No. 18-556

In the Supreme Court of the United States

STATE OF KANSAS,
Petitioner,

v.

CHARLES GLOVER,
Respondent.

On Writ of Certiorari to the Supreme Court of Kansas

REPLY BRIEF FOR THE PETITIONER

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Common sense and ordinary experience suggest that the owner of a vehicle is very often the vehicle's driver. As the overwhelming majority of lower courts to have considered the issue have held, this provides reasonable suspicion for a brief investigatory stop when an officer spots a vehicle registered to an owner with a suspended or revoked license. Glover's arguments to the contrary are inconsistent with this Court's reasonable suspicion precedents.

I. Reasonable suspicion here was based on the totality of the circumstances.

Kansas is not urging this Court to abandon its totality of the circumstances approach to reasonable suspicion. *Contra* Resp. Br. 7-8, 12-19. Instead, the State has always asserted, and continues to assert, that Deputy Mehrer had reasonable suspicion to believe that Glover was operating his vehicle in violation of Kansas law based on the totality of the circumstances, which are described in the parties' factual stipulation.

Glover suggests that an officer needs to establish a long catalog of facts before reasonable suspicion can exist. But the facts necessary to establish reasonable suspicion depend on the crime the officer suspects. For instance, an officer who sees a vehicle swerving erratically may reasonably suspect that the driver is under the influence based on that single fact alone. *See Navarette v. California*, 572 U.S. 393, 402 (2014) (reliable tip alleging dangerous driving would justify a traffic stop on suspicion of drunk driving). So too here,

where Deputy Mehrer suspected Glover was operating the vehicle without a valid license. Kan. Stat. Ann. § 8-262. A "mosaic" of factors, Resp. Br. 16, is not required to establish reasonable suspicion. *See Navarette*, 572 U.S. at 404 (rejecting the need for "additional suspicious conduct").

Neither *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975), nor *Brown v. Texas*, 443 U.S. 47 (1979), stand for the proposition that a single fact cannot give rise to reasonable suspicion. *Contra* Resp. Br. 14-16.[1] Instead, those cases merely held that the particular fact in question did not create a reasonable basis to suspect wrongdoing. The issue was one of degree, not of the number of facts. In *Brown*, for instance, the fact that a person was in a high crime area may have made it slightly more likely that the person was engaged in wrongdoing, but the likelihood did not rise to the level required by reasonable suspicion.

Here, given the commonsense notion that a vehicle's owner is often its driver, there was a sufficient likelihood of wrongdoing to give rise to reasonable suspicion, as the overwhelming majority of lower courts have held. Even the dissenting Justices in *Navarette* suggested that a probability of 1 in 10 or 1 in 20 would suffice to establish reasonable suspicion. *Id.* at 410

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[1] Besides, reasonable suspicion here was based on at least two facts—(1) that the vehicle was registered to Glover, and (2) that Glover had a revoked license—taken together with the inference that a registered owner of a vehicle is often the driver. But how the facts are counted is irrelevant, since the totality of the circumstances inquiry does not require a certain number of facts to establish reasonable suspicion.

(Scalia, J., dissenting). Glover argues that a registered owner *might* not be a vehicle's driver, especially when the owner's license has been suspended, but Glover does not (and cannot) argue that the possibility is so remote as to be less than 1 in 20 or 1 in 10. And in any event, statistical evidence confirms that many unlicensed drivers continue to refuse to comply with the law. *See* Pet. Br. 14; Amicus Br. of Oklahoma and 16 Other States at 15.

Glover complains that the stipulation did not address certain circumstances of the stop, like the reason Deputy Mehrer ran the vehicle's license plate, whether he observed any traffic violations, or the road and weather conditions at the time. Resp. Br. 3-4, 12. But none of these facts are relevant to the existence of reasonable suspicion for the offense of driving without a valid license. Of course, if Deputy Mehrer had observed a traffic violation, he could have stopped Glover for that reason alone. But none of these other circumstances would have shed any light on whether it was reasonable to suspect that Glover, as opposed to someone else, was driving his vehicle.

