No. 20-733

In the Supreme Court of the United States

TERRILL A. RICKMON, SR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Acting Solicitor General
Counsel of Record
NICHOLAS L. MCQUAID
Acting Assistant Attorney General
THOMAS E. BOOTH
Attorney
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether a police officer had reasonable suspicion to stop the only car he saw driving away from a location from which police had received multiple reports of recent gunfire, in the very early hours of a Sunday morning, in an area known to the officer for criminal activity.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (C.D. Ill.):

United States v. *Rickmon*, No. 18-cr-10046 (Dec. 27, 2018)

United States Court of Appeals (7th Cir.):

United States v. *Rickmon*, No. 19-2054 (Mar. 11, 2020)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-21) is reported at 952 F.3d 876. The order of the district court (Pet. App. 22-27) is not published in the Federal Supplement.

JURISDICTION

The judgment of the court of appeals was entered on March 11, 2020. A petition for rehearing was denied on June 25, 2020 (Pet. App. 28). The petition for a writ of certiorari was filed on November 20, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Central District of Illinois, petitioner was convicted on one count of unlawfully possessing a fire-

arm as a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 75 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1-21.

1. At about 4:40 a.m. on July 29, 2018 (a Sunday), the Peoria, Illinois Police Department's ShotSpotter system—which detects and locates gunfire—reported two shots fired from 2203 North Ellis Street in Peoria. Pet. App. 2. ShotSpotter is a surveillance system that uses sophisticated microphones to record gunshots in a specific area. *Ibid.* After a device detects the sound of gunfire, it relays the audio file to California, where an individual determines whether the sound is a shot. *Ibid.* When that individual confirms the sound is a gunshot, ShotSpotter sends it back to the local police department. *Ibid.*

Officer Travis Ellefritz was patrolling the city in his squad car at the time, and he immediately started driving towards that address, which is near the end of a dead-end street. Pet. App. 2; D. Ct. Doc. 48, at 60-61 (May 14, 2019). While Officer Ellefritz was on his way, a second ShotSpotter alert indicated that three more shots had been fired at the same location. Pet. App. 2. Police dispatch also reported information from a related 911 call, stating that "several cars" were "leaving" the scene and that a "black male on foot * * * ran northbound." *Ibid.* Officer Ellefritz, who responded to calls in this area on an almost nightly basis and had previously responded to shots-fired calls there, was familiar with the neighborhood. *Id.* at 14.

Officer Ellefritz reached North Ellis Street at approximately 4:45 a.m. Pet. App. 3. He saw only one other car driving, headed away from the identified

shooting location and toward him. *Ibid.* Officer Ellefritz activated his emergency lights and veered his squad car into the lane of oncoming traffic. *Ibid.* Officer Ellefritz briefly feared that the other car was trying to get away, so he shouted "stop" as he exited his squad car and unholstered his firearm. *Ibid.*; D. Ct. Doc. 48, at 27-28. The car then stopped next to the left bumper of Officer Ellefritz's squad car. *Ibid.*

The car's occupants began pointing backwards in the direction from which they had come, toward the dead end of North Ellis Street, yelling: "They are down there! They are down there!" Pet. App. 3. Officer Ellefritz looked and could see a crowd of about 15-20 people at the street's dead end, approximately 300 feet from him. *Ibid.* Officer Ellefritz could also see petitioner in the car's passenger seat. *Ibid.* Petitioner and the driver kept their hands up until backup arrived, at which point petitioner informed the officers that someone had shot him in the leg. *Ibid.* With the driver's consent, Officer Ellefritz searched the car and found a nine-millimeter handgun under the passenger seat where petitioner, a prior felon, had been sitting. *Id.* at 4.

