

# ON *KANSAS V. GLOVER* AND THE ISSUE OF REASONABLE SUSPICION

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## INTRODUCTION

It is settled law that an officer may initiate a traffic stop when there is articulable and reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime.<sup>1</sup> In *Kansas v. Glover*, the Supreme Court has an opportunity to clarify what constitutes “reasonable suspicion.” The Court will determine whether it is reasonable for an officer to seize a vehicle if the registered owner has a revoked license and there is no information to suggest that the person driving is not the owner of the car.<sup>2</sup>

This Commentary argues that the Court should uphold the Kansas Supreme Court decision and find that the burden of reasonable suspicion was not met. *Glover* turns on whether the fact that a vehicle is registered to someone with a revoked license is enough to warrant reasonable suspicion. This Commentary posits that, in this instance, the State did not meet its burden as it relied on one questionable factor that was not based on an officer’s training. More generally, common sense and the Court’s own precedent support the idea that the State needs more justification to pull over a vehicle than the mere fact it is registered to someone with a suspended or revoked license. The current standard for reasonable suspicion is so slight that there is no need to lower it further, and the increase in public safety that would result from this less demanding standard is outweighed by the social costs of increased traffic stops.

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1. *Terry v. Ohio*, 392 U.S. 1, 26 (1968).

2. Brief for Respondent at 1, *Kansas v. Glover*, 139 S.Ct. 1445, (petition for cert. filed Oct. 25, 2018) (No. 18-556) (hereinafter Brief for Respondent).

## I. BACKGROUND

### A. *Facts*

On April 28, 2016, Kansas Deputy Mack Mehrer ran a registration check on a 1995 Chevrolet pickup truck with Kansas license plates.<sup>3</sup> Deputy Mehrer discovered the truck was registered to Charles Glover, a Kansas resident with a revoked license.<sup>4</sup> Mehrer did not witness any traffic violations but initiated a traffic stop on the presumption that Glover was the driver of the vehicle.<sup>5</sup> There was no evidence either supporting or rebutting this presumption.<sup>6</sup> Deputy Mehrer charged Glover with driving as a habitual violator for driving with a revoked license.<sup>7</sup> Glover filed a motion to suppress all evidence from the stop, arguing that his Fourth Amendment protections were violated due to Deputy Mehrer lacking reasonable suspicion to initiate the traffic stop.<sup>8</sup>

### B. *Legal Background*

The Fourth Amendment protects individuals from unreasonable searches and seizures.<sup>9</sup> It requires law enforcement officers to have either a warrant—which requires probable cause—or a well-recognized exception to a warrant to seize an individual or conduct a search.<sup>10</sup> One well-recognized exception to the warrant requirement is when an officer can articulate “reasonable suspicion.”<sup>11</sup> An officer may stop and briefly detain an individual if he has reasonable suspicion, based in fact, that the individual in question is committing, has committed, or is about to commit a crime.<sup>12</sup> In *Terry v. Ohio*, the Supreme Court established that there is “no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.”<sup>13</sup> Reasonable suspicion requires “specific and articulable facts which, taken together with rational

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3. *State v. Glover*, 422 P.3d 64, 66 (Kan. 2018).

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. U.S. CONST. amend. IV.

10. *Riley v. California*, 573 U.S. 373, 382 (2014).

11. *Navarette v. California*, 572 U.S. 393, 396–97 (2014); *Terry v. Ohio*, 392 U.S. 1, 19–30 (1968).

12. *Terry*, 392 U.S. at 26.

13. *Id.* at 21 (quoting *Camara v. Mun. Court*, 387 U.S. 523, 536–37 (1967)).

inferences from those facts, reasonably warrant [the] intrusion.”<sup>14</sup> Reasonable suspicion has a lower standard than probable cause.<sup>15</sup>

*Terry*’s scope has been clarified in subsequent Supreme Court decisions. In *Delaware v. Prouse*,<sup>16</sup> the Court held that discretionary spot checks of vehicles were an unconstitutional violation of Fourth Amendment protections.<sup>17</sup> However, the Court took care to note that its holding “[did] not preclude . . . [s]tates from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion,” as officers were relying on nothing more than their judgment to stop and search vehicles.<sup>18</sup> Additionally, the Court in *Whren v. United States*<sup>19</sup> held that any observed traffic violation is a legitimate basis for a stop, regardless of the subjective intent of the officer making the stop.<sup>20</sup> *Terry* was further expanded in *Hiibel v. Sixth Judicial District Court of Nevada*,<sup>21</sup> where the Court held it was constitutional to require a suspect to disclose his identity during the course of a *Terry* stop.<sup>22</sup> Finally, in *Heien v. North Carolina*,<sup>23</sup> the Court held that both mistakes of law and fact can give rise to reasonable suspicion.<sup>24</sup>