As the State has explained, the totality of the circumstances inquiry also considers facts that would detract from reasonable suspicion, such as any indication that someone other than the registered owner is driving. No such facts existed here, which is part of what made this stop reasonable. But the absence of any facts tending to undermine reasonable suspicion does not mean that the stop here was not based on the totality of the circumstances.

II. Glover's arguments are inconsistent with this Court's reasonable suspicion precedents.

Glover makes a number of arguments why he believes reasonable suspicion did not exist, but these arguments are unsupported by—and in many cases outright conflict with—this Court's reasonable suspicion precedents.

A. There was no need for Deputy Mehrer to explain his training, experience, or subjective motivations for this stop.

Glover incorrectly argues that reasonable suspicion did not exist because Kansas presented no evidence about Deputy Mehrer's training or experience. Resp. Br. 25-28. Officers' training and experience may sometimes be relevant to the reasonable suspicion analysis, such as when they allow officers "to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)). But this Court has never adopted a bright-line rule that evidence of an officer's training and experience must be introduced to support reasonable suspicion in every case.

Instead, as here, reasonable suspicion often turns on common sense and *ordinary* human experience. *See, e.g.*, *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000); *United States v. Cortez-Galaviz*, 495 F.3d 1203, 1207 (10th Cir. 2007). If an officer sees a vehicle driving erratically and pulls its driver over for suspected drunk driving, there is no need for the officer to specifically

explain that, in that particular officer's training and experience, intoxicated drivers often have difficulty driving in a straight line. *See Navarette*, 572 U.S. at 402. Or consider an officer who sees a person wearing a ski mask run out of a bank, jump in a vehicle, and quickly drive away. Surely reasonable suspicion does not require testimony that, in that officer's training and experience, bank robbers often conceal their identities and flee from the crime scene. That is a matter of common sense and ordinary experience.

So too here. As every other state court of last resort to have considered the issue has held, an officer who sees a vehicle registered to an owner with a suspended or revoked driver's license being driven has reasonable suspicion to stop the vehicle based on the commonsense proposition that a vehicle's owner is often its driver. None of those lower courts based their holdings on the particular officer's training and experience.

And it is too late for Glover to question Deputy Mehrer's training and experience. Throughout this case, the question has always been whether it is reasonable for an officer to suspect that a vehicle's owner is its driver based on common sense and ordinary experience. Glover never raised questions about Deputy Mehrer's training and experience until his merits brief in this Court. In the district court, Glover's motion to suppress did not argue that reasonable suspicion was lacking because there was no evidence about Deputy Mehrer's training and experience. If he had, the State could have introduced evidence on that issue. Nor did the district court or the Kansas Supreme Court cite the absence of evidence

about Deputy Mehrer's training and experience as a basis for their opinions that Deputy Mehrer lacked reasonable suspicion. Glover cannot forgo any argument about Deputy Mehrer's training and experience before every lower court and then, for the first time in his merits briefing before this Court, rely on a lack of evidence about training and experience to seek affirmance of the judgment below.

In any event, the parties here stipulated that Deputy Mehrer was "a certified law enforcement officer employed by the Douglas County Kansas Sheriff's Office." Pet. App. 60. It is reasonable to presume that officers rely on their training and experience in carrying out their duties. Of course, a defendant is always free to argue that an officer was inadequately trained or insufficiently experienced, but Glover did not make that argument here.

Glover's attempt to make reasonable suspicion turn on a particular officer's training and experience is also contrary to this Court's precedent holding that reasonable suspicion is supposed to be *objective*. *See, e.g.*, *Navarette*, 572 U.S. at 396. While there may be times when a particular officer has specialized training or experience that contributes to reasonable suspicion, Glover's attempt to tie reasonable suspicion to the particular officer's training and experience in all cases would turn reasonable suspicion into a much more subjective test that Fourth Amendment inquiries eschew. *See*, *e.g.*, *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (reasonable suspicion is "viewed from the standpoint of an objectively reasonable police officer").