2. A federal grand jury in the Central District of Illinois charged petitioner with unlawfully possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Indictment 1. Petitioner moved to suppress the gun, contending that Officer Ellefritz lacked reasonable suspicion to stop the car in which he was a passenger. See Pet. App. 24. Following an evidentiary hearing, the district court denied the motion, determining that the "stop was an objectively reasonable one based on the totality of the circumstances." *Id.* at 26. The district court emphasized that Officer Ellefritz encountered the

car "leaving th[e] exact area" in which "numerous shots" had been fired "within minutes" before. *Ibid.*

Petitioner subsequently pleaded guilty to possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. Petitioner's plea was conditional, preserving his right to appeal the denial of his motion to suppress. Pet. App. 6. The district court sentenced him to 75 months' imprisonment, to be followed by three years of supervised release. Judgment 2-3.

3. The court of appeals affirmed. Pet. App. 1-21.

The court of appeals recognized that in order to "conduct a brief investigatory stop, sometimes referred to as a *Terry* stop," officers must "reasonably suspect that an individual has committed or is about to commit a crime." Pet. App. 6 (citation and internal quotation marks omitted). Such "[r]easonable suspicion," the court explained, "requires specific and articulable facts which, taken together with rational inferences from those facts, suggest criminal activity." *Ibid.* (citation omitted). The court also "generally agree[d]" with petitioner that "ShotSpotter, standing on its own," did not establish reasonable suspicion for police to stop any "vehicle in the immediate vicinity of a gunfire report without any individualized suspicion." *Id.* at 7; see *ibid.* ("[W]e question whether a single ShotSpotter alert would amount to reasonable suspicion."). But the court found that additional circumstances, beyond the ShotSpotter report, supported reasonable suspicion in this case. *Ibid.*

First, the court of appeals observed that Officer Ellefritz received "two ShotSpotter alerts and two [911] dispatches reporting a shooting on North Ellis," which corroborated each other and gave the officer "a good idea of what to be on the lookout for when he arrived"

at the scene. Pet. App. 9, 11. Second, the court noted that Officer Ellefritz was responding to "an emergency report of shots fired," which carries an "inherent danger." *Id.* at 11. The court stated that such an "emergency report can support an officer's reasonable suspicion" with "less substantiation," as an officer must be able "to obtain for his own safety * * * as much information about the situation in the [area] as he could before * * * enter[ing] it in the dark." *Id.* at 12 (citation and internal quotation marks omitted; brackets in original).

Third, the court of appeals emphasized that Officer Ellefritz had "encountered [petitioner's] vehicle on the same block of the shooting five-and-a-half minutes after [police] received reports of shots fired," that the car was the only one driving on the street, and that it was "driving away from the site of the shooting on the only street leading from it." Pet. App. 12-13. The court of appeals found that those facts supported Officer Ellefritz's "rational * * * infer[ence] that [petitioner's] car participated in the gunfight." *Id.* at 13. Fourth, and relatedly, the court noted that the encounter occurred at 4:45 a.m., at a time when "we realistically expect few people on the road." *Id.* at 14. And fifth, the court observed that Officer Ellefritz was familiar with North Ellis Street, had previously responded to shots-fired calls nearby, and "had personal knowledge of criminal activity in that part of Peoria." *Ibid.*

Based on those considerations, the court of appeals determined that the totality of the circumstances here —"the reliability of the police reports, the dangerousness of the crime, the stop's temporal and physical proximity to the shots, the light traffic late at night, and the officer's experience with gun violence in that area"—

supported a finding of reasonable suspicion. Pet. App. 15.

Judge Wood dissented. In her view, Officer Ellefritz lacked individualized reasonable suspicion to stop petitioner's car. Pet. App. 16-21.

ARGUMENT

Petitioner contends (Pet. 4-15) that police violated the Fourth Amendment by stopping the car in which he was a passenger as it drove away from the location of recent gunfire. The court of appeals' factbound decision is correct and does not conflict with the decision of any other court of appeals. No further review is warranted.

