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IN THE SUPREME COURT OF THE UNITED STATES

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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 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. We have
11 --

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 the contrary, we
22 believe that the stipulations are the facts.

23 JUSTICE GORSUCH: Well, the
24 stipulation, as I understand it, though, is the
25 officer said he assumed.

1 MR. CROUSE: Yeah. So --

2 JUSTICE GORSUCH: Yeah. We don't --
3 we don't have any "in my experience," nothing --
4 no -- nothing --

5 MR. CROUSE: So -- so there are two
6 aspects to that.

7 JUSTICE GORSUCH: -- other than an
8 assumption.

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

15 I think this Court's cases have
16 recognized -- I believe it was the Christian
17 Legal Society's motion --

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

24 MR. CROUSE: Yeah. And --

25 JUSTICE GORSUCH: Here, we don't have

1 any facts from the government, from the
2 officer --

3 MR. CROUSE: So --

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

10 MR. CROUSE: Well --

11 JUSTICE GORSUCH: Is that a thing?

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

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

25 JUSTICE SOTOMAYOR: I -- I admit --

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

2 JUSTICE SOTOMAYOR: I'm sorry.

3 JUSTICE GORSUCH: Please.

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

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

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

23 MR. CROUSE: So --

24 JUSTICE SOTOMAYOR: Or with the lack
25 of anybody with experience in the field. At

1 least there was one judge below who said: In my
2 experience, that presumption doesn't make sense.

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

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

16 But, rather, what we understand is
17 that reasonable suspicion is something of common
18 understanding and ordinary human experience that
19 whether or not the registered owner is a driver
20 is not something that we would look to the law
21 enforcement officer's history and expectations
22 about. Rather, those cases come up -- such as
23 Cortez, in which we would have an international
24 trafficking situation -- instead more like
25 Navarette, it's common understanding that

1 individuals will be driving under the influence
2 and have certain particular behavior. In
3 Wardlow, flight from the presence of law
4 enforcement officers would be something of
5 common, ordinary understanding.

6 JUSTICE SOTOMAYOR: But I think
7 Navarette had to do with the -- with the
8 reliability of the tips -- the tip --

9 MR. CROUSE: So --

10 JUSTICE SOTOMAYOR: -- and not with
11 questions -- I know that the majority and the
12 dissent in Navarette argued about what the
13 presumption should be. That's why it's so
14 dangerous --

15 MR. CROUSE: So --

16 JUSTICE SOTOMAYOR: -- for us to make
17 our own presumptions and not let the fact
18 finder.

19 MR. CROUSE: Well, but -- so a couple
20 of things. One is I think this Court has done
21 it in Navarette. There was a reliability issue.
22 But also with regard to whether or not it's
23 sufficient to justify an investigation as to
24 that particular crime.

25 Here, the crime is driving while under

1 the -- or driving while suspended. And
2 having --

3 JUSTICE GINSBURG: But the -- but the
4 cause for the suspension can be a number of
5 things that have nothing to do with safety on
6 the roads. It could be, I didn't pay my fine.
7 I didn't pay court costs.

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

10 MR. CROUSE: That's -- that's right,
11 Justice --

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

14 MR. CROUSE: So two things. One is
15 this Court's Fourth Amendment jurisprudence
16 doesn't look to the underlying crime as to
17 whether or not it's a socially appropriate or a
18 wise policy choice that would justify the
19 suspension. Rather, this officer has an
20 indication that Mr. Glover's license has been
21 suspended and is incapable of lawfully operating
22 a motor vehicle.

23 JUSTICE GINSBURG: But I'm asking
24 about the technology of it. Was there an easy
25 way to push a button to say also that the

1 registered owner's driver's license has been
2 suspended because?

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

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

20 CHIEF JUSTICE ROBERTS: Do I -- let me
21 make sure I understand. You -- you concede that
22 if the officer acquires additional information
23 in the course of the stop that suggests that his
24 suspicion that this is the driver with the
25 suspended license is not the driver in that

1 instance, you would not be -- the officer would
2 not be able to pursue the stop further?

3 MR. CROUSE: Yeah, I --

4 CHIEF JUSTICE ROBERTS: If, for
5 example, it's -- it's, you know, Mr. So-and-So
6 who's the registered owner and the woman -- it's
7 a woman in -- driving the car, he would -- that
8 would be the end of the matter, right? He would
9 not be able to pursue the stop further?

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

17 JUSTICE SOTOMAYOR: We have dealt with
18 that question on probable cause. We have dealt
19 with, if there is exculpatory material in the
20 presence of probable cause, that a police
21 officer is not required to take that into
22 consideration.

23 You're suggesting a different standard
24 for reasonable suspicion?

25 MR. CROUSE: So I'm not sure I'm

1 understanding you correctly. I think once --

2 JUSTICE SOTOMAYOR: Under probable
3 cause, if a defendant comes and gives you what
4 seems to be a very reasonable explanation for
5 why he did not commit this crime, we don't
6 obligate police officers to investigate that
7 reasonable explanation. We say, probable cause
8 exists, and the officer can arrest on probable
9 cause.

10 We're creating a different rule for
11 reasonable cause?

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

13 JUSTICE SOTOMAYOR: Under reasonable
14 cause, you're prepared to say the rule is
15 different. If you have reason to believe it's
16 not the driver, you shouldn't stop the car?

17 MR. CROUSE: I don't -- I don't
18 believe so. I believe our rule is the totality
19 of the circumstances. And as I understand the
20 Chief Justice --

21 JUSTICE SOTOMAYOR: But there's only
22 one totality.

23 MR. CROUSE: Well, so, in his
24 hypothetical, the situation was, if the officer
25 finds -- believes that they're searching for a

1 60-year-old man and is able to identify that the
2 driver is a 20-year-old female, then the
3 suspicion that initially attracted the officer
4 to that vehicle would be dispelled. That's just
5 an application of the totality --

6 JUSTICE GINSBURG: But -- but you --

7 MR. CROUSE: -- of the circumstances.

8 JUSTICE SOTOMAYOR: But --

9 JUSTICE GINSBURG: -- but you say
10 there is no necessity for the officer to make
11 that check.

12 MR. CROUSE: Right. So that's what
13 this Court's cases have historically recognized,
14 is once the existence of reasonable suspicion is
15 there, then there is no necessity to investigate
16 further, such as --

17 JUSTICE GINSBURG: And the only basis
18 for the reasonable suspicion is not a totality
19 of the circumstance, it's one circumstance, the
20 registered owner's driver's license has been
21 suspended, period. That's -- that's the only
22 factor.

23 What is the totality, in addition
24 to --

25 MR. CROUSE: So the totality depends

1 on the particular crime that the officer is
2 investigating. I -- I concede to -- to the
3 Court that the particular facts that the officer
4 knew in this situation are frequently going to
5 be determinative, but, rather, our rule permits
6 the recognition that there could be situations
7 that would come to the officer. For example,
8 if, again, it's a convertible and you're able to
9 see the person, that suspicion is going to be
10 dispelled.

