No. 25-248

IN THE
SUPREME COURT OF THE UNITED STATES

DISTRICT OF COLUMBIA,

Petitioner,

v.

R.W.,

Respondent.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

---

BRIEF IN OPPOSITION

JACLYN S. FRANKFURT
Counsel of Record
SARAH MCDONALD
PUBLIC DEFENDER SERVICE
633 3rd Street, NW
Washington, DC 20001
(202) 628-1200
jfrankfurt@pdsdc.org

Counsel for Respondent

QUESTION PRESENTED

Whether the D.C. Court of Appeals appropriately determined that the District of Columbia failed to meet its burden to justify R.W.'s seizure where it failed to put into evidence any articulable facts behind the dispatch for a "suspicious vehicle" and where the only observations on the scene consisted of two *other* people running and R.W. starting to back out of a parking space.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

INTRODUCTION

Petitioner the District of Columbia seeks certiorari based upon a purported split in authority on an issue where the law is resolved and the inquiry is, per this Court's direction, extraordinarily factbound. In concocting a split, the District parses language taken out of context rather than engaging with substance. The District accuses the court below of excluding certain categories of information because they are insufficiently incriminating in isolation. But the District fails to show that the lower court here, or the law of any other jurisdiction, has categorically cast certain facts aside or considered them only in "isolation" rather than assessing their import against the entire factual context.

The District faults the court below for declining to assign weight to a dispatch for a "suspicious vehicle" and the fact that other people fled from the car in which Respondent was stopped. But the District fails to engage with the reasons for the court's determination that this information did not contribute to the reasonable-suspicion calculus in this case—namely, the District's own failure to adduce judicially evaluable facts. The court's decision that it could not assign weight to an unknown person's subjective hunch, filtered through a radio dispatch, that a vehicle was "suspicious" is perfectly consistent with this Court's case law, and courts on both sides of the District's purported split have reached that same conclusion. Similarly, courts on both sides of the District's purported split recognize that one person's flight from police cannot automatically be held against another; instead, the factual context must provide a reason to think someone else's flight suggests that the person stopped was involved in criminal activity.

The District takes issue with language the court below used, but both the court's mode of analysis and the result the court reached—that the record as a whole did not demonstrate that R.W.'s seizure was based on the requisite suspicion of criminality—follow from basic principles of this Court's well-established Fourth Amendment law: its demand for specificity, articulable facts, and particularity. This Court should deny certiorari.

STATEMENT OF THE CASE

In the early morning hours of February 7, 2023, Metropolitan Police Department officer Clifford Vanterpool seized R.W., who was sitting in the driver's seat of a parked car in the rear parking lot of an apartment building at 514 Ridge Road in Southeast D.C. In the course of his subsequent trial for unauthorized use of a vehicle and related charges, R.W. challenged the seizure on Fourth Amendment grounds.

I. Suppression Hearing

1. At the suppression hearing, the government presented officer testimony that the stop had stemmed from a "dispatch call for service" for a "suspicious vehicle" at 514 Ridge Road. Pet. App. 42a, 46a.[1] The District presented no further evidence about the

[1] Throughout its petition, the District asserts that the dispatch was for a "suspicious *or stolen* vehicle," Pet. i, 3, 22, 23, 30, 31 (emphasis added), citing Officer Vanterpool's testimony that he "believe[d] it may have been" one or the other, Pet. App. 42a; *but see* 3/28/23 Tr. at 114 (suppression-hearing testimony from another officer describing it as an investigation into a "suspicious vehicle"). The trial court, however, made a factual finding that the dispatch was for a "suspicious vehicle." Pet. App. 46a; *see also* Pet. App. 30a-32a; 3/28/23 Tr. at 135 ("THE COURT: The fact that this car may or may not have been stolen is not one of the pieces of evidence that we're going to be making suppression rulings based on because there's no evidence of that in this hearing."). In its arguments to both courts below about the role of the dispatch in the reasonable-suspicion analysis, the District consistently described the dispatch as being only for a "suspicious" vehicle. 3/28/23 Tr. at 150, 165, 167; Br. for Appellee at 1, 5, 9, 12-15, 17-20. The trial court's factual finding—based on the District's own characterization of the evidence—was not clearly erroneous, and certiorari review is not the proper forum to relitigate that waived factual issue.

dispatch or its basis. It did not introduce the dispatch itself into evidence. It did not introduce any evidence about what prompted the dispatch—although the prosecution had referenced a 911 call in an earlier pleading, *see* Opp'n to Mot. to Suppress at 1 (D.C. Super. Ct. Mar. 21, 2023), neither a 911 call nor any testimony about a 911 call was ever introduced in evidence. The trial court was presented with no evidence about whether the dispatch arose from a 911 call, an anonymous tip, or some other source. Similarly, the trial court was presented with no evidence about *why* some unknown person had deemed a vehicle "suspicious" or what was meant by that vague and subjective term.

The prosecution acknowledged that it had not actually "elicit[ed] testimony about what [the officer] heard when he was responding to the radio run." 3/28/23 Tr. at 166. Officer Vanterpool's testimony implied that there may have been more content to the dispatch than what was put forth in evidence—for example, he testified that the Hyundai "fit the description" he had heard of the "suspect vehicle." *Id.* at 62; *see also* Pet. App. 42a-43a. But, as the trial court pointed out, neither that description nor any other details about the vehicle were presented in evidence. 3/28/23 Tr. at 166. There was no evidence about what the supposedly "suspicious" vehicle looked like. Nor was there information about whether there were people in or near the vehicle. And though the bare record evidence of the dispatch included a particular address, there was no information about whether the "suspicious" vehicle was parked, and, if so, whether it was on the street in front of the identified address or in the rear parking lot behind the apartment complex, which was not visible from the street.

