

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

KANSAS,)
)
 Petitioner,)
)
 v.) No. 18-556
)
 CHARLES GLOVER,)
)
 Respondent.)

Pages: 1 through 81
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KANSAS,)

Petitioner,)

v.) No. 18-556

CHARLES GLOVER,)

Respondent.)

- - - - -

Washington, D.C.

Monday, November 4, 2019

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:08 a.m.

APPEARANCES:

TOBY CROUSE, Solicitor General, Topeka, Kansas; on behalf of the Petitioner.

MICHAEL R. HUSTON, Assistant to the Solicitor General, Department of Justice, Washington, D.C.; for the United States, as amicus curiae, supporting the Petitioner.

SARAH E. HARRINGTON, ESQ., Bethesda, Maryland; on behalf of the Respondent.

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P R O C E E D I N G S

(11:08 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 18-556, Kansas versus Glover.

General Crouse.

ORAL ARGUMENT OF TOBY CROUSE
ON BEHALF OF THE PETITIONER

MR. CROUSE: Thank you, Mr. Chief Justice, and may it please the Court:

Reasonable suspicion is a minimal standard. It permits a brief investigation upon an officer's objective and particularized suspicion. Common-sense judgments and inferences about ordinary expenses -- experiences are the touchstone of reasonable suspicion.

Here, Deputy Mehrer found a vehicle on the road, learned that the registered driver was incapable of lawfully operating that vehicle, had the belief that under common sense the registered owner was likely the driver, pulled the vehicle over, initiated the stop, cited the individual for being a habitual violator.

That common-sense belief that Deputy

1 Mehrer had is one that has been recognized by
2 the judges in 12 state supreme courts, four
3 circuit courts of appeals across the country,
4 and that is that finding the registered owner of
5 the vehicle as a driver is a common-sense
6 inference, absent information to the contrary.

7 Some may argue that the existence of a
8 suspended license would undermine that
9 suspicion, but the, of the 16 courts that I just
10 mentioned, 11 of them have dealt with this
11 precise situation, and the judges of those
12 courts have indicated that reasonable suspicion
13 continues to exist even in that circumstance.

14 Indeed, the factual predicate for the
15 habitual violator law across the country is that
16 the registered owner may be continuing to drive.
17 And the only thing we're asking here is whether
18 or not there's reasonable suspicion to
19 investigate further.

20 Here, Deputy Mehrer relied upon the
21 common-sense understanding that a registered
22 owner, given the pervasiveness of automobile use
23 in the United States, was likely to be driving
24 again, warranted additional investigation. To
25 borrow a phrase from Terry, it would have been

1 poor police work for Deputy Mehrer not to
2 initiate the stop in this case and investigate
3 further to confirm or dispel his suspicion.

4 At this point, I would invite any
5 questions from the Court.

6 JUSTICE GORSUCH: Mr. Crouse, many of
7 those cases that you referenced involved at
8 least an officer who testified, speaking about,
9 in his experience, drivers tend to be owners.

10 We don't have anything like that here.
11 We have --

12 MR. CROUSE: We don't.

13 JUSTICE GORSUCH: -- we have an
14 officer who said he assumed that. And that's a
15 pretty unusual -- you're asking us to make an
16 inference about facts when there are no facts in
17 the record at all, zero.

18 MR. CROUSE: Well --

19 JUSTICE GORSUCH: What do we do about
20 that?

21 MR. CROUSE: So, to -- to the
22 contrary, we believe that the stipulations are
23 the facts.

24 JUSTICE GORSUCH: Well, the
25 stipulation, as I understand it, though, is the

1 officer said he assumed.

2 MR. CROUSE: Yeah.

3 JUSTICE GORSUCH: Yeah.

4 MR. CROUSE: So --

5 JUSTICE GORSUCH: We don't -- we don't
6 have any "in my experience," nothing -- no --
7 nothing --

8 MR. CROUSE: So -- so there are two
9 aspects to that.

10 JUSTICE GORSUCH: -- other than an
11 assumption.

12 MR. CROUSE: First of them is with
13 regard to the stipulations, the parties have
14 stipulated as to what the relevant facts were.
15 If they believed there was information absent
16 from those facts, they -- they could have and
17 would have done that.

18 I think this Court's cases have
19 recognized -- I believe it was the Christian
20 Legal Society's motion --

21 JUSTICE GORSUCH: Maybe I'm not being
22 clear what I'm -- what I'm getting at. In most
23 cases, officers have testified that "in my
24 experience," so we have some factual basis for a
25 judge to then make a legal conclusion that the

1 officer's stop was reasonable.

2 MR. CROUSE: Yeah. And --

3 JUSTICE GORSUCH: Here, we don't have
4 any facts from the government, from the
5 officer --

6 MR. CROUSE: So I --

7 JUSTICE GORSUCH: -- about experience
8 or realities on the ground. And yet you're
9 asking the judge to make a legal conclusion
10 about certain facts on the ground that are not
11 present in the record. It's almost like a
12 judicial notice of facts not in record.

13 MR. CROUSE: Well, so --

14 JUSTICE GORSUCH: Is that a thing?

15 MR. CROUSE: -- so what I -- what I
16 would agree with is that there is no evidence or
17 testimony as to the history and experience of
18 this officer. Rather, we know that he's a
19 certified law enforcement officer. And none of
20 the cases that I've found have relied upon an
21 officer's understanding of whether or not a
22 registered owner is frequently the driver.
23 Rather, the courts have indicated, as a matter
24 of common sense and ordinary human experience,
25 that the registered owner is a -- is likely the

1 driver.

2 JUSTICE GORSUCH: But don't -- but --

3 JUSTICE SOTOMAYOR: I -- I admit --

4 JUSTICE GORSUCH: I -- I'm sorry.

5 JUSTICE SOTOMAYOR: I'm sorry.

6 JUSTICE GORSUCH: Please.

7 JUSTICE SOTOMAYOR: I admit there's
8 three cases that hold that, but not 11. The
9 others do talk extensively about the officer's
10 experience. What I want to know is -- and I
11 thought that the Kansas court had somewhat
12 limited it, although it had broad language on
13 corroborating that could be questioned, how
14 corroboration could happen.

15 But, in most of the others that
16 Justice Gorsuch is talking about, the officer
17 doesn't say "I assume." He says something more
18 like, this has been my experience or this is the
19 training, or the statistics that you put into
20 the record in this case are presented to the
21 judge.

22 Why is the Supreme Court better able
23 than the trial court, who's the finder of fact,
24 to make decisions about what common sense
25 teaches?

1 MR. CROUSE: So --

2 JUSTICE SOTOMAYOR: Or with the lack
3 of anybody with experience in the field. At
4 least there was one judge below who said: In my
5 experience, that presumption doesn't make sense.

6 And I'm presuming that three other
7 courts have said the opposite, but the supreme
8 court here, the Kansas Supreme Court, agreed
9 with the judge below.

10 MR. CROUSE: Yes. So -- so let me
11 address a couple things. First, the assumption.
12 We don't believe there's a legal distinction
13 between assumption, presumption, inference,
14 belief, or the otherwise. I think this Court's
15 cases, whether it be Terry, Cortez, Wardlow, or
16 any of the others, may -- refer to that term.
17 So the reference as to assumption, we don't read
18 a difference into that.

19 But, rather, what we understand is
20 that reasonable suspicion is something of common
21 understanding and ordinary human experience that
22 whether or not the registered owner is the
23 driver is not something that we would look to
24 the law enforcement officer's history and
25 expectations about. Rather, those cases come up

1 -- such as Cortez, in which we would have an
2 international trafficking situation -- instead
3 more like Navarette, it's common understanding
4 that individuals will be driving under the
5 influence and have certain particular behavior.
6 In Wardlow, flight from the presence of law
7 enforcement officers would be something of
8 common --

9 JUSTICE SOTOMAYOR: But I think --

10 MR. CROUSE: -- ordinary
11 understanding.

12 JUSTICE SOTOMAYOR: -- Navarette had
13 to do with the -- with the reliability of the
14 tips -- the tip --

15 MR. CROUSE: So --

16 JUSTICE SOTOMAYOR: -- and not with
17 questions -- I know that the majority and the
18 dissent in Navarette argued about what the
19 presumption should be. That's why it's so
20 dangerous --

21 MR. CROUSE: So --

22 JUSTICE SOTOMAYOR: -- for us to make
23 our own presumptions and not let the fact
24 finder.

25 MR. CROUSE: Well, but -- so a couple

1 of things. One is I think this Court has done
2 it in Navarette. There was a reliability issue.
3 But also with regard to whether or not it's
4 sufficient to justify an investigation as to
5 that particular crime.

6 Here, the crime is driving while under
7 the -- or driving while suspended. And
8 having --

9 JUSTICE GINSBURG: But the -- but the
10 cause for the suspension can be a number of
11 things that have nothing to do with safety on
12 the roads. It could be, I didn't pay my fine.
13 I didn't pay court costs.

14 It doesn't say anything about the --
15 the driver's ability to drive safely.

16 MR. CROUSE: That's -- that's right,
17 Justice --

18 JUSTICE GINSBURG: And was there a way
19 of finding out why the license was suspended?

20 MR. CROUSE: So two things. One is
21 this Court's Fourth Amendment jurisprudence
22 doesn't look to the underlying crime as to
23 whether or not it's a socially appropriate or a
24 wise policy choice that would justify the
25 suspension. Rather, this officer has an

1 indication that Mr. Glover's license has been
2 suspended and is incapable of lawfully operating
3 a motor vehicle.

4 JUSTICE GINSBURG: But I'm asking
5 about the technology of it. Was there an easy
6 way to push a button to say also that the
7 registered owner's driver's license has been
8 suspended because?