### C. Procedural History

The Kansas state district court granted Glover’s motion to suppress, holding that an officer does not have reasonable suspicion under the Fourth Amendment to initiate a stop based solely on the fact that the car being driven is registered to someone with a suspended license.<sup>25</sup> The court emphasized that it is often true that someone other than the registered owner is often driving the vehicle.<sup>26</sup>

The State appealed, and the Kansas Court of Appeals reversed the trial court’s suppression order.<sup>27</sup> The court found that an officer has

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14. *Id.* (quoting *Camara*, 387 U.S. at 536–37).

15. *Id.* at 25.

16. *Delaware v. Prouse*, 440 U.S. 648 (1979).

17. *Id.* at 649.

18. *Id.* at 663.

19. *Whren v. United States*, 517 U.S. 806 (1996).

20. *Id.* at 813.

21. *Hiibel v. Sixth Judicial Dist. Court of Nev.*, 542 U.S. 177 (2004).

22. *Id.* at 186.

23. *Heien v. North Carolina*, 574 U.S. 54 (2014).

24. *Id.* at 57.

25. *State v. Glover*, 422 P.3d 64, 67 (Kan. 2018).

26. *Id.*

27. *State v. Glover*, 400 P.3d 182 (Kan. Ct. App. 2017).

reasonable suspicion to stop a driver if the officer knows the vehicle is registered to someone with a revoked license and there is no “evidence or circumstances from which an inference could be drawn that the registered owner is not the driver of the vehicle.”<sup>28</sup> The court reasoned that it is often difficult for an officer to safely verify a driver’s identity, and that requiring additional evidence to justify the stop would effectively turn the reasonable suspicion standard into something resembling probable cause.<sup>29</sup> Glover appealed the decision to the Kansas Supreme Court.<sup>30</sup>

## II. HOLDING

The Kansas Supreme Court reversed the Kansas Court of Appeals and reinstated the suppression order.<sup>31</sup> The Kansas Supreme Court emphasized that there were no additional facts implying that Glover was driving the vehicle at the time of the stop, and that the State could have met its burden with the presentation of corroborating evidence.<sup>32</sup> It held that the State must provide additional justification beyond the vehicle being registered to someone with a revoked license to show reasonable suspicion.<sup>33</sup> To not do so would be to “relieve the State of its burden by eliminating the officer’s need to develop specific and articulable facts . . . on the determinative issue of whether the registered owner is driving the vehicle, not whether the vehicle is being driven.”<sup>34</sup>

The Kansas Supreme Court highlighted that Deputy Mehrer assumed, rather than inferred, that the registered owner of the truck was its driver.<sup>35</sup> An assumption, the Court posited, has “no basis in proof” and is therefore “an inarticulate hunch.”<sup>36</sup> Here, Deputy Mehrer did not view the totality of information, as he possessed no information beyond the fact that Glover was the registered owner of the vehicle and that Glover had a revoked license.<sup>37</sup> To assume—with no other information—that the owner of a car is its driver is to ignore “common experience,” as cars are commonly driven by those other than the

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28. *Id.* at 188.

29. *Id.* at 187.

30. *Glover*, 422 P.3d at 67.

31. *Id.* at 64.

32. *Id.* at 70.

33. *Id.*

34. *Id.*

35. *Id.* at 69.