Officer Vanterpool testified that after receiving the radio dispatch, he drove to 514 Ridge Road but did not see the vehicle described in the dispatch. Pet. App. 42a-43a. He drove down another street, then returned to 514 Ridge Road and drove up the driveway leading to the back of the apartment building. *Ibid.* As the officer turned the corner from the driveway into the rear parking lot, he saw "two guys come out [of a] vehicle" and run off. Pet. App. 43a. The officer testified that the car from which the two people had fled then "started to back out." *Ibid.* He did not testify how far, if at all, the car actually reversed. But the body-worn camera footage introduced in evidence showed that even after any backing up, the car was pulled all the way in to the parking spot, even further in than the car parked next to it. Pet. App. 16a-17a. The car had already stopped backing up when Officer Vanterpool got out of his cruiser, gun in hand, and yelled, "Hands up!"—the undisputed moment at which R.W. was seized for Fourth Amendment purposes. Pet. App. 47a; *see also* 3/28/23 Tr. at 22, 48-49.

All the subsequent facts the District recites in its petition—R.W.'s statements to police, the officer's observations of the shattered window and punched ignition, and the database indicating that the license plates corresponded to a stolen car—postdated the stop and are thus irrelevant to whether Officer Vanterpool had reasonable suspicion to stop R.W.

2. The trial court found that Officer Vanterpool "was responding to a [radio run] for a suspicious vehicle," explaining that "we don't know what he was told about why the vehicle was suspicious, but he was there on the scene to investigate a suspicious vehicle."

Pet. App. 46a.[2] The court then summarized the pertinent portions of the body-worn camera footage, beginning with the moment Officer Vanterpool radioed, "I got two running." Pet. App. 46a-47a. Eight seconds later, Officer Vanterpool started getting out of the car. Pet. App. 47a. At that point, the police cruiser was parked such that the car R.W. was in could not back out, *ibid.*, though the trial court credited Officer Vanterpool's testimony that the car had "started to back out" while the police cruiser was still approaching, Pet. App. 43a; *see* Pet. App. 33a-34a, 47a-48a. Fifteen seconds after Officer Vanterpool radioed that two people were running, he directed R.W. to put his hands up—this, the trial court found, was "the point at which everyone agrees [R.W.] is detained," and so the point at which "there must be reasonable articulable suspicion." Pet. App. 47a.

The trial court concluded that the stop was supported by reasonable suspicion. The court noted that it was almost 2 a.m.; there was a dispatch for a suspicious vehicle; when Officer Vanterpool arrived at the parking lot, he saw two people fleeing from a vehicle after "[p]olice had not done anything other than simply pull up"; and the vehicle itself was "backing out while the rear driver's side door [was] still open." Pet. App. 48a.[3] Under these circumstances, the trial court concluded, there was "reasonable articulable suspicion that the driver of the vehicle may have been involved in some kind of criminal

---

[2] The judge initially stated that Officer Vanterpool "was responding to a 911 call for a suspicious vehicle," but corrected himself in the next sentence: "In response to the 911—or in response to the radio run he goes to the location." Pet. App. 46a. This correction was consistent with the parties' earlier clarification that there was no evidence of a tip or a 911 call. 3/28/23 Tr. at 133 (prosecutor clarifying that he was not saying "that there was a tip specifically as it wasn't proffered as in evidence [sic].").

[3] Although the trial court included the open door among the facts contributing to the reasonableness of the stop, Officer Vanterpool (who approached the car from the passenger's side) had never testified that he saw the open rear driver's-side door *before* the stop. *See* 3/28/23 Tr. at 22, 34, 36, 49. Instead, he pointed out where the open door was visible in body-worn camera footage captured *after* the stop. *See id.* at 34.

activity." Pet. App. 48a. R.W. was adjudicated delinquent on the substantive charges one week after the suppression hearing. Pet. App. 36a-39a.[4] On May 26, 2023, he was placed on one year of probation. Pet. App. 22a-25a; 5/26/23 Tr. at 33.

II. D.C Court of Appeals

1. R.W. appealed the denial of the suppression motion, arguing that the government failed to show that the facts known to police before the stop established reasonable, articulable, particularized suspicion. R.W. first argued that the radio dispatch, as presented in evidence, made no contribution to reasonable suspicion because it contained no judicially evaluable facts. Because the government did not adduce any evidence about the source or basis of the dispatch, he argued, there was no way for a judge to determine the nature or reliability of the information that led someone to the ambiguous and subjective conclusion that a vehicle at 514 Ridge Road was "suspicious." R.W. cited this Court's decisions in *Whiteley v. Warden*, 401 U.S. 560 (1971), and *United States v. Hensley*, 469 U.S. 221 (1985), for the proposition that a reviewing court cannot simply assume that a dispatch had a valid foundation. Br. for Appellant at 16, 19-21. Instead, it must evaluate the underlying facts giving rise to the dispatch—facts the District itself admitted it failed to put in evidence.

R.W. also argued that the facts Officer Vanterpool observed in the parking lot before the seizure—two people running from the car and the car starting to back out—did not establish reasonable suspicion that R.W. was engaged in criminal activity or

[4] The suppression hearing and the trial were "incorporated," meaning that the suppression-hearing testimony was used for trial purposes, and no additional evidence relating to the circumstances of the stop was adduced at trial. *See* 3/28/23 Tr. at 18, 190.

"corroborate" the contentless dispatch. He argued that the dispatch was so devoid of objective factual content that its reliability could not be established through "corroboration" on the scene unless the on-scene observations themselves amounted to reasonable, articulable suspicion. Reply Br. at 3-7. Thus, even accounting for the dispatch, the reasonable-suspicion analysis would turn on whether the facts Officer Vanterpool observed when he arrived in the parking lot, and before he stopped R.W., established reasonable suspicion. R.W. argued that on the sparse record before the court, the flight of others suggested very little about R.W.'s own consciousness of guilt or involvement in criminality, distinguishing prior D.C. Court of Appeals decisions in which the court had found that the specific facts gave rise to a reasonable joint-venture inference and thus relied on one person's flight in finding particularized suspicion as to another. Reply Br. at 10 (citing, *inter alia*, *Black v. United States*, 810 A.2d 410, 411 (D.C. 2002), and *United States v. Johnson*, 496 A.2d 592, 597 (D.C. 1985)).