9 MR. CROUSE: So it's not in the
10 record, but my understanding is the answer is
11 no. But even if there were, this law
12 enforcement officer would not have the ability
13 to say, you know, it's driving while suspended
14 for failing to pay any number of tickets, I
15 don't think I'm going to initiate the stop.

16 Rather, this law enforcement officer
17 knows that the registered owner is incapable of
18 lawfully operating a motor vehicle. And that
19 gives sufficient suspicion in order to
20 investigate further, much like the -- the
21 conduct that was in Terry. That may be
22 perfectly lawful conduct, and maybe -- maybe
23 it's a good idea, maybe it's a bad idea, but the
24 officer at least has suspicion to generate
25 additional inquiry.

1 CHIEF JUSTICE ROBERTS: Do I -- and
2 make sure I understand. You -- you concede that
3 if the officer acquires additional information
4 in the course of the stop that suggests that his
5 suspicion that this is the driver with the
6 suspended license is not the driver in that
7 instance, you would not be -- the officer would
8 not be able to pursue the stop further?

9 MR. CROUSE: Yeah, I --

10 CHIEF JUSTICE ROBERTS: If, for
11 example, it's -- it's, you know, Mr. So-and-So
12 who's the registered owner and the woman -- it's
13 a woman in -- driving the car, he would -- that
14 would be the end of the matter, right? He would
15 not be able to pursue the stop further?

16 MR. CROUSE: He would not be able to
17 initiate the stop if information to the contrary
18 had been present to him. The archetypal
19 situation is the looking for a 60-year-old man
20 and it's a 22-year-old female. So that would
21 be -- that would dispel the reasonable suspicion
22 that's under our --

23 JUSTICE SOTOMAYOR: We have dealt with
24 that question on probable cause. We've dealt
25 with, if there is exculpatory material in the

1 presence of probable cause, that a police
2 officer is not required to take that into
3 consideration.

4 You're suggesting a different standard
5 for reasonable suspicion?

6 MR. CROUSE: So I'm not sure I'm
7 understanding you correctly.

8 JUSTICE SOTOMAYOR: Under probable
9 cause --

10 MR. CROUSE: I think once --

11 JUSTICE SOTOMAYOR: -- if a defendant
12 comes and gives you what seems to be a very
13 reasonable explanation for why he did not commit
14 this crime, we don't obligate police officers to
15 investigate that reasonable explanation. We
16 say, probable cause exists, and the officer can
17 arrest on probable cause.

18 We're creating a different rule for
19 reasonable cause?

20 MR. CROUSE: I -- I don't --

21 JUSTICE SOTOMAYOR: Under reasonable
22 cause, you're prepared to say the rule is
23 different. If you have reason to believe it's
24 not the driver, you shouldn't stop the car?

25 MR. CROUSE: I don't -- I don't

1 believe so. I believe our rule is the totality
2 of the circumstances. And as I understand the
3 Chief Justice --

4 JUSTICE SOTOMAYOR: But there's only
5 one totality.

6 MR. CROUSE: Well, so, in his
7 hypothetical, the situation was, if the officer
8 finds -- believes that they're searching for a
9 60-year-old man and is able to identify that the
10 driver is a 20-year-old female, then the
11 suspicion that initially attracted the officer
12 to that vehicle would be dispelled. That's just
13 an application of the totality --

14 JUSTICE GINSBURG: But -- but you --

15 MR. CROUSE: -- of the circumstances.

16 JUSTICE SOTOMAYOR: But --

17 JUSTICE GINSBURG: -- but you say
18 there is no necessity for the officer to make
19 that check.

20 MR. CROUSE: Right. So that's what
21 this Court's cases have historically recognized,
22 is once the existence of reasonable suspicion is
23 there, then there is no necessity to investigate
24 further, such as --

25 JUSTICE GINSBURG: And the only basis

1 for the reasonable suspicion is not a totality
2 of the circumstance, it's one circumstance, the
3 registered owner's driver's license has been
4 suspended, period. That's -- that's the only
5 factor.

6 What is the totality, in addition
7 to --

8 MR. CROUSE: So the totality depends
9 on the particular crime that the officer is
10 investigating. I -- I concede to -- to the
11 Court that the particular facts that the officer
12 knew in this situation are frequently going to
13 be determinative, but, rather, our rule permits
14 the recognition that there could be situations
15 that would come to the officer. For example,
16 if, again, it's a convertible and you're able to
17 see the person, that suspicion is going to be
18 dispelled.

19 But what -- once the officer in -- in
20 this situation has reasonable suspicion to
21 initiate the stop, then --

22 JUSTICE GINSBURG: But you say -- you
23 say it's -- it would be happenstance that the
24 officer was able to do this because the officer
25 doesn't have to make any effort at all.

1 Once he has -- once he knows that the
2 registered owner's driver's license has been
3 suspended, he doesn't have to do one more thing.
4 He can -- he can do a Terry stop.

5 MR. CROUSE: So he can initiate the
6 Terry stop to ask additional questions. If
7 in obtaining the license and registration or --
8 I'm sorry, the registration data behind the
9 vehicle, he's capable -- he or she is capable of
10 determining any characteristics of the driver,
11 that's one thing.

12 But, for example, if -- if the driver
13 was expected to be a 60-year-old man and the
14 officer was able to identify the driver and
15 thinks, well, maybe it's a 58-year-old man, it
16 may or may not be that individual, that
17 suspicion is not dispelled, the stop would occur
18 and the officer would approach the vehicle.

19 JUSTICE GORSUCH: Mr. Crouse, it seems
20 to me --

21 JUSTICE KAGAN: General, are you --

22 JUSTICE GORSUCH: I'm sorry.

23 JUSTICE KAGAN: Please.

24 JUSTICE GORSUCH: It seems to me that
25 a lot hinges on -- in your case on common sense

1 assumption that the drivers of vehicles
2 typically are the owners of the vehicle.

3 Would you agree with that?

4 MR. CROUSE: I think that's -- yes.

5 JUSTICE GORSUCH: Yeah and -- and that
6 might be true in our contemporary contingent
7 historical reality, but the next generation, for
8 example, often rents cars. They don't -- they
9 don't buy cars. They don't own cars.

10 You're asking us to write a rule for
11 the Constitution that presumably has some
12 duration to it. Is this one with a short
13 expiration date?

14 MR. CROUSE: So I don't think it is.
15 I think it -- it would be part of the totality
16 that could potentially come up. I would
17 envision a situation in which 20 or 40 or 60
18 years from now, maybe our operation of motor
19 vehicles are different and under these same
20 facts, perhaps there is no stipulation, perhaps
21 the criminal defendant that has been stopped
22 would like to cross-examine the officer and say,
23 well, you know, in 2019, the registered owners
24 were frequently the driver, but our -- our life
25 has changed. We've become the BRB -- or AirBnB

1 of the society, and that would be able -- is
2 something that the Court would then be able to
3 consider. But --

4 JUSTICE KAGAN: General, do you -- do
5 you -- do you know the Florida v. Harris dog
6 search case? You're familiar with that?

7 What struck me in reading this case is
8 that you're asking for a very different approach
9 than we unanimously decided was proper in that
10 case.

11 So it's a probable cause case, but I
12 don't think that much -- makes all that much
13 difference. The idea was that if you have a
14 trained dog and it gives an alert, there's a
15 reason to think that there's drugs in the car.

16 And yet -- and yet unanimously we
17 said, you know, but, at that suppression
18 hearing, a person is entitled to say that's not
19 all the circumstances that exist. We know
20 something about the dog's history. We know
21 something about the dog's training. We know
22 something about some other circumstance.

23 And I think what you're asking us to
24 do is essentially to say that all of those
25 similar things in this context become irrelevant

1 because we just have, as Justice Ginsburg said,
2 this single circumstance, which is that a -- a
3 non-registered owner is driving the car.

4 MR. CROUSE: Yeah. So I actually
5 think --

6 JUSTICE KAGAN: Right. You've got it.

7 MR. CROUSE: Yeah, yeah. I actually
8 think that's helpful because it depends upon
9 what the nature of the inquiry is. Here, it's
10 driving while suspended and the registered owner
11 and the connection to the driver is common.

12 With regard to a trained dog to sniff
13 out particular drugs, I think there the dog
14 actually alerted to a drug that it was not
15 trained to identify.

16 And so that does -- that's a more
17 nuanced characterization than whether or not an
18 individual is driving their vehicle because, for
19 example, in -- oh, by the way, Mr. Glover could
20 have cross-examined on a similar sort of
21 circumstance. Mr. Glover chose not to because
22 the parties agreed what the facts were and they
23 were tied to the particular crime of driving
24 while suspended.

25 CHIEF JUSTICE ROBERTS: Does it make a

1 difference -- Justice Kagan pointed out that
2 case was probable cause. This is reasonable
3 suspicion.

4 Does the level of inquiry or
5 examination vary depending upon whether it's
6 probable cause or reasonable suspicion?

7 MR. CROUSE: Obviously, both Fourth
8 Amendment, but the inquiry is much lower or the
9 burden is much lower for an officer to justify a
10 brief investigative decision --

11 JUSTICE KAGAN: The threshold is --

12 MR. CROUSE: -- to confirm or dispel.

13 JUSTICE KAGAN: -- the threshold is
14 certainly lower.

15 MR. CROUSE: Yeah.

16 JUSTICE KAGAN: But why would it be
17 that we would, just because the threshold is
18 lower, essentially throw out the totality of the
19 circumstances analysis and simply say this one
20 fact is enough?

21 MR. CROUSE: So we are not asking you
22 to throw out the totality of the circumstance.
23 You have to look at the particular crime
24 that's -- that is implicated, whether it's in
25 Florida versus Harris or -- or Nellis versus, I

1 think, United States, those are relatively
2 complicated crimes.

