No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2019

BARBARA MYERS-MCNEIL,

Petitioner,

-v-

STATE OF NORTH CAROLINA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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QUESTION PRESENTED FOR REVIEW

Whether the Fourth Amendment permits a police officer to seize a motorist when the only thing the officer knows is the motorist is driving a vehicle registered to a person whose driving license has been suspended.

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Petitioner Barbara Myers-McNeil, respectfully petitions this Court pursuant to Supreme Court Rules 10, 12, 13, and 14, to issue a Writ of Certiorari to review the judgment of the Supreme Court of North Carolina declining merits review, entered in the above case on August 14, 2019.

INTRODUCTION

This case presents an important issue of federal law on which North Carolina courts have passed but this Court has not, and that is currently pending before this

Court in *Kansas v. Glover*, U.S. Sup. Ct. Case No. 18-556 (*argued* November 4, 2019): whether state law allowing an officer to stop a motorist based only on the fact the vehicle is registered to someone whose license has been suspended or revoked violates the Fourth Amendment. *See* U.S. Sup. Ct. R. 10(c).

North Carolina, like a number of other states, has case law holding that as a rule, an officer has reasonable suspicion to warrant an investigative stop "when [the] police officer becomes aware that a vehicle being operated is registered to an owner with a suspended or revoked driver's license, and there is no evidence appearing to the officer that the owner is not the individual driving the automobile." *State v. Hess*, 185 N.C. App. 530, 534, 648 S.E.2d 913, 917 (2007). This Court, however, has never permitted officers to rely on that type of one-size-fits-all rule in assessing the reasonableness of a seizure under the Fourth Amendment. Whether an officer has reasonable suspicion must be assessed after considering the totality of circumstances and inferences the officer drew in light of his experience and training.

In Ms. Myers-McNeil's case, the challenged owner-is-the-driver presumption was the only basis for stopping her. *McNeil*, 822 S.E.2d at 322. North Carolina law says this was enough. *See Hess*, 185 N.C. App. at 534, 648 S.E.2d at 917. However, as the Kansas Supreme Court noted in *State v. Glover*, under this Court's precedent, that presumption should not be permitted to establish reasonable suspicion. *Glover*, 308 Kan. 590, 601, 422 P.3d 64, 72 (2018). "[R]easonable

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." *Id.*

This case provides an ideal vehicle to settle an important issue of federal law on which North Carolina and other state courts have passed but this Court has not: whether the bright-line rule that officers have reasonable suspicion sufficient to justify an investigative stop when they learn the owner of a vehicle has a suspended license comports with the Fourth Amendment. *See* U.S. Sup. Ct. R. 10(c). The Court should settle this important federal question by granting certiorari in this case and deciding the issue in conjunction with *Glover*, No. 18-556.

OPINION BELOW

The order of the Supreme Court of North Carolina issued on August 14, 2019, denying discretionary review of Ms. Myers-McNeil's direct appeal is attached hereto as Appendix A and is also available at *State v. Myers-McNeil*, 831 S.E.2d 91, 2019 N.C. LEXIS 831 (Aug. 14, 2019). The underlying North Carolina Court of Appeals judgment entered June 28, 2018, is attached as Appendix B and is also available at *State v. McNeil*, 822 S.E.2d 317, 2018 N.C. App. LEXIS 1147 (N.C. Ct. App. 2018).

JURISDICTION

The judgment of the Supreme Court of North Carolina denying discretionary review of Ms. Myers-McNeil's case on direct appeal was entered August 14, 2019. *See* Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257, as Ms. Myers-McNeil is asserting a deprivation of her rights secured by the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

This petition invokes the Fourth Amendment to the United States Constitution. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

PROCEEDINGS BELOW

Ms. Myers-McNeil was charged by citation with driving while impaired. She was found guilty in District Court, and appealed to Superior Court for a trial. Prior to trial, Ms. Myers-McNeil made a motion to suppress. The motion was denied. A jury found Ms. Myers-McNeil guilty of driving while impaired. Ms. Myers-McNeil was sentenced to 60 days, suspended, and placed on unsupervised probation for 12 months.

On appeal, the Court of Appeals noted the initial stop was justified by reasonable suspicion under *Hess*, 185 N.C. App. at 534, 648 S.E.2d at 917, because the officer "learned that the registered owner of the vehicle was a male with a suspended license." *McNeil*, 822 S.E.2d at 319-320. The court further noted that before the officer "completed the mission of the stop" – to "identify the driver of the vehicle to see first if the owner was in the car, if they were driving, who the driver of the vehicle was" – the officer "acquired reasonable suspicion that [Ms. Myers-McNeil] was operating the vehicle while impaired. *Id.* at 320, 323. Thus, the court concluded, the stop was not impermissibly extended in violation of *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), and Ms. Myers-McNeil's motion to suppress had been properly denied. *Id.* at 323-24.