The District did not argue that the officer's observations in the parking lot could themselves establish reasonable, articulable suspicion as to R.W. *See* Br. for Appellee at 15 n.4; Reply Br. at 1 n.1.[5] Nor did the District challenge the trial court's factual finding that the dispatch as presented in evidence described only a "suspicious vehicle." *See* Br. for Appellee at 5, 12-15, 17-20; Oral Arg. at 35:57. Instead, the District argued that even

[5] At oral argument, counsel for the District appeared to disagree with R.W.'s contention that the District had forfeited any argument that the on-scene observations themselves amounted to reasonable suspicion. Oral Arg. at 46:38-47:10, https://www.youtube.com/watch?v=a8gRgJez4nY. But the District still did not explain how two other people running and the car starting to back out could meet that standard, and the District acknowledged that "it would be a completely different scenario" had the officer not been "brought to [the] particular area because of a report of a suspicious vehicle." *Id.* at 48:03-48:20.

though the report of the "suspicious vehicle" did not contain a specific description, it was reasonable to think the car in which R.W. was stopped was the reported "suspicious vehicle" because it was the only occupied vehicle in the parking lot and two people ran from it when Officer Vanterpool pulled in. Br. for Appellee at 14-15. The District accepted that the others' flight was relevant to suspicion as to R.W. only if the circumstances "indicated a joint venture"; it argued that those circumstances existed because R.W. and the others "were all in a small vehicle together" with the motor running. *Id.* at 16. The District also argued that R.W.'s own actions constituted "reckless flight" because the car started to back out with the rear driver's-side door open. *Id.* at 16-17, 20.

2. In its opinion, the D.C. Court of Appeals began its analysis by recognizing that "determin[ing] whether [the] stop was supported by reasonable articulable suspicion" required it to "examine . . . the totality of 'the facts available to the officer at the moment of the seizure.'" Pet. App. 7a (quoting *Mayo v. United States*, 315 A.3d 606, 620 (D.C. 2024) (en banc)). It explained that "[t]he District [bore] the burden of justifying [the] seizure" by adducing "specific and articulable facts" supporting a reasonable suspicion that R.W. was "involved in criminal activity." Pet. App. 6a-7a (quoting *Golden v. United States*, 248 A.3d 925, 933 (D.C. 2021)). In assessing whether the District met its burden, the court would "first assess the legitimacy and weight of each of the factors" on which the officers had relied, and "then weigh that information all together." Pet. App. 7a (quoting *Mayo*, 315 A.3d at 621).

The court first examined the radio dispatch that directed Officer Vanterpool to 514 Ridge Road on a report of a "suspicious vehicle." It held that the trial court erred in

according weight to the dispatch because there was no information in the record about either "what motivated the dispatch" or "why the vehicle was suspicious." Pet. App. 8a. In doing so, the court relied on this Court's decision in *Whiteley*, 401 U.S. at 564. The court explained that "the Fourth Amendment requires that a judicial officer make an *independent* determination that a police intrusion was justified," and so a reviewing court must evaluate the information underlying a dispatch rather than "*assum[ing]* that a police dispatcher has solid information underlying the dispatch." Pet. App. 8a-9a. The lack of record information "about the basis for the dispatch" left the court with "no way to determine whether suspicion of criminal activity was objectively reasonable." Pet. App. 9a. Further, because the dispatch, "so far as the trial court found, directed Officer Vanterpool to look only for a suspicious vehicle," its content "was so broad as to be useless." *Ibid.* The court emphasized that the dispatch did not "involve a specific, reported crime," but instead "referenced only a 'suspicious vehicle.'" Pet. App. 10a.

The court then considered the passengers' flight. At the outset, the court recognized that "the flight of another can be relevant to the reasonable-suspicion analysis." Pet. App. 11a. But, the court noted, "*[b]oth parties agree[d]*" that the "flight of one person from authority may imply the guilt of another" only when the "circumstances indicate that the two were engaged in a joint venture." Pet. App. 12a (emphasis added) (quoting *Black*, 810 A.2d at 413). The court thus considered "whether the facts known to Officer Vanterpool gave rise to the reasonable inference that R.W. and the two fleeing persons were associated in a suspicious manner." Pet. App. 13a. It concluded that the

facts preceding the stop, so far as they appeared in the record, did not give rise to such an inference. Pet. App. 11a, 14a.

Finally, the court rejected the government's attempt to cast the sparse testimony about the car starting to back out as headlong, reckless flight. "Given what the record reveal[ed] about the limited movement of the car," which "could not have traveled more than a foot or so," the court concluded that the car's movement was a factor to be considered but not one that strongly suggested criminal activity. Pet. App. 16a-18a.[6] And while recognizing that the time of night might, depending on the "context," render presence in certain places more or less suspicious, the court concluded that the time of night did not cast as particularly suspicious the conduct at issue here—sitting in a car together in a residential parking lot. Pet. App. 14a-16a, 15a n.3.

The court then considered the factors relied upon by the trial court in their totality, noting that it had already determined that the radio dispatch and the flight of others did not contribute to reasonable suspicion on these facts. Pet. App. 19a. Finding that the District had not met its burden to show that R.W.'s seizure was supported by reasonable suspicion, the court reversed.[7] The District did not petition for panel rehearing or rehearing en banc.

---

[6] This was true, in the court's view, whether or not the fact that the rear door was open was known to the officer before the stop. Pet. App. 17a-18a, 18a n.6.

[7] When the court issued its decision, R.W. had already completed his one-year term of probation. *See* Pet. App. 1a, 22a-25a.

REASONS FOR DENYING THE PETITION

I. There Is No Conflict.

The petition does not meet any of this Court's criteria for exercising its certiorari review. The split in authority the District devises to argue for this Court's review is a semantic creation that crumbles upon any real scrutiny.

