

Unreasonable Suspicion: Kansas’s Adoption of the Owner-as-Driver Rule [State v. Glover, 400 P.3d 182 (Kan. Ct. App. 2017), rev. granted Oct. 27, 2017]

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Summary: The Kansas Court of Appeals adopted a bright-line rule that reasonable suspicion exists for a traffic stop when the vehicle’s registered owner has a suspended license and the officer is unaware of evidence that the owner is not the driver. This rule fails to meet the reasonableness requirement of the Fourth Amendment of the United States Constitution.

I. INTRODUCTION

To protect individuals’ privacy, the Fourth Amendment of the United States Constitution imposes a reasonableness standard on the actions of governmental officials.¹ A court may determine reasonableness by weighing the government’s interest against an individual’s privacy interest or by determining whether reasonable suspicion that criminal activity is afoot existed under the totality of the circumstances.² In *State v. Glover*,³ the Kansas Court of Appeals adopted a bright-line rule that reasonable suspicion exists for a law enforcement officer to stop a vehicle when the registered owner has a suspended license and the officer is unaware of evidence that the owner is not the driver.⁴ This rule, however, is incorrect as it does not meet the reasonableness requirement of the Fourth Amendment.

II. BACKGROUND

A. Case Description

While on patrol on April 28, 2016, a Douglas County Sherriff’s Deputy observed a 1995 Chevrolet 1500 pickup truck driving on a public roadway.⁵ The Deputy ran the truck’s license plate number through the Kansas Department of Revenue’s file service.⁶ The report showed the truck’s registered owner was Charles Glover and Glover’s Kansas driver’s license was revoked.⁷ Based on this information, the Deputy initiated a traffic stop without attempting to identify the driver and despite not observing any infractions.⁸ After initiating the stop, the Deputy identified Glover as the driver.⁹ Glover

1. U.S. CONST. amend. IV.
2. See *Terry v. Ohio*, 392 U.S. 1, 21 (1968).
3. 400 P.3d 182 (Kan. Ct. App. 2017), rev. granted Oct. 27, 2017.
4. *Id.* at 188.
5. *Id.* at 184.
6. *Id.* Drivers do not have a privacy interest in their license plate number because the license plate is in open view. See *United States v. Matthews*, 615 F.2d 1279, 1285 (10th Cir. 1980); *State v. Fisher*, 154 P.3d 455, 472 (Kan. 2007).
7. *Glover*, 400 P.3d at 184.
8. *Id.*
9. *Id.*; Brief of Appellant at 1–2, *State v. Glover*, 400 P.3d 182 (No. 116,446) (Kan. Ct. App. 2017).

was charged with driving without a license as a habitual violator under Kan. Stat. Ann. § 8-287.¹⁰

In the district court, Glover filed a motion to suppress the evidence obtained as a result of the traffic stop.¹¹ Glover argued the Deputy did not have reasonable suspicion that a crime was occurring when he initiated the traffic stop because he knew only that the registered owner of the vehicle had a suspended driver's license.¹² The Deputy did not know who was driving the vehicle when he initiated the traffic stop.¹³ The State responded that it is reasonable for an officer "to infer that the registered owner of a vehicle [is] also the driver of the vehicle" as long as "there [is] no evidence from which a contrary inference [can] be made."¹⁴ Therefore, the Deputy had a reasonable suspicion that Glover, the registered owner, was the driver because the Deputy was unaware of any evidence to the contrary.¹⁵

The district court granted Glover's motion to suppress, finding the Deputy did not have reasonable suspicion when he initiated the traffic stop.¹⁶ The judge relied upon personal experience, stating she has "three cars registered in [her] name. [Her] husband drives one every day; [her] daughter's in [Washington, D.C.] with one every day, and [she] drive[s] the other."¹⁷ The judge believed her situation is similar to many families.¹⁸ The State then filed an interlocutory appeal of the district court's decision granting the motion to suppress.¹⁹

B. Legal Background

The Fourth Amendment of the United States Constitution and Section Fifteen of the Kansas Bill of Rights protect individuals from unreasonable government searches and seizures.²⁰ A person is seized when, "by means of physical force or a show of authority, his freedom of movement is restrained."²¹ A government official stopping a moving vehicle is always considered a seizure.²² The Fourth Amendment imposes a reasonableness standard on government officials' actions "in order to safeguard the privacy and security of

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10. *Glover*, 400 P.3d at 184. Driving without a license, as a habitual violator under KAN. STAT. ANN. § 8-287, is a class A nonperson misdemeanor.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Glover*, 400 P.3d at 184–85.

17. *Id.* at 185.

18. *Id.* ("I think that's true for a lot of families that if there are multiple family members and multiple vehicles, that somebody other than the registered owner often is driving that vehicle.")

19. *Id.*

20. U.S. CONST. amend. IV; KAN. CONST. Bill of Rts. § 15. The scope of Section Fifteen is identical to the Fourth Amendment. *State v. Deskins*, 673 P.2d 1174, 1177 (Kan. 1983).

21. *California v. Hodari D.*, 499 U.S. 621, 638 (1991).