1. The Fourth Amendment allows police officers to stop and briefly detain a suspect for investigation if they have reasonable suspicion that criminal activity is afoot. See, *e.g.*, *Navarette* v. *California*, 572 U.S. 393, 396-397 (2014); *Terry* v. *Ohio*, 392 U.S. 1, 21-22, 30 (1968). Reasonable suspicion requires more than a hunch, but it does not require proof by a preponderance of the evidence or even probable cause, and it does not require ruling out the possibility of innocent conduct. See *Navarette*, 572 U.S. at 403; *United States* v. *Arvizu*, 534 U.S. 266, 273-274 (2002); *United States* v. *Sokolow*, 490 U.S. 1, 10 (1989). For example, an officer may stop a car reported to have been driving recklessly based on an inference of drunk driving, even though that behavior "might also be explained by, for example, a driver responding to 'an unruly child or other distraction.'" *Navarette*, 572 U.S. at 403 (citation omitted).

The reasonable-suspicion standard "takes into account 'the totality of the circumstances—the whole picture.' " *Navarette*, 572 U.S. at 397 (quoting *United States* v. *Cortez*, 449 U.S. 411, 417 (1981)). The Court has accordingly warned against "divide-and-conquer

analysis," *Arvizu*, 534 U.S. at 274, and has explained that a combination of facts may provide reasonable suspicion even if, considered independently, those facts could have innocent explanations, see, *e.g.*, *ibid.*; *Sokolow*, 490 U.S. at 9-10. Courts applying the reasonable-suspicion standard "must permit officers to make 'commonsense judgments and inferences about human behavior'" in light of the totality of the circumstances before them. *Kansas* v. *Glover*, 140 S. Ct. 1183, 1188 (2020).

Applying those principles, the court of appeals correctly determined that Officer Ellefritz had reasonable suspicion to stop the car in which petitioner was a passenger. As the court explained, multiple "specific and articulable facts" together supported Officer Ellefritz's "rational inference[]" that the car's occupants might be involved in the shooting on North Ellis Street. Pet. App. 6-7 (citation omitted). Officer Ellefritz encountered the car traveling on North Ellis, on the only route away from the shooting scene, just five minutes after multiple ShotSpotter alerts and 911 dispatches had begun to report gunfire. See *id.* at 9-14. Other than Officer Ellefritz's own cruiser, the car was the only one traveling on North Ellis at the time—4:45 a.m. on a Sunday morning—in a neighborhood whose criminal activity was familiar to the officer. See *id.* at 14, 19.

Based on those facts, Officer Ellefritz "used common sense to form a reasonable suspicion that a specific [car] was potentially [involved] in specific criminal activity," *Glover*, 140 S. Ct. at 1190. That the criminal activity created an "inherent danger" to Officer Ellefritz only reinforces the reasonableness of his conduct, at a time when he was alone on a dark road responding to a recent

shooting. Pet. App. 11; see generally *Illinois* v. *Rodriguez*, 497 U.S. 177, 185-186 (1990) ("[I]n order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government * * * is not that they always be correct, but that they always be reasonable."); *Maryland* v. *Buie*, 494 U.S. 325, 334 n.2 (1990) (noting that "the reasonable suspicion standard" strikes a "balance between officer safety and citizen privacy").

Contrary to petitioner's contentions, the court of appeals did not "create[] a new exception to *Terry* such that anything that even sounds like a gunshot may be treated as an 'emergency'" that "overshadows the need for real individualized suspicion." Pet. 13. Nor did the court establish that police may "indiscriminately stop persons standing, walking, or driving within earshot of what they perceive to be gunfire," or "enter homes in the general vicinity" of gunfire. *Ibid.* Instead, the court conducted the totality-of-the-circumstances analysis required by this Court's precedents and determined that on these facts, Officer Ellefritz lawfully stopped the lone car he saw leaving the scene of a shooting that had been reported by multiple sources. Indeed, the court specifically disclaimed any suggestion that a ShotSpotter alert would permit the police "to stop a vehicle in the immediate vicinity * * * without any individualized suspicion." Pet. App. 7. It simply found such individualized suspicion here.

2. Petitioner also errs in contending (Pet. 4-9) that the court of appeals' decision conflicts with precedents of the D.C. Circuit and the Fourth Circuit.