The District contends that "[w]hether an investigatory stop should be judged against all of the facts known to the officer or merely a subset" is a question that demands this Court's attention. Pet. 21. But as the District recognizes elsewhere, Pet. 27-28, this Court has already addressed that question and left no doubt as to its answer. *See, e.g.*, *United States v. Cortez*, 449 U.S. 411, 418 (1981) (holding that an assessment of reasonable suspicion "must be based upon all the circumstances," accounting for "objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers"); *United States v. Arvizu*, 534 U.S. 266, 274 (2002) (reiterating that *Terry v. Ohio*, 392 U.S. 1 (1968), "precludes [a] divide-and-conquer analysis" in which an observation that is "by itself readily susceptible to an innocent interpretation [receives] 'no weight'"); *District of Columbia v. Wesby*, 583 U.S. 48, 60-61 (2018) (holding that the D.C. Circuit "failed to follow two basic and well-established principles of law" when it did not "consider 'the whole picture'" and "dismiss[ed] outright any circumstances that were 'susceptible of innocent explanation'").[8]

[8] Although some of these cases involve the probable-cause standard and some, as here, reasonable suspicion, this Court has made clear that these principles apply "equally" to the probable-cause and reasonable-suspicion inquiries. *United States v. Sokolow*, 490 U.S. 1, 10 (1989).

The court below did not run afoul of the mandate to consider all the facts known to police in assessing the reasonableness of the stop, and there is no split. The court below recognized its obligation to account for the totality of the circumstances, Pet. App. 7a, and so do the courts on the "minority" side of the District's purported split. *See* Pet. 13-19 (placing the Fourth, Fifth, Sixth, and Tenth Circuits, along with Wyoming, Massachusetts, and Indiana, on the "minority side of the split").[9]

It is only by taking language out of context that the District can support its argument that some courts are straying from *Arvizu*. It cites to a truncated statement by the Fourth Circuit that it is "impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration," Pet. 16 (quoting *United States v. Bowman*, 884 F.3d 200, 219 (4th Cir. 2018)), without including the qualifying clause that follows—"*unless there are concrete reasons for such an interpretation*,"

[9] *See, e.g.*, *United States v. Frazier*, 30 F.4th 1165, 1177 (10th Cir. 2022) (recognizing that "wholly innocent conduct may support a finding of reasonable suspicion when viewed alongside other factors" so long as there is "a concrete reason to support that interpretation"); *United States v. Black*, 707 F.3d 531, 539, 542 (4th Cir. 2013) (recognizing that "factors 'susceptible of innocent explanation,' when taken together, may 'form a particularized and objective basis' for reasonable suspicion," but holding that this was "not such a case" because "[v]iewed in their totality, all the factors recited by the Government fail to amount to a reasonable suspicion" (quoting *Arvizu*, 534 U.S. at 277)); *United States v. Monsivais*, 848 F.3d 353, 363 (5th Cir. 2017) ("Looking at the totality of the circumstances without sacrificing the rational inferences that *Terry* demands, we can see no objectively logical process that justifies interpreting the range of Monsivais's behavior as reasonably suspected criminal conduct."); *United States v. Williams*, 615 F.3d 657, 666 (6th Cir. 2010) ("In evaluating whether an officer had reasonable suspicion, we must consider the totality of the circumstances rather than analyze each fact in isolation."); *Damato v. State*, 64 P.3d 700, 710 (Wyo. 2003) ("Although we have decided that each of these factors are innocent, under the totality of the circumstances test, individually innocuous factors can combine to arouse a reasonable suspicion for the experienced officer."); *Commonwealth v. Warren*, 58 N.E.3d 333, 339 (Mass. 2016) (noting that "a combination of factors that are each innocent of themselves may, when taken together, amount to the requisite reasonable belief" of criminal activity, but holding that the information available to police at the time of the seizure was not "sufficiently specific to establish reasonable suspicion"); *State v. Quirk*, 842 N.E.2d 334, 340, 343 (Ind. 2006) (holding that the state had not "show[n] that under the totality of the circumstances its intrusion was reasonable," while acknowledging that "conduct, which would be wholly innocent to the untrained observer, might acquire significance when viewed by an officer").

Bowman, 884 F.3d at 219 (emphasis added). The same language appears in cases on the District's "majority" side as well. *See, e.g.*, *Clinton v. Garrett*, 49 F.4th 1132, 1143 (8th Cir. 2022); *United States v. Jones*, 269 F.3d 919, 929 (8th Cir. 2001); *United States v. Beck*, 140 F.3d 1129, 1137 (8th Cir. 1998); *United States v. Stranger*, Nos. 23-2814, 23-2817, 2025 WL 401205, at *3 (3d Cir. Feb. 5, 2025); *Karnes v. Skrutski*, 62 F.3d 485, 496 (3d Cir. 1995) (abrogated on other grounds); *Thornton v. State*, 214 A.3d 34, 49 (Md. 2019); *Crosby v. State*, 970 A.2d 894, 907 (Md. 2009); *Lilley v. State*, 208 S.W.3d 785, 791 (Ark. 2005).

The District cannot even keep its sides of the split straight, demonstrating just how illusory and nonsubstantive the purported split is. Take, for example, its internally inconsistent handling of the D.C. Circuit's case law. On the one hand, the District contends that the D.C. Circuit is "firmly on the majority side" of its purported split, citing cases from 2001 and 2003 to argue that the D.C. Circuit properly considers all the facts in the aggregate. Pet. 11-12, 20-21 (discussing *United States v. Edmonds*, 240 F.3d 55 (D.C. Cir. 2001), and *United States v. Brown*, 334 F.3d 1161 (D.C. Cir. 2003)). But not ten pages later, the District acknowledges that as recently as 2018, this Court, as the petition puts it, "chastised the D.C. Circuit" for "dismiss[ing] outright" circumstances that "could be susceptible to an innocent explanation" when viewed alone. Pet. 28 (discussing *Wesby*, 583 U.S. at 61).

If there were really a substantive conflict of the kind the District posits—that is, if it were true that the law of four federal circuits permits an assessment of the reasonableness of a stop in a manner that conflicts with a majority of the circuits and

the clear guidance of this Court—one would have expected the Department of Justice to have sought this Court's intervention. Tellingly, however, in not one of the dozens of cases on the District's "minority side of the split" in which the United States was a party—cases dating back over twenty years—did the United States petition for certiorari. *See* Pet. 14-18, 24-25.[10] That includes the "long line of [D.C. Court of Appeals] cases" preceding this one, including *Mayo v. United States*, 315 A.3d 606 (D.C. 2024) (en banc), which the District says had already "calcified th[e] problematic trend" in that court before the decision below. Pet. 24-25.[11] If there is a split on this issue, it appears that only the District has recognized it.