Ms. Myers-McNeil sought discretionary review of the Court of Appeals' decision in the North Carolina Supreme Court on two bases: (1) that the Court of Appeals determination that Ms. Myers-McNeil's stop had not been impermissibly extended was incorrect; and (2) despite North Carolina precedent to the contrary, learning a car is registered to a person whose driver's license is suspended is insufficient to provide reasonable suspicion to stop the driver of that vehicle in the absence of specific information suggesting the driver is also the registered owner of the vehicle. The North Carolina Supreme Court denied Ms. Myers-McNeil's petition on August 14, 2019.

STATEMENT OF THE CASE

The isolated fact that a car being driven on the road is owned by a unlicensed driver with a suspended license does not establish reasonable suspicion that the driver of that car is engaged in illegal activity. *But see Hess*, 185 N.C. App. at 534, 648 S.E.2d at 917 (holding the opposite). Bright-line rules like the *Hess* rule applied in this case are inapt in the context of Fourth Amendment determinations about whether an officer had reasonable suspicion to justify an investigatory stop. This Court has long held that "stopping an automobile and detaining the driver in order to check his driver's license . . . [is] unreasonable under the Fourth Amendment," except when "there is at least articulable and reasonable suspicion that [the] motorist is unlicensed." *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). The North Carolina Supreme Court, however, has created an exception to that rule for vehicles registered to people with suspended licenses. This presumption assumes that vehicle owners with suspended licenses will violate the law by continuing the drive. Further, this type of bright-line rule encourages officers to ignore the facts actually before them, and undermines this Court's insistence that reasonable-suspicion determinations be based on the "totality of the circumstances." *Navarette v. California*, 572 U.S. 393, 396-397 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

The Fourth Amendment ensures individuals have the right to be free from "unreasonable searches and seizures." U.S. Const. amend. IV. "As the text makes

clear, 'the ultimate touchstone of the Fourth Amendment is reasonableness.'" *Riley v. California*, 573 U.S. 373, 381 (2014) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)). Although ordinarily a search or seizure must be based on a warrant supported by probable cause, brief "investigative stops," including traffic stops, are permitted when an officer can articulate a "reasonable suspicion" of criminal activity. *Navarette*, 572 U.S. at 396-397; *Terry v. Ohio*, 392 U.S. 1, 19-30 (1968). The reasonable suspicion standard is intended to balance the government's general interest in enforcing the law against the public's interest in being free from unwarranted governmental intrusion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 880- 883 (1975); *Terry*, 392 U.S. at 20-21. Whether a search or seizure is reasonable depends on the context in which it is undertaken. *Id.*

The State bears the burden of establishing that an officer had reasonable suspicion of illegal activity at the time of a seizure by creating a record that would support such a conclusion. *Ornelas v. United States*, 517 U.S. 690, 699-700 (1996); *Brown v. Texas*, 443 U.S. 47, 52 (1979); *Prouse*, 440 U.S. at 659. 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*, 517 U.S. at 696, and citing *United States v.*

Sokolow, 490 U.S. 1, 7 (1989)). This Court has "deliberately avoided reducing [the concept of reasonable suspicion] to a neat set of legal rules." *United States v. Arvizu*, 534 U.S. 266, 274 (2002).

Under this Court's precedent, assessment of reasonable suspicion turn "commonsense judgment and inferences about human behavior." *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000). The *Hess* rule applied in Ms. Myers-McNeil's case constitutionalizes the presumption that vehicle owners with suspended licenses will violate the law by continuing to drive. In addition, whether a driver is unlawfully driving on a suspended license has nothing to do with the particular vehicle he or she is driving; it has everything to do with the identity of the driver. Where the only thing that distinguishes between legal and illegal activity is the identity of the driver, it makes little sense to hold as a matter of constitutional law that an officer can infer an individual is acting illegally when the officer has no information about the particular individual in question, *i.e.*, the driver of the car.

To the extent information about a vehicle's owner is relevant to assessing who the driver of the vehicle is, a legal presumption that an officer may always assume a car is being driven by its owner ignores the practical realities of vehicle use. For example in *Glover,* the Kansas Supreme Court noted, "common experience . . . suggests families may have several drivers sharing vehicles legally registered in the names of only one or two of the family members." For insurance purposes, spouses or children may drive vehicles owned by others. Family members may

share vehicles. People may drive cars owned by their neighbors, or take advantage of ever-growing peer-to-peer car sharing networks.

Further, the owner-as-driver presumption fails to account for the deterrent effect of a suspended license. Whatever the odds are that a car's driver is its owner at any particular moment, those odds certainly fall sharply when an owner's license has been suspended. North Carolina's rule to the contrary implicitly assumes a broad criminal inclination on the part of suspended drivers. The observation that some unlicensed drivers sometimes drive is not individualized suspicion, just as a neighborhood's top-line crime rate would not justify stopping its residents solely on the strength of their "presence in an area of expected criminal activity." *Wardlow*, 528 U.S. at 124 (citing *Brown*, 443 U.S. at 99).