Petitioner first points (Pet. 5-6) to *United States* v. *Delaney*, 955 F.3d 1077 (D.C. Cir. 2020), but the facts of

that case differ materially from this one. In *Delaney*, police officers encountered the defendant kissing a woman in a parked car about one minute after hearing gunshots nearby. *Id.* at 1079-1080. In concluding that police lacked reasonable suspicion to seize the defendant, the D.C. Circuit emphasized that the officers did not know where the gunshots had come from, which "undermined" any "inferences of suspicion" that could have followed from the defendant's location. *Id.* at 1086; see *ibid.* ("[T]he district court made no findings to suggest that the officers knew the approximate location from which the various shots originated. There are no findings, for example, that the officers heard the gunshots coming from the direction of the parking lot or that someone directed the officers that way."). And the D.C. Circuit distinguished cases—like this one—in which police had encountered suspects at, or fleeing from, the known location of recent gunfire. *Id.* at 1086-1087. "Moreover," the court observed, "the officers were patrolling a populated residential area shortly after midnight on New Year's Eve, a time when one would have expected other folks to be out and about celebrating," including by kissing—further indicating that the defendant's conduct was not suspicious. *Id.* at 1086.

Nothing about the D.C. Circuit's decision in *Delaney* indicates that it would necessarily (or even likely) have reached a different conclusion than the Seventh Circuit did in this case. *Delaney* recognized that a suspect's "proximity to 'close-by gunshots' goes some way toward establishing reasonable suspicion." 955 F.3d at 1085-1086 (citation omitted). In evaluating whether the totality of the circumstances in *Delaney* amounted to reasonable suspicion, the D.C. Circuit emphasized some of the same types of facts considered by the opinion below.

In this case, however, those same types of facts support rather than undermine a finding of reasonable suspicion: Officer Ellefritz had reliable information about the precise location of the gunfire, and petitioner was in the only car driving away from that location at a time when "we realistically expect few people on the road." Pet. App. 14. The approach in *Delaney* is thus consistent with the Seventh Circuit's approach here. And the D.C. Circuit in *Delaney* emphasized that it found the "question [there] close," 955 F.3d at 1079, thereby reinforcing the significance of factual differences like the ones here.

Petitioner also points (Pet. 7-8) to the Fourth Circuit's decision in *United States* v. *Curry*, 965 F.3d 313 (2020) (en banc), but that case both arose on different facts and considered a different legal question. In *Curry*, police officers encountered the defendant among a group of five to eight men who were "calmly and separately walking in a public area * * * , away from the general vicinity of where the officers believed" gunshots had very recently been fired, at about 9:00 p.m. *Id.* at 315. The court concluded that the officers' "suspicionless, investigatory stop" of the defendant in those circumstances was not justified by the "exigent circumstances doctrine" under the Fourth Amendment. *Id.* at 316. The Fourth Circuit emphasized that the government had "abandoned its *Terry* justification" for the defendant's stop by "conceding" that it "was suspicionless." *Id.* at 318. And the court opined that permitting such a stop under the exigent-circumstances doctrine would "create a sweeping exception to *Terry*" by sanctioning suspicionless investigatory stops. *Id.* at 316.

The facts of *Curry* differ from the facts of this case; most notably, the defendant in *Curry* was one among

many similarly situated people walking away from the scene of gunfire, while petitioner here was a passenger in the only car driving away from gunfire in the very early hours of the morning. *Curry* assumed—rather than decided—the question of individualized suspicion under the totality of the circumstances, which was the sole legal focus of the decision below. *Curry* thus did not consider the application of the reasonable-suspicion framework to the facts there—let alone the different ones here. Instead, *Curry* considered the application of the exigent-circumstances doctrine, which is not at issue in this case. See, *e.g.*, *Curry,* 965 F.3d at 315 ("This appeal presents the question of whether the Fourth Amendment's exigent circumstances doctrine justified the *suspicionless* seizure of Defendant.") (emphasis added). *Curry*'s holding therefore does not conflict with the holding below, and *Curry* does not indicate that the Fourth Circuit would find a *Terry* stop unlawful on the facts of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General
NICHOLAS L. MCQUAID
Acting Assistant Attorney General
THOMAS E. BOOTH
Attorney

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