11 But what -- once the officer in -- in
12 this situation has reasonable suspicion to
13 initiate the stop, they --

14 JUSTICE GINSBURG: But you say -- you
15 say it's -- it would be happenstance that the
16 officer was able to do this because the officer
17 doesn't have to make any effort at all.

18 Once he has -- once he knows that the
19 registered owner's driver's license has been
20 suspended, he doesn't have to do one more thing.
21 He can -- he can do a Terry stop.

22 MR. CROUSE: So he can initiate the
23 Terry stop to ask additional questions. If
24 in obtaining the license and registration or --
25 I'm sorry, the registration data behind the

1 vehicle, he's capable -- he or she is capable of
2 determining any characteristics of the driver,
3 that's one thing.

4 But, for example, if -- if the driver
5 was expected to be a 60-year-old man and the
6 officer was able to identify the driver and
7 thinks, well, maybe it's a 58-year-old man, it
8 may or may not be that individual, that
9 suspicion is not dispelled, the stop would occur
10 and the officer would approach the vehicle.

11 JUSTICE GORSUCH: Mr. Crouse, it seems
12 to me --

13 JUSTICE KAGAN: General, are you --

14 JUSTICE GORSUCH: I'm sorry.

15 JUSTICE KAGAN: Please.

16 JUSTICE GORSUCH: It seems to me that
17 a lot hinges on -- in your case on common sense
18 assumption that the drivers of vehicles
19 typically are the owners of the vehicle.

20 Would you agree with that?

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

22 JUSTICE GORSUCH: And -- and that
23 might be true in our contemporary contingent
24 historical reality, but the next generation, for
25 example, often rents cars. They don't -- they

1 don't buy cars. They don't own cars.

2 You're asking us to write a rule for
3 the Constitution that presumably has some
4 duration to it. Is this one with a short
5 expiration date?

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

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

24 What struck me in reading this case is
25 that you're asking for a very different approach

1 than we unanimously decided was proper in that
2 case.

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

8 And yet -- and yet unanimously we
9 said, you know, but, at that suppression
10 hearing, a person is entitled to say that's not
11 all the circumstances that exist. We know
12 something about the dog's history. We know
13 something about the dog's training. We know
14 something about some other circumstance.

15 And I think what you're asking us to
16 do is essentially to say that all of those
17 similar things in this context become irrelevant
18 because we just have, as Justice Ginsburg said,
19 this single circumstance, which is that a -- a
20 non-registered owner is driving the car.

21 MR. CROUSE: Yeah. So I actually
22 think --

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

24 MR. CROUSE: Yeah, yeah. I actually
25 think that's helpful because it depends upon

1 what the nature of the inquiry is. Here, it's
2 driving while suspended and the registered owner
3 and the connection to the driver is common.

4 With regard to a trained dog to sniff
5 out particular drugs, I think there the dog
6 actually alerted to a drug that it was not
7 trained to identify.

8 And so that does -- that's a more
9 nuanced characterization than whether or not an
10 individual is driving their vehicle because, for
11 example, in -- oh, by the way, Mr. Glover could
12 have cross-examined on a similar sort of
13 circumstance. Mr. Glover chose not to because
14 the parties agreed what the facts were and they
15 were tied to the particular crime of driving
16 while suspended.

17 CHIEF JUSTICE ROBERTS: Does it make a
18 difference -- Justice Kagan pointed out that
19 case was probable cause. This is reasonable
20 suspicion.

21 Does the level of inquiry or
22 examination vary depending upon whether it's
23 probable cause or reasonable suspicion?

24 MR. CROUSE: Obviously, both Fourth
25 Amendment, but the inquiry is much lower or the

1 burden is much lower for an officer to justify a
2 brief investigative decision --

3 JUSTICE KAGAN: The threshold is --

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

5 JUSTICE KAGAN: -- the threshold is
6 certainly lower.

7 MR. CROUSE: Yeah.

8 JUSTICE KAGAN: But why would it be
9 that we would, just because the threshold is
10 lower, essentially throw out the totality of the
11 circumstances analysis and simply say this one
12 fact is enough?

13 MR. CROUSE: So we are not asking you
14 to throw out the totality of the circumstance.
15 You have to look at the particular crime
16 that's -- that is implicated, whether it's in
17 Florida versus Harris or -- or Nellis versus, I
18 think, United States, those are relatively
19 complicated crimes.

20 I look at the Cortez case in which the
21 number of inferences and deductions in order to
22 identify Chevron as he -- he was scurrying
23 people across the border, those are some
24 significant inferences that depend upon an
25 educated understanding of the law enforcement

1 officer.

2 JUSTICE KAGAN: I guess I'm just not
3 seeing that. I mean, the question in the dog
4 alert case is, are there drugs in the car or are
5 there not drugs in the car? And it's like,
6 well, the dog alerted. That's an awfully good
7 reason to think there are drugs in the car. But
8 still we're going to go further and say that
9 there are other things that might be involved in
10 a particular case.

11 CHIEF JUSTICE ROBERTS: Yes, briefly.

12 MR. CROUSE: Thank you, Your Honor.

13 So I would say that the -- in this
14 situation, the database alerted that Mr. Glover
15 had a license that had been suspended and he
16 couldn't operate the vehicle.

17 We don't know why the dog alerted and
18 we had to have information as to the officer's
19 training and experience to answer that question.

20 CHIEF JUSTICE ROBERTS: Thank you,
21 counsel.

22 Mr. Huston.

23

24

25

1 ORAL ARGUMENT OF MICHAEL R. HUSTON
2 FOR THE UNITED STATES, AS AMICUS CURIAE,
3 SUPPORTING THE PETITIONER

4 MR. HUSTON: Mr. Chief Justice, and
5 may it please the Court:

6 The Fourth Amendment asks police
7 officers to be reasonable. It does not ask them
8 to set aside common sense when they step into
9 the patrol car.

10 The traffic stop at issue in this case
11 was constitutional because it was based on a
12 common-sense inference. It was reasonable for
13 the officer to think that Charles Glover might
14 be the person driving the truck registered in
15 his name.

16 That's an inference that police
17 officers use all the time in a range of law
18 enforcement situations as to --

19 JUSTICE GINSBURG: But let's --
20 let's -- I'm sorry. Please continue.

21 (Laughter.)

22 MR. HUSTON: That's an inference that
23 we commonly rely on in a range of law
24 enforcement situations and the prevalence of the
25 inference supports its reliability.

1 Moreover, this Court has repeatedly
2 explained that reasonable suspicion is a minimal
3 standard. It is significantly less than a
4 preponderance of the evidence. And less also
5 than probable cause.

