No. 18-556

In the Supreme Court of the United States

STATE OF KANSAS,
Petitioner,

v.

CHARLES GLOVER,
Respondent.

On Writ of Certiorari to the Supreme Court of Kansas

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether, for purposes of an investigative stop under the Fourth Amendment, it is reasonable for an officer to suspect that the registered owner of a vehicle is the one driving the vehicle absent any information to the contrary.

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JURISDICTION

The Supreme Court of Kansas issued its decision and final judgment on July 27, 2018. This Court has jurisdiction under 28 U.S.C. § 1257(a). *See New York v. Quarles*, 467 U.S. 649, 651 n.1 (1984) (concluding that a state court's suppression ruling was "a 'final judgment' within the meaning of" 28 U.S.C. § 1257 and that the Court therefore had jurisdiction).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> 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.

STATEMENT OF THE CASE

1. The parties have stipulated to the following facts: While on routine patrol in Douglas County, Kansas, Sheriff's Deputy Mark Mehrer ran a registration check on a pickup truck with a Kansas license plate. Pet. App. 60-61. The Kansas Department of Revenue's electronic database indicated the truck was registered to Charles Glover, Jr., and that Glover's Kansas driver's license had been revoked. Pet. App. 61, 83. Deputy Mehrer stopped the truck to investigate whether the driver had a valid license because he "assumed the registered owner of the truck was also the driver." Pet. App. 61. The stop was based only on the information that Glover's license had been revoked; Deputy Mehrer did not observe any traffic infractions and did not identify the driver. Pet. App. 61. Glover was in fact the driver, Pet. App. 61, and was charged as a habitual violator for driving while his license was revoked, Pet. App. 4, 45-46. *See* Kan. Stat. Ann. § 8-287 (defining the penalty for conviction as a habitual violator).

2. Though Glover admitted he "did not have a valid driver's license," he moved to suppress all evidence from the stop. Pet. App. 47-48. He claimed the stop violated the Fourth Amendment, as interpreted by this Court in *Terry v. Ohio*, 392 U.S. 1 (1968), and *Delaware v. Prouse*, 440 U.S. 648 (1979), because Deputy Mehrer lacked reasonable suspicion to pull him over. Pet. App. 37, 48.

The State responded that a law enforcement officer could infer that the registered owner of a vehicle may be driving his or her vehicle, absent information to the

contrary. It also argued that this inference was sufficient to provide reasonable suspicion for an investigative stop where the officer knows the owner has a revoked license. Pet. App. 51-54. The State relied in part on the decisions of other state supreme courts and intermediate appellate courts that had approved stops based on the very same inference. Pet. App. 56.

Based only on the judge's anecdotal personal experience, the Douglas County, Kansas, District Court concluded that it is not reasonable for an officer to infer that the registered owner of a vehicle is the driver of the vehicle. Pet. App. 38-39. Accordingly, the District Court granted Glover's motion to suppress. Pet. App. 39.

3. The State appealed to the Kansas Court of Appeals, maintaining that the decision had misapplied the Fourth Amendment. Pet. App. 22, 69-71, 74-77. That court agreed with the State and reversed the District Court's decision. Citing "the consensus of state supreme courts that have considered this issue," the Court of Appeals held 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 . . . 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." Pet. App. 33.

The Court of Appeals reasoned that requiring an officer to gather additional evidence to confirm a driver's identity before stopping a vehicle would "raise[] the evidentiary standard [for an investigative stop]

from one of reasonable suspicion to the more demanding standard of probable cause." Pet. App. 31. It also noted that, as a practical matter, forbidding an officer from inferring that the registered owner of a vehicle is driving the vehicle would seriously limit an officer's ability to investigate driver's license suspension violations because often there is little an officer can do to safely verify a driver's identity. Pet. App. 30.

4. Glover sought review in the Kansas Supreme Court, asking it to hold that the stop violated the Fourth Amendment. Pet. App. 103-04. That court granted review and rejected the decisions of other state and federal courts that permitted the "common sense" inference that registered owners often drive their own vehicles. Pet. App. 17. Instead, the court held that an officer lacks reasonable suspicion to believe that the registered owner of a vehicle is driving the vehicle unless the officer has "more evidence" that the owner actually is the driver. Pet. App. 17-18.