There is no split because the District takes issue with form, not substance. Despite the District's attempts to suggest otherwise, the court below did not impose categorical rules "exclud[ing] certain types of evidence in all cases," Pet. 29; nor did it discard facts solely because they were "insufficiently incriminating in isolation," Pet. 26. Instead, it took each factor on which the District had relied in arguing for reasonable suspicion and looked at it in light of the full picture of events and evidence. Pursuant to this contextual, case-specific analysis, the court determined that two of

---

[10] The United States lost on appeal in all of these cases but one, s*ee United States v. Hernandez-Mandujano*, 721 F.3d 345, 351 (5th Cir. 2013) (affirming denial of suppression motion because the fruits of the unlawful stop were not suppressible). It did not seek certiorari following any of these losses, even in the cases garnering a dissent.

The Kansas Attorney General petitioned for certiorari in one of the District's cited cases, a civil suit under 42 U.S.C. § 1983, primarily alleging that the Tenth Circuit did not properly apply this Court's qualified-immunity precedents, but also alleging that the panel's "divide-and-conquer approach" to reasonable suspicion was inconsistent with *Arvizu* and deepened an *intra-circuit* split within the Tenth Circuit. *See* Petition for Writ of Certiorari at i, 21-23, *Lewis v. Vasquez*, No. 16-805, 2016 WL 7423034 (U.S. Dec. 19, 2016). This Court denied the petition. *Lewis v. Vasquez*, 581 U.S. 917 (2017).

[11] The United States prosecutes adult felony cases in the District of Columbia. D.C. Code § 23-101.

the factors on which the District relied—the radio dispatch with no record basis and no actual assertion of illegality, and the flight of other people—did not contribute to objective, particularized suspicion as to R.W. under the circumstances of this case.[12] The court thus did not include these factors in its ultimate weighing of the factors in their totality. Pet. App. 19a. But that does not mean the court did not consider these factors against the entire factual context of the case. To the contrary, that is precisely what it had already done. Pet. App. 7a-14a. To require the court to add these factors back into its analysis after having already determined that they carried no weight would be mere formalism.

A court is not obliged to follow a particular mode of analysis in "slosh[ing] [its] way through the factbound morass of 'reasonableness.'" *Scott v. Harris*, 550 U.S. 372, 383 (2007); *cf. Pearson v. Callahan*, 555 U.S. 223, 236-37 (2009) (recognizing that it was not appropriate to mandate that lower courts structure their opinions in a particular way and noting that different modes of analysis or approaches to writing an opinion may be appropriate depending on the particular case at hand). The totality-of-the-circumstances inquiry does not demand that a court limit its opinion to one unstructured paragraph that discusses every factor at the same time.

---

[12] It explicitly recognized, however, that both dispatch information and other people's flight from police can contribute to reasonable suspicion. *See* Pet. App. 8a (noting that "the fact that officers had information leading them to [a specified address]" contributes "to the articulable suspicion calculus" so long as "the judge has been apprised of sufficient facts to enable him to evaluate the nature and reliability of that information" (alteration in original) (quoting *In re T.L.L.*, 729 A.2d 334, 341 (D.C. 1999))); Pet. App. 9a & n.2 (noting that the basis for a dispatch will affect the objective reasonableness of a stop based upon it, and citing as an example the difference between a dispatch based on hearing loud music and one based on hearing gunshots); Pet. App. 11a (recognizing that "the flight of another can be relevant to the reasonable-suspicion analysis if the facts known to the officer suggest that the involved parties were engaged in a suspicious joint venture").

In attempting to generate a split, the District loses sight of the case-specific reasons the court below assigned no weight to the radio run and the flight of others, as well as the contextual analysis the court undertook to arrive at that conclusion. Looking to the particular factors that the court of appeals "excised" from the ultimate reasonable-suspicion calculus here shows that the decision below is not in conflict with decisions of this Court or other courts.

The court here determined that because there was no record information "whatsoever about what motivated the dispatch," and because the content of the dispatch (a "suspicious vehicle") was "so broad as to be useless," the dispatch contributed no objective, judicially reviewable facts that could bolster the reasonableness of the stop. Pet. App. 8a-9a. That conclusion was consistent with this Court's case law regarding the government's obligation of proof at a suppression hearing—cases the District does not even mention. *See, e.g.*, *Hensley*, 469 U.S. at 230-33 (holding that while an officer need not have personal knowledge of the "specific and articulable facts" leading to a dispatch in order to effect a stop, the admissibility of evidence uncovered in the course of a stop turns on the facts known to "the police who *issued* the flyer or bulletin" (citing *Whiteley*, 401 U.S. at 567-68)); *Brown v. Texas*, 443 U.S. 47, 52 (1979) (holding that officer's conclusion that situation "looked suspicious" did not contribute to reasonable suspicion where he did not "point to any facts supporting that conclusion").

Where other courts have been presented with the unusual situation in which officers reference a vague dispatch conveying only a subjective sense of suspicion as

the impetus for a stop, but then the prosecution presents no evidence of the source of the dispatch, they reach the same result. This includes courts on the "majority" side of the District's purported split.

Take, for example, *United States v. Thomas*, 211 F.3d 1186 (9th Cir. 2000), a decision of the Ninth Circuit, one of the courts the District describes as "faithfully apply[ing] this Court's precedents by viewing the evidence bearing on reasonable suspicion in its totality." Pet. 11. In *Thomas*, which R.W. cited below, Reply Br. at 5, the challenged seizure stemmed from information the sheriff's department had received from the FBI about a "suspicion" that "there might be some narcotics" at a particular house. 211 F.3d at 1189. Relying on this Court's decisions in *Whiteley*, 401 U.S. at 568, *Hensley*, 469 U.S. at 232-33, and *Florida v. J.L.*, 529 U.S. 266, 271-72 (2000), the Ninth Circuit held that the FBI information could not "play *any part* in the reasonable suspicion calculus" given the government's failure to present any evidence regarding the basis for the FBI's suspicion and the lack of any indicia of reliability. 211 F.3d at 1189-90 (emphasis added). Given how "vague and generalized" the tip was, its reliability could not be established through independent corroboration, either: "Even if suspicious activity had subsequently been observed at the house, any finding of reasonable suspicion would have to rest on that observation alone and not, in whole *or in part*, on the FBI tip." *Id.* at 1190 (emphasis added).