6 The reason for that is that a traffic
7 stop is much less intrusive than a custodial
8 arrest, and the point of a traffic stop, just
9 like every Terry stop, is simply to conduct
10 further investigation.

11 Justice Ginsburg, can I pick up your
12 question?

13 (Laughter.)

14 JUSTICE GINSBURG: The -- you say it's
15 reasonable to infer that the owner is the
16 driver, but it's a little less reasonable, is it
17 not, when the owner's license has been
18 suspended?

19 MR. HUSTON: I -- I think, Your Honor,
20 it is maybe marginally less probable. That's
21 true. But, again --

22 JUSTICE GINSBURG: Because you're --
23 you're -- you're positing that most people who
24 have had their license suspended will break the
25 law?

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

8 JUSTICE KAGAN: But you just said, Mr.
9 -- Mr. Huston, marginally less. How do you know
10 that, that it's only marginally less as opposed
11 to significantly less?

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

19 We have other amici in this case that
20 have offered the Court some of the statistics,
21 about 7,000 fatalities involving unlicensed
22 drivers. It's not ultimately, at the end of the
23 day, a detailed statistical question, as the
24 Court has repeatedly explained in cases like
25 Wardlow. It turns on a common-sense judgment

1 that the officer made.

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

10 So what is it based on?

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

22 I don't think we would say that the
23 reasonableness of the stop in that case turned
24 on whether the officer came into court and said
25 here's how often in my particular experience

1 I've found that people who are swerving end up
2 being drunk.

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

9 The Court in *Navarette* did not think
10 that the permissibility of that traffic stop
11 turned on the particular testimony that the
12 officer had given. It said, instead, the Court
13 said that --

14 JUSTICE KAGAN: You see, I thought it
15 was the opposite, that we really do want
16 particularistic inquiries here, whether the
17 particularistic inquiry is related to the driver
18 or the officer, that we want some way of saying
19 there's reasonable suspicion in this case, not
20 in -- I mean, for example, would you just say --
21 suppose we just had a statistic that said, you
22 know, that -- you know, that 30 percent of
23 drivers are likely to do this.

24 Would you say that, you know, that
25 alone is enough, if it's just statistical? I'm

1 just trying to find out like, what's the basis?
2 Is the basis purely statistical? Is it
3 something about a particular driver's experience
4 and training? What is the basis?

5 MR. HUSTON: Your Honor is absolutely
6 right that the suspicion has to be particular
7 and objective. That's the Court's formulation.

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

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

22 JUSTICE KAVANAUGH: Why not?

23 MR. HUSTON: -- a reasonable --

24 JUSTICE SOTOMAYOR: But getting to the
25 particular person, doesn't that have to do with

1 geography? Meaning I suspect there are some
2 towns in the United States where people don't
3 break the law no matter what, that it would
4 be -- you know, if your license got suspended,
5 the police officer knows that in this
6 jurisdiction, that presumption is not a good
7 one. It doesn't work.

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

11 MR. HUSTON: Absolutely.

12 JUSTICE SOTOMAYOR: So you really are
13 asking us to have one presumption based on no
14 evidence --

15 MR. HUSTON: I respectfully --

16 JUSTICE SOTOMAYOR: -- other than a
17 stipulation that says that the driver of that
18 license -- of that vehicle or that vehicle
19 belongs to someone whose license has been
20 suspended.

21 MR. HUSTON: Your Honor, we're asking
22 the Court to hold that, as a general matter, as
23 a matter of common sense and ordinary human
24 experience, the owner of a driver is very often
25 the vehicle -- the drive -- excuse me, the owner

1 of the vehicle is very often the driver of that
2 vehicle, in the absence of information to the
3 contrary.

4 So, in a circumstance in which, based
5 on geography or other conditions of the area,
6 there's a different standard and a reasonable
7 officer would know --

8 JUSTICE KAVANAUGH: That is --

9 MR. HUSTON: -- that --

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

18 MR. HUSTON: My point to Justice Kagan
19 was a generalized observation about how many
20 people in the world commit a certain crime does
21 not provide a basis for --

22 JUSTICE KAGAN: Well, let me give you
23 a -- a hypothetical. Suppose that a
24 municipality has a law that says everybody has
25 to carry their driver's license with them at all

1 times. And suppose that a particular police
2 department actually did a kind of survey or, you
3 know, a -- a -- a study of their practices and
4 found that actually 50 percent of teenagers do
5 not carry their driver's license with them at
6 all times. All right?

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

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

17 JUSTICE KAVANAUGH: How --

18 MR. HUSTON: -- this needle out of a
19 haystack.

20 JUSTICE KAVANAUGH: -- how is that
21 different -- how is that different from this
22 case? Or, you know, you pull over a teenage
23 driver because you suspect they're texting and
24 there's statistics on that.

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

1 JUSTICE KAVANAUGH: So it's the same
2 hypothetical as Justice Kagan's, but then
3 distinguish that from this case.

4 MR. HUSTON: The difference, Your
5 Honor, is that you need a reason -- you need --
6 the officer needs something that identifies the
7 particularized suspicion that this driver is
8 committing a crime.

9 JUSTICE KAGAN: There is the
10 particularized suspicion: Look, she's a
11 teenager.

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

19 JUSTICE SOTOMAYOR: So why isn't the
20 requirement, as the Kansas court suggested, that
21 you have to corroborate -- and I take that word
22 very generally -- that you've just got to -- if
23 you can safely, because no one's asking police
24 officers to do things unsafely, okay -- but at
25 least drive by and see it's an older person,

1 make sure it's not a woman, do something besides
2 permitting one fact to drive a conclusion that's
3 no different than a generalized statistic?

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

11 But even in a circumstance where
12 everybody would say you could reasonably attempt
13 that sort of in-vehicle pull-aside-and-peek
14 maneuver, this Court has repeatedly --

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

21 MR. HUSTON: And if the officer does
22 that, Your Honor, if the -- if the officer gains
23 that type of information, that absolutely would
24 be part of the totality of the circumstances,
25 but I think this Court has explained, in

1 Sokolow, that where an officer develops
2 reasonable suspicion, a traffic stop is
3 authorized and the permissibility of the stop
4 does not depend on other less intrusive
5 investigatory techniques that the officer might
6 have pursued.

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

13 The point of the reasonable suspicion
14 standard is to be a minimal standard, because
15 the purpose of reasonable suspicion is simply to
16 conduct further investigation.

17 Thank you.

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.

20 Ms. Harrington.

21 ORAL ARGUMENT OF SARAH E. HARRINGTON

22 ON BEHALF OF THE RESPONDENT

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

25 Kansas and the United States asked

1 this Court to adopt a bright-line nationwide
2 rule that it is always reasonable to assume that
3 a car is being driven by its unlicensed owner.