The court gave two reasons for its conclusion. First, it said that the "owner-is-the-driver presumption implicitly requires applying and stacking unstated assumptions." Pet. App. 9. The two "assumptions" the court took issue with "stacking" were that (i) "the registered owner was likely the primary driver of the vehicle" and (ii) "the owner will likely disregard the suspension or revocation order and continue to drive." Pet. App. 11-12. Second, the court said that allowing an officer to infer that a registered owner of a vehicle is driving the vehicle would relieve the State of its burden of showing reasonable suspicion and shift the burden to

the defendant to show an absence of reasonable suspicion. Pet. App. 14.

The Kansas Supreme Court did not meaningfully consider the reasoning that led the other state supreme courts that have considered this issue to unanimously hold exactly the opposite. It only commented in passing that the other courts did not address the question under its "inference stacking" and burden shifting analysis. Pet. App. 17.

This Court agreed to review the Kansas Supreme Court's decision regarding reasonable suspicion.

SUMMARY OF THE ARGUMENT

The Kansas Supreme Court erred in holding that Deputy Mehrer's stop of Glover's truck violated the Fourth Amendment. This Court should reverse.

I. The Fourth Amendment allows an officer to initiate a traffic stop when he or she has a particularized and objective basis for suspecting that a "motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of the law." *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). This reasonable suspicion is based on "commonsense judgments and inferences about human behavior," *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000), and "practical considerations of everyday life," *Navarette v. California*, 572 U.S. 393, 402 (2014).

A. Courts have repeatedly found that an officer may reasonably suspect that the registered owner of a vehicle is the driver of his or her vehicle where the

officer lacks information to the contrary. While it is *possible* that someone other than the registered owner is driving, it is *reasonable* to suspect the owner is driving. In fact, the inference is so well accepted that many States recognize a legal presumption in civil cases that the registered owner of a vehicle is the driver. That inference is not diminished because the driver's license has been revoked. Recidivism is such a pronounced risk in the driving context that several States, including Kansas, have enacted laws aimed at habitual violators to "get the chronic violator out from behind the wheel." *State v. Underwood*, 693 P.2d 1205, 1210 (Kan. Ct. App. 1985).

B. Deputy Mehrer had objective, articulable facts justifying the investigative stop. He knew that Glover was the registered owner of the vehicle, that Glover's license was revoked, and that it was unlawful to operate a vehicle in Kansas without a valid driver's license. Pet. App. 61. The totality of these circumstances provided a sound basis to initiate the stop to confirm or dispel the suspicion that Glover was violating Kansas law. It would have been "poor police work" for Deputy Mehrer "to have failed to investigate this behavior further." *Terry v. Ohio*, 392 U.S. 1, 23 (1968).

C. Deputy Mehrer's suspicion that Glover was driving was reasonable because he had no contradictory information. If, for example, Deputy Mehrer had been able to tell that the driver was not Glover, his suspicion would have been dispelled before the stop occurred. This standard does not shift the burden to the defendant, as the Kansas Supreme Court

suggested; it merely reflects the principle that reasonable suspicion is based on the totality of the circumstances.

II. The Kansas Supreme Court erred by concluding that an officer needs "more evidence" that the registered owner is driving. The standard for an investigative stop requires only a "minimal level of objective justification," *United States v. Sokolow*, 490 U.S. 1, 7 (1989), which is satisfied by "considerably less than proof of wrongdoing by a preponderance of the evidence," *Wardlow*, 528 U.S. at 123. It is even less demanding than probable cause, which only requires "a fair probability" that contraband or evidence of a crime will be found. *Sokolow*, 490 U.S. at 7. The Kansas Supreme Court's insistence on corroborating evidence impermissibly transforms the rule of reasonable suspicion into something akin to (or greater than) probable cause.

III. Stops like the one at issue here are both reasonable and serve important public safety interests. States obviously have "a vital interest in ensuring" roadway safety, which they accomplish by verifying that only licensed drivers operate vehicles on their roads. *See Prouse*, 440 U.S. at 658-59.

Such stops promote that goal and do not unreasonably intrude on individual liberty. Deputy Mehrer's stop of Glover's vehicle advanced Kansas's interest in keeping its roadways safe by ensuring that those whose driving privileges have been revoked do not endanger themselves or other motorists. And, while no driver likes being stopped, the stop's mission can be accomplished quickly and without undue delay.

Requiring further investigation of the driver's identity, as Glover advocates, would be impractical in light of the challenges posed by moving vehicles on a roadway and would heighten the safety risk that officers and other motorists may face while officers attempt to obtain additional evidence.

ARGUMENT

This Court has repeatedly recognized that an officer may, consistent with the Fourth Amendment, initiate a brief investigative stop of an automobile when that officer has reasonable suspicion to believe that criminal activity is afoot. Reasonable suspicion is a minimal standard that requires the officer to have only "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Navarette v. California*, 572 U.S. 393, 396 (2014). The purpose of such a stop is to confirm or dispel the officer's suspicion.