Further, in one of the cases the District itself cites with approval, Pet. 12, the First Circuit held that "determining whether to afford *any weight* to a nameless 911 call" turns on "whether the 911 call possessed sufficient indicia of reliability." *United*

States v. Andrade, 551 F.3d 103, 110 (1st Cir. 2008) (emphasis added) (quoting *United States v. Ruidíaz*, 529 F.3d 25, 31 (1st Cir. 2008)). In another case, the First Circuit—*at the government's invitation*—"excise[d]" information that an officer "had interviewed an anonymous witness who believed [appellant] was the triggerman in a recent shooting," because "the government failed to provide information regarding the source or reliability of [the] tip." *United States v. Am*, 564 F.3d 25, 31-32 (1st Cir. 2009).

R.W. pointed the court below to state-court decisions employing this same reasoning. Reply Br. at 5-7. For example, in *Arguellez v. State*, 409 S.W.3d 657 (Tex. Crim. App. 2013), Texas's criminal court of last resort—another court on the District's "majority" side, Pet. 11 n.1—declined to assign weight to a 911 caller's subjective impression that a man taking photographs at a public pool was "suspicious," and held that "since there was no indication [from the 911 call] of crime being afoot," there was not sufficient justification for a stop even after the "suspicious vehicle" took off when police arrived. 409 S.W.3d at 659, 664. Similarly, Delaware's highest court[13] concluded that where a 911 caller's tip "stated only that [a Black male wearing a blue coat] was 'suspicious' without providing any articulable support for that subjective conclusion," the "question [was] whether the evidence remaining once the tip is removed suffices to establish that [police] held a reasonable and articulable suspicion of criminal activity prior to seizing [appellant]." *Jones v. State*, 745 A.2d 856, 870-71, 870 n.72 (Del. 1999).

[13] The District does not put Delaware on one side of its split or the other. *See* Pet. 11, 18-19.

In these cases, the courts did not abdicate their responsibility to consider the totality of the circumstances. Instead, they recognized that under *Terry* and its progeny, the totality-of-the-circumstances inquiry requires objective, articulable facts—and incorporates officers' reasonable, experience-based inferences drawn from those facts. *Terry v. Ohio*, 392 U.S. 1, 21 (1968) ("[I]n justifying the particular intrusion the police officer must be able to point to *specific and articulable* facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion." (emphasis added)); *Brown*, 443 U.S. at 51-52 (holding that because reasonable suspicion of criminal activity must be "based on objective facts," an officer's testimony that the situation he confronted "looked suspicious" did not contribute to reasonable suspicion where the officer "was unable to point to any facts supporting that conclusion"); *Cortez*, 449 U.S. at 418 ("[The] demand for specificity in the information upon which police action is predicated is *the central teaching of this Court's Fourth Amendment jurisprudence*." (quoting *Terry*, 392 U.S. at 21 n.18)). The prosecution has the burden to present those facts to the court to enable the judicial determination of reasonableness that the Fourth Amendment requires. *See Terry*, 392 U.S. at 21 ("The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances."); *United States v. Sokolow*, 490 U.S. 1, 10 (1989) (noting that conclusory testimony that someone matched a "drug courier profile[]" would not meet

the Fourth Amendment's demands; "[a] court sitting to determine the existence of reasonable suspicion *must require the agent to articulate the factors leading to that conclusion*" (emphasis added)).

Accordingly, under this Court's case law, the mere fact of a dispatch does not carry independent significance in the reasonable-suspicion analysis, which looks instead to the underlying facts. *Whiteley*, 401 U.S. at 568; *Hensley*, 469 U.S. at 230-33; *see also United States v. Robinson*, 536 F.2d 1298, 1299-1300 (9th Cir. 1976) (cited with approval in *Hensley*, 469 U.S. at 231-33) (holding, under *Whiteley*, that while a responding officer need not have personal knowledge of the basis of a dispatch, the government must still produce that evidence to avoid suppression; otherwise, a dispatcher could "create justification [for a stop] simply by relaying a direction to a fellow officer to make the stop"). The District does not cite a single case that actually conflicts with the notion, relied upon by the court below, that a subjective hunch does not enter the reasonable-suspicion calculus just because it is presented in the form of a dispatch.

Similarly, the District identifies no actual conflict with the lower court's treatment of the flight of others. Contrary to the District's suggestion, the court below did not hold that a passenger's actions "cannot even be *considered* in the reasonable-suspicion analysis." Pet. 20. Instead, the court explicitly recognized that "the flight of another can be relevant to the reasonable-suspicion analysis" depending on the other facts known to the officer. Pet. App. 11a. Here, however, the court determined that the flight of others could not be imputed to R.W. because, on these facts, there was no

objectively reasonable indication of a "suspicious joint venture." *Ibid*. This was a quintessentially contextual analysis.