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

15 But that's not true, and that's not
16 how the Fourth Amendment works.

17 Here, the only fact that would give
18 rise to suspicion of illegal activity is the
19 identity of the driver. And it was Kansas's
20 burden to establish that the officer had reason
21 to suspect that Mr. Glover was driving.

22 But the officer stipulated that,
23 actually, he had no idea who was driving. And
24 the officer decided not to come in and testify
25 at the suppression hearing to explain why he

1 would assume that an unlicensed driver would be
2 driving his car.

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

9 This Court has repeatedly declined to
10 adopt bright-line rules with respect to
11 reasonable suspicion or probable cause. And
12 nothing about this case -- excuse me -- or this
13 context would support departing from that
14 ordinary contextual type of analysis.

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

22 Here, Kansas didn't do that work, and
23 so this Court should affirm. I'm happy to take
24 any questions.

25 JUSTICE GORSUCH: Ms. Harrington --

1 MS. HARRINGTON: Yes.

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

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

17 MS. HARRINGTON: So thank you for that
18 question. I think it's certainly not a
19 formalism.

20 So the first thing I would say is the
21 question isn't whether an owner usually drives
22 his car but whether an owner who doesn't have a
23 valid license usually drives his car.

24 JUSTICE GORSUCH: Fine. Fine. I
25 amend my question and I pose it back to you.

1 (Laughter.)

2 MR. HARRINGTON: Okay. It's a very
3 important distinction, though.

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

7 MS. HARRINGTON: But -- but --

8 JUSTICE GORSUCH: Instead of the one I
9 proposed, it's the one you proposed.

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

14 JUSTICE GORSUCH: Really?

15 JUSTICE ALITO: What if the officer --
16 if the officer in this case had said, I was
17 trained that the -- that the driver of a car is
18 usually the owner, even when the driver has a
19 suspended license?

20 MS. HARRINGTON: So then there --

21 JUSTICE ALITO: Would that be enough?

22 MS. HARRINGTON: It might be, but
23 there would be opportunity for cross-examination
24 about what the training is.

25 JUSTICE ALITO: Well, there was an

1 opportunity here for -- for your client to put
2 in any evidence that he wanted and to subpoena
3 any witnesses he wanted. Was there not?

4 MS. HARRINGTON: Certainly, Justice
5 Alito, but it was Kansas's burden to make the
6 evidentiary showing. Kansas decided to
7 stipulate, if you look at the hearing transcript
8 on pages --

9 JUSTICE ALITO: Yeah, but that's not
10 responsive to my question. If that was -- if
11 that was done, if that's all you're asking for,
12 would that be enough? The officer says, this is
13 how I was trained.

14 MS. HARRINGTON: No. I think you
15 would need -- you'd need an opportunity for
16 cross-examination. You know, I think it's
17 important --

18 JUSTICE ALITO: And was there an
19 opportunity for cross-examination here?

20 MS. HARRINGTON: There -- but there
21 wasn't that -- if the officer had made that
22 showing, had made that -- that factual
23 assertion, then my client probably would have
24 wanted to cross-examine, but they didn't even do
25 that. They didn't rely on any officer

1 experience.

2 JUSTICE GORSUCH: But if you could
3 return --

4 MS. HARRINGTON: It's not the
5 defendant's job to --

6 JUSTICE ALITO: Do you think --

7 JUSTICE GORSUCH: -- to my question
8 very briefly.

9 MS. HARRINGTON: Yes.

10 JUSTICE GORSUCH: Because I think it's
11 antecedent to Justice Alito's. If an officer
12 comes in and says these magic words, whatever
13 they are, right, and that's the sum total of
14 evidence in the case, in my experience, in my
15 training, whatever, is that good enough to
16 satisfy the Constitution in your view?

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

19 JUSTICE GORSUCH: Okay. All right.

20 MS. HARRINGTON: That could -- that
21 could be said in every single reasonable
22 suspicion -- reasonable suspicion case, right?
23 There's always something the officer can come in
24 and say.

25 But what the -- the point of the

1 suppression hearing is that you want to hear
2 what the actual -- what the officer actually is
3 going to say. And I think it is certainly
4 common sense to think that the rate at which
5 suspended drivers continue to drive is going to
6 vary from type of community to type of
7 community.

8 JUSTICE ALITO: Well, let me try this
9 again.

10 JUSTICE GORSUCH: And could you have
11 asked the officer in this case just to finish
12 your --

13 JUSTICE ALITO: Sure.

14 JUSTICE GORSUCH: -- your line of
15 questioning, it's mine too.

16 JUSTICE ALITO: Yeah. Yeah.

17 JUSTICE GORSUCH: Could -- could the
18 defendant in this case -- did he have the
19 opportunity to ask those questions of the
20 officer?

21 MS. HARRINGTON: Yes. And I think if
22 the -- if the state had chosen to rely on the
23 officer's experience, then certainly we would
24 have asked questions about that. But the state
25 chose not to rely on the officer's experience.

1 And that's up to the state.

2 If the state chooses to truncate its
3 evidentiary showing, it's not up to the
4 defendant to say, well, actually, maybe you
5 should have put in evidence about this or that
6 or the other thing, right? That's on the state.
7 And it really is not a -- it's not a huge burden
8 that the state has to do.

9 CHIEF JUSTICE ROBERTS: Ms.
10 Harrington, do you -- do you think it's totally
11 random who the driver is? In other words, it's
12 registered to Fred Jones, but it could be
13 anybody in the world?

14 MS. HARRINGTON: No.

15 CHIEF JUSTICE ROBERTS: Okay. Do you
16 think it's -- the odds that it's Fred Jones are
17 5 percent? In other words, there could be --
18 out of 100 people, there could be 95 people that
19 you don't know driving the car registered to
20 Fred Jones, but there's a 5 percent chance that
21 it's him?

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

24 CHIEF JUSTICE ROBERTS: No, I'm asking
25 you if you think that, whether it's reasonable

1 suspicion or not, do you think it is at least a
2 5 percent chance that it's Fred Jones?

3 MS. HARRINGTON: That the owner is
4 driving?

5 CHIEF JUSTICE ROBERTS: That the owner
6 of the car is driving the car.

7 MS. HARRINGTON: On a suspended
8 license or just in general?

9 CHIEF JUSTICE ROBERTS: Just in
10 general.

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

12 CHIEF JUSTICE ROBERTS: Okay. And
13 where are you going to stop? Surely one out of
14 ten, it's Fred Jones's car. It's being driven.
15 And when the officer goes up, he sees that it's
16 -- it's -- it's whatever Fred Jones is, a
17 middle-aged man and not a teenage girl. Is --
18 is it still like -- is it maybe one out of ten
19 chances?

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

22 CHIEF JUSTICE ROBERTS: You really
23 don't know? You don't think it's one out of
24 ten?

25 MS. HARRINGTON: I think it is

1 probably one out of ten that an owner with a
2 valid license is driving his car.