B. Reasonable suspicion does not require statistical evidence.

Glover also incorrectly suggests that, in the absence of testimony about an officer's training and experience, officers need to support their commonsense suspicions with statistical proof. Resp. Br. 19-25.

This Court has never before demanded statistical evidence to establish reasonable suspicion. For instance, in *Illinois v. Wardlow*, 528 U.S. 119 (2000), this Court did not require statistical evidence showing what percentage of the time someone fleeing from the police in a high crime area is engaged in criminal wrongdoing. Instead, *Wardlow* explained that "courts do not have available empirical studies dealing with inferences drawn from suspicious behavior, and we cannot reasonably demand scientific certainty from judges or law enforcement officers where none exists." *Id.* at 124-25. Thus, rather than requiring statistical evidence, this Court held that "the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." *Id.*

And there are good reasons not to require statistical evidence. One is because, as *Wardlow* explained, empirical evidence about the mathematical probability that a particular person is engaged in criminal wrongdoing will seldom, if ever, exist. For another, even if the precise probability of wrongdoing could be determined, this Court has never framed reasonable suspicion in such terms. Reasonable suspicion cannot be reduced to a mathematical calculation. *See Ornelas*, 517 U.S. at 695-96 ("Articulating precisely what 'reasonable suspicion' and 'probable cause' mean is not

possible. They are commonsense, nontechnical conceptions that deal with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983))). And finally, officers in the field need to be able to quickly determine whether reasonable suspicion exists at the time they might make a stop. *Cf. Graham v. Connor*, 490 U.S. 386, 397 (1989) (reasonableness inquiry must embody allowance for the fact that officers are forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving). This Court should not hold that, in order to determine whether a stop is justified, an officer must be aware of statistical studies showing a certain probability of wrongdoing, much less anticipate how a court might later view those studies. *See* Resp. Br. 24 n.2 (attempting to distinguish a study that Respondent first offered).

That being said, the available statistical evidence confirms the commonsense proposition that registered owners often drive their own vehicles. *See* Pet. Br. at 13; Amicus Br. of Oklahoma and 16 Other States at 7-12. Glover's primary response to this data is that it does not distinguish between all drivers and drivers who have had their licenses suspended. But as Glover himself acknowledges, officers need not assume that all drivers with license suspensions will follow the law. Resp. Br. 22. After all, the fact that someone's driver's license was suspended or revoked in the first place typically means that the person previously violated the law, even if it was by not paying parking tickets (which themselves were incurred for violating the law). And we know that many drivers with a suspended or

revoked license do in fact continue to drive. Pet. Br. 14; Amicus Br. of Oklahoma and 16 Other States at 15. While Deputy Mehrer could not have determined the precise probability of wrongdoing, he did have "some minimal level of objective justification" for suspecting that Glover was driving his own vehicle, which justified a brief stop to investigate further. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

C. When an officer has reasonable suspicion, the officer is not required to obtain additional evidence before making an investigatory stop.

Glover attempts to raise the standard that this Court has previously required for reasonable suspicion, arguing that officers cannot rely on "probability-based inference[s]" alone. Resp. Br. 15-16, 22. But reasonable suspicion is all about whether there is a sufficient likelihood of wrongdoing to justify a brief investigatory stop. Of course, reasonable suspicion must still be particularized (which rules out the outrageous hypotheticals Glover claims would result from Kansas's position), but here Deputy Mehrer's suspicion was particularized to Glover and his vehicle.