36. *Id.*

37. *Id.* at 68.

registered owner.<sup>38</sup> Additionally, the Kansas Supreme Court held that the State's argument unfairly assumed that those with suspended or revoked licenses would continue to drive.<sup>39</sup> The State applied filed a petition for writ of certiorari, which was granted by the Supreme Court on April 1, 2019.<sup>40</sup>

### III. ARGUMENTS

#### A. *Petitioner's Arguments*

Petitioner, the State of Kansas, argues that the State has met the burden of reasonable suspicion.<sup>41</sup> Petitioner contends that although it is possible for someone other than the registered owner of a vehicle to be driving, it is reasonable for an officer to suspect that the owner is driving.<sup>42</sup> This argument is supported by precedent, as federal and state courts have almost unanimously confirmed that it is reasonable to infer the registered owner of a vehicle will do the vast amount of driving.<sup>43</sup> Additionally, studies have indicated that there are, on average, two to three drivers for every registered automobile in Kansas.<sup>44</sup> This suggests a likelihood of at least 33 percent that the registered owner of a vehicle in Kansas is driving that vehicle.<sup>45</sup> This number, Petitioner argues, is more than enough to support reasonable suspicion.<sup>46</sup>

Furthermore, Petitioner also notes that neither *Terry* nor its progeny distinguish between assumptions or inferences.<sup>47</sup> The question instead is whether the facts available to Deputy Mehrer objectively provided reasonable suspicion that Glover was breaking the law.<sup>48</sup> Petitioner contends they do, and that Deputy Mehrer was relying on an inference driven by objective facts rather than on an impermissible

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38. *Id.* at 69.

39. *Id.* at 70.

40. *Kansas v. Glover*, 139 S.Ct. 1445 (Apr. 1, 2019) (No. 18-556) (granting writ of cert.).

41. Brief for Petitioner at i, *Kansas v. Glover*, 139 S.Ct. 1445, (petition for cert. filed Oct. 25, 2018) (No. 18-556) (hereinafter Brief for Petitioner).

42. *Id.* at 10.

43. *Id.* (citing *State v. Vance*, 790 N.W.2d 775, 781 (Iowa 2010)) (discussing cases from twelve state supreme courts and four federal circuit courts of appeals that have reached this conclusion).

44. *Id.* at 13 (citing *The 10 States with the Most Suspended/Revoked Licenses*, INSURIFY (June 4, 2018), <https://insurify.com/insights/the-10-states-with-the-most-suspended-revokedlicenses/>).

45. *Id.*

46. *Id.* at 14.

47. *Id.* at 16.

48. *Id.* at 17.

hunch.<sup>49</sup> These facts include that Glover was the registered owner of the vehicle, Glover's license was revoked, and driving with a revoked license is illegal in Kansas.<sup>50</sup> Petitioner argues that it would have been poor police work for Deputy Mehrer to ignore these articulable facts, especially considering the general truth that registered owners often drive their vehicles.<sup>51</sup> There was no evidence to suggest that Glover was not driving his vehicle, and the reasonable suspicion standard allows officers to view the totality of the circumstances in light of their experience.<sup>52</sup> Petitioner emphasizes that reasonable suspicion is not a demanding standard.<sup>53</sup> Although it requires more than a hunch, it is certainly less demanding than a preponderance of the evidence or probable cause.<sup>54</sup> To require "more" or "corroborating" evidence, as the Kansas Supreme Court stated, would transform reasonable suspicion into a much higher burden.<sup>55</sup>

Finally, Petitioner argues that investigative stops are reasonable and important to public safety.<sup>56</sup> They help keep roads safe with minimal intrusion, as they are necessarily short in duration.<sup>57</sup> Therefore, they do not violate the inherent balance of public interest and an individual's right to security.<sup>58</sup> Petitioner takes care to emphasize that courts in twelve states and four federal circuit courts of appeals have adopted this logic.<sup>59</sup> To require officers to ascertain more information on the driver of a vehicle is not only unnecessary, but also dangerous.<sup>60</sup>

### *B. Respondent's Arguments*

Respondent Glover argues that the State has not met its burden of establishing reasonable suspicion of an illegal activity.<sup>61</sup> First, Respondent emphasizes that the State did not present evidence regarding either the circumstances surrounding the stop or Deputy

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49. *Id.* at 15.

50. *Id.*

51. *Id.*

52. *Id.* at 19.

53. *Id.* at 20.

54. *Id.*

55. *Id.* at 21.

56. *Id.*

57. *Id.* at 22–25.

58. *Id.*

59. *Id.* at 25.

60. *See Id.* at 26 (noting the risks involved in having an officer attempt to learn about the driver of a car while it is in motion).