When Deputy Mehrer learned that the truck he was following was registered to Charles Glover, Jr., and that Glover's driver's license had been revoked, he suspected that Glover was unlawfully driving. Based on that objective, articulable suspicion, and with no reason to suspect otherwise, Deputy Mehrer stopped Glover's truck to investigate whether Glover was violating Kansas law. Upon stopping the truck, Deputy Mehrer confirmed that Glover was in fact driving the truck and issued Glover a citation for driving with a revoked license in violation of Kansas law. Pet. App. 45-46.

Deputy Mehrer's investigative stop was reasonable under the Fourth Amendment.

I. An officer has reasonable suspicion to stop a vehicle when the officer knows the registered owner cannot legally drive, absent information that the owner is not the driver.

The Fourth Amendment permits brief investigative stops—such as the traffic stop in this case—when a law enforcement officer has a particularized and objective basis for suspecting that a "motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of the law." *Delaware v. Prouse*, 440 U.S. 648, 663 (1979); *accord Navarette v. California*, 572 U.S. 393, 396-97 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). To show reasonable suspicion, an officer need only "be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Deputy Mehrer's stop of Glover's vehicle satisfied that standard.

A. It is reasonable to suspect that the registered owner of a vehicle is the driver.

The "determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior," *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000), and "practical considerations of everyday life," *Navarette*, 572 U.S. at 402. Deputy Mehrer's

decision to initiate an investigative stop was based on the commonsense judgment that a vehicle's owner is often the driver of his or her own car. It was therefore reasonable under the Fourth Amendment.

1. Courts—both state and federal—have almost unanimously concluded that it is "reasonable for an officer to infer the registered owner of the vehicle will do the vast amount of the driving." *State v. Vance*, 790 N.W.2d 775, 781 (Iowa 2010); *accord* Pet. at 6-10 (citing cases from twelve state supreme courts and four federal circuit courts of appeals that have reached this conclusion). "[C]ommon sense and ordinary experience" support this conclusion, *United States v. Cortez-Galaviz*, 495 F.3d 1203, 1207 (10th Cir. 2007) (Gorsuch, J.), both when the registered owner's license has been suspended, *United States v. Chartier*, 772 F.3d 539, 542 (8th Cir. 2014), and when the registered owner has an outstanding warrant, *United States v. Pyles*, 904 F.3d 422, 424-25 (6th Cir. 2018).

While it is certainly *possible* that the registered owner of a vehicle is not the driver, "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. Tozier*, 905 A.2d 836, 839 (Me. 2006) (emphasis added). After all, it is well established that reasonable suspicion can exist even when the conduct might have a lawful explanation. That is the very point of investigative stops—to confirm or dispel an officer's suspicion.

Take *Terry* itself. The officer observed equivocal behavior—two men repeatedly walking in front of a store window, gathering at a corner to confer, and then

walking back past the store window—that could have had an innocent explanation. 392 U.S. at 6. But because the behavior also suggested possible future criminal conduct, this Court held that "it would have been poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further." *Id.* at 23.

So too in *Wardlow*. There, Wardlow fled from an area known for narcotics trafficking when police cruisers arrived. While flight "is not necessarily indicative of ongoing criminal activity," the officer "was justified in suspecting that Wardlow was involved in criminal activity, and, therefore, in investigating further." 528 U.S. at 125.

The stop here was consistent with these recognized principles. It was conducted to confirm or dispel Deputy Mehrer's suspicion that Glover, the registered owner, was the driver. Indeed, he was. While someone other than Glover could have been driving, "the likelihood that the operator is the owner is strong enough to satisfy the reasonable suspicion standard." *Commonwealth v. Deramo*, 762 N.E.2d 815, 818 (Mass. 2002).

To be sure, an officer's suspicion is not infallible. There will be situations where someone other than the registered owner is driving the vehicle. But the Constitution generally, and *Terry* specifically, allow for the fact that sometimes an innocent person will be stopped. *See Wardlow*, 528 U.S. at 126 ("*Terry* accepts the risk that officers may stop innocent people."); *cf. Baker v. McCollan*, 443 U.S. 137, 145 (1979)

(recognizing in a situation involving a more significant intrusion that the "Constitution does not guarantee that only the guilty will be arrested").