Requiring an officer to uncover more information about the identity of the driver before making a stop would raise the standard of reasonable suspicion to one of probable cause or beyond. *See Cortez-Galaviz*, 495 F.3d at 1207-08. All that is required for reasonable suspicion is a reasonable basis for *suspecting* that criminal activity may be afoot such that further investigation is warranted. The fact that there may be other explanations for the conduct—such as a family

member or friend of a revoked or suspended driver driving the vehicle—is beside the point, as this Court has "consistently recognized that reasonable suspicion 'need not rule out the possibility of innocent conduct.'" *Navarette*, 572 U.S. at 403 (quoting *Arvizu*, 534 U.S. at 277) (rejecting the argument that the cause of the irrational driving could be attributable to innocent behavior such as an unruly child or other distraction).

Glover also downplays the fact that it will often be difficult if not impossible for an officer to safely identity a driver. His response is to propose a sort of exhaustion rule for reasonable suspicion, arguing that a court, in assessing reasonable suspicion, should consider whether the officer could have taken additional investigatory steps. Resp. Br. 45. But that is not the way reasonable suspicion works. Either reasonable suspicion exists based on particular facts or it does not; as the State has previously explained, reasonable suspicion "does not turn on the availability of less intrusive investigatory techniques." *Navarette*, 572 U.S. at 404 (quoting *Sokolow*, 490 U.S. at 11). Glover's proposed analysis would also be totally unworkable. Every defendant who was initially stopped based on reasonable suspicion would claim there was *something* more that the officer could have done to investigate before making the stop.

D. Glover's "balancing" argument is contrary to this Court's precedents.

1. Finally, Glover argues that this Court should use a balancing test that weighs the State's interest against the private interests at stake in this and every case. Resp. Br. 37. But nothing in this Court's

precedents supports this sort of case-specific balancing approach. Rather, this Court's reasonable suspicion standard for traffic stops *is the result* of the constitutional balance. *See Whren v. United States*, 517 U.S. 806, 817-18 (1996) (holding that a balancing analysis is generally not required when probable cause exists);[2] *United States v. Montoya de Hernandez*, 473 U.S. 531, 541 (1985) (applying a reasonable suspicion standard as a result of the constitutional balancing).

Glover's ad hoc balancing approach to reasonable suspicion is not only unprecedented, but it would be unworkable. Officers on the scene would have no way of knowing how the amorphous interests at stake in any case they encounter might be balanced by a reviewing court at some point in the future. It would also lead to results inconsistent with the nature of reasonable suspicion. For instance, Glover argues the State's interest is limited here because a person's driver's license may have been suspended for something like an unpaid parking ticket. Resp. Br. 41. But if the officer knows that the person's license has been suspended for driving under the influence, does that somehow make the suspicion that the owner is driving more reasonable? Whether it is reasonable for an officer to suspect criminal wrongdoing has nothing to do with the gravity of the crime giving rise to the

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[2] *Whren* did explain that a balancing analysis applies in "extraordinary" cases, despite the existence of probable cause, but those cases (such as seizure by deadly force, unannounced or warrantless entry into a home, and physical penetration of the body) are truly exceptional, not the sort of traffic stop at issue here. 517 U.S. at 818.

suspension or revocation, the wisdom of the policy behind the suspension or revocation, or the privacy interests at stake in any particular case.

2. In any event, Glover both understates the State's interest and overstates the privacy interests at stake. This Court has already recognized that States have a "vital interest" in keeping unlicensed drivers off the road. *See Delaware v. Prouse*, 440 U.S. 648, 658 (1979). This interest has been determined sufficient to justify driver's license checkpoints under the Fourth Amendment. *See Texas v. Brown*, 460 U.S. 730, 739 (1983). And at least some of the reasons for license suspensions and revocations directly relate to roadway safety, such as drunk driving. States have a substantial interest in being able to enforce those laws.

Glover and his amici offer a lengthy criticism of some of the reasons States suspend driver's licenses, but that policy discussion is irrelevant to the existence of reasonable suspicion. Glover and his amici are free to share their policy concerns with state legislatures. But once a State has made the policy decision to suspend or revoke driver's licenses for a particular reason, and to criminalize driving without a valid license, officers have a sworn duty to enforce those laws and are entitled to stop drivers they reasonably suspect of violating the law. This Court should not heighten the standard of reasonable suspicion based on policy concerns with the underlying law being enforced.

