was not reasonable for the officer to infer that that because the owner of the vehicle had a suspended license, the driver of the vehicle was the owner driving on a suspended license. The state had to present corroborating evidence to support the inference that the driver was the owner. The state's burden of proof cannot be shifted to the defendant. See *State v. Porting,* 281 Kan. 320, 328, 130 P.3d 1173 (2006) (Court of Appeals "impermissibly shifted the burden of proof to the defendants when it relied on the defendants' failure to prove that they lacked authority to consent.") In the present case, Mr. Glover did not have to present evidence contradicting the officer's inference that driver was, in fact, the unlicensed owner.

Other state cases have required the officer to conduct further investigation to justify the stop of the vehicle. In California, the failure to investigate whether a vehicle had a temporary registration tag in the window resulted in the reversal of a conviction based upon an illegal stop. *People v. Dean,* 69 Cal.Rptr.3d 770, 158 Cal.App.4th 377 (2007); See also *People v. Nabong* 9 Cal.Rptr.3d 854, 115 Cal.App.4th Supp. 1, 2-3 (2004).

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favorably from an old, out of state case that "'[a]n officer is not warranted in relying upon circumstances deemed by him suspicious, when the means are at hand of either verifying or dissipating those suspicions without risk, and he neglects to avail himself of those means.'" Id. at 115 Cal.App.4th Supp. 45, fn. 12, 9 Cal.Rptr.3d 854 quoting *Filer v. Smith* 96 Mich. 347, 355, 55 N.W. 999 (1893).

Here, the means were at hand to investigate further. The officer could have obtained a description of the owner of the vehicle and compared the description with the driver. Further, the officer could have found out whether the owner of the vehicle had prior convictions for driving while suspended which would have offered additional justification for the stop or whether there were warrant for his arrest.

In *State v. Cerino,* 141 Idaho 736, 117 P.3d 876 (Ct. App. 2005), all that was known to the detective prior to the stop was that the vehicle was registered to a male and a female, that the male registrant did not possess an Idaho driver's license, and that a male was presently driving the vehicle. The Court noted that the detective knew only that the registrant did not have an Idaho driver's license, but did not know whether the registrant had a license from another jurisdiction. In addition, nothing but the driver's gender "matched" the officer's information about the registration. Therefore, the Court held "that the mere observation of a vehicle being driven by someone of the same gender as the unlicensed owner is insufficient to give rise to a reasonable suspicion of unlawful activity." Id at 738.

The *Cerino* decision was followed in a 2014 unpublished opinion, *State of Idaho v. Pendergrass,*

(Docket No 40914, Opin. No. 653, filed August 8, 2014) which upheld a stop based on corroborating evidence. An officer saw a vehicle and proceeded to do a search of the vehicle's license plate number using his in-car computer. Before initiating the traffic stop, the officer was able to determine that Pendergrass' driving privileges were suspended and was also able to locate a booking photograph of Pendergrass. He was able to identify Pendergrass as the driver of the vehicle coming towards him before the officer turned his vehicle around and initiated the traffic stop. Therefore, the stop was legal. Here, the stipulation fails to include any information at to the officer's location in relation to the vehicle or whether he could have obtained a booking photo.

In *State v. Parks,* the New Jersey Appellate Court required additional information before an officer could infer that the driver was the owner whose license had expired. 288 N.J. Super. 407, 672 A.2d 742 (App. Div. 1996). The appellate division held that the officer must have additional evidence of defendant's identity as the driver of the vehicle at that particular time. The Court held that "when the officer's observation of the driver indicates that the driver could reasonably be the person described in the DMV records, then the dictates of *Delaware v. Prouse, supra,* and *State v. Davis, supra* are satisfied." 288 N.J. Super. at 412.

In *Worley v. Commonwealth,* an unreported decision from Virginia cited by the state, the Court found that there was no reasonable suspicion of wrongdoing where police knew only that the car's owner had a suspended license, and "did not determine whether the driver was the owner" before making the stop. No. 1913-94-2, 1996

WL 31949 (Va.Ct.App. Jan. 30, 1996) at 1. The Court noted that a reasonable and articulable suspicion existed when an officer, alerted to the registered owner of a vehicle being under suspension, confirmed that the driver's physical description matched the owner's gender and approximate height, weight, and hair color." *Id.* (quotation omitted).