Moreover, the very suspicion justifying the investigative detention limits its scope. If that suspicion is confirmed, as it was here, the officer is permitted to issue a traffic citation and take other lawful actions that may be warranted under the circumstances. *See Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015); *see also Cortez*, 449 U.S. at 421 (recognizing the purpose of the stop was limited by the suspicion). But if the officer learns that a properly licensed individual is driving the vehicle, the innocent motorist will be free to leave after only a brief encounter. *Wardlow*, 528 U.S. at 126; *see also Rodriguez*, 135 S. Ct. at 1614-15 (holding the authority for the seizure ends when the stop's mission has been accomplished).

2. Support for the notion that registered owners typically drive their own vehicle is widespread. For example, the authors of a leading treatise have recognized that "absent additional facts suggesting otherwise, on grounds to arrest the registered owner of a specific vehicle, there exists a reasonable suspicion the present driver is the registered owner to justify a stop and inquiry." 4 Wayne R. LaFave & David C. Baum, *Search and Seizure*, § 9.5(e), p. 687 (5th ed. 2017). In fact, some States have even recognized a rebuttable presumption in civil actions that the registered owner of a vehicle is the driver. *See Anderson v. Miller*, 559 N.W.2d 29, 32-33 (Iowa 1997); *Privette v. Faulkner*, 550 P.2d 404, 406 (Nev. 1976); *Brayman v. Nat'l State Bank of Boulder*, 505 P.2d 11,

13 (Colo. 1973); *Lee v. Tucker*, 365 S.W.2d 849, 852 (Ky. 1963); *Grinstead v. Anscer*, 92 N.W.2d 42, 43 (Mich. 1958); *Limes v. Keller*, 74 A.2d 131, 132 (Pa. 1950); *State v. Candelaria*, 245 P.3d 69, 74 (N.M. Ct. App. 2010); *Lawing v. Johnson*, 355 S.W.2d 465, 468 (Tenn. App. 1961); *see also Breeding v. Johnson*, 159 S.E.2d 836, 841 (Va. 1968) (discussing the presumption that automobile was being operated by owner or someone acting for the owner).[1] That is telling because "[l]egal presumptions are inferences that common sense draws from known facts or events." *Village of Lake in the Hills v. Lloyd*, 591 N.E.2d 524, 526 (Ill. Ct. App. 1992) (recognizing the presumption in Illinois dates back to at least 1956).

Two recent studies confirm this belief. They suggest that there are two to three drivers for every registered automobile in Kansas. Opp. at 19 n.6 (citing *The 10 States with the Most Suspended/Revoked Licenses*, Insurify (June 4, 2018), https://insurify.com/insights/the-10-states-with-the-most-suspended-revoked-licenses/); States' Amicus, p. 13 (suggesting there could be three drivers for every registered vehicle). That means the likelihood that the registered owner of a vehicle in Kansas is driving his or her vehicle is no less than 33%, and probably much higher because "common

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[1] Other States have considered the issue and opted to leave it to the legislative process. *See Parker v. Wilson*, 100 S.E.2d 258, 261 (N.C. 1957) (declining to adopt a rebuttable presumption and leaving the question for the General Assembly); *see also Gaul v. Noiva*, 230 A.2d 591, 593 (Conn. 1967) (declining to adopt such a presumption where "no gain would come from complicating the charge by a reference to any presumption."); *Ambassador Ins. Co. v. Dumas*, 402 A.2d 1297, 1299 (Me. 1979) (same).

sense and ordinary experience suggest that a vehicle's owner is . . . very often the driver of his or her own car." *Cortez-Galaviz*, 495 F.3d at 1207. That is far greater than what is necessary to support reasonable suspicion. *See Wardlow*, 528 U.S. at 123.

3. The reasonableness of an officer's suspicion that the registered owner may be the driver is not undermined when the registered owner's driving privileges have been revoked. Recidivism, especially among those whose license has been repeatedly suspended, is a known and dangerous fact. *See*, *e.g.*, *Deramo*, 762 N.E.2d at 818-19 & n.6 (describing the driver's history of recidivism). One study found that "as many as 75% of suspended drivers continue to drive[.]"[2] Thus, contrary to the Kansas Supreme Court's suggestion, *see* Pet. App. 12, Deputy Mehrer was not required to assume Glover would adhere to his license revocation, *Navarette*, 572 U.S. at 403. After all, the known danger that recidivists pose to themselves and other motorists is what led Kansas—like many States—