The resulting effect of these unfounded inferences is that the *Hess* rule provides officers "standardless and unconstrained discretion." *Prouse*, 440 U.S. at 661. "A suspicion so broad that [it] would permit the police to stop a substantial portion of the lawfully driving public . . . is not reasonable." *United States v. Paniagua-Garcia*, 813 F.3d 1013, 1014-1015 (7th Cir. 2016) (Posner, J.) (omission in original) (quoting *United States v. Flores*, 798 F.3d 645, 649 (7th Cir. 2015). North Carolina's *Hess* rule, though, is just that broad. It sweeps in every vehicle registered to a suspended or unlicensed driver, and therefore every individual who shares those cars. Both the spouse who drives his or her unlicensed partner to work and the older sister or brother who drives siblings to school during a parent's

suspension will be at risk of indiscriminate seizures whenever they set out on the road in the family car. This is not a small risk for law-abiding drivers. Automated license-plate readers "can capture up to 1,800 license plates a minute during day or night, across four lanes of traffic and at speeds of up to 150 miles per hour, alerting officers "within milliseconds" of suspect plates.[1] Under North Carolina's *Hess* rule, law-abiding drivers have no way of avoiding a traffic stop (or many traffic stops) merely because a different driver had his or her license suspended. The Fourth Amendment does not permit this sort of unjustified intrusion on personal privacy.

The State bears the burden of establishing that every seizure is reasonable under the Fourth Amendment. Whether a particular stop is reasonable can be assessed only by looking at the totality of circumstances that led to the seizure. Here, the circumstances in total indicate the following: two officers, while running as many license plates as they could, happened to run the plate on the car Ms. Myers-McNeil was driving and that car was owned by an individual with a suspended license. Under North Carolina's interpretation of the Fourth Amendment, on this information alone it was reasonable for the officers to infer the

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[1] See Kaveh Waddell, *How License-Plate Readers Have Helped Police and Lenders Target the Poor*, The Atlantic (Apr. 22, 2016), https://www.theatlantic.com/technology/archive/2016/04/how-license-plate-readers-have-helped-police-and-lenders-target-the-poor/479436/ (quoting Leonardo, https://www.leonardocompany-us.com/lpr).

car was being driven by its suspended owner and therefore reasonable to stop the car. Under this Court's precedent, that cannot hold true.

This Court has repeatedly declined to accept bright-line rules that a single fact is *per se* sufficient to establish reasonable suspicion. In *Brignoni-Ponce*, for example, the Court considered whether border-patrol officers had reasonable suspicion to stop a car near the Mexican border to investigate whether the occupants were aliens. 422 U.S. at 874-876. "[T]he officers relied on a single factor to justify stopping [the defendant's] car: the apparent Mexican ancestry of the occupants." *Id.* at 885-886. The government argued that the officers' specialized training enabled them to "recognize the characteristic appearance of persons who live in Mexico, relying on such factors as the mode of dress and haircut." *Id.* at 885. The Court acknowledged that "[t]he likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor," but held that "standing alone it does not justify stopping all Mexican-Americans to ask if they are aliens." *Id.* at 886-887.

This Court reached a similar conclusion in *Brown v. Texas*, when it held that a defendant's presence "in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that [the defendant] himself was engaged in criminal conduct." 443 U.S. at 52. This Court in *Brown* explained a finding of reasonable suspicion must be based on "objective facts" "in the record." *Id.* at 51, 52. The Court emphasized that although inferences an officer may draw based on his

training and experience can form the basis of reasonable suspicion, an officer's assertion that an individual "looked suspicious" is not entitled to deference in the reasonable-suspicion analysis. *Id.* at 49, 52 n.2.

The same result is required in this case. Although a person who appears to be of Mexican descent may have a higher likelihood of being an alien than a person who does not, see *Brignoni-Ponce*, 422 U.S. at 886 n.12, and a person who is present in a high-crime area may have a higher likelihood of being engaged in criminal activity than a person in a low-crime area, that type of statistical likelihood has never been found sufficient on its own to establish reasonable suspicion. The same is true here. Even if it is true that a car owned by an driver with a suspended license is more likely to be driven by an unlicensed driver than a car with a licensed owner is, that fact alone is insufficient to establish reasonable suspicion when the actual "activity" of the driver is "no different from the activity of other [drivers]." *Brown*, 443 U.S. at 52. There is no precedent in this Court's cases for adopting such a bright-line rule. To the contrary, even when the Court has found reasonable suspicion based on the totality of circumstances, the Court has cautioned that such a finding in one case may or may not suggest that a seizure was reasonable in a case with similar facts. *Arvizu*, 534 U.S. at 275 ("[I]n many instances the factual 'mosaic' analyzed for a reasonable suspicion determination would preclude one case from squarely controlling another."); *Terry*, 392 U.S. at 30 ("Each case of this sort will, of course, have to be decided on its own facts.").

This case presents an ideal vehicle for this Court to squarely determine whether the Fourth Amendment guarantee against unreasonable searches and seizures forbids the type of bright-line rule or presumption North Carolina adopted in *Hess* and applied in Ms. Myers-McNeil's case. Absent intervention by this Court, law enforcement officials will have unbridled freedom to stop over and over law-abiding drivers with the misfortune of sharing a vehicle with a vehicle owner who is unlicensed or has a suspended license.

CONCLUSION

For the reasons set forth in this Petition for Writ of Certiorari, this Court should grant certiorari to hear Myers-McNeil's case.

Respectfully submitted,

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