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

5 MS. HARRINGTON: Right.

6 CHIEF JUSTICE ROBERTS: It's somewhat
7 less than 50 percent.

8 MS. HARRINGTON: Yes.

9 CHIEF JUSTICE ROBERTS: And even you
10 are willing to agree that it's at least
11 10 percent.

12 MS. HARRINGTON: Yes.

13 CHIEF JUSTICE ROBERTS: Well, what --
14 what reasonable suspicion cutoff do you think?
15 Do you think it's one out of five?

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

18 CHIEF JUSTICE ROBERTS: No, but you --

19 MS. HARRINGTON: -- none of us can
20 say, right?

21 CHIEF JUSTICE ROBERTS: No, the point
22 is most of us can say. And the reason is
23 because reasonable suspicion does not have to be
24 based on statistics, it does not have to be
25 based on specialized experience. As we've said

1 often, it can be based on common sense.

2 And I'm sure that the number varies.
3 I'm sure if you're in a neighborhood that --
4 that has a lot of, you know, kids who will drive
5 their parents' car, that's fine. And if it's an
6 area where you don't, that's fine.

7 But reasonable suspicion doesn't
8 depend upon the kind of showing that you seem to
9 demand, whether it's a statistical study or
10 special experience.

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

17 CHIEF JUSTICE ROBERTS: They don't --
18 I was just going to say if they're relying on
19 common sense, they don't have to give you
20 anything more than common sense.

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

23 JUSTICE ALITO: All we're saying --

24 CHIEF JUSTICE ROBERTS: I already got
25 you to 10 percent.

1 MS. HARRINGTON: But that's in people
2 -- that's about owners who have valid licenses.
3 I think it's -- I think it is not at all common
4 sense. It's the opposite of common sense to
5 think that someone having a suspended or revoked
6 license is going to have no effect at all on
7 whether they drive.

8 CHIEF JUSTICE ROBERTS: I think the --
9 the inference cuts the other way. We know
10 somebody's already broken the law in some sense;
11 he's got a suspended license.

12 MS. HARRINGTON: Well, we --

13 CHIEF JUSTICE ROBERTS: I think it's
14 probably more likely than not that he would
15 break the law saying you can't drive with a
16 suspended license.

17 MS. HARRINGTON: So, first, you know,
18 the facts on the ground suggest that we don't
19 know that, because, in many states, it's -- it's
20 the inability to pay fines that results in a
21 suspended license, not criminal activities.

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

25 CHIEF JUSTICE ROBERTS: But this isn't

1 -- this is collateral to your basic proposition.
2 Your basic proposition is that it doesn't rise
3 to the level of reasonable suspicion to think
4 that a car registered in Fred Jones' name is
5 being driven by Fred Jones.

6 That's different than the collateral
7 point about whether he's more or less likely
8 because the license is suspended.

9 MS. HARRINGTON: No, that's not true.
10 Our -- our basic proposition is it's not a
11 reasonable inference when Fred Jones does not
12 have a valid license, right? And it's not
13 reasonable to think that the -- that the
14 statistics or the rate of driving on a suspended
15 license are going to be the same in every
16 community in the country.

17 If someone lives in Manhattan or
18 Chicago or downtown D.C. and has a suspended
19 license, I think it's significantly less likely
20 that they're going to drive on a suspended
21 license because they have access to public
22 transportation and Uber and all these things to
23 get to the places they needed to go, compared to
24 someone who lives in, say, rural North Dakota or
25 some other place where there isn't public

1 transportation.

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

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

14 An officer could say the information
15 that came up on the computer was that this
16 person had previously been caught driving on a
17 suspended license. That's what --

18 JUSTICE BREYER: Can I go back for a
19 second --

20 MS. HARRINGTON: And there's others.

21 JUSTICE BREYER: -- to the Chief
22 Justice's question --

23 JUSTICE KAVANAUGH: Finish.

24 JUSTICE BREYER: -- because I had
25 exactly the same reaction, and I'd like to

1 finish with that or just a step further.

2 Look, I go outside. We go outside.
3 There's a car driving. We happen to know the
4 license plate, and the license plate tells us
5 that Charles Smith owns the car. We see a
6 friend. He says: I reasonably suspect that
7 it's Charles Jones driving that car.

8 Would you say the friend is wrong to
9 reasonably suspect that Charles is driving the
10 car?

11 MS. HARRINGTON: No, unless you have
12 some reason --

13 JUSTICE BREYER: The answer is no.

14 MS. HARRINGTON: Unless it's legal.

15 JUSTICE BREYER: Now we add another
16 fact. I would like to tell you a fact on my
17 side this time. The State told you the other
18 fact. I'm telling you this one.

19 His license was suspended. Now he
20 says, you know, that's a good point, but I still
21 reasonably suspect he's driving. Now, would you
22 say that now that person is wrong? Yes, you
23 would.

24 MS. HARRINGTON: Well, but --

25 JUSTICE BREYER: But you're asking me

1 to say --

2 MS. HARRINGTON: I would have
3 questions for that person.

4 JUSTICE BREYER: -- that that person
5 is -- a question, but the question you're asking
6 me to say that that person who still suspects
7 that Charles is driving is unreasonable. That's
8 pretty tough for me to say. It's pretty tough
9 for me to say that that person's wrong,
10 unreasonable, when he still suspects it.

11 Now, there we are. And I can't get
12 any further in this case. Now, it may be that
13 you have found some precedent that shows that
14 this initial reaction, which I'm showing you, is
15 totally wrong. And I'd like to know what it is
16 because I'll go read it.

17 MS. HARRINGTON: Well, I'll point to
18 basically all of this Court's Fourth Amendment
19 cases, which say you have to look at the
20 totality of circumstances.

21 JUSTICE BREYER: We just did.

22 MS. HARRINGTON: And you can't just --
23 no, you can't just assume illegal activity based
24 on one --

25 JUSTICE BREYER: I'm not assuming --

1 MS. HARRINGTON: -- isolated fact.

2 JUSTICE BREYER: -- illegal activity.

3 MS. HARRINGTON: You are if you --

4 JUSTICE BREYER: It happens to be --

5 MS. HARRINGTON: -- think that he has
6 a suspended license --

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

10 MS. HARRINGTON: Right. So I would
11 point --

12 JUSTICE BREYER: It's different from
13 the teenage case.

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

17 JUSTICE BREYER: What -- say it again.

18 MS. HARRINGTON: United States versus
19 Brignoni-Ponce. I won't try to spell it here,
20 but it's in the briefs. And Brown versus Texas.
21 Those are two cases where this Court has said
22 you can't do, basically, what you're saying.

23 In Brown versus Texas, there was
24 someone in an alley walking away from another
25 person in a high-crime area, and the officer

1 stopped him and, and -- you know, in -- did a
2 Terry stop, basically. And the Court said it's
3 not enough that he was present in a high-crime
4 area where the probability that he was doing
5 something illegal was higher than if he had been
6 somewhere else.