The Court in *Worley* did not require, contrary to the state's argument that all these specific factors had to be confirmed before stopping the driver; but that some further investigation was needed to justify the stop beyond the belief that the owner of the vehicle had a suspended license. *Worley* followed Hoye *v. Commonwealth,* 18 Va. App. 132, 133-34, 442 S.E.2d 404, 405-06 (1994), in which a police officer stopped a vehicle after determining that the registered owner was a habitual offender. The Court held that the officer had reasonable and articulable suspicion because she obtained a description of the owner from the Department of Motor Vehicles (DMV) records and confirmed "that the vehicle's driver matched the description of the registered owner as to gender and approximate height, weight, and hair color." Id. at 135, 442 S.E.2d at 406.

The state asks for a bright line rule that when owner of a vehicle is unlicensed, any driver of the vehicle is subject to stop and seizure. (State's brief at 3). This does not comport with Supreme Court law. The United States Supreme Court has explained that courts "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu,* 534 U.S. 266,

273-74, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002) (quoting *United States v. Cortez,* 449 U.S. 411, 417-18, 101 S.Ct. 690, 66 L.Ed.2d 621 [1981]). Even the Court in *State v. Hamic,* a case relied on by the state "decline[d] to suggest any temporal bright lines on the question of whether knowledge that a driver had a suspended driver's license a month before the stop creates an objectively reasonable suspicion that the driver's license is currently suspended." *State v Hamic,* 35 Kan. App. 2d 202, 209-210, 129 P.3d 114 (2006). See also recent decision of *State v. Sharp,* No. 110, 845 syl 5, filed March 17, 2017 ("The totality of the circumstances standard precludes a divide and conquer analysis under which factors that are readily susceptible to an innocent explanation entitled to no weight.")

Assuming that millions of car owners have a suspended license, a bright line gives police carte blanche to stop a huge proportion of the population without further evidence of wrong doing. Common sense dictates that people with suspended licenses who own vehicles, have other people drive the vehicle for errands, transportation to work, doctor's appointments, grocery shopping and all the other daily tasks that require a vehicle to complete. Also the owner may give the vehicle to his family members to use, since he or she can't drive, as noted by the District Court. (Volume II, 1-9). There may be family co owners of the car. A bright line rule requested by the state gives the police the authority to stop the driver of the owner's vehicle repeatedly, if not daily, by multiple officers. An owner's license suspension would give the police the right to stop members of his family repeatedly, a punishment by association not warranted by a license suspension.

Driving while suspended is not a crime which harms the safety of the public. Many suspensions are for unpaid traffic tickets, falling behind on child support, getting caught with drugs, bouncing checks, failure to pay fines on non driving traffic violations, not paying parking tickets; or minor juvenile offenses like missing school, using false identification to buy alcohol, or shoplifting. The need to stop motorists who might be driving on a suspended license is not so urgent so as to grant the state's request for a bright line rule.

Further, a bright line rule could be applied arbitrarily to minorities in the population. Cases dealing with automobile stops sometimes have a flavor of racial profiling. See *State v. Diaz-Ruiz,* 211 P.3d 836, 846 (Kan.Ct.App. 2009) (questioning credibility of officer because facts demonstrated trooper was motivated by a "desire to search the vehicle of these two Hispanic men"). See ACLU of Illinois (2015) pp 8-23) (Stop and frisk is disproportionately concentrated in the black community). Tracey Maclin, *United States v. Whren: The Fourth Amendment Problem with Pretextual Stops, in* WE DISSENT 90, 94 (Michael Avery ed., 2009) ("We know, of course, that police officers will not use the discretion granted by [*Whren*] against *every* motorist . . . police will utilize this discretionary power selectively. As in this case, African American male motorists will bear the brunt of this arbitrary police power.... "(construing *Whren v. United States,* 517 U.S. 806 (1996)).

Requiring specific, individualized facts to support the stop of driver of a vehicle owned by a person whose license has been suspended would help limit the arbitrary stop and seizures of members of the public.

While the state argues that the creation of a bright line rule will eliminate ambiguity, some ambiguity is necessary in order to satisfy the test that the officer must know of specific and articulable facts that create a reasonable suspicion the seized individual is committing, has committed, or is about to commit a crime or traffic infraction." *State v.* Garza, 295 Kan. at 332, 286 P.3d 554 (2012) (citing K.S.A. 22-2402[1]). The use of the terms "specific" and "individual" imply that corroborating evidence specific to each person seized is necessary to justify the stop in each case.

Police should conduct additional investigation, which does not involve a threat to their personal safety, in order to support reasonable suspicion to justify a stop based upon the fact that the owner of vehicle is the driver. However, the police should not be permitted to put on blinders, so they will not find evidence to undermine the validity of the stop. Further, investigation may show that the driver does not match the description of the owner, or the age of the driver does not match the age of the owner or the date of the suspension is old or that the records are not up to date. Here, there was no evidence that the officer even attempted to obtain a description of the owner of the vehicle. With increasingly advanced technology, an officer can obtain sufficient information from state and federal databases which will give him or her enough information to justify a vehicle stop.