3 I look at the Cortez case in which the
4 number of inferences and deductions in order to
5 identify Chevron as he -- he was scurrying
6 people across the border, those are some
7 significant inferences that depend upon an
8 educated understanding of the law enforcement
9 officer.

10 JUSTICE KAGAN: I guess I'm just not
11 seeing that. I mean, the question in the dog
12 alert case is, are there drugs in the car or are
13 there not drugs in the car? And it's like,
14 well, the dog alerted. That's a awfully good
15 reason to think there are drugs in the car. But
16 still we're going to go further and say that
17 there are other things that might be involved in
18 a particular case.

19 CHIEF JUSTICE ROBERTS: Yes, briefly.

20 MR. CROUSE: Thank you, Your Honor.

21 So I would say that the -- in this
22 situation, the database alerted that Mr. Glover
23 had a license that had been suspended and he
24 couldn't operate the vehicle.

25 We don't know why the dog alerted and

1 we had to have information as to the officer's
2 training and experience to answer that question.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Mr. Huston.

6 ORAL ARGUMENT OF MICHAEL R. HUSTON
7 FOR THE UNITED STATES, AS AMICUS CURIAE,
8 SUPPORTING THE PETITIONER

9 MR. HUSTON: Mr. Chief Justice, and
10 may it please the Court:

11 The Fourth Amendment asks police
12 officers to be reasonable. It does not ask them
13 to set aside common sense when they step into
14 the patrol car.

15 The traffic stop at issue in this case
16 was constitutional because it was based on a
17 common-sense inference. It was reasonable for
18 the officer to think that Charles Glover might
19 be the person driving the truck registered in
20 his name.

21 That's an inference that police
22 officers use all the time in a range of law
23 enforcement situations as to --

24 JUSTICE GINSBURG: But let's --
25 let's -- I'm sorry. Please continue.

1 (Laughter.)

2 MR. HUSTON: That's an inference that
3 we commonly rely on in a range of law
4 enforcement situations and the prevalence of the
5 inference supports its reliability.

6 Moreover, this Court has repeatedly
7 explained that reasonable suspicion is a minimal
8 standard. It is significantly less than a
9 preponderance of the evidence and less also than
10 probable cause.

11 The reason for that is that a traffic
12 stop is much less intrusive than a custodial
13 arrest, and the point of a traffic stop, just
14 like every Terry stop, is simply to conduct
15 further investigation.

16 Justice Ginsburg, can I pick up your
17 question?

18 (Laughter.)

19 JUSTICE GINSBURG: The -- you say it's
20 reasonable to infer that the owner is the
21 driver, but it's a little less reasonable, is it
22 not, when the owner's license has been
23 suspended?

24 MR. HUSTON: I -- I think, Your Honor,
25 it is maybe marginally less probable. That's

1 true. But, again --

2 JUSTICE GINSBURG: Because you're --
3 you're -- you're positing that most people who
4 have had their license suspended will break the
5 law?

6 MR. HUSTON: I -- I don't think we're
7 positing that people will necessarily break the
8 law, Your Honor. In every case where you're
9 conducting a Terry stop, you're going to have
10 equivocal facts. And the whole point of Terry
11 is to provide a safe opportunity for the officer
12 to conduct further investigation. So --

13 JUSTICE KAGAN: But you just said, Mr.
14 -- Mr. Huston, marginally less. How do you know
15 that, that it's only marginally less as opposed
16 to significantly less?

17 MR. HUSTON: Your Honor, there -- we
18 know that there are hundreds of thousands of
19 citations in this country every year for driving
20 on a suspended license. I think the statistics
21 that are pointed to, the study that's identified
22 at page 41 of Respondent's own brief, talks
23 about some of these statistics.

24 We have other amici in this case that
25 have offered the Court some of the statistics,

1 about 7,000 fatalities involving unlicensed
2 drivers. It's not ultimately, at the end of the
3 day, a detailed statistical question, as the
4 Court has repeatedly explained in cases like
5 Wardlow. It turns on a common-sense judgment
6 that the officer made.

7 JUSTICE KAGAN: I guess what I'm
8 trying to say is, what is that common-sense
9 judgment based on? I mean, I understand that if
10 -- this goes back to Justice Gorsuch's
11 question -- if it were based on a particular
12 officer's training and experience and judgment.
13 But, here, we can't say that it's based on any
14 of those things. So what is it based on?

15 MR. HUSTON: Your Honor, I think we
16 can -- I would respectfully dispute the idea
17 that we can say it wasn't based on the officer's
18 training and experience. I do think that there
19 are going to be a wide range of crimes where
20 reasonable suspicion turns on only one fact.
21 Think of a case like Berkemer. The officer is
22 driving, he sees a car swerving erratically, and
23 he thinks that person might be drunk. Now they
24 might not, but I have reasonable suspicion to
25 investigate further. There's only one fact.

1 I don't think we would say that the
2 reasonableness of the stop in that case turned
3 on whether the officer came into court and said,
4 here's how often in my particular experience
5 I've found that people who are swerving end up
6 being drunk.

7 I also think that dovetails with a
8 wide variety of this Court's cases which have
9 explained that we don't want the permissibility
10 of a Fourth Amendment stop to turn on something
11 that's unique to this particular officer, how he
12 was trained at this particular time.

13 The Court in *Navarette* did not think
14 that the permissibility of that traffic stop
15 turned on the particular testimony that the
16 officer had given. It said, instead, the Court
17 said that --

18 JUSTICE KAGAN: You see, I thought it
19 was the opposite, that we really do want
20 particularistic inquiries here, whether the
21 particularistic inquiry is related to the driver
22 or the officer, that we want some way of saying
23 there's reasonable suspicion in this case, not
24 in -- I mean -- I mean, for example, would you
25 just say -- suppose we just had a statistic that

1 said, you know, that -- you know, that
2 30 percent of drivers are likely to do this.

3 Would you say that, you know, that
4 alone is enough, if it's just statistical? I'm
5 just trying to find out like, what's the basis?
6 Is the basis purely statistical? Is it
7 something about a particular driver's experience
8 and training? What is the basis?

9 MR. HUSTON: Your Honor is absolutely
10 right that the suspicion has to be particular
11 and objective. That's the Court's formulation.

12 But, when the Court has talked about
13 particular, it means particular to this suspect,
14 not particular to this officer. Indeed, the
15 Court has said, we don't want the availability
16 of a traffic stop to turn on whether it's made
17 by a junior officer versus a more experienced
18 officer or something like that, but that the
19 stop has to be particularized to the information
20 that was known about this particular suspect.

21 That's why I think, to answer Your
22 Honor's question directly, a generalized
23 statistic about how many people in the world
24 commit a certain kind of offense will not
25 generally be sufficient to establish --

1 JUSTICE KAVANAUGH: Why not?

2 MR. HUSTON: -- a reasonable --

3 JUSTICE SOTOMAYOR: But getting to the
4 particular person, doesn't that have to do with
5 geography? Meaning I suspect there are some
6 towns in the United States where people don't
7 break the law no matter what, that it would
8 be -- you know, if your license got suspended,
9 the police officer knows that in this
10 jurisdiction, that presumption is not a good
11 one. It doesn't work.

12 It might work somewhere else, but
13 without having the officer testify as to where
14 he's doing this stop, we don't know.

15 MR. HUSTON: Absolutely.

16 JUSTICE SOTOMAYOR: So you really are
17 asking us to have one presumption based on no
18 evidence --

19 MR. HUSTON: I respectfully --

20 JUSTICE SOTOMAYOR: -- other than a
21 stipulation that says that the driver of that
22 license -- of that vehicle or that vehicle
23 belongs to someone whose license has been
24 suspended.

25 MR. HUSTON: Your Honor, we're asking

1 the Court to hold that, as a general matter, as
2 a matter of common sense and ordinary human
3 experience, the owner of a driver is very often
4 the vehicle -- the drive -- excuse me, the owner
5 of the vehicle is very often the driver of that
6 vehicle, in the absence of information to the
7 contrary.

8 So, in a circumstance in which, based
9 on geography or other conditions of the area,
10 there's a different standard and a reasonable
11 officer would know --

12 JUSTICE KAVANAUGH: That is a --

13 MR. HUSTON: -- that --

14 JUSTICE KAVANAUGH: Excuse me. That
15 is a generalized statistic then, though, that --
16 to point out what Justice Kagan was saying. Are
17 you relying on a generalized statistic? And you
18 said no, but, in answering Justice Sotomayor, if
19 I heard you correctly, you're basically saying,
20 well, the common sense is based on this general
21 idea that people are driving their own cars.

22 MR. HUSTON: My point to Justice Kagan
23 was a generalized observation about how many
24 people in the world commit a certain crime does
25 not provide a basis for --

1 JUSTICE KAGAN: Well, let me give you
2 a -- a hypothetical. Suppose that a
3 municipality has a law that says everybody has
4 to carry their driver's license with them at all
5 times. And suppose that a particular police
6 department actually did a kind of survey or, you
7 know, a -- a -- a study of their practices and
8 found that, actually, 50 percent of teenagers do
9 not carry their driver's license with them at
10 all times. All right?

11 So now it's like common sense that if
12 you see a teenager, she won't be carrying her
13 driver's license with her. Does that -- does
14 that give the police officer the ability to stop
15 every teenager that he sees?

16 MR. HUSTON: Generally not, Your
17 Honor. I think the Court has said that that's
18 what it means for the suspicion to be
19 particularized to the individual. You need a
20 reason to pluck --

21 JUSTICE KAVANAUGH: How --

22 MR. HUSTON: -- this needle out of a
23 haystack.

24 JUSTICE KAVANAUGH: -- how is that
25 different -- how is that different from this

1 case? Or, you know, you pull over a teenage
2 driver because you suspect they're texting and
3 there's statistics on that.