Glover also repeats his odd argument that the impact of Kansas Supreme Court's holding, if affirmed, will be limited because a law enforcement officer can almost always find some other traffic violation and stop

the vehicle for that reason. It would be strange to adopt a rule that requires officers to feign other justifications for a stop when they already reasonably suspect a violation of state law. Glover's encouragement of stops for other traffic violations to investigate suspected unlicensed driving also undermines his hyperbolic claim that a brief traffic stop is a traumatic experience. If anything, the stops that Glover proposes will be *more* intrusive than the stops at issue here because they will not necessarily end as soon as an officer discovers that someone other than the registered owner is driving.[3]

Glover also overstates the ability to stop a driver for other reasons, claiming that it is difficult for a driver to comply with all traffic laws. Resp. Br. 44. But a driver who is illegally driving without a valid license has a very strong incentive to drive carefully while in the presence of a law enforcement vehicle. *See Navarette*, 582 U.S. at 403 ("It is hardly surprising that the appearance of a marked police car would inspire more careful driving for a time."). And the fact that a driver

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[3] For instance, suppose an officer suspects that the registered owner of a vehicle is driving with a revoked or suspended license but instead is required to pull the driver over for driving 32 mph in a 30 mph zone. Then, while approaching the vehicle, the officer notices that the driver is obviously not the owner—say an approximately 60-year-old woman rather than a 20-year-old man. If the stop had been based on reasonable suspicion of an unlicensed driver, the officer would simply explain the situation and let the driver go on her way. But if the stop were for speeding, the officer could conduct a full traffic stop and would likely feel compelled to at least write a warning to maintain the constitutional charade that Glover suggests. Meanwhile, the driver will probably feel harassed or targeted over being stopped for driving only 2 mph over the speed limit.

is complying with the traffic laws at any particular moment does not diminish the State's interests in keeping unlicensed drivers off the road, as Glover claims. Resp. Br. 42. Just because unsafe drivers have their licenses suspended or revoked for that reason does not mean that they *constantly* drive unsafely. For example, the State has a substantial interest in preventing a person whose license has been revoked following multiple DUI convictions from driving, even if that person happens to be sober when encountered by an officer.

Holding that it is unreasonable for an officer to suspect that the owner of a vehicle is driving it, without more information about the driver's identity, would also eliminate officers' ability to stop a vehicle based on a warrant for the arrest of the owner. Glover responds that in the most serious cases, this will not be a problem because officers can rely on exigent circumstances. Resp. Br. 30-33. But it would be a mistake to hold that officers' commonsense inferences are *unreasonable* in these situations, leaving the validity of the stop to turn entirely on a hope that a reviewing court will later agree that exigent circumstances were present. The fact that officers frequently use license plate information to apprehend wanted suspects demonstrates the reasonableness of the commonsense inference that the owner of a vehicle

is often the driver.[4] And while exigent circumstances may exist in some high-profile situations, it is far from clear that exigent circumstances would exist the vast majority of times that the owner of a vehicle has an outstanding arrest warrant.

3. In addition to minimizing the State's interests, Glover also dramatically overstates the intrusiveness of a brief investigatory stop. This concern only arises when someone other than the registered owner is driving. But as soon as an officer recognizes that is the case, reasonable suspicion dissipates and the law recognizes that the driver is free to leave. In some situations, this will occur as the officer approaches the vehicle. At most, any reasonable suspicion will be resolved as soon as the officer obtains the person's driver's license. Finding reasonable suspicion in these circumstances will not result in prolonged or intrusive stops of innocent drivers. And drivers other than the registered owner should know that they are driving someone else's vehicle (and will frequently be aware