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[2] *See* American Association of Motor Vehicle Administrators, *Reducing Suspended Drivers and Alternative Reinstatement—Best Practices*, p. 5 (Nov. 2018), https://www.aamva.org/ReducingSuspendedDriversAternativeReinstatementBP/ (citing the National Cooperative Highway Research Program Report 500, Vol. 2 (2003)); *see also* National Highway Traffic Safety Administration, Reasons for Driver License Suspension, Recidivism, and Crash Involvement Among Drivers with Suspended/Revoked Licenses, 1 (2009), available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/811092_driver-license.pdf (describing a 2002 study finding that "in Michigan 30 to 70 percent of drivers whose licenses have been suspended or revoked for driving under the influence of drugs or alcohol continue to drive during the suspension period").

to enact habitual violator statutes like the one Glover was charged with violating. *See*, *e.g.*, Kan. Stat. Ann. § 8-284 (describing the public policy of the State as to, among other things, "impose increased and added deprivation of the privilege to operate motor vehicles upon habitual violators who have been convicted repeatedly of violations of traffic laws"); *State v. Underwood*, 693 P.2d 1205, 1210 (Kan. Ct. App. 1985) (stating the purpose of the Kansas habitual violator law is to "get the chronic violator out from behind the wheel").

B. The suspicion is objective and articulable.

The Kansas Supreme Court found the stop unreasonable because Deputy Mehrer "assumed" that the registered owner was also the driver, which the court characterized as an impermissible hunch. Pet. App. 10-11. Not so.

The stipulated facts demonstrate an objective and articulable basis for Deputy Mehrer's decision to stop Glover's truck. A license plate check "indicated the truck was registered to Charles Glover, Jr." Pet. App. 61. It "also indicated that Mr. Glover had a revoked driver's license in the State of Kansas." Pet. App. 61. Operating a vehicle with a revoked driver's license is a violation of Kansas law. Kan. Stat. Ann. § 8-262. Those objective and articulable facts, plus the fact that registered owners often drive their own vehicles, *see* § I.A., *supra*, provided the basis to investigate whether Glover was in fact driving. To borrow a phrase from *Terry*, it would have been "poor police work" for Deputy Mehrer "to have failed to investigate this behavior further." 392 U.S. at 23; *see also Berkemer v. McCarty*,

468 U.S. 420, 439-40 (1984) (explaining that the purpose of a *Terry* stop is to investigate the circumstances that provoked suspicion).

The Kansas Supreme Court attempted to avoid this obvious conclusion by manufacturing a legal difference between an "inference" and an "assumption." Pet. App. 10. It reasoned that the stop was impermissible because "Deputy Mehrer *assumed* the registered owner of the truck was also the driver," Pet. App. 61 (emphasis added), and concluded that such "an assumption will not satisfy reasonable suspicion under the *Terry* standard." Pet. App. 10-11.

Neither *Terry* nor its progeny recognize any legal difference between describing an officer's suspicion as an assumption, inference, or deduction. In *Terry* itself, this Court used the word "assume" to describe the officer's suspicion. *See* 392 U.S. at 28 (describing the officer's "hypothesis that these men [he observed] were contemplating a daylight robbery—which, it is reasonable to assume, would be likely to involve the use of weapons"). That framing has not been lost on other courts that have likewise upheld officers' reasonable assumptions to justify investigative detentions. *See*, *e.g.*, *United States v. Coplin*, 463 F.3d 96, 101 n.4 (1st Cir. 2006) (not questioning an officer's assumption that the registered owner and the driver were one and the same); *State v. Neil*, 207 P.3d 296, 298 (Mont. 2009) (upholding officer's "assumption" that the registered owner was the driver); *see also Tozier*, 905 A.2d at 839 (concluding that it was reasonable for an officer to "suspect" that a driver is the registered owner); *cf. also Cortez*, 449 U.S. at 419 (lauding the

officers' "*deductions* and *inferences*" based on otherwise innocuous facts (emphasis added)).

There is also a sound doctrinal basis for rejecting the Kansas Supreme Court's hyperliteral interpretation of the word "assumed" in the stipulated facts. *See* Pet. App. 10-11. This Court has repeatedly concluded that an action is reasonable under the Fourth Amendment, regardless of the officer's state of mind, so long as the facts and circumstances, when viewed objectively, justify the actions. *See*, *e.g.*, *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006) (collecting cases). Thus, it makes no difference how Deputy Mehrer described his belief—i.e., whether he assumed, inferred, or suspected Glover was the driver—because the sole focus is on whether the facts known to him objectively provided reasonable suspicion that Glover was unlawfully driving. *See generally Ashcroft v. al Kidd*, 563 U.S. 731, 736 (2011) (collecting cases supporting the focus on an objective determination that flows from the facts known to the officer).