4 MR. HUSTON: It's -- it's --

5 JUSTICE KAVANAUGH: So it's the same
6 hypothetical as Justice Kagan's, but then
7 distinguish that from this case.

8 MR. HUSTON: The difference, Your
9 Honor, is that you need a reason -- you need --
10 the officer needs something that identifies the
11 particularized suspicion that this driver is
12 committing a crime.

13 JUSTICE KAGAN: There is the
14 particularized suspicion: Look, she's a
15 teenager.

16 MR. HUSTON: I don't think -- unless
17 that inference was so overwhelmingly reliable,
18 it correlated so strongly, I guess at a certain
19 point the inference becomes so overwhelming that
20 there's a particular behavior that's so closely
21 correlated with criminal activity that it would
22 provide reasonable suspicion.

23 JUSTICE SOTOMAYOR: So why isn't the
24 requirement, as the Kansas court suggested, that
25 you have to corroborate -- and I take that word

1 very generally -- that you've just got to -- if
2 you can safely, because no one's asking police
3 officers to do things unsafely, okay -- but at
4 least drive by and see if it's an older person,
5 make sure it's not a woman, do something besides
6 permitting one fact to drive a conclusion that's
7 no different than a generalized statistic?

8 MR. HUSTON: Two responses to Your
9 Honor. First, it's actually not nearly as safe
10 to do that as -- as one might suppose, as we
11 explained in our brief. Officers are trained
12 instead to keep their vehicles positioned behind
13 a suspect because that's the safest place for
14 them to be.

15 But even in a circumstance where
16 everybody would say you could reasonably attempt
17 that sort of in-vehicle pull-aside-and-peek
18 maneuver, this Court has repeatedly --

19 JUSTICE SOTOMAYOR: Well, if you drive
20 by. Plenty of police officers that let someone
21 they want to stop move forward from where they
22 are and then pull in behind them. There's a
23 whole lot of things that could be done to do
24 that.

25 MR. HUSTON: And if the officer does

1 that, Your Honor, if the -- if the officer gains
2 that type of information, that absolutely would
3 be part of the totality of the circumstances,
4 but I think this Court has explained, in
5 Sokolow, that where an officer develops
6 reasonable suspicion, a traffic stop is
7 authorized and the permissibility of the stop
8 does not depend on other less intrusive
9 investigatory techniques that the officer might
10 have pursued.

11 You could make the same argument in
12 any reasonable suspicion case. Every defendant
13 would come in and say there's always something
14 that the officer could have easily done to
15 investigate me further, short of making a
16 traffic stop.

17 The point of the reasonable suspicion
18 standard is to be a minimal standard, because
19 the purpose of reasonable suspicion is simply to
20 conduct further investigation.

21 Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Ms. Harrington.

25

1 ORAL ARGUMENT OF SARAH E. HARRINGTON
2 ON BEHALF OF THE RESPONDENT

3 MS. HARRINGTON: Thank you, Mr. Chief
4 Justice, and may it please the Court:

5 Kansas and the United States ask this
6 Court to adopt a bright-line nationwide rule
7 that it is always reasonable to assume that a
8 car is being driven by its unlicensed owner.

9 But, in three briefs and now 27
10 minutes of oral argument, they have offered
11 literally no way for this Court to assess
12 whether that is, in fact, a reasonable
13 assumption, whether it is, in fact, based on
14 common sense. They disclaim reliance on the
15 factual context. They disclaim reliance on
16 officers' experience. They disclaim reliance on
17 statistical evidence. They simply assert that
18 it is common sense in every circumstance and in
19 every community in the country.

20 But that's not true, and that's not
21 how the Fourth Amendment works.

22 Here, the only fact that would give
23 rise to suspicion of illegal activity is the
24 identity of the driver. And it was Kansas's
25 burden to establish that the officer had reason

1 to suspect that Mr. Glover was driving.

2 But the officer stipulated that,
3 actually, he had no idea who was driving. And
4 the officer decided not to come in and testify
5 at the suppression hearing to explain why he
6 would assume that an unlicensed driver would be
7 driving his car.

8 Kansas should not be permitted now to
9 make up for its evidentiary lapses by relying on
10 a bright-line nationwide rule that has no basis
11 in facts or in the circumstances of this case or
12 in statistical evidence. The Fourth Amendment
13 requires a contextual analysis.

14 This Court has repeatedly declined to
15 adopt bright-line rules with respect to
16 reasonable suspicion or probable cause. And
17 nothing about this case -- excuse me -- or this
18 context would support departing from that
19 ordinary contextual type of analysis.

20 In an ordinary case, it would be
21 relatively easy for an officer to establish
22 reasonable suspicion that a car is or is not
23 being driven by its unlicensed owner, but the
24 officer and the state have to do at least that
25 minimal amount of work before they can initiate

1 the seizure.

2 Here, Kansas didn't do that work, and
3 so this Court should affirm. I'm happy to take
4 any questions.

5 JUSTICE GORSUCH: Ms. Harrington --

6 MS. HARRINGTON: Yes.

7 JUSTICE GORSUCH: -- that last bit is
8 what interests me, that it's a minimal burden
9 that you would impose on the state. And it does
10 seem like in many of the cases on which the
11 government relies, there's an officer who comes
12 in and says, well, in my experience, owners
13 drive their cars.

14 And if that's all that is at issue
15 here, is that Kansas forgot, neglected to put an
16 officer on the stand to say, in my experience,
17 the driver is usually the owner of the car or
18 often is, what are we fighting about here? And
19 is this -- what's really at stake? It seems to
20 me that it's almost a formalism you're asking
21 for this Court to endorse.

22 MS. HARRINGTON: So thank you for that
23 question. I think it's certainly not a
24 formalism.

25 So the first thing I would say is the

1 question isn't whether an owner usually drives
2 his car but whether an owner who doesn't have a
3 valid license usually --

4 JUSTICE GORSUCH: Fine.

5 MS. HARRINGTON: -- drives his car.

6 JUSTICE GORSUCH: Fine. I amend my
7 question and I pose it back to you.

8 (Laughter.)

9 MS. HARRINGTON: Okay. It's a very
10 important distinction, though.

11 JUSTICE GORSUCH: The officer will now
12 come in and say -- and recite -- I mean, we're
13 just asking for a magic incantation of words.

14 MS. HARRINGTON: But -- but --

15 JUSTICE GORSUCH: Instead of the one I
16 proposed, it's the one you proposed.

17 MS. HARRINGTON: So maybe he will;
18 maybe he won't, right? We don't know what the
19 officer's experience is. I mean, I think it's
20 going to certainly --

21 JUSTICE GORSUCH: Really?

22 JUSTICE ALITO: What if the officer --
23 if the officer in this case had said, I was
24 trained that the -- that the driver of a car is
25 usually the owner, even when the driver has a

1 suspended license?

2 MS. HARRINGTON: So then there --

3 JUSTICE ALITO: Would that be enough?

4 MS. HARRINGTON: It might be, but
5 there would be opportunity for cross-examination
6 about what the training is.

7 JUSTICE ALITO: Well, there was an
8 opportunity here for -- for your client to put
9 in any evidence that he wanted and to subpoena
10 any witnesses he wanted. Was there not?

11 MS. HARRINGTON: Certainly, Justice
12 Alito, but it was Kansas's burden to make the
13 evidentiary showing. Kansas decided to
14 stipulate, if you look at the hearing transcript
15 on pages --

16 JUSTICE ALITO: Yeah, but that's not
17 responsive to my question. If that was -- if
18 that was done, if that's all you're asking for,
19 would that be enough? The officer says, this is
20 how I was trained.

21 MS. HARRINGTON: No. I think you
22 would need -- you'd need an opportunity for
23 cross-examination. You know, I think it's
24 important --

25 JUSTICE ALITO: And was there an

1 opportunity for cross-examination here?

2 MS. HARRINGTON: There -- but there
3 wasn't that -- if the officer had made that
4 showing, had made that -- that factual
5 assertion, then my client probably would have
6 wanted to cross-examine. But they didn't even
7 do that. They didn't rely on any officer
8 experience.

9 JUSTICE GORSUCH: But if you could
10 return --

11 MS. HARRINGTON: It's not the
12 defendant's job to --

13 JUSTICE ALITO: Do you think --

14 JUSTICE GORSUCH: -- to my question
15 very briefly.

16 MS. HARRINGTON: Yes.

17 JUSTICE GORSUCH: Because I think it's
18 antecedent to Justice Alito's. If an officer
19 comes in and says these magic words, whatever
20 they are, right, and that's the sum total of
21 evidence in the case, in my experience, in my
22 training, whatever, is that good enough to
23 satisfy the Constitution in your view?

24 MS. HARRINGTON: So it might be, but
25 let me -- let me make just two points.

1 JUSTICE GORSUCH: Okay. All right.

2 MS. HARRINGTON: That could -- that
3 could be said in every single reasonable
4 suspicion -- reasonable suspicion case, right?
5 There's always something the officer can come in
6 and say.

7 But what -- the point of the
8 suppression hearing is that you want to hear
9 what the actual -- what the officer actually is
10 going to say. And I think it is certainly
11 common sense to think that the rate at which
12 suspended drivers continue to drive is going to
13 vary from type of community to type of
14 community.

15 JUSTICE ALITO: Well, let me try this
16 again.

17 JUSTICE GORSUCH: And could you have
18 asked the officer in this case just to finish
19 your --

20 JUSTICE ALITO: Sure.

21 JUSTICE GORSUCH: -- your line of
22 questioning, it's mine too.

23 JUSTICE ALITO: Yeah. Yeah.

24 JUSTICE GORSUCH: Could -- could the
25 defendant in this case -- did he have the

1 opportunity to ask those questions of the
2 officer?

3 MS. HARRINGTON: Yes. And I think if
4 the -- if the state had chosen to rely on the
5 officer's experience, then certainly we would
6 have asked questions about that. But the state
7 chose not to rely on the officer's experience.
8 And that's up to the state.