The District's purported "intra-jurisdiction conflict" between the local and federal courts depends on misreading the decision below as a categorical holding that a passenger's actions cannot support reasonable suspicion to stop a driver. Pet. 20. Because the lower court held no such thing, its decision is not in tension with—and certainly does not "directly conflict[] with"—the D.C. Circuit's decision in *United States v. Edmonds*, 240 F.3d 55 (D.C. Cir. 2001), as the District contends. Pet. 20. Indeed, *Edmonds* looked to the law of the D.C. Court of Appeals in addressing the flight of others, recognizing—as the lower court did here, Pet. App. 11a-12a—that "one person's flight is imputable to another only if other circumstances indicate that the flight from authority implies another person's consciousness of guilt as well." *Edmonds*, 240 F.3d at 62 (quoting *United States v. Johnson*, 496 A.2d 592, 597 (D.C. 1985)). Though the D.C. Court of Appeals in *Johnson* had imputed a driver's flight to the passengers after finding a joint-venture inference reasonable on the facts, 496 A.2d at 597,[14] *Edmonds* determined that another person's flight was meaningful for a different reason than in *Johnson*: The fact that someone fled *into* the van to join Mr. Edmonds when police arrived raised suspicion as to what "was going on *in the van*"—the case thus "involve[d] direct, not transferred, suspicion." *Edmonds*, 240

[14] In *Johnson*, a case R.W. distinguished below, the facts reasonably suggested a joint enterprise of robbery: Officers observed three men in a distinctive, damaged car that they did not recognize (despite familiarity with the neighborhood) parked late at night in an area known for frequent robberies—robberies that were, in the officers' experience, often "committed by men in groups of two or three" driving just "such a vehicle." 496 A.2d at 597.

F.3d at 62 (emphasis added). But *Edmonds*, like *Johnson* and the decision below, recognized that there had to be a reason—aside from mere presence in the same car—that one person's flight could contribute to the justification to stop someone else.[15] When two courts apply the same legal test to different constellations of facts, there is nothing remarkable about the fact that the outcomes they reach diverge.

II. This Case Is a Poor Vehicle.

The split the petition imagines—between courts that excise facts because they "seem[] innocuous" and would not support reasonable suspicion on their own, Pet. 2, and courts that properly consider the totality of the circumstances—does not exist. Even if it did, this would not be the case to take up the issue. Nowhere in the opinion below did the court suggest that it was excising facts from its totality-of-the-circumstances analysis because that information, "standing alone," could not support reasonable suspicion, as the District suggests. Pet. 4. Nor was a fact cast aside because it was explained by innocent reasons. The factors the District thinks were improperly disregarded in this case carried no weight in the court's analysis because,

[15] Even beyond the fact that the other person fled into Mr. Edmonds's van when he saw police, the additional facts known to officers in *Edmonds* provided a much clearer picture linking the two men together in suspicion of criminal activity than what the record showed here: The encounter took place in what officers described as "an extremely high crime area" particularly known for drug offenses, and the van was parked in a school parking lot (which was known to be a frequent site of drug transactions) well after the school had closed. 240 F.3d at 57, 60-61. When a uniformed officer approached the van, Mr. Edmonds leaned forward and "reach[ed] under the driver's seat as though he were attempting to conceal something." *Id.* at 61. The District offers no reason to think that if the court below had been faced with this set of facts it would not have found a "suspicious joint venture" sufficient to impute flight.

viewed in context, they did not supply the sort of articulable, particularized information the Fourth Amendment demands.[16]

For that reason, the District is wrong that "considering" the flight of others and the dispatch (as it appears in the record) would affect the outcome of the case. As the lower court recognized, an unknown person's subjective sense that a vehicle was "suspicious" for an unknown reason is not an objective fact contributing to articulable suspicion, whether or not it is filtered through a police dispatch. The District argues that the court below nevertheless failed to consider how other evidence *corroborated* the dispatch. Pet. 31. But as R.W. argued below, given the wholly subjective and vague nature of the dispatch as it appears in the record, no amount of "corroboration" could have established the reliability of the subjective and inchoate assertion of a "suspicious vehicle" unless that "corroboration" independently amounted to reasonable, articulable suspicion. *Accord Thomas*, 211 F.3d at 1190. The District has never argued—not in the trial court, not in the court of appeals, and not in its petition to this Court—that Officer Vanterpool's observations at the scene themselves amounted to reasonable suspicion.[17]

---

[16] Indeed, subsequent decisions of the D.C. Court of Appeals show the limited, fact-dependent scope of the ruling below and belie the District's assertion that the lower court erected categorical rules excluding certain types of evidence. In *In re E.A.*, 343 A.3d 1, 6-7 (D.C. 2025), the court relied on a dispatch in finding reasonable suspicion notwithstanding the appellant's argument that the government failed to present any evidence establishing the basis and reliability of the radio reports in that case. The *E.A.* court distinguished the decision below because "[f]ar more [was] known about the radio reports in [*E.A.*], which from their contents plainly relayed contemporaneous reports from robbery or attempted robbery victims and other on-scene witnesses, allowing [the court] to make a sufficient independent judgment regarding their nature and reliability." *Id.* at 7.

[17] The lower court's determination that the flight of others carried no weight on these facts was therefore not outcome dispositive.

At its core, this case involves the District's failure to adduce articulable facts allowing for a judicial determination that the stop was reasonable. Whatever prompted the "suspicious vehicle" dispatch, the District failed to put that information in evidence for judicial evaluation. While the District characterizes this case as presenting a "question of immense importance," namely, "[w]hether an investigatory stop should be judged against all of the facts known to the officer or merely a subset," Pet. 21, that hyperbolic claim loses significant force when it becomes clear that this case turned in large part on the District's failure to present the court with all the facts known to police. The court below properly rested its holding on only the evidence presented to it.

In this way, the case is like *Whiteley*, 401 U.S. at 564-68, and *In re T.L.L.*, 729 A.2d 334, 342-43 (D.C. 1999)—both decisions on which the court below relied, Pet. App. 8a-9a—in that it is not a holding that the facts *known to police* did not establish reasonable suspicion, but rather a holding that the facts *presented in evidence for judicial evaluation* did not establish reasonable suspicion. In *Whiteley*, this Court recognized that although an informer's tip was the "actual basis" to connect Mr. Whiteley to a break-in, "that fact, as well as every other operative fact, [was] omitted" from the stipulated record, rendering it impossible for a judge to determine that the warrant (and, in turn, the dispatch based on it) was supported by probable cause. 401 U.S. at 564-68, 565 n.8. In *T.L.L.*, the D.C. Court of Appeals similarly held that it could not "sustain the seizure of T.L.L. on the basis of the evidence presented at the suppression hearing" because while the police "may well have had a basis for

dispatching officers to T.L.L.'s apartment," the "relevant facts . . . were not communicated to the court." 729 A.2d at 342-43. The same was true here.