C. The rule applies absent information to the contrary.

As recognized by other courts, information to the contrary can dispel the suspicion that the registered owner is the driver. That natural limitation does not, as the Kansas Supreme Court suggested, shift the burden to the defendant to establish why reasonable suspicion does not exist.

1. Both state and federal courts that have considered this question have held that an officer has reasonable suspicion to stop a vehicle where the officer knows the registered owner does not have a valid license or is otherwise subject to seizure so long as the officer has no information indicating that the registered owner is not the driver of the vehicle. *See*, *e.g.*, *Armfield v. State*, 918 N.E.2d 316, 321-22 (Ind. 2009); *Chartier*, 772 F.3d at 543. That makes sense: an officer cannot reasonably believe that the registered owner is driving when he or she knows the registered owner is a 22-year-old male, but can tell that the driver is an approximately 60-year-old female. *See State v. Pike*, 551 N.W.2d 919, 922 (Minn. 1996); *Armfield*, 918 N.E.2d at 321 n.7 (agreeing with courts in Maine and Michigan that observing a driver of a different gender would dissipate reasonable suspicion).

This is not to say an officer is obliged to ascertain additional facts before initiating a stop. Reasonable suspicion "need not rule out the possibility of innocent conduct." *United States v. Arvizu*, 534 U.S. 266, 277 (2002). And in any event, requiring law enforcement to do so exceeds what is required to establish reasonable suspicion, *see* § II, *infra*, and would, in many instances, be unsafe, impractical, or both. *See* § III.C., *infra*. Thus, this natural limitation is simply a recognition that the officer's suspicion can sometimes be dispelled before even initiating the investigative stop.

2. The Kansas Supreme Court missed this simple point. It held that allowing officers to suspect that the owner of a vehicle is the one driving the vehicle, absent information to the contrary, would "shift the burden to

the defendant to establish why reasonable suspicion did not exist," Pet. App. 9, because "absence of evidence is not evidence of absence." Pet. App. 14-15. That view misapprehends both the reasonable suspicion inquiry and the evidence.

Reasonable suspicion requires "tak[ing] into account 'the totality of the circumstances—the whole picture.'" *Navarette*, 572 U.S. at 397 (quoting *Cortez*, 449 U.S. at 417). It "allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *Arvizu*, 534 U.S. at 273 (quoting *Cortez*, 449 U.S. at 418). Thus, determining whether reasonable suspicion exists requires consideration of all the facts known to the officer, both those supporting and detracting from reasonable suspicion. Holding that it is reasonable to suspect that the owner of a vehicle is the driver absent information to the contrary does not shift the burden to the defendant; it merely reflects the principle that reasonable suspicion must be based on the totality of the circumstances.

The evidence confronting Deputy Mehrer supported the suspicion that Glover was driving unlawfully. He knew that Glover was the registered owner of the vehicle, that Glover's license was revoked, and that it was unlawful to operate a vehicle in Kansas without a valid driver's license. Pet. App. 61. The totality of these circumstances provided a reasonable, articulable, and objective basis to initiate the stop. That suspicion could have been weakened if he had information suggesting that Glover was not the driver, but no such information

existed. *See Neil*, 207 P.3d at 298 (upholding the reasonableness of the stop because the officer was aware of no facts that "would render unreasonable the assumption that [the registered owner] was the person driving the vehicle at the time of the stop").

II. The Kansas Supreme Court adopted a standard more demanding than reasonable suspicion.

The Kansas Supreme Court concluded that the Fourth Amendment required "more evidence" that the driver is the registered owner before an officer may initiate an investigative stop. Pet. App. 18. That conclusion cannot be squared with this Court's repeated admonition that the Fourth Amendment requires only a "minimal level of objective justification" for making a stop. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

Reasonable suspicion is a slight hurdle to overcome. While that level of suspicion is more than an "inchoate and unparticularized suspicion or 'hunch,'" *Terry v. Ohio*, 392 U.S. 1, 27 (1968), it is satisfied by "considerably less than proof of wrongdoing by a preponderance of the evidence," *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). It is even less demanding than probable cause, which only requires "a fair probability" that contraband or evidence of a crime will be found, *Sokolow*, 490 U.S. at 7; *see also District of Columbia v. Wesby*, 138 S. Ct. 577, 586 (2018) (stating probable cause requires only a "substantial chance of criminal activity"). The facts known to Deputy Mehrer surely met this minimal standard.