9 If the state chooses to truncate its
10 evidentiary showing, it's not up to the
11 defendant to say, well, actually, maybe you
12 should have put in evidence about this or that
13 or the other thing, right? That's on the state.
14 And it really is not a -- it's not a huge burden
15 that the state has to do.

16 CHIEF JUSTICE ROBERTS: Ms.
17 Harrington, do you -- do you think it's totally
18 random who the driver is? In other words, it's
19 registered to Fred Jones, but it could be
20 anybody in the world?

21 MS. HARRINGTON: No.

22 CHIEF JUSTICE ROBERTS: Okay. Do you
23 think it's -- the odds that it's Fred Jones are
24 5 percent? In other words, there could be --
25 out of 100 people, there could be 95 people that

1 you don't know driving the car registered to
2 Fred Jones, but there's a 5 percent chance that
3 it's him?

4 MS. HARRINGTON: Are you asking if I
5 think that's enough for reasonable suspicion?

6 CHIEF JUSTICE ROBERTS: No, I'm asking
7 you if you think that, whether it's reasonable
8 suspicion or not, do you think it is at least a
9 5 percent chance that it's Fred Jones?

10 MS. HARRINGTON: That the owner is
11 driving?

12 CHIEF JUSTICE ROBERTS: That the owner
13 of the car is driving the car.

14 MS. HARRINGTON: On a suspended
15 license or just in general?

16 CHIEF JUSTICE ROBERTS: Just in
17 general.

18 MS. HARRINGTON: So, yes, in general.

19 CHIEF JUSTICE ROBERTS: Okay. And
20 where are you going to stop? Surely one out of
21 ten, it's Fred Jones's car. It's being driven.
22 And when the officer goes up, he sees that it's
23 -- it's -- it's whatever Fred Jones is, a
24 middle-aged man and not a teenage girl. Is --
25 is it still like -- is it maybe one out of ten

1 chances?

2 MS. HARRINGTON: I don't -- I mean, I
3 don't know what it is. And it's not --

4 CHIEF JUSTICE ROBERTS: You really
5 don't know? You don't think it's one out of
6 ten?

7 MS. HARRINGTON: I think it is
8 probably one out of ten that an owner with a
9 valid license is driving his car.

10 CHIEF JUSTICE ROBERTS: Okay. Well,
11 we know that probable cause is not 50 percent.

12 MS. HARRINGTON: Right.

13 CHIEF JUSTICE ROBERTS: It's somewhat
14 less than 50 percent.

15 MS. HARRINGTON: Yes.

16 CHIEF JUSTICE ROBERTS: And even you
17 are willing to agree that it's at least
18 10 percent.

19 MS. HARRINGTON: Yes.

20 CHIEF JUSTICE ROBERTS: Well, what --
21 what reasonable suspicion cutoff do you think?
22 Do you think it's one out of five?

23 MS. HARRINGTON: I can't say because
24 this Court has said repeatedly that --

25 CHIEF JUSTICE ROBERTS: No, but you --

1 MS. HARRINGTON: -- none of us can
2 say, right?

3 CHIEF JUSTICE ROBERTS: No, the point
4 is most of us can say. And the reason is
5 because reasonable suspicion does not have to be
6 based on statistics, it does not have to be
7 based on specialized experience. As we've said
8 often, it can be based on common sense.

9 And I'm sure that the number varies.
10 I'm sure if you're in a neighborhood that --
11 that has a lot of, you know, kids who will drive
12 their parents' car, that's fine. And if it's an
13 area where you don't, that's fine.

14 But reasonable suspicion doesn't
15 depend upon the kind of showing that you seem to
16 demand, whether it's a statistical study or
17 special experience.

18 MS. HARRINGTON: Mr. Chief Justice,
19 I'm not saying that the state has to put in any
20 particular type of evidence. But, if they're
21 just relying on an assertion of common sense,
22 they have to give us some way to assess whether
23 that is a reasonable common-sense inference.

24 CHIEF JUSTICE ROBERTS: They don't --
25 I was just going to say if they're relying on

1 common sense, they don't have to give you
2 anything more than common sense.

3 MS. HARRINGTON: But how do we know if
4 it is common sense? I mean, I think your --

5 JUSTICE ALITO: All we're saying --

6 CHIEF JUSTICE ROBERTS: I already got
7 you to 10 percent.

8 MS. HARRINGTON: But that's in people
9 -- that's about owners who have valid licenses.
10 I think it's -- I think it is not at all common
11 sense. It's the opposite of common sense to
12 think that someone having a suspended or revoked
13 license is going to have no effect at all on
14 whether they drive.

15 CHIEF JUSTICE ROBERTS: I think the --
16 the inference cuts the other way. We know
17 somebody's already broken the law in some sense;
18 he's got a suspended license.

19 MS. HARRINGTON: Well, we --

20 CHIEF JUSTICE ROBERTS: I think it's
21 probably more likely than not that he would
22 break the law saying you can't drive with a
23 suspended license.

24 MS. HARRINGTON: So, first, you know,
25 the facts on the ground suggest that we don't

1 know that, because, in many states, it's -- it's
2 the inability to pay fines that results in a
3 suspended license, not criminal activities.

4 But, second, this Court has never ever
5 held or come close to holding that evidence that
6 you committed X crime is enough for us --

7 CHIEF JUSTICE ROBERTS: But this isn't
8 -- this is collateral to your basic proposition.
9 Your basic proposition is that it doesn't rise
10 to the level of reasonable suspicion to think
11 that a car registered in Fred Jones' name is
12 being driven by Fred Jones.

13 That's different than the collateral
14 point about whether he's more or less likely
15 because the license is suspended.

16 MS. HARRINGTON: No, that's not true.
17 Our -- our basic proposition is it's not a
18 reasonable inference when Fred Jones does not
19 have a valid license, right? And it's not
20 reasonable to think that the -- that the
21 statistics or the rate of driving on a suspended
22 license are going to be the same in every
23 community in the country.

24 If someone lives in Manhattan or
25 Chicago or downtown D.C. and has a suspended

1 license, I think it's significantly less likely
2 that they're going to drive on a suspended
3 license because they have access to public
4 transportation and Uber and all these things to
5 get to the places they needed to go, compared to
6 someone who lives in, say, rural North Dakota or
7 some other place where there isn't public
8 transportation.

9 JUSTICE KAVANAUGH: In your -- in your
10 opening, you said it would be relatively easy
11 for the police to establish whether the driver
12 is the owner. What are you basing that on?

13 MS. HARRINGTON: Well, to establish a
14 reasonable suspicion. I mean, there are a lot
15 of things that they can do. So, first of all,
16 an officer could come in, as I said, and testify
17 and say, well, you know, in my experience, nine
18 times out of ten, when this kind of hit comes up
19 on the computer, it ends up being the suspended
20 owner who is driving the car.

21 An officer could say the information
22 that came up on the computer was that this
23 person had previously been caught driving on a
24 suspended license. That's what --

25 JUSTICE BREYER: Can I go back for a

1 second --

2 MS. HARRINGTON: And there's others.

3 JUSTICE BREYER: -- to the Chief

4 Justice's question --

5 JUSTICE KAVANAUGH: Finish.

6 JUSTICE BREYER: -- because I had
7 exactly the same reaction, and I'd like to
8 finish with that or just a step further.

9 Look, I go outside. We go outside.
10 There's a car driving. We happen to know the
11 license plate, and the license plate tells us
12 that Charles Smith owns the car. We see a
13 friend. He says: I reasonably suspect that
14 it's Charles Jones driving that car.

15 Would you say the friend is wrong to
16 reasonably suspect that Charles is driving the
17 car?

18 MS. HARRINGTON: No, unless you have
19 some reason --

20 JUSTICE BREYER: The answer is no.

21 MS. HARRINGTON: Unless it's legal.

22 JUSTICE BREYER: Now we add another
23 fact. I would like to tell you a fact on my
24 side this time. The State told you the other
25 fact. I'm telling you this one.

1 His license was suspended. Now he
2 says, you know, that's a good point, but I still
3 reasonably suspect he's driving. Now would you
4 say that now that person is wrong? Yes, you
5 would.

6 MS. HARRINGTON: Well, but --

7 JUSTICE BREYER: But you're asking me
8 to say --

9 MS. HARRINGTON: -- I would have
10 questions for that person.

11 JUSTICE BREYER: -- that that person
12 is -- a question, but the question you're asking
13 me to say that that person who still suspects
14 that Charles is driving is unreasonable. That's
15 pretty tough for me to say. It's pretty tough
16 for me to say that that person's wrong,
17 unreasonable, when he still suspects it.

18 Now there we are. And I can't get any
19 further in this case. Now it may be that you
20 have found some precedent that shows that this
21 initial reaction, which I'm showing you, is
22 totally wrong, and I'd like to know what it is
23 because I'll go read it.

24 MS. HARRINGTON: Well, I'll point to
25 basically all of this Court's Fourth Amendment

1 cases, which say you have to look at the
2 totality of circumstances.

3 JUSTICE BREYER: We just did.

4 MS. HARRINGTON: And you can't just --
5 no, you can't just assume illegal activity based
6 on one --

7 JUSTICE BREYER: I'm not assuming --

8 MS. HARRINGTON: -- isolated fact.

9 JUSTICE BREYER: -- illegal activity.

10 MS. HARRINGTON: You are if you --

11 JUSTICE BREYER: It happens to be --

12 MS. HARRINGTON: -- think that he has
13 a suspended license --

14 JUSTICE BREYER: Oh, yeah, it happens
15 to be. All I'm assuming is a fact. All I want
16 to know is a fact: Is Charles driving the car?