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

10 JUSTICE GINSBURG: So what is the --

11 MS. HARRINGTON: -- the presence there
12 --

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

17 MS. HARRINGTON: Right. So maybe you
18 know something more about the driver's history.
19 It could come up that, you know, the --
20 Mr. Glover was charged in this case with being a
21 habitual offender. One way to be a habitual
22 offender is to have been convicted three times
23 of driving on a suspended license.

24 JUSTICE GINSBURG: I -- but --

25 MS. HARRINGTON: If that's something

1 the officer knew --

2 JUSTICE GINSBURG: I -- I asked -- I
3 think I asked the question whether there's an
4 easy way to find out what was the reason for the
5 suspension. And the -- the answer to that
6 question was no.

7 MS. HARRINGTON: For Kansas. For this
8 county at least. But at -- that's probably
9 going to vary from community to community. I'm
10 sorry to interrupt you.

11 JUSTICE GINSBURG: Well, tell me how
12 you think the police can safely verify that
13 the -- their suspicion that the owner is the
14 driver is accurate?

15 MS. HARRINGTON: So as I said, you can
16 do things short of verifying it, right? You can
17 rely on your experience. If this hit comes up
18 and nine times out of ten it's always the
19 suspended owner who's driving, if you know
20 something specific, that this person has
21 previously been caught driving on a suspended
22 license.

23 But also, you know, this stop happened
24 in a sort of -- in an area where there were
25 multiple lanes of traffic in every direction.

1 There was a stoplight at the corner. It would
2 not have been dangerous or difficult for the
3 officer to pull alongside the car and take a --
4 take a -- take a glance and see is this an --

5 CHIEF JUSTICE ROBERTS: Do you have --

6 MS. HARRINGTON: -- African-American
7 man.

8 CHIEF JUSTICE ROBERTS: -- statistics
9 to support that proposition?

10 MS. HARRINGTON: I don't.

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

14 MS. HARRINGTON: I do not, no, Justice
15 -- Mr. Chief Justice. But that is certainly
16 part of what officers do. You know, they
17 examine the circumstances and factual
18 surroundings. I have noticed, since taking on
19 this case driving around, how easy is it or
20 difficult is it to see the -- the face of a
21 driver in front of me, just by looking in the
22 mirror -- side-view mirror or the rear-view
23 mirror, and there are certainly circumstances
24 where you can do it and it's not difficult.

25 JUSTICE ALITO: Let's say then --

1 JUSTICE GINSBURG: If he peers into
2 the window and his glass is -- is tinted and he
3 can't see, so you -- you're saying if -- if he
4 -- he has to -- in that case he can't make the
5 stop; he lets -- he has to let the -- the driver
6 go on?

7 MS. HARRINGTON: Unless he can rely on
8 one of the several things I've mentioned, like
9 his experience with these types of --

10 JUSTICE GINSBURG: I -- I had
11 mentioned one of the problems with experience,
12 that you're making a distinction between the
13 rookie cop who doesn't have any experience and
14 the veteran.

15 MS. HARRINGTON: But that's going to
16 be true in every Fourth Amendment context,
17 right, where you're -- where you're relying on
18 officers' experience. If they have no
19 experience, it's going to be harder for them to
20 justify their reasonable suspicion.

21 JUSTICE GINSBURG: What about the
22 manual that says stay behind the car that you
23 suspect?

24 MS. HARRINGTON: So if such a manual
25 exists -- and it's not in the record -- you

1 know, then -- then you would need to rely on one
2 of the other methods of establishing reasonable
3 suspicion. One thing officers often testify
4 about is how the person that they're suspecting
5 reacted to the officer's presence. And so if
6 suddenly the car slowed down in a way that
7 seemed suspicious or took a sudden turn, that
8 could be a factor in -- you know, a tile in the
9 mosaic of circumstances that would be relevant.

10 JUSTICE KAVANAUGH: You -- you want
11 the officer, therefore, to follow the driver,
12 and your brief suggests this, until they make a
13 lane change or until they go too quickly on the
14 right turn on red or don't come to a full stop.
15 What sense does that rule make?

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

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

20 MS. HARRINGTON: Yeah.

21 JUSTICE KAVANAUGH: -- I'm trying to
22 figure out what -- what purpose that would
23 serve. Just, okay, instead of stopping right
24 away, I'm going to -- I'm going to follow you
25 until you go 31 in the 30, and then I'm going to

1 immediately pull you over.

2 MS. HARRINGTON: Well, you would
3 follow him until you had probable cause of some
4 traffic violation. And this Court said in
5 Delaware versus Prouse that that is the way that
6 these laws about licensing and registration are
7 generally enforced.

8 JUSTICE KAGAN: But if I --

9 JUSTICE ALITO: Let's say an officer
10 --

11 JUSTICE KAGAN: -- understand you
12 correctly, Ms. Harrington, you don't really
13 require that anybody be followed until they do
14 something wrong, and you don't really require
15 that a police officer goes and checks out who's
16 sitting in the front seat.

17 A police officer could do neither of
18 those things.

19 MS. HARRINGTON: Right.

20 JUSTICE KAGAN: As long as the police
21 officer shows up to the suppression hearing and
22 says "I based this on my training and my
23 experience" and subjects himself to some form of
24 cross-examination.

25 MS. HARRINGTON: Just like the usual

1 way, right.

2 CHIEF JUSTICE ROBERTS: How -- how
3 much --

4 JUSTICE KAGAN: That would be enough
5 --

6 MS. HARRINGTON: We talked about
7 before --

8 JUSTICE KAGAN: -- wouldn't it?

9 CHIEF JUSTICE ROBERTS: -- experience
10 -- how much experience does he have to have?
11 How many times does he have to stop a car
12 because he thinks -- well, I guess he can do it
13 -- how does he get experience if he can't do it
14 the first time?

15 MS. HARRINGTON: Well, he -- I mean,
16 if he has some other basis to do it or, you
17 know, he's -- he's driving with someone. I
18 don't know. I --

19 JUSTICE KAGAN: I mean, it's just like
20 the dog, right?

21 MS. HARRINGTON: Right.

22 JUSTICE KAGAN: It's like, you know,
23 somebody certifies me, somebody trains me, I've
24 seen this done by my partner, I've heard about
25 it being done by other people in my department.