It is unclear what the Kansas Supreme Court meant when it stated "more" or "corroborating" evidence was necessary to initiate a stop under the Fourth Amendment. Pet. App. 18. But whatever the Kansas Supreme Court had in mind, requiring corroborating evidence imposes a higher burden than reasonable suspicion requires, effectively transforming the rule of reasonable suspicion into something akin to (or greater than) probable cause. *See United States v. Cortez-Galaviz*, 495 F.3d 1203, 1207-08 (10th Cir. 2007) (holding that requiring "an officer to know the identity of the driver . . . would take us from *Terry* [and] *Wardlow* . . . into the land of requiring an officer to have probable cause before effecting any stop"); *State v. Edmonds*, 58 A.3d 961 (Vt. 2012) (same).

III. Investigative stops like the one here are reasonable and important to public safety.

The States have "a vital interest in ensuring" roadway safety, which they accomplish by verifying that only licensed drivers operate vehicles on its roads, that the vehicles being driven are registered and fit for safe operation, and that the owners maintain minimal insurance. *Delaware v. Prouse*, 440 U.S. 648, 658-59 (1979). As a result, driving a motor vehicle is subject to comprehensive government regulations and controls that are designed to promote safety of the public thoroughfares. *See South Dakota v. Opperman*, 428 U.S. 364, 368 (1976). Traffic stops like the one at issue here promote that goal, do not unreasonably intrude on individual liberty, and respect the safety of the officers charged with enforcing the many traffic laws.

A. Investigative stops promote public safety.

The States have a "paramount interest" in fostering safety on their roadways. *See Birchfield v. North Dakota*, 136 S. Ct. 2160, 2178 (2016); *accord Standish v. Department of Revenue*, 683 P.2d 1276, 1281 (Kan. 1984) (noting that driving is a privilege, not a right). And this Court has repeatedly recognized that automobile travel is subject to "pervasive and continuing regulation and controls." *Opperman*, 428 U.S. at 368; *accord New York v. Class*, 475 U.S. 106, 113 (1986); *California v. Carney*, 471 U.S. 386, 392 (1985).

One of the ways States promote safety on their roadways is through licensing and registration requirements. Such requirements help ensure that those operating motor vehicles sufficiently understand the rules of the road and are physically capable of operating their vehicle. *See* Kan. Stat. Ann. § 8-235 (prohibiting operation of a motor vehicle without a valid driver's license); *see also Prouse*, 440 U.S. at 658-59 (highlighting States' interest in roadway safety and the laws designed to promote that interest). And where necessary, many States, including Kansas, revoke the driving privileges of those who demonstrate an inability or unwillingness to abide by those restrictions. *See* Kan. Stat. Ann. §§ 8-254 & 8-286.

Similarly, since the early 1900s, States have issued and relied upon license plates to quickly verify conformance with state licensing and registration obligations of those owning and operating vehicles. *See generally Walker v. Texas Div., Sons of Confederate*

Veterans, Inc., 135 S. Ct. 2239, 2248-49 (2015) (describing the evolving uses of license plates as a form of government identification). Kansas, for example, issues a license plate to the registered owner of a vehicle and requires it to be attached to the rear of the vehicle to which it is assigned. Kan. Stat. Ann. § 8-127 (requiring owners to register their vehicle); Kan. Stat. Ann. § 8-133 (requiring the license plate and registration to be displayed). That license plate number conveys, among other things, that the registered owner has a valid title, the vehicle's registration is current, and the owner has the required insurance. Kan. Stat. Ann. § 8-173.

Law enforcement officers in Kansas and elsewhere rely on this license plate data to determine compliance with a variety of traffic laws and regulations. In certain situations, the license plate information will show that the vehicle is not properly registered. *See*, *e.g.*, *Arizona v. Johnson*, 555 U.S. 323, 327-28 (2009) (involving a traffic stop based on a license plate check that revealed the vehicle's registration had been suspended for an insurance-related violation); *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (holding that an expired license plate provided valid grounds for a stop). In other circumstances, registration violations may uncover more serious offenses. *See*, *e.g.*, *Maryland v. King*, 569 U.S. 435, 450 (2013) ("Hours after the Oklahoma City bombing, Timothy McVeigh was stopped by a state trooper who noticed he was driving without a license plate. Police stopped serial killer Joel Rifkin for the same reason.").

The stop of Glover's vehicle sits at the confluence of several strands of government regulation of vehicles—license plates, registration, and driver's licenses. Deputy Mehrer stopped Glover's vehicle because its license plate revealed a registered owner with revoked driving privileges. And Kansas law—for good reason—forbids the operation of a motor vehicle without a valid license. *See* Kan. Stat. Ann. § 8-235(a).