17 MS. HARRINGTON: Right. So I would
18 point --

19 JUSTICE BREYER: It's different from
20 the teenage case.

21 MS. HARRINGTON: Justice Breyer, I
22 would point you to the Brignoni-Ponce and Brown
23 versus Texas as two good examples.

24 JUSTICE BREYER: What -- say it again.

25 MS. HARRINGTON: United States versus

1 Brignoni-Ponce. I won't try to spell it here,
2 but it's in the briefs. And Brown versus Texas.
3 Those are two cases where this Court has said
4 you can't do, basically, what you're saying.

5 In Brown versus Texas, there was
6 someone in an alley walking away from another
7 person in a high-crime area, and the officer
8 stopped him and -- and -- you know, in -- did a
9 Terry stop basically. And the Court said it's
10 not enough that he was present in a high-crime
11 area where the probability that he was doing
12 something illegal was higher than if he had been
13 somewhere else.

14 Not enough. You need something else.
15 And there's a footnote saying including just the
16 officer's explaining why, in his experience --

17 JUSTICE GINSBURG: So what is the --

18 MS. HARRINGTON: -- the presence there
19 --

20 JUSTICE GINSBURG: -- something else?
21 You're referring to experience and you're making
22 a distinction between the rookie cop and the one
23 who's on the beat for a long time. And --

24 MS. HARRINGTON: Right. So maybe you
25 know something more about the driver's history.

1 It could come up that, you know, the --
2 Mr. Glover was charged in this case with being a
3 habitual offender. One way to be a habitual
4 offender is to have been convicted three times
5 of driving on a suspended license.

6 JUSTICE GINSBURG: I -- but --

7 MS. HARRINGTON: If that's something
8 the officer knew --

9 JUSTICE GINSBURG: I -- I asked -- I
10 think I asked the question whether there's an
11 easy way to find out what was the reason for the
12 suspension, and the -- the answer to that
13 question was no.

14 MS. HARRINGTON: For Kansas. For this
15 county at least. But at -- that's probably
16 going to vary from community to community. I'm
17 sorry to interrupt you.

18 JUSTICE GINSBURG: Well, tell me how
19 you think the police can safely verify that
20 the -- their suspicion that the owner is the
21 driver is accurate?

22 MS. HARRINGTON: So, as I said, you
23 can do things short of verifying it, right? You
24 can rely on your experience. If this hit comes
25 up and nine times out of ten it's always the

1 suspended owner who's driving, if you know
2 something specific, that this person has
3 previously been caught driving on a suspended
4 license.

5 But also, you know, this stop happened
6 in a sort of -- in an area where there were
7 multiple lanes of traffic in every direction.
8 There was a stoplight at the corner. It would
9 not have been dangerous or difficult for the
10 officer to pull alongside the car and take a --
11 take a glance and see is this an --

12 CHIEF JUSTICE ROBERTS: Do you have --

13 MS. HARRINGTON: -- African-American
14 man.

15 CHIEF JUSTICE ROBERTS: -- statistics
16 to support that proposition?

17 MS. HARRINGTON: I don't.

18 CHIEF JUSTICE ROBERTS: That it
19 wouldn't have been hard for the officer to pull
20 up next to the car and look over?

21 MS. HARRINGTON: I do not, no, Justice
22 -- Mr. Chief Justice. But that is certainly
23 part of what officers do. You know, they
24 examine the circumstances and the factual
25 surroundings. I have noticed, since taking on

1 this case just driving around, how easy is it or
2 difficult is it to see the -- the face of a
3 driver in front of me, just by looking in the
4 mirror -- side-view mirror or the rear-view
5 mirror, and there are certainly circumstances
6 where you can do it and it's not difficult.

7 JUSTICE ALITO: Let's say then --

8 JUSTICE GINSBURG: But if he peers
9 into the window and his glass is -- is tinted
10 and he can't see, so you -- you're saying if --
11 if he -- he has to -- in that case, he can't
12 make the stop; he lets -- he has to let the --
13 the driver go on?

14 MS. HARRINGTON: Unless he can rely on
15 one of the other several things I've mentioned,
16 like his experience with these types of --

17 JUSTICE GINSBURG: I -- I mentioned
18 one of the problems with experience, that you're
19 making a distinction between the rookie cop who
20 doesn't have any experience and the veteran.

21 MS. HARRINGTON: But that's going to
22 be true in every Fourth Amendment context,
23 right, where -- where you're relying on
24 officers' experience. If they have no
25 experience, it's going to be harder for them to

1 justify their reasonable suspicion.

2 JUSTICE GINSBURG: What about the
3 manual that says stay behind the car that you
4 suspect?

5 MS. HARRINGTON: So, if such a manual
6 exists -- and it's not in the record -- you
7 know, then -- then you would need to rely on one
8 of the other methods of establishing reasonable
9 suspicion. One thing officers often testify
10 about is how the person that they're suspecting
11 reacted to the officer's presence. And so, if
12 suddenly the car slowed down in a way that
13 seemed suspicious or took a sudden turn, that
14 could be a factor in -- you know, a tile in the
15 mosaic of circumstances that would be relevant.

16 JUSTICE KAVANAUGH: You -- you want
17 the officer, therefore, to follow the driver,
18 and your brief suggests this, until they make a
19 lane change or until they go too quickly on the
20 right turn on red or don't come to a full stop.
21 What sense does that rule make?

22 MS. HARRINGTON: So I think that's --
23 that's one option. And this Court said --

24 JUSTICE KAVANAUGH: That's an option
25 you articulate in the brief, and --

1 MS. HARRINGTON: Yeah.

2 JUSTICE KAVANAUGH: -- I'm trying to
3 figure out what -- what purpose that would
4 serve. Just, okay, instead of stopping right
5 away, I'm going to -- I'm going to follow you
6 until you go 31 in the 30, and then I'm going to
7 immediately pull you over.

8 MS. HARRINGTON: Well, you would
9 follow him until you had probable cause of some
10 traffic violation. And this Court said in
11 Delaware versus Prouse that that is the way that
12 these laws about licensing and registration are
13 generally enforced.

14 JUSTICE KAGAN: But if I --

15 JUSTICE ALITO: Let's say an officer
16 --

17 JUSTICE KAGAN: -- understand you
18 correctly, Ms. Harrington, you don't really
19 require that anybody be followed until they do
20 something wrong, and you don't really require
21 that a police officer goes and checks out who's
22 sitting in the front seat.

23 A police officer could do neither of
24 those things.

25 MS. HARRINGTON: Right.

1 JUSTICE KAGAN: As long as the police
2 officer shows up to the suppression hearing and
3 says "I based this on my training and my
4 experience" and subjects himself to some form of
5 cross-examination.

6 MS. HARRINGTON: Just like the usual
7 way, right.

8 CHIEF JUSTICE ROBERTS: How -- how
9 much --

10 JUSTICE KAGAN: That would be enough
11 --

12 MS. HARRINGTON: We talked about
13 before --

14 JUSTICE KAGAN: -- wouldn't it?

15 CHIEF JUSTICE ROBERTS: -- experience
16 -- how much experience does he have to have?
17 How many times does he have to stop a car
18 because he thinks -- well, I guess he can do it
19 -- how does he get experience if he can't do it
20 the first time?

21 MS. HARRINGTON: Well, he -- I mean,
22 if he has some other basis to do it or, you
23 know, he's -- he's driving with someone. I
24 don't know. I --

25 JUSTICE KAGAN: I mean, it's just like

1 the dog, right?

2 MS. HARRINGTON: Right.

3 JUSTICE KAGAN: It's like, you know,
4 somebody certifies me, somebody trains me, I've
5 seen this done by my partner, I've heard about
6 it being done by other people in my department.
7 It's just you subject yourself to something,
8 which is the point of suppression hearings,
9 isn't it?

10 MS. HARRINGTON: Right. I mean, this
11 Court's held in Ornelas versus United States
12 that courts should defer to the reasonable
13 community-based experience not only of law
14 enforcement officers but also of trial judges.
15 Here, we did not --

16 CHIEF JUSTICE ROBERTS: That was a
17 probable cause case, right? Probable cause,
18 although still less than 50 percent --

19 MS. HARRINGTON: Yes.

20 CHIEF JUSTICE ROBERTS: -- is
21 significantly more than reasonable suspicion.

22 MS. HARRINGTON: That's absolutely --

23 CHIEF JUSTICE ROBERTS: So it --

24 MS. HARRINGTON: -- true.

25 CHIEF JUSTICE ROBERTS: -- may be the

1 case that you don't need a -- the same level of
2 training and experience and background to make
3 the -- make the assumption that you've already
4 said is at least 10 percent.

5 MS. HARRINGTON: You may need less,
6 but you -- but the type of analysis you would go
7 through to determine if there is reasonable
8 suspicion, there's no reason that it would be
9 different than in a probable cause case.

10 JUSTICE ALITO: Let's say --

11 MS. HARRINGTON: But in --

12 JUSTICE ALITO: -- a police officer
13 pulls up behind a car after having -- is behind
14 the car after having obtained information that
15 the registered owner of the car has a suspended
16 license.

17 What are all of the considerations
18 that you think the officer has to take into
19 account before initiating a stop? Checking --
20 trying to check with headquarters as to the
21 basis for the license suspension? Whether it's
22 an urban area or a rural area or someplace in
23 between? Whether it's a highway or a city
24 street? Whether it's raining? Whether it's
25 dark? Maybe whether it's a law-abiding

1 community where people who have suspended
2 licenses never drive?

3 He -- the officer has to take into
4 account all of those factors before initiating a
5 stop?

6 MS. HARRINGTON: Not necessarily. He
7 just has to take into account the full sort of
8 factual context and -- making a judgment about
9 whether he has reason to suspect that the owner
10 is, in fact, driving the car. And --

11 JUSTICE ALITO: After having done that
12 and when there is a motion to suppress, the --
13 the -- the judge has to take into account all of
14 those factors? Well, it wasn't really a rural
15 area or a city; it was sort -- sort of in
16 between, and it was raining, but it wasn't
17 raining hard? All those things would depend on
18 an -- an -- an evaluation of all of those
19 factors?