61. Brief for Respondent, *supra* note 2, at 8.

Mehrer’s experience or training.<sup>62</sup> The truck was ostensibly being operated legally, and there is nothing illegal about driving a vehicle owned by someone with a revoked license.<sup>63</sup> These factors, Respondent contends, indicate that the State was relying only on the fact that the owner of the vehicle had a revoked license to establish reasonable suspicion, rather than looking to the totality of the circumstances.<sup>64</sup> This fact alone is insufficient to establish reasonable suspicion, as the “assessment of the whole picture must yield a particularized suspicion . . . that the particular individual being stopped is engaged in wrongdoing.”<sup>65</sup> Here, the “whole picture” was only one fact that did not relate to the particular individual being seized.<sup>66</sup> Respondent cites previous cases where the Court has “declined to accept bright-line rules that a single fact is *per se* sufficient to establish reasonable cause in all cases.”<sup>67</sup> Respondent contrasts these cases to those in which the Court used multiple facts and looked to a totality of the circumstances to find reasonable suspicion.<sup>68</sup>

Respondent also takes little solace in the State’s tautological “safeguard” that an officer cannot stop a car based purely on the fact it is registered to someone with a revoked license if that officer has evidence the driver is not the owner.<sup>69</sup> It is inherent that a police officer cannot pull someone over on suspicion of driving without a license if there is no proof that the person driving has no license.<sup>70</sup> Additionally, the State has provided no evidence as to how this “safeguard” would apply practically.<sup>71</sup>

Respondent also argues the State has failed to establish that a police officer is always entitled to assume that a car is being driven by its registered owner.<sup>72</sup> First, the “statistical ‘evidence’” the State relies on does not support this inference.<sup>73</sup> For example, the State relies on statistics that indicate suspended drivers continue to drive while failing

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62. *Id.* at 12.

63. *Id.* at 13.

64. *Id.*

65. *Id.* at 14 (citing *United States v. Cortez*, 449 U.S. 411, 417–18 (1981)).

66. *Id.*

67. *Id.* at 14–16 (discussing *United States v. Brignoni-Ponce*, 422 U.S. 873, 885–87 (1975) and *Brown v. Texas*, 443 U.S. 47, 51–52 (1979)).

68. *Id.* at 16–18 (discussing *United States v. Arvizu*, 534 U.S. 266, 274 (2002), *Cortez*, 449 U.S. at 417–422, and *Ornelas v. United States*, 517 U.S. 690, 697–98 (1996)).

69. *Id.* at 18.

70. *Id.*

71. *Id.* at 19.

72. *Id.*

73. *Id.* at 20.

to note the *frequency* with which they continue to drive.<sup>74</sup> Whether a suspended driver ever drives with a suspended license is less relevant than whether that driver is driving the car at the particular moment in question.<sup>75</sup> Failing to account for the natural deterrent effect of a suspended license renders this statistic meaningless for a case like Glover's.<sup>76</sup> In fact, the State supplied no evidence—either through data or Deputy Mehrer's experience—regarding the extent to which drivers continue to drive after their licenses are revoked.<sup>77</sup> Although officers are allowed to rely on reasonable inferences “in light of [their] experience[s],” the State presented no evidence that Deputy Mehrer's inferences were based on experience or training.<sup>78</sup>

Respondent also rejects the idea that “common sense” leads to a reasonable inference that the owner of a car is driving it.<sup>79</sup> The Supreme Court has historically only used common sense in finding inference-based reasonable suspicion when that common sense is grounded in the training and experience of police officers.<sup>80</sup> Here, the State has given no evidence that was the case.<sup>81</sup> In fact, common sense indicates both that the driver of a vehicle is likely not its registered owner and that likelihood is contingent on where the vehicle is being driven.<sup>82</sup> For example, statistics indicate that it is more likely that the owner of a car is driving that car in urban areas as opposed to suburban or rural areas.<sup>83</sup> Since the State's proposed bright line rule fails to consider differences among communities, it makes little sense to institutionalize it.<sup>84</sup>

Respondent acknowledges that in many cases it will be easy for an officer to establish reasonable suspicion.<sup>85</sup> A traffic violation, corroborating physical characteristics of the driver, or a history of the driver in question continuing to drive with a suspended license can all

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74. *Id.* at 20–23.

75. *Id.* at 23.

76. *Id.* at 22.

77. *Id.* at 25.

78. *Id.* at 26.

79. *Id.* at 28.