B. Investigative stops impose a minimal intrusion.

Not only do stops like the one at issue here promote important state interests, but they also impose only a minimal intrusion on a motorist suspected of violating the traffic laws. The stops are necessarily short in duration because their purpose is limited to confirming or dispelling the suspicion that the owner is unlawfully driving. *See Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015). If it turns out the owner is not the driver, the innocent driver will be quickly on his or her way. *See State v. Vance*, 790 N.W.2d 775, 778 (Iowa 2010).

An analogy to this Court's checkpoint cases underscores that the intrusion is minimal. This Court has upheld the constitutionality of *suspicionless* sobriety and driver's license checkpoint stops based on the minimal intrusion they impose and in recognition of the States' vital interest in ensuring roadway safety. *See Texas v. Brown*, 460 U.S. 730, 739 (1983) (citing *Prouse*, 440 U.S. at 654); *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 454-55 (1990) (describing the intrusion on motorists stopped at a sobriety checkpoint as "slight"). Although those cases are doctrinally

different, they support the conclusion that it is reasonable for an officer to perform an investigative stop when the officer actually *has* suspicion that a particular driver lacks a valid driver's license, specifically when the officer knows that the registered owner's license has been suspended or revoked and there is no reason to believe that someone other than the registered owner is driving.

The reasonable suspicion standard seeks to protect the rights of individual citizens "against police conduct which is overbearing or harassing," *Terry v. Ohio*, 392 U.S. 1, 15 (1968), while balancing the public interest and the individual's right to personal security. *See United States v. Arvizu*, 534 U.S. 266, 273 (2002). As the courts in twelve states and four federal circuit courts of appeals have found, stops like the one here do not violate that careful balance recognized by this Court's cases.

C. Requiring officers to gather "more evidence" is impractical and would endanger law enforcement.

The rule that Kansas proposes is clear, easy to apply, and promotes public safety. The Kansas Supreme Court's insistence that the officer obtain "more evidence," Pet. App. 18, is not only out of step with this Court's cases, but it also is impractical and would endanger law enforcement officers.

Requiring an officer to obtain more evidence from a moving vehicle is impractical. *See United States v. Cortez-Galaviz*, 495 F.3d 1203, 1207-08 (10th Cir. 2007). In many situations, the officer may be unable to

ascertain who is in the vehicle, such as when the encounter happens at night, in bad weather, or when the suspect vehicle has tinted windows. *See United States v. Chartier*, 772 F.3d 539, 542 (8th Cir. 2014); *Vance*, 790 N.W.2d at 778; *State v. Neil*, 207 P.3d 296, 296-97 (Mont. 2009); *Armfield v. State*, 918 N.E.2d 316, 317 n.1 (Ind. 2009); *State v. Smith*, 905 N.W.2d 353, 356 (Wis. 2018). In other situations, the individual's positioning inside the vehicle may obscure the individual's physical characteristics from the officer. *See*, *e.g.*, *United States v. Pyles*, 904 F.3d 422, 425 (6th Cir. 2018); *People v. Cummings*, 6 N.E.3d 725, 727 (Ill. 2014) *reversed on other grounds* 46 N.E.3d 248, 248-49 (Ill. 2016). Again, *Terry* and its progeny confirm that an officer who reasonably suspects that criminal behavior may be afoot can stop a vehicle to investigate the officer's suspicions.

Requiring more evidence would also be unnecessarily dangerous. It is not hard to imagine the perils that an officer and other motorists may face in the mine run of encounters when attempting to identify a driver in a moving vehicle while driving among other motorists, something that is especially daunting while at highway speeds, in heavy traffic, or on a narrow two-lane road. These challenges are quite real, and Glover has not "suggest[ed] how an officer might practicably and safely divine the identity of a driver of a moving vehicle." *Cortez-Galaviz* 495 F.3d at 1208. Fortunately, the Fourth Amendment does not require an officer to undertake such dangerous maneuvers in an attempt to dispel suspicion. *See*, *e.g.*, *Chartier*, 772 F.3d at 543. This Court has repeatedly said that officers need not exclude the possibility of innocent conduct before

initiating a stop, *Arvizu*, 534 U.S. at 277, and need not delay an investigative stop until additional suspicious or unlawful conduct is observed, *Navarette v. California*, 572 U.S. 393, 403-04 (2014).

CONCLUSION

The judgment of the Kansas Supreme Court should be reversed.

Respectfully submitted,

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