20 MS. HARRINGTON: Just like in any
21 Fourth Amendment case, Justice Alito, that you
22 have to look at the full factual context. And,
23 here, we did not hear from the local law
24 enforcement officer at the suppression hearing.
25 We did hear from the local trial judge, and she

1 said, in her experience, based on her life in
2 the community of Lawrence, Kansas, this was not
3 a reasonable assumption. And Ornelas said you
4 should defer to that just as much as you should
5 defer to the officer's experience.

6 JUSTICE ALITO: Is it -- is it your
7 argument that reasonable suspicion can never be
8 based on a single fact, on just one fact? There
9 always has to be more than one fact?

10 MS. HARRINGTON: Not necessarily. It
11 depends on what the fact is. If a fact is
12 inherently suspicious, if you -- if you see
13 someone running out of a bank with an alarm
14 going off wearing a ski mask, that's probably
15 enough to raise reasonable suspicion.

16 JUSTICE KAVANAUGH: How about -- how
17 about a swerving car?

18 MS. HARRINGTON: So a swerving car, it
19 would depend on the -- on the situation. In
20 Navarette, it wasn't just the -- the car was
21 swerving --

22 JUSTICE KAVANAUGH: So sometimes yes?

23 MS. HARRINGTON: Sometimes yes. So,
24 in Navarette, the car was -- had run another car
25 off the road. And this car -- this -- this

1 Court did cite studies about sort of the
2 observable behavior of people who were driving
3 --

4 JUSTICE KAVANAUGH: Then, on the
5 question Justice Kagan followed up with you on,
6 saying that you weren't really arguing that the
7 officer had to do more to follow the driver, on
8 page 35 and 36 of your brief, you specifically
9 say that.

10 MS. HARRINGTON: We say the officer
11 can do that. That's one of the things officers
12 can -- we're not trying to say -- so we're not
13 asking for a bright-line rule in our direction
14 here.

15 JUSTICE KAVANAUGH: You -- you said
16 there that it's relatively easy for an officer
17 to do this by tracking the driver until the
18 driver does some minor traffic violation, and
19 then you can pull the -- the driver over.

20 MS. HARRINGTON: Which is what this
21 Court has said in Delaware versus Prouse.
22 That's the ordinary way of enforcing these types
23 of laws, but I think --

24 JUSTICE KAVANAUGH: However, Delaware,
25 that case did not involve someone with a

1 suspended license.

2 MS. HARRINGTON: They were looking for
3 people who had -- who were unlicensed. And --

4 JUSTICE KAVANAUGH: That's what they
5 were looking for, but they didn't have
6 information that the owner of the car in
7 question had a suspended license.

8 MS. HARRINGTON: They didn't, no. My
9 point is --

10 JUSTICE KAVANAUGH: That was the whole
11 point. In fact, the last paragraph or page of
12 the opinion specifically distinguishes that
13 situation.

14 MS. HARRINGTON: Yes, Justice
15 Kavanaugh, that's absolutely true. My point is
16 only that the Court said that that is just the
17 ordinary way that you enforce these laws, and so
18 there's nothing extraordinary about my saying
19 that's one option.

20 When -- when I'm talking in the brief
21 about how it is relatively easy for officers to
22 do this, what I'm saying is there's no reason to
23 depart from the ordinary Fourth Amendment
24 contextual analysis to adopt a bright-line rule.
25 There's no special safety justifications --

1 JUSTICE KAVANAUGH: I'm just trying to
2 figure out why -- what sense that makes. And I
3 don't want to dwell too long on this but you
4 made a point of it in the brief of, yeah, the
5 officer should just follow them around until
6 they do something wrong on the traffic laws.

7 And do you think that really is a
8 sufficient basis to stop someone in this exact
9 circumstance, if they had gone another mile down
10 the road --

11 MS. HARRINGTON: I think --

12 JUSTICE KAVANAUGH: -- it would have
13 been fine because he --

14 MS. HARRINGTON: Sorry.

15 JUSTICE KAVANAUGH: -- swerved or had
16 just barely exceeded the speed limit?

17 MS. HARRINGTON: Well, I think that
18 the officer has no other basis for having a
19 reasonable suspicion, that the suspended owner
20 is, in fact, driving, but they kind of have a
21 hunch and they want to follow up on the hunch,
22 then they can just follow the person until
23 that --

24 JUSTICE KAVANAUGH: You're encouraging
25 pretextual stops.

1 MS. HARRINGTON: No, it's not
2 pretextual if they see something that raises
3 probable cause for some other violation. This
4 Court has said that's fine. It doesn't matter
5 what the subjective motivation was. If they see
6 something that objectively creates probable
7 cause to make a traffic stop, they can do that.

8 JUSTICE GINSBURG: And you
9 mentioned -- you mentioned peering into the
10 window, that that's something that could be
11 done.

12 MS. HARRINGTON: In some cases, yes.
13 I mean, so our point is just there's a whole
14 number of -- I hope I didn't interrupt you if
15 you have more to your question.

16 There's a whole number of things an
17 officer can do to -- you know, to do more than
18 just say I'm just assuming that the unlicensed
19 owner is driving the car.

20 JUSTICE GINSBURG: But it does seem --
21 I think the word formal was used, after this
22 case, suppose you're right. And that every case
23 what happens is that the police officer goes to
24 the hearing, testifies either, my manual said
25 stay behind the car or, in my experience when

1 I've done stops, it's the registered owner who's
2 the driver. That would be -- that that's okay.

3 MS. HARRINGTON: That would probably
4 be fine. And I say probably only because this
5 Court has said we don't adopt bright-line rules,
6 so I don't want to give sort of absolutist
7 answers --

8 JUSTICE GORSUCH: Well, if that's --

9 CHIEF JUSTICE ROBERTS: Well, he
10 doesn't --

11 JUSTICE GORSUCH: -- the case -- I'm
12 sorry, Chief.

13 CHIEF JUSTICE ROBERTS: I'm just -- he
14 doesn't have to say that in his experience the
15 registered owner is the driver, right? He just
16 has to hit one out of ten times, or two out of
17 ten.

18 MS. HARRINGTON: Maybe. I mean --

19 CHIEF JUSTICE ROBERTS: In my
20 experience, you know, I've done ten of these and
21 twice it was the driver. And that --

22 MS. HARRINGTON: That might be enough.

23 CHIEF JUSTICE ROBERTS: -- that
24 strikes me as the right number for reasonable
25 suspicion.

1 MS. HARRINGTON: It might be enough.
2 This Court has never put a number on it. It has
3 said a number of times it can't put a number on
4 it, and so I can't put a number on it. But that
5 might be enough. It might not be enough, you
6 know.

7 JUSTICE GORSUCH: Well, if -- if it is
8 and if your answer to Justice Ginsburg is
9 correct that all an officer has to say is, in my
10 training or experience, one out of 10, one out
11 of 20, it's -- it's been the driver who is the
12 owner of an unregistered car --

13 MS. HARRINGTON: Unlicensed owner of a
14 registered car, yeah.

15 JUSTICE GORSUCH: Unlicensed, yeah,
16 right. Then -- then why is it -- why shouldn't
17 we read the declaration here as effectively
18 saying that, that I assume? I'm an officer.
19 This is what I do.

20 MS. HARRINGTON: Right.

21 JUSTICE GORSUCH: I assume this is the
22 driver, okay?

23 MS. HARRINGTON: This is Kansas,
24 not New York.

25 JUSTICE GORSUCH: This is the owner,

1 okay?

2 (Laughter.)

3 JUSTICE GORSUCH: Touche.

4 Why -- why isn't that a fair reading,
5 though, of the declaration before us and then it
6 becomes incumbent upon the defendant, if the
7 defendant wishes to raise questions, just as a
8 defendant might about the dog's training and
9 sniffing abilities and record with different
10 substances, to raise some questions about the
11 officer's training and experience or locality,
12 circumstances in Lawrence, which is a very
13 law-abiding community.

14 MS. HARRINGTON: I'm sure.

15 JUSTICE GORSUCH: Or whatever. Why --
16 why shouldn't we read this as effectively
17 exactly what you say would be sufficient?

18 MS. HARRINGTON: I think the simple
19 answer is because it isn't. That isn't what it
20 says. It just said he assumed that --

21 JUSTICE GORSUCH: I understand
22 literally, counsel --

23 MS. HARRINGTON: -- the owner was the
24 driver.

25 JUSTICE GORSUCH: -- it says -- it's a

1 different formulation of words, but why isn't it
2 functionally? Why isn't it practically? Why
3 isn't it really exactly what we're talking
4 about?

5 MS. HARRINGTON: Because it's -- it
6 doesn't say I assume that an unlicensed owner is
7 the driver. It just says, I assume an owner is
8 a driver.

9 JUSTICE GORSUCH: So it's all --

10 MS. HARRINGTON: That's not --

11 JUSTICE GORSUCH: -- magic words.

12 MS. HARRINGTON: The relevant
13 question.

14 JUSTICE GORSUCH: It's just --

15 MS. HARRINGTON: It's not magic words.
16 You just have -- it's -- it's -- like I said,
17 it's not going very hard in most cases, but the
18 -- the state --

19 JUSTICE SOTOMAYOR: Ms. Harrington --

20 MS. HARRINGTON: -- has to do the
21 work.

22 JUSTICE SOTOMAYOR: -- I read the
23 lower court, the supreme court, Kansas Supreme
24 Court's words literally. It said, when a court
25 draws inferences in favor of the state based on

1 a lack of evidence in the record, it
2 impermissibly relieves the state of its burden.