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[4] Glover argues that in the warrant context, an officer only needs to suspect that the owner is in the vehicle, not the one driving it. That distinction only matters when the officer can tell that there are multiple people in a vehicle, and the record does not suggest that Deputy Mehrer had any such information here. Even if he had, it still would have been reasonable for him to suspect that Glover was driving. After all, a number of States have recognized a presumption in civil cases that the owner of a vehicle is the driver, at least when the owner is in the vehicle, Pet'r Br. 13-14, and Glover himself admits that it is "hard to argue with" the reasoning "why an officer would think that the owner of a car might be in it." Resp. Br. 32. In any event, Glover does not argue that the possibility that the registered owner is driving is so remote as to be less than five or ten percent.

that the owner's license has been revoked or suspended), so the officer's explanation of the reason for the stop should allay any "fear and anxiety" on their part. Resp. Br. 50.

Glover also exaggerates officers' ability to stop someone other than the registered owner. While it is true that innocent individuals will sometimes be stopped—as is always a possibility with investigatory stops based on reasonable suspicion—the rule Kansas seeks only applies in the absence of information that someone other than the registered owner may be the driver. Thus, if an officer knows that the owner of a vehicle is a 50-year-old man but can see that the vehicle is being driven by Glover's hypothesized teenage girl, the officer would not have reasonable suspicion to make a stop. Pet'r Br. 18 (citing cases). Furthermore, this case only addresses a situation where the vehicle is registered to a single owner. If a spouse of a suspended or revoked driver intends to drive a vehicle, that spouse's name can be added to the vehicle's registration (assuming it is not already on it), which would make the existence of reasonable suspicion a closer case than here.

Glover and his amici's extensive discussion of automatic license plate readers (ALPRs) has nothing to do with the existence of reasonable suspicion. This case did not involve an ALPR; and the possibility of ALPRs being used in other cases has no bearing on the reasonable suspicion analysis.

The concern about ALPRs is also overblown in at least two respects. *First*, the manner of identifying a license plate registered to an unlicensed owner—whether ALPR, on-board computer, or two-way communication with dispatch officers—implicates no Fourth Amendment concerns. Drivers have no expectation of privacy in their license plates; the very purpose of a license plate is to provide the government with information about a vehicle. And even if an ALPR identifies a vehicle belonging to a driver with a revoked or suspended license, an officer must still be dispatched to locate that vehicle and confirm that the ALPR information detected matches the particular vehicle before any stop could occur. Given the many demands on police resources, it seems very unlikely officers would be able to stop anywhere close to all of the vehicles flagged by an ALPR. But even if an officer is sent to track down a vehicle, the officer may be able to tell that the driver is someone other than the registered owner, negating reasonable suspicion for a stop. Also, because officers have no incentive to dispatch an officer to track down and stop vehicles that are being legally driven, it is conceivable that ALPR technology or officers using it could track when a vehicle that has previously been stopped was being driven by someone other than the owner. There is simply no evidence of how ALPRs might be used in this context, and this Court should not curtail its reasonable suspicion precedents based on speculative fears of emerging technology.

Second, the threat of collecting historical ALPR data that motivates Glover's concerns is far afield from this case. *See generally* https://www.eff.org/pages/automated-license-plate-readers-alpr (last visited Sept. 21, 2019) (explaining how stored ALPR data can be used to "paint a very specific portrait of drivers' lives"). It is true that privacy concerns are raised when law enforcement uses technology to construct a historical or real-time picture of an individual's physical movement. *See generally Carpenter v. United States*, 138 S. Ct. 2206, 2216-17 (2018). But those concerns are not present in this case: there has been no evidence or suggestion that Deputy Mehrer used an ALPR reader. And even if he had been tipped off that Glover's vehicle was registered to an unlicensed driver by an ALPR, Deputy Mehrer made an independent judgment that Glover might be driving his vehicle in violation of Kansas law. The Fourth Amendment does not forbid an officer from investigating what reasonably appears to be a violation of state law.

CONCLUSION

The judgment of the Kansas Supreme Court should be reversed.

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