The failure of proof in this case also makes the concerns of the District and *amici* about inhibiting law-enforcement action and providing guidance to officers unfounded.[18] It is clear under the "fellow officer" rule that officers may act on the strength of a dispatch even without personal knowledge of the facts giving rise to it. *See Hensley*, 469 U.S. at 231 ("[E]ffective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another[,] and . . . officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information." (quoting *Robinson*, 536 F.2d at 1299)). But the ultimate admissibility of evidence recovered in reliance on the dispatch requires a court to scrutinize the *basis* of the dispatch rather than assume that it was legitimate. *Id.* at 231-32. That piece of the puzzle is what was missing here. Officers operating in the wake of the decision below have no reason to be "overly cautious" when relying on a broadcast dispatch, as the

[18] The District's concerns about discouraging or undervaluing anonymous tips are similarly misplaced. Pet. 23, 30-31. Had the District presented an anonymous tip in evidence, the lower court would have followed the well-worn path to determining whether the tip was reliable on both required metrics: its "tendency to identify a determinate person" and its "assertion of illegality." *J.L.*, 529 U.S. at 272. As the D.C. Court of Appeals has recognized, the requisite reliability could be established through corroboration, *see, e.g.*, *Plummer v. United States*, 983 A.2d 323, 333-34 (D.C. 2009) (applying *J.L.* and concluding that officers' observations of furtive gestures sufficiently corroborated anonymous tip that a described man in a particular location had a gun), but more corroboration would be required the lower the degree of reliability in the tip itself. *J.L.*, 529 U.S. at 270; *Alabama v. White*, 496 U.S. 325, 330 (1990). Here the court did not discount the dispatch because it was "unreliable" when viewed "in isolation," as the District contends. Pet. 3-4, 19, 23. Instead, the court was concerned that the record was devoid of information "allowing [a] court to evaluate [the dispatch's] basis and reliability." Pet. App. 10a. The notion that a court must be able to determine (through corroboration or otherwise) that a tip is sufficiently reliable has long been a feature of this Court's law.

District suggests. Pet. 22. The District, however, should realize that if the constitutionality of the officers' actions is challenged, and a dispatch is at the heart of those actions, the District must—as this Court has made clear since *Whiteley*—present adequate evidence to the court to permit an independent assessment of the basis for the call.

III. The Decision Below Is Correct.

Beyond the absence of any conflict with the law of this Court, a federal circuit court, or a state court of last resort, certiorari is also not warranted because the decision below is correct.

The District is simply wrong when it states that the facts preceding the stop painted "a coherent picture of a potentially stolen vehicle." Pet. 22. The District disregards the trial court's factual finding that the only record evidence of the dispatch was that it was for a "suspicious vehicle" at 514 Ridge Road. Pet. App. 32a, 46a. And the District's insistence that the court below was obliged to give weight to an unknown person's unexplained hunch that a vehicle was "suspicious" for an unknown reason is inconsistent with *Brown v. Texas*, in which this Court held that even a trained officer's assessment that a situation is "suspicious" does not itself carry weight in a judicial assessment of the reasonableness of a stop, which instead turns on the "facts supporting that conclusion." 443 U.S. at 52; *see also Hensley*, 469 U.S. at 232-33 (holding that where a challenged stop stems from a dispatch, courts are to look to the "articulable facts" underlying the dispatch).

Because of the lack of factual content in the dispatch as it appears in the record, this was not a case where a judicial determination that the dispatch was "reliable"

could be made based on "corroborating" evidence observed by officers on the scene. When Officer Vanterpool pulled into the parking lot, he saw two people run from a car and the car "start[] to back out." Pet. App. 43a. As the District tacitly recognizes, these facts did not independently constitute reasonable suspicion of criminal activity on the part of the car's driver. By the same token, these facts could not show that the dispatch—which, as it appears in the record, contained no indication of its basis and asserted no illegality—was sufficiently reliable to effect a stop. *See Thomas*, 211 F.3d at 1190 (recognizing that sufficiently "corroborating" the mere assertion that something is suspicious would require facts that themselves constituted reasonable suspicion); *cf. Alabama v. White*, 496 U.S. 325, 330 (1990) (recognizing that reliability of anonymous tips may be established through corroboration, but holding that "if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable"); *J.L.*, 529 U.S. at 272 (reiterating that where reasonable suspicion is based on a tip, the tip must "be reliable in its assertion of illegality, not just in its tendency to identify a determinate person"). The sum total of the information presented for judicial evaluation in this case—*including* the dispatch and the others' flight—does not amount to the reasonable, articulable, particularized suspicion of criminal activity that the Fourth Amendment requires.

There is thus no error in the unanimous decision below, much less the kind of clear error required for summary reversal. Summary reversal is an "extraordinary remedy." *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 512-13 (2001)

(Stevens, J., dissenting); *see Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 422 (1990) ("Summary reversals of courts of appeals are unusual under any circumstances."); *cf. Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (mem.) (Barrett, J., concurring) (expressing concern about issuing decisions "without benefit of full briefing and oral argument"). Indeed, the District fails to identify a single case summarily reversing under similar circumstances.

Not only did the lower court here get it right, it issued a highly factbound decision—on unusually sparse facts due to the limited evidence introduced in the trial court—involving a fifteen-year-old who had already completed his term of probation when the court below reversed his convictions. The D.C. Court of Appeals has not treated the decision below as establishing any sort of categorical rule, but has in subsequent decisions recognized the opinion's factbound nature and distinguished it where the record included more information for judicial evaluation. *See supra* note 16 (discussing *In re E.A.*, 343 A.3d 1, 6-7 (D.C. 2025)). Thus, even if the Court found any error in the decision below, error correction in this case would be a particularly bad use of this Court's limited resources.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

s/ Jaclyn S. Frankfurt
JACLYN S. FRANKFURT
Counsel of Record
SARAH MCDONALD
PUBLIC DEFENDER SERVICE
633 3rd Street, NW
Washington, DC 20001
(202) 628-1200
jfrankfurt@pdsdc.org

Counsel for Respondent

December 8, 2025