80. *Id.*

81. *Id.*

82. *Id.* at 29.

83. *Id.* (first citing Katherine E. Heck & Keith C. Nathaniel, *Driving Among Urban, Suburban and Rural Youth in California* 13 tbl.2 (2011); then citing Fed. Highway Admin., U.S. Dep't of Transp., *Summary of Travel Trends: 2017 National Household Travel Survey* 96–97 tbl.33 (2018)).

84. *Id.* at 29–30.

85. *Id.* at 35.

serve as grounds for an officer to pull over a vehicle registered to someone with a revoked license.<sup>86</sup> In fact, an officer being able to give any explanation as to how his training and experience supported his inference that the registered owner in question was driving the vehicle can probably serve as reasonable suspicion.<sup>87</sup> However, Respondent notes that just because the State's burden is light does not excuse the State from satisfying that burden.<sup>88</sup> The State still must establish reasonable suspicion, and it failed to do so here.<sup>89</sup>

Finally, Respondent argues this infringement of personal privacy is not justified by government interests.<sup>90</sup> The State has provided no evidence that all drivers with revoked licenses are unsafe.<sup>91</sup> Every state suspends licenses for non-driving reasons.<sup>92</sup> For example, 47 Districts suspend for failure to pay child support and 8 for failure to pay a parking ticket.<sup>93</sup> In fact, "nearly 40 percent of [American] license suspensions are unrelated to traffic safety."<sup>94</sup> Drivers with licenses suspended for non-traffic reasons are no more dangerous than the average driver.<sup>95</sup> There is no record of why Glover's license was revoked, which weakens the State's safety-related justification.<sup>96</sup> Additionally, the only instance where the State would need this bright line rule is in the absence of any observed traffic violations.<sup>97</sup> Respondent also focuses on the ease with which modern officers can enforce traffic laws, and that the State's proposed rule creates a perverse incentive for officers to learn as little as possible about the driver of a vehicle for fear of destroying reasonable suspicion.<sup>98</sup>

Respondent also argues that the traffic stops impose a serious burden on individuals.<sup>99</sup> Respondent notes the large number of drivers

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86. *Id.*

87. *Id.* at 36.

88. *Id.*

89. *Id.* at 37.

90. *Id.* at 37–38.

91. *Id.* at 39.

92. *See id.* at 41 (discussing a nationwide assessment of license suspensions).

93. Nat'l Highway Traffic Safety Admin., *Reasons for Driver License Suspension, Recidivism, and Crash Involvement Among Drivers with Suspended/Revoked Licenses* (Jan. 2009).

94. *Id.* (citing Joseph Shapiro, *How Driver's License Suspensions Unfairly Target the Poor*, NPR (Jan. 5, 2015)).

95. *Id.* at 42 (citing David J. DeYoung & Michael A. Gebers, *An Examination of the Characteristics and Traffic Risks of Drivers Suspended/Revoked for Different Reasons*, 35 J. SAFETY RES. 287, 290 (2004)).

96. *Id.* at 42.

97. *Id.* at 42–43.

98. *Id.* at 43–44.

99. *Id.* at 46.

in America with suspended licenses, including 4.2 million people across five states for unpaid court debt alone.<sup>100</sup> Each owner with a suspended license increases the likelihood that others in their home or community will drive that person's vehicle.<sup>101</sup> Any individual who does so may be subjected to seizure whenever they drive that car.<sup>102</sup> Additionally, the growing prevalence of automated license-plate readers ("ALPRs") increases the number of license plates that can be scanned, and therefore, the number of innocent drivers subject to seizure.<sup>103</sup> Respondent also emphasizes the degree of intrusion caused by stops, differentiating them from minimally intrusive checkpoints.<sup>104</sup> Finally, Respondent argues that the anxiety induced by a traffic stop is far greater than the State acknowledges.<sup>105</sup> This is partly due to the Court's Fourth Amendment jurisprudence, which allows officers to request identification,<sup>106</sup> order all occupants of the vehicle to step out, and react to anything in plain view that gives rise to reasonable suspicion or probable cause.<sup>107</sup> These factors can lead to anxious and evasive behavior which, in turn, can also be a factor in determining suspicion.<sup>108</sup>

#### IV. ANALYSIS

The Supreme Court should uphold the Kansas Supreme Court's decision to reinstate the suppression motion. The burden is on the State to prove reasonable suspicion.<sup>109</sup> Here, the State did not meet that burden. Reasonable suspicion requires "tak[ing] into account 'the totality of the circumstances—the whole picture.'"<sup>110</sup> The Court has consistently declined to let one fact justify reasonable suspicion.<sup>111</sup>

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100. *Id.* at 47 (citing Mario Salas & Angela Ciolfi, Legal Aid Justice Ctr., *Driven by Dollars: A State-by-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt*, at 1 (2017)).