1 It's just you subject yourself to something,
2 which is the point of suppression hearings,
3 isn't it?

4 MS. HARRINGTON: Right. I mean, this
5 Court's held in Ornelas versus United States
6 that courts should defer to the reasonable
7 community-based experience not only of law
8 enforcement officers but also of trial judges.
9 Here, we did not --

10 CHIEF JUSTICE ROBERTS: That was a
11 probable cause case, right? Probable cause,
12 although still less than 50 percent --

13 MS. HARRINGTON: Yes.

14 CHIEF JUSTICE ROBERTS: -- is
15 significantly more than reasonable suspicion.

16 MS. HARRINGTON: That's absolutely --

17 CHIEF JUSTICE ROBERTS: So it --

18 MS. HARRINGTON: -- true.

19 CHIEF JUSTICE ROBERTS: -- may be the
20 case that you don't need a -- the same level of
21 training and experience and background to make
22 the -- make the assumption that you've already
23 said is at least 10 percent.

24 MS. HARRINGTON: You may need less,
25 but you -- but the type of analysis you would go

1 through to determine if there is reasonable
2 suspicion, there's no reason that it would be
3 different than in a probable cause case.

4 JUSTICE ALITO: Let's say --

5 MS. HARRINGTON: But in --

6 JUSTICE ALITO: -- a police officer
7 pulls up behind a car after having -- is behind
8 the car after having obtained information that
9 the registered owner of the car has a suspended
10 license.

11 What are all of the considerations
12 that you think the officer has to take into
13 account before initiating a stop? Checking --
14 trying to check with headquarters as to the
15 basis for the license suspension? Whether it's
16 an urban area or a rural area or someplace in
17 between? Whether it's a highway or a city
18 street? Whether it's raining? Whether it's
19 dark? Maybe whether it's a law-abiding
20 community where people who have suspended
21 licenses never drive?

22 He -- the officer has to take into
23 account all of those factors before initiating a
24 stop?

25 MS. HARRINGTON: Not necessarily. He

1 just has to take into account the full, sort of
2 factual context and -- making a judgment about
3 whether he has reason to suspect the owner is,
4 in fact, driving the car. And --

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

14 MS. HARRINGTON: Just like in any
15 Fourth Amendment case, Justice Alito, that you'd
16 have to look at the full factual context. And
17 here we did not hear from the local law
18 enforcement officer at the suppression hearing.
19 We did hear from the local trial judge, and she
20 said, in her experience, based on her life in
21 the community of Lawrence, Kansas, this was not
22 a reasonable assumption. And Ornelas said you
23 should defer to that just as much as you should
24 defer to the officer's experience.

25 JUSTICE ALITO: Is it -- is it your

1 argument that reasonable suspicion can never be
2 based on a single fact, on just one fact? There
3 always has to be more than one fact?

4 MS. HARRINGTON: Not necessarily. It
5 depends on what the fact is. If a fact is
6 inherently suspicious, if you -- if you see
7 someone running out of a bank with an alarm
8 going off wearing a ski mask, that's probably
9 enough to raise reasonable suspicion.

10 JUSTICE KAVANAUGH: How about -- how
11 about a swerving car?

12 MS. HARRINGTON: So a swerving car, it
13 would depend on the -- on the situation. In
14 Navarette, it wasn't just the -- the car was
15 swerving --

16 JUSTICE KAVANAUGH: So sometimes yes?

17 MS. HARRINGTON: Sometimes yes. So in
18 Navarette, the car was -- had run another car
19 off the road. And this car -- this -- this
20 Court did cite studies about sort of the
21 observable behavior of people who were driving
22 --

23 JUSTICE KAVANAUGH: Then on the
24 question Justice Kagan followed up with you on,
25 saying that you weren't really arguing that the

1 officer had to do more to follow the driver, on
2 page 35 and 36 of your brief you specifically
3 say that.

4 MS. HARRINGTON: We say the officer
5 can do that. That's one of the things officers
6 can -- we're not trying to say -- so we're not
7 asking for a bright-line rule --

8 JUSTICE KAVANAUGH: You -- you --

9 MS. HARRINGTON: -- in our direction
10 here.

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

16 MS. HARRINGTON: Which is what this
17 Court said in Delaware versus Prouse. That's
18 the ordinary way of enforcing these types of
19 laws, but I think --

20 JUSTICE KAVANAUGH: However, Delaware,
21 that case did not involve someone with a
22 suspended license.

23 MS. HARRINGTON: They were looking for
24 people who had -- who were unlicensed. And
25 that's --

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

5 MS. HARRINGTON: It didn't, no. My
6 point is --

7 JUSTICE KAVANAUGH: That was the whole
8 point. In fact, the last paragraph or page of
9 the opinion specifically distinguishes that
10 situation.

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

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

23 JUSTICE KAVANAUGH: I'm just trying to
24 figure out why -- what sense that makes. And I
25 don't want to dwell too long on this but you

1 made a point of it in the brief of, yeah, the
2 officer should just follow them around until
3 they do something wrong on the traffic laws.

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

8 MS. HARRINGTON: I think --

9 JUSTICE KAVANAUGH: -- it would have
10 been fine because he --

11 MS. HARRINGTON: -- sorry.

12 JUSTICE KAVANAUGH: -- swerved or hit,
13 just barely exceeded the speed limit?

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

21 JUSTICE KAVANAUGH: You're encouraging
22 pretextual stops.

23 MS. HARRINGTON: No, it's not
24 pretextual if they see something that raises
25 probable cause for some other violation. This

1 Court has said that's fine. It doesn't matter
2 what the subjective motivation was. If they see
3 something that objectively creates probable
4 cause to make a traffic stop, they can do that.

5 JUSTICE GINSBURG: And you
6 mentioned -- you mentioned peering into the
7 window, that that's something that could be
8 done.

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

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

17 JUSTICE GINSBURG: But it does seem --
18 I think the word formal was used, after this
19 case, suppose you're right. And that every case
20 what happens is that the police officer goes to
21 the hearing, testifies either, my manual said
22 stay behind the car or, in my experience when I
23 have done stops, it's the registered owner who's
24 the driver. That would be -- that -- that's
25 okay.

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

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

7 CHIEF JUSTICE ROBERTS: Well, he
8 doesn't --

9 JUSTICE GORSUCH: -- the case -- I'm
10 sorry, Chief.

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

16 MS. HARRINGTON: Maybe. I mean --

17 CHIEF JUSTICE ROBERTS: In my
18 experience, I have done ten of these and twice
19 it was the driver.

20 MS. HARRINGTON: That might be enough.

21 CHIEF JUSTICE ROBERTS: And that --
22 that strikes me as the right number for
23 reasonable suspicion.

24 MS. HARRINGTON: It might be enough.
25 This Court has never put a number on it. It has

1 said a number of times it can't put a number on
2 it and so I can't put a number on it. But that
3 might be enough. It might not be enough, you
4 know.

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

11 MS. HARRINGTON: Unlicensed owner of
12 --

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

18 MS. HARRINGTON: Right.

19 JUSTICE GORSUCH: I assume this is the
20 driver, okay?

21 MS. HARRINGTON: This is Kansas,
22 not New York.

23 JUSTICE GORSUCH: This is the owner.

24 (Laughter.)