3 MS. HARRINGTON: Right.

4 JUSTICE SOTOMAYOR: And very carefully
5 it says, here, the problem is not that the state
6 necessarily needs significantly more evidence,
7 it needs some more evidence.

8 MS. HARRINGTON: Right. I think
9 that's -- that has to be true. And -- and the
10 Kansas Supreme Court said, I'm not even going to
11 try to list all the different ways you could do
12 it because there are so many, but you have to
13 just do something. And that's sort of all that
14 what we're asking for.

15 That is what this Court has said time
16 and time again in its Fourth Amendment cases,
17 that you have to look at the totality of
18 circumstances. You can't just rely on a single
19 sort of -- single fact that has a
20 probability-based correlation, maybe, to a
21 crime.

22 You have to come in and explain the
23 basis for your suspicion. My friend,
24 Mr. Crouse, talked about Terry, but Terry did
25 not adopt a bright-line rule that anytime

1 someone walks past a store window three times,
2 you automatically have reasonable suspicion,
3 right?

4 They relied on the officer's
5 experience, his observations of other things
6 that were going on. That's all we're saying in
7 this case you should do, just rely on other --
8 other things that were observed, other things
9 the officer knew. Maybe in his experience, the
10 database is extremely unreliable, but that would
11 be something that's relevant to know.

12 Maybe in his experience it's extremely
13 reliable also would be relevant to know. You
14 just need something more.

15 JUSTICE ALITO: Do you think in Terry
16 they needed statistics about the percentage of
17 people who walked by a window three times who
18 have some criminal intent?

19 MS. HARRINGTON: No. But, in Terry,
20 there wasn't a sort of probability-based
21 suspicion. But also, I want -- I want to be
22 clear. We don't think the state needs
23 statistics. Kansas relied on statistics in its
24 opening brief to this Court. We think they were
25 bad statistics, and its amici statistics were

1 bad statistics. They are not relevant to the
2 central question in this case.

3 And so our point in our brief in
4 discussing the statistics is at least you have
5 to rely on good statistics, right?

6 JUSTICE BREYER: So what's -- you said
7 something, it certainly caught my attention. I
8 thought the officer was probably saying the
9 right thing, in my experience, people who own
10 cars are likely to be the drivers.

11 MS. HARRINGTON: It --

12 JUSTICE BREYER: End of the matter,
13 until you point out, not them, you point out
14 that here the driver had lost his license. Now
15 it becomes more difficult. But you keep saying
16 not a bright-line rule. I don't think there's a
17 bright-line rule. I don't see that.

18 You want to add other things. What
19 other things? And if there were other things
20 that were relevant to this, why not call the
21 officer --

22 MS. HARRINGTON: Because it --

23 JUSTICE BREYER: -- and ask him about
24 them?

25 MS. HARRINGTON: Because it's --

1 JUSTICE BREYER: And if you want to
2 say no, that's unreasonable given my fact, given
3 my fact, you probably didn't say that because,
4 actually, the statistics show 75 percent, you
5 know, 60 percent, but not here, dah-dah-dah.
6 Okay, we're into that.

7 MS. HARRINGTON: So --

8 JUSTICE BREYER: But what is it --
9 what is it that you think is that extra thing in
10 the facts here that should have been in?

11 MS. HARRINGTON: I mean, I've listed
12 like ten things he could have done and he didn't
13 do any of them, but --

14 JUSTICE BREYER: I didn't say that. I
15 said, what is it? I'm not talking about what he
16 might have done.

17 MS. HARRINGTON: Yeah.

18 JUSTICE BREYER: I'm saying, what fact
19 is there other than the two he pointed to and
20 the one you added that you think was relevant?

21 MS. HARRINGTON: So the -- the
22 drive -- the behavior of the driver could have
23 been relevant. It could have been relevant
24 whether Mr. --

25 JUSTICE BREYER: No, I'm not asking

1 could have been.

2 MS. HARRINGTON: Well, I don't -- I
3 don't know because they didn't come forward.

4 JUSTICE BREYER: Oh, all right. So --

5 MS. HARRINGTON: It's the state's
6 burden to --

7 JUSTICE BREYER: -- your point is --

8 MS. HARRINGTON: -- put forward the
9 evidence.

10 JUSTICE BREYER: -- you should decide
11 all the facts, but I can't point you to a fact
12 that wasn't -- that was relevant and wasn't
13 decided. I mean --

14 JUSTICE KAGAN: Well, how about --

15 JUSTICE BREYER: -- you say they
16 shouldn't just do --

17 JUSTICE KAGAN: How about his
18 experience and training?

19 MS. HARRINGTON: Yeah. I mean, he
20 could have testified about his experience and
21 training. Maybe in his experience, you know,
22 nine times out of ten or 99 times out of 100
23 when you pull someone over in this circumstance,
24 it's not the unlicensed owner who's driving the
25 car. We just don't know, right? They need to

1 come in -- under the rule Kansas wants, anytime
2 someone borrows a car that's registered to an
3 unlicensed owner, there's literally nothing she
4 could do to avoid being seized, right? If you
5 adopt this bright-line rule, there's nothing she
6 could do to avoid being seized. That has to be
7 evidence, strong evidence, that the rule is
8 overly broad.

9 JUSTICE ALITO: And what you are
10 proposing is either a trivial decision or a
11 revolutionary decision. It's a trivial decision
12 if all that's lacking here is a statement, I've
13 been trained that, blah, blah, blah.

14 It's a revolutionary decision if in
15 every case involving reasonable suspicion there
16 has to be a statistical showing or an
17 examination of all the things that you think are
18 necessary here.

19 Is that not right?

20 MS. HARRINGTON: May I answer?

21 CHIEF JUSTICE ROBERTS: Sure.

22 MS. HARRINGTON: Justice Alito, what
23 we're asking for is that the ordinary Fourth
24 Amendment contextual analysis be required in
25 every case. It doesn't require statistics in

1 every case. It doesn't require any magic words.
2 It just requires something to support the
3 reasonableness of an assumption.

4 Thank you.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.

7 Three minutes, General Crouse.

8 REBUTTAL ARGUMENT OF TOBY CROUSE

9 ON BEHALF OF THE PETITIONER

10 MR. CROUSE: Thank you, Mr. Chief
11 Justice, and I'd like to first start with regard
12 to the officer's training and experience and the
13 lack of testimony.

14 The reason that isn't in this case is
15 because Mr. Glover stipulated to the facts below
16 and failed to raise any question as to the
17 officer's training and experience until the red
18 brief in this Court. See page 4 of our reply
19 brief.

20 JUSTICE SOTOMAYOR: But wait a minute.
21 Whose burden is it? Isn't it yours? You have
22 to prove the facts.

23 MR. CROUSE: We have proved the
24 stipulated facts.

25 JUSTICE SOTOMAYOR: Well, you proved

1 --

2 MR. CROUSE: They didn't challenge
3 those facts.

4 JUSTICE SOTOMAYOR: -- that fact, but
5 they don't have to if you don't prove enough.

6 MR. CROUSE: So they didn't --

7 JUSTICE SOTOMAYOR: They could -- they
8 could -- you could come in and say he wore a red
9 hat, that's why I stopped him, and they would
10 come back and say, that's not enough to make out
11 reasonable suspicion.

12 So, if what they're saying is making
13 an assumption without telling us what the basis
14 of that assumption is, is not enough.

15 MR. CROUSE: So the point is they
16 stipulated to the facts that were relevant to
17 the determination, and the Kansas Supreme Court
18 made a determination as to those facts.

19 My point is that didn't arise until
20 the red brief in this Court. And so we don't
21 think it's fair to criticize once they've
22 agreed. If they wanted to indicate as to what
23 the statistics were, they had an opportunity to
24 call that officer and cross-examine him.

25 Second, with regard to waiting for a

1 violation, as Justice Kavanaugh talked about, we
2 think that's a perfectly reasonable situation if
3 we're going to eliminate reasonable suspicion.

4 Rather, if there's a traffic
5 violation, that's probable cause for a stop and
6 that's not a basis. This Court's decision has
7 indicated that you don't have to wait for
8 probable cause in order to initiate a stop. And
9 so I think your question was right on.

10 Third, statistics. We agree with the
11 red brief that indicates that statistics are
12 rarely present and frequently are going to be
13 distinguished by the parties. And so we don't
14 believe that statistics are relevant.

15 Fourth, we also believe that --

16 JUSTICE GINSBURG: May I go back to
17 the stipulation? You said it's -- Kansas drew
18 the stipulation, right?

19 MR. CROUSE: The parties drew the
20 stipulation, agreed to them, and presented them
21 to the court.

22 JUSTICE GINSBURG: So it was a joint
23 stipulation?

24 MR. CROUSE: The parties stipulated,
25 yes, Your Honor.

1 The fourth point I would like to make
2 is that the Fourth Amendment does not and should
3 not apply differently based upon the age and
4 experience of the officer or the time of day of
5 the Fourth Amendment.

6 The rule that Respondents propose
7 would require the officers to let this vehicle
8 go at night because it's impossible to identify.
9 This Court's cases, except for, I believe, a no
10 knock warrant, does not do that. Certainly, the
11 reasonable suspicion cases do not do that.

12 And, fifth, the states have a strong
13 interest in regulating the roadways of the
14 traffic situation here, and they have a strong
15 law enforcement interest.

16 For example, if there's a report of a
17 -- a child that had been --

18 CHIEF JUSTICE ROBERTS: You can finish
19 your thought.

20 MR. CROUSE: Thank you. A child that
21 had been abducted, and we were looking for the
22 mother, the officers would be reasonable to rely
23 upon the license plate.

24 Thank you, Your Honor.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel. The case is submitted.

2 (Whereupon, at 12:09 p.m., the case
3 was submitted.)

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