101. *Id.* at 48.

102. *Id.*

103. *Id.* at 49 (citing Kaveh Waddell, *How License-Plate Readers Have Helped Police and Lenders Target the Poor*, THE ATLANTIC (Apr. 22, 2016), <https://www.theatlantic.com/technology/archive/2016/04/how-license-plate-readers-havehelped-police-and-lenders-target-the-poor/479436/>).

104. *Id.* at 50.

105. *Id.* at 51.

106. *Id.* at 51–52 (citing *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 185 (2004)).

107. *Id.* at 52 (citing *Maryland v. Wilson*, 519 U.S. 408, 414–15 (1997)).

108. *Id.* (citing *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000)).

109. *Delaware v. Prouse*, 440 U.S. 648, 659 (1979).

110. *Navarette v. California*, 572 U.S. 393, 397 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

111. *E.g.*, *United States v. Brignoni-Ponce*, 422 U.S. 873, 885–86 (1975); *Brown v. Texas*, 443 U.S. 47, 51–52 (1979).

Instead, prior Supreme Court opinions have expressed a desire to take a “mosaic” of factors into account to determine reasonable suspicion.<sup>112</sup>

The State argues that Deputy Mehrer examined the totality of the circumstances in deciding to pull the vehicle over.<sup>113</sup> It claims that Mehrer discovered that the vehicle was registered to someone with a revoked license, observed the vehicle was being driven, and knew driving a vehicle with a revoked license is a crime in the state of Kansas.<sup>114</sup> These factors, the State argues, add up to a “totality of the circumstances.”<sup>115</sup> This argument rings hollow for a variety of reasons. First, the State stipulated that Deputy Mehrer seized Glover “solely on the information that the registered owner of the truck was revoked.”<sup>116</sup> The State is backtracking, as precedent has indicated that only one fact will probably not suffice for reasonable suspicion. Second, two of the factors the State lists are pretextual. While knowledge that the vehicle in question was registered to someone with a revoked license is undoubtedly salient, the “facts” that Deputy Mehrer was aware that driving with a suspended license is a crime and observed that the vehicle was in motion have little relevance to the State’s argument. These facts are prerequisites to any traffic stop, and they would allow any seizure to be justified by a “totality of the circumstances” if the Court accepted them as valid. The Court should reject the State’s effort to amalgamate a “totality of the circumstances” out of its only substantial fact.

The State’s “totality of the circumstances” argument also does not square with the Court’s reasonable suspicion jurisprudence. Knowledge that crimes are illegal and observation of mundane actions have not been held to be relevant factors in prior reasonable suspicion cases. For instance, in *Brown v. Texas*, officers seized a man who was walking away from another person in an area with a high incidence of drug trafficking.<sup>117</sup> The man was arrested for failing to identify himself.<sup>118</sup> In holding that the man’s Fourth Amendment rights were violated, the Court found the basis for the stop was rooted in only one factor: the man’s “suspicious” appearance.<sup>119</sup> The Court did not use the

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112. *United States v. Arvizu*, 534 U.S. 266, 274 (2002).

113. Brief for Petitioner, *supra* note 40, at 15.

114. *Id.*

115. *Id.* at 19.

116. *State v. Glover*, 422 P.3d 64, 67 (Kan. 2018).

117. *Brown v. Texas*, 443 U.S. 47, 48–49 (1979).

118. *Id.* 49.

119. *Id.* at 52.

facts that the neighborhood was notorious for drug trafficking or that drug trafficking was illegal in its consideration of reasonable suspicion. It should compare the facts of *Brown* to those in the current case and come to the same conclusion. There was no justification for Deputy Mehrer to initiate a stop outside of the fact the vehicle in question was registered to someone with a suspended license. This single fact should not reach the totality of the circumstances necessary to justify reasonable suspicion.