As noted by the District Court, some of the cases cited by the state are distinguishable. In *State v Hamic,* 35 Kan. App. 2d 202, supra, the officer had prior contact with the owner/driver and there was an arrest warrant. The Court of Appeals noted that the

fact that an owner has a suspended license or a warrant must be viewed in combination with all of the other information available to the officer. Knowing that the owner has a suspended license or a warrant is a factor, but is not necessarily determinative.

Several of the out of state cases cited by the state, while stating the general principle that an officer can stop a vehicle if the owner has a suspended license nonetheless have additional facts to support the stop. In *State v. Armfield,* 918 N.E.2d 316, 322 (Ind, 2009), the officer had knowledge that Armfield was the registered owner of the vehicle and that Armfield had a lifetime suspension of driving privileges. After initiating the stop but before he approached the vehicle, he ascertained the registered owner's name, address, and physical description and only then verified that the name of the driver matched that of the registered owner. Based on his investigation, the stop was upheld.

In *State v. Pike,* 551 N.W.2d 919 (Minn.1996), the truck stopped was traveling unusually slow and was being driven as though the driver wanted the trooper "out of there"; the license of the registered owner was revoked; and the driver of the truck appeared to be of the same age and sex as the registered owner. The stop was upheld. In *Commonwealth v. Deramo,* 436 *Mass*. 40, 42-43, 762 *NE. 2d 815* (2002) based on the officer's observation of the defendant's vehicle and his knowledge that the defendant's license had, as of two months earlier, still been subject to two lengthy periods of revocation, and that the officer knew the defendant, the officer reasonably suspected that the defendant was committing the crime of operating a motor vehicle

without a valid license. In *People v. Jones,* 260 Mich. App. 424, 678 N.W.2d 627 (2004), the police officer's computer check of the vehicle license number returned information that there were two outstanding warrants for the registered owner of the vehicle providing the justification for the investigatory stop of the driver. In *People v. Close,* 939 N.E.2d 463, 471, 238 Ill. 2d 497 (2010) the officer was aware that the license of the registered owner of the vehicle had been revoked and the person driving the vehicle strongly resembled the photograph of the owner. Viewed objectively, the facts available to the officer were sufficient to create the reasonable, articulable suspicion necessary to effect a *Terry* stop.

In *State v. Howard,* 766 N.E. 2d 179, 183 (Ohio app. Ct., 2007) a trooper took the license plate number of a car stopped at a gas station, called his dispatcher, and asked for a check of the plate. He was informed by the dispatcher that the owner of the vehicle had a felony warrant out for his arrest. The individual, who the trooper later determined to be appellant, jumped into his car, and left the gas station after seeing the trooper. The trooper followed appellant and stopped appellant's vehicle. He found marijuana and a large amount of cash in the car. The driver was not the owner of the car. Given a combination of factors such as leaving the running car unattended and appearing to evade the trooper, the stop of the vehicle was upheld.

Cases cited by the Court of Appeals, while stating the general rule that an officer may stop a vehicle if the owner's license is suspended, have additional facts to support a finding of reasonable suspicion to stop the vehicle. In *State v. Tozier,* 905 A.2d 836, 839 (Maine,

2006), the officer, who was not familiar with the car's owner, ran the license plate number which revealed that the registered owner's license to be suspended. However, the officer observed that the driver was of the same gender as the registered owner; and suspected that the driver was the owner. In *State v. Vance,* 790 N.W.2d 775, 781 (Iowa, 2010), the officer was aware that the owner of the car has committed several DWS offenses, making it more likely the owner was driving the vehicle again. In *State v. Edmonds,* 58 A.3d 961 (Vt. 2012) the trooper inferred that defendant Edmonds was the driver whose license was suspended based on officer's observation that a male was driving the car.

"Investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *United States v. Sharpe,* 470_U.S._675, 686, 105_S. Ct._1568, 1575, 84_L. Ed. 2d_605, 615-16 (1985). Here, the officer simply checked the computer database for driver information and then resorted to the most intrusive means to verify the officer's suspicion by seizing the person driving the vehicle. It was unreasonable to infer that the owner of the car was the driver without some corroborating evidence. The officer lacked reasonable suspicion to stop of vehicle in violation of the Fourth Amendment. Mr. Glover respectfully requests that this Court grant his petition for review.

Respectfully Submitted

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