25 JUSTICE GORSUCH: Touche.

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

11 MS. HARRINGTON: I'm sure.

12 JUSTICE GORSUCH: Or whatever.

13 Why -- why shouldn't we read this as
14 effectively exactly what you say would be
15 sufficient?

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

19 JUSTICE GORSUCH: I understand
20 literally, Counsel --

21 MS. HARRINGTON: -- the owner was the
22 driver.

23 JUSTICE GORSUCH: -- it says -- it's a
24 different formulation of words, but why isn't it
25 functionally? Why isn't it practically? Why

1 isn't it really exactly what we're talking
2 about?

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

7 JUSTICE GORSUCH: So it's all --

8 MS. HARRINGTON: That's not --

9 JUSTICE GORSUCH: -- magic words.

10 MS. HARRINGTON: The relevant
11 question.

12 JUSTICE GORSUCH: It's just --

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

17 JUSTICE SOTOMAYOR: Ms. Harrington --

18 MS. HARRINGTON: -- has to do the
19 work.

20 JUSTICE SOTOMAYOR: -- I read the
21 lower court, the supreme court, Kansas Supreme
22 Court's words literally. It said, when a court
23 draws inferences in favor of the state based on
24 a lack of evidence in the record, it
25 impermissibly relieves the state of its burden.

1 MS. HARRINGTON: Right.

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

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

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

20 You have to come in and explain the
21 basis for your suspicion. My friend,
22 Mr. Crouse, talked about Terry, but Terry did
23 not adopt a bright line rule that anytime
24 someone walks past a store window three times,
25 you automatically have reasonable suspicion.

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

9 Maybe in his experience it is
10 extremely reliable also would be relevant to
11 know. You just need something more.

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

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

25 And so our point in our brief in

1 discussing the statistics is at least you have
2 to rely on good statistics, right?

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

8 MS. HARRINGTON: It --

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

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

19 MS. HARRINGTON: Because it --

20 JUSTICE BREYER: -- and ask him about
21 them?

22 MS. HARRINGTON: Because it's --

23 JUSTICE BREYER: And if you want to
24 say no, that's unreasonable given my fact, given
25 my fact, you probably didn't say that because

1 actually the statistics show 75 percent, you
2 know, 60 percent, but not here, dah-dah-dah.
3 Okay, we're into that.

4 MS. HARRINGTON: So --

5 JUSTICE BREYER: But what is it --
6 what is it that you think is that extra thing in
7 the facts here that should have been in?

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

11 JUSTICE BREYER: I didn't say that. I
12 said, what is it? I am not talking about what
13 he might have done.

14 MS. HARRINGTON: Yeah.

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

18 MS. HARRINGTON: So the -- the
19 drive -- the behavior of the driver could have
20 been relevant. It could have been relevant
21 whether Mr. --

22 JUSTICE BREYER: No, I'm not asking
23 could have been.

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

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

2 MS. HARRINGTON: It is for the
3 plaintiffs to --

4 JUSTICE BREYER: -- your point is --

5 MS. HARRINGTON: -- put forward the
6 evidence.

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

11 JUSTICE KAGAN: Well, how about --

12 JUSTICE BREYER: -- you say they
13 shouldn't just do --

14 JUSTICE KAGAN: How about his
15 experience and training?

16 MS. HARRINGTON: Yeah. I mean, he
17 could have testified about his experience and
18 training. Maybe in his experience, you know,
19 nine times out of ten or 99 times out of 100
20 when you pull someone over in this circumstance,
21 it's not the unlicensed owner who's driving the
22 car. We just don't know, right? All right.
23 They need to come in -- under the rule Kansas
24 wants, any time someone borrows a car that's
25 registered to an unlicensed owner, there's

1 literally nothing she could do to avoid being
2 ceased, right? If you adopt this bright line
3 rule, there's nothing she could do to avoid
4 being ceased. That has to be evidence, strong
5 evidence that the rule is overly broad.

6 JUSTICE ALITO: What you are proposing
7 is either a trivial decision or a revolutionary
8 decision. It's a trivial decision if all who's
9 lacking here is a statement, I've been trained
10 that, blah, blah, blah.

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

16 Is that not right?

17 MS. HARRINGTON: May I answer?

18 CHIEF JUSTICE ROBERTS: Sure.

19 MS. HARRINGTON: Justice Alito, what
20 we're asking for is that the ordinary Fourth
21 Amendment contextual analysis be required in
22 every case. It doesn't require statistics in
23 every case. It doesn't require any magic words.
24 It just requires something to support the
25 reasonableness of an assumption.

1 Thank you.

2 CHIEF JUSTICE ROBERTS: Thank you,
3 counsel. Three minutes, General Crouse.

4 REBUTTAL ARGUMENT OF TOBY CROUSE
5 ON BEHALF OF THE PETITIONER

6 MR. CROUSE: Thank you, Mr. Chief
7 Justice and I'd like to first start with regard
8 to the officer's training and experience and the
9 lack of testimony.

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

16 JUSTICE SOTOMAYOR: But wait a minute.
17 Whose burden is it? Isn't it yours? You have
18 to prove the facts.

19 MR. CROUSE: We have proved the
20 stipulated facts.

21 JUSTICE SOTOMAYOR: Well, you proved
22 --

23 MR. CROUSE: They didn't challenge
24 those facts.

25 JUSTICE SOTOMAYOR: -- that fact but

1 they don't have to if you don't prove enough.

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

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

8 So if what they're saying is making an
9 assumption without telling us what the basis of
10 that assumption is, is not enough.

11 MR. CROUSE: So the point is they
12 stipulated to the facts that were relevant to
13 the determination, and the Kansas Supreme Court
14 made a determination as to those facts.

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

21 Second, with regard to waiting for a
22 violation, as Justice Kavanaugh talked about, we
23 think that's a perfectly reasonable situation,
24 if we're going to eliminate reasonable
25 suspicion.

1 Rather, if there's a traffic
2 violation, that's probable cause for a stop and
3 that's not a basis. This Court's decision has
4 indicated that you don't have to wait for a
5 probable cause in order to initiate a stop.

6 And so I think your question was right
7 on.

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

13 Fourth, we also believe that --

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

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

20 JUSTICE GINSBURG: So it was a joint
21 stipulation?

22 MR. CROUSE: The parties stipulated,
23 yes, Your Honor.

24 The fourth point I would like to make
25 is that the Fourth Amendment does not and should

1 not apply differently based upon the age and
2 experience of the officer or the time of day of
3 the Fourth Amendment.

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

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

14 For example, if there's a report of a
15 -- a child that had been --

16 CHIEF JUSTICE ROBERTS: You can finish
17 your thought.

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

22 Thank you, Your Honor.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel. The case is submitted.

25 (Whereupon, at 12:09 p.m., the case

1 was submitted.)
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