The State argues it would be “poor police work” for Deputy Mehrer to not initiate the stop.<sup>120</sup> On the contrary, good police work, or any at all, would have justified Deputy Mehrer’s actions. Reasonable suspicion likely would have been met if Deputy Mehrer had any other information. The gender of the driver, an observed traffic violation, or a prior relationship with Glover to combine with his knowledge that the vehicle was registered to someone with a suspended license would likely have been individually sufficient to establish reasonable suspicion. In fact, if Deputy Mehrer had been able to point to any inferences he made that were grounded in his training or experience as a police officer, those most likely would also justify reasonable suspicion. He did not do so.

Generally speaking, adopting the bright line rule that the State proposes would be a mistake. The statistics on which the State relies to make its argument are misleading and incomplete. For example, the State uses the fact that the average vehicle has between two and three drivers to argue that there is at minimum a 33 percent chance the driver of a vehicle is its owner.<sup>121</sup> This argument fails for a few reasons. First, it assumes those with suspended or revoked licenses will continue to drive at the same rate as the average driver, which ignores the natural deterrent effect that comes with a driver getting their license taken away.<sup>122</sup> Second, reasonable suspicion is inherently “somewhat abstract.”<sup>123</sup> The State attempts to distill an ambiguous idea into a hard statistic, which is antithetical to the nature of the standard. Third, adoption of this rule would reward “poor police work.” If an officer

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120. Brief for Petitioner, *supra* note 40, at 15.

121. *Id.* at 13 (citing *The 10 States with the Most Suspended/Revoked Licenses*, INSURIFY (June 4, 2018), <https://insurify.com/insights/the-10-states-with-the-most-suspended-revokedlicenses/>).

122. See *Delaware v. Prouse*, 440 U.S. 648, 660 (1979) (noting that it is natural to think that “the unlicensed driver” would “be deterred by the possibility of being involved in a traffic violation or having some other experience calling for proof of his entitlement to drive”).

123. *United States v. Arvizu*, 534 U.S. 266, 274 (2002).

runs a license plate and discovers it is registered to someone with a revoked license, that officer immediately becomes disincentivized from learning any additional information since he already has what he needs to justify the stop.

Finally, the State's proposed rule would run afoul of the inherent balance between the State's interest in safety and the individual's interest in privacy. Every search and seizure decision requires "balancing the need to search [or seize] against the invasion which the search [or seizure] entails."<sup>124</sup> The State insists that these traffic stops are slight intrusions that are necessary to ensure public safety.<sup>125</sup> That is not the case. The State understates the amount of harm traffic stops cause. The Court has emphasized the "physical and psychological intrusion" these stops cause as well as the "substantial anxiety" they create.<sup>126</sup> Importantly, the cumulative of these stops cannot be ignored. Perfectly legal drivers would be subject to seizure every time they left the house purely because the transportation they rely on is registered to someone with a suspended license. This knowledge would surely compound the substantial anxiety a driver would experience every time they are pulled over or leave their residence.

The safety benefits from this substantial intrusion are slight at best. First, licenses can be suspended for offenses completely unrelated to driving. There is nothing to suggest drivers with suspended licenses are more dangerous than average drivers, and there is certainly no advancement in public safety from the infringement on these drivers' rights as well as the right of every person to drive vehicles registered to a member of this group. Second, inherent in the State's proposal is that the driver being pulled over would be following every traffic law. If the driver is breaking any traffic laws, officers can simply pull him or her over for that. Therefore, officers would be seizing those who, by definition, are the safest drivers on the road at the time they are being pulled over. This hardly seems to be the crucial advancement in public safety the State purports it to be.

## CONCLUSION

The Supreme Court should reaffirm the Fourth Amendment rights that citizens are guaranteed by the Constitution. To rule in favor of the

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124. *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (quoting *Camara v. Mun. Court*, 387 U.S. 523, 536–37 (1967)) (alterations in original).

125. Brief for Petitioner, *supra* note 40, at 21.

126. *Delaware*, 440 U.S. at 657.

State would be to diminish the reasonable suspicion standard into essential nothingness. It would defy common sense and precedent, and whatever marginal increase in public safety that would result would be more than counterbalanced by the social costs of an inevitable rise in traffic stops. The Court should uphold the Kansas Supreme Court's ruling and find in favor of the respondent.