22. *State v. McKeown*, 819 P.2d 644, 648 (Kan. 1991).

individuals against arbitrary invasions.”²³ To determine whether an official’s action is reasonable under the Fourth Amendment, courts balance the action’s “intrusion on the individual’s Fourth Amendment interests against [the action’s] promotion of legitimate governmental interests.”²⁴

The United States Supreme Court elaborated on this balancing test in *Terry v. Ohio*.²⁵ In examining whether the search was reasonable, the Court stressed the importance of balancing “the need to search (or seize) against the invasion which the search (or seizure) entails.”²⁶ To initiate a seizure, an officer must have reasonable, articulable suspicion of criminal activity.²⁷ The officer must “be able to point to specific and articulable facts which, taken together with rational inferences from those facts,” suggest criminal activity is afoot.²⁸

The level of justification required for reasonable suspicion is “less demanding than that for probable cause,” which is required to make an arrest.²⁹ However, reasonable suspicion is more than an unparticularized suspicion or hunch.³⁰ The State must prove the seizure was lawful based on the totality of circumstances known to the officer.³¹

It is unlawful under the Fourth Amendment to stop a vehicle on a public highway for a spot check without reasonable suspicion.³² In *Delaware v. Prouse*,³³ a patrolman stopped a vehicle to check the driver’s license and registration without observing a traffic violation or any suspicious activity.³⁴ The United States Supreme Court noted the security guaranteed by the Fourth Amendment would be circumscribed if an individual was subject to “unfettered governmental intrusion every time he entered an automobile.”³⁵ Therefore, it is unlawful to stop a vehicle unless there is “at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law.”³⁶

In *State v. Hamic*,³⁷ the Kansas Court of Appeals used an inference that the owner is the driver of the vehicle as a factor in determining whether reasonable suspicion existed.³⁸ In *Hamic*, an officer observed a vehicle “he

23. *Delaware v. Prouse*, 440 U.S. 648, 653–54 (1979) (internal citations omitted).

24. *Id.* at 654.

25. 392 U.S. 1, 21 (1968).

26. *Id.*

27. *Id.*

28. *Id.*

29. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

30. *Id.*

31. *State v. Toothman*, 985 P.2d 701, 706 (Kan. 1999) (citing *Alabama v. White*, 496 U.S. 325, 330 (1990)); see also KAN. STAT. ANN. § 22-3216 (2017).

32. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979).

33. 440 U.S. 648 (1979).

34. *Id.* at 650.

35. *Id.* at 662–63.

36. *Id.* at 663.

37. 129 P.3d 114 (Kan. Ct. App. 2006).

38. *Id.* at 119–20.

believed might belong to” a woman whom he knew had a suspended license and an outstanding arrest warrant.³⁹ The officer confirmed the vehicle was registered to the woman but initiated a traffic stop before identifying the driver.⁴⁰ The court used the officer’s inference along with the other information the officer knew to find reasonable suspicion existed for the traffic stop.⁴¹

III. COURT’S DECISION

On appeal, the State argued the Deputy had reasonable suspicion solely because he knew the registered owner of the observed vehicle had a suspended license.⁴² Although the court in *Hamic* did not adopt a bright-line rule, the State relied on the case for guidance and requested the court “explicitly hold that it is reasonable for an officer to make the owner-as-driver inference, unless the officer has information otherwise.”⁴³ The State also argued the vast majority of jurisdictions faced with the same, or a similar, issue adopted the same, or a similar, bright-line rule.⁴⁴

In response, Glover argued it was not reasonable for the Deputy to infer the owner was the driver.⁴⁵ Therefore, the Deputy lacked reasonable suspicion justifying the stop because he did not obtain any corroborating evidence.⁴⁶ Furthermore, the burden should not be shifted to the defendant to provide evidence to contradict the Deputy’s inference.⁴⁷ Next, the adoption of a bright-line rule would give “police carte blanche to stop a huge proportion of the population without further evidence of wrong doing.”⁴⁸ Last, Glover noted the officers in several cases where other jurisdictions adopted a bright-line rule had additional facts to support finding reasonable suspicion.⁴⁹

On appeal, the parties stipulated to the facts of the case, providing the Court of Appeals unlimited review.⁵⁰ The court noted in *Hamic* it found

39. *Id.* at 116. At the time of the seizure, the officer knew the woman had a suspended driver’s license because she had been stopped twice in the previous two months. *Id.* at 118. The officer also knew that “the municipal court had issued a warrant for [the woman’s] arrest because of a probation violation.” *Id.*

40. *Id.* at 116.

41. *Id.* at 119–20.

42. *State v. Glover*, 400 P.3d 182, 184 (Kan. Ct. App. 2017), *rev. granted* Oct. 27, 2017.

43. Brief of Appellant, *supra* note 9, at 9.

44. *Id.* at 10–13 (citing *State v. Edmonds*, 58 A.3d 961, 965 (Vt. 2012); *State v. Vance*, 790 N.W.2d 775, 781 (Iowa 2010); *Armfield v. State*, 918 N.E.2d 316, 321–22 (Ind. 2009); *City of Billings v. Costa*, 140 P.3d 1070, 1074 (Mont. 2006); *State v. Tozier*, 905 A.2d 836, 839 (Me. 2006); *Commonwealth v. Deramo*, 762 N.E.2d 815, 818 (Mass. 2002); *State v. Richter*, 765 A.2d 687, 689 (N.H. 2000); *State v. Pike*, 551 N.W.2d 919, 922 (Minn. 1996); *State v. Newer*, 742 N.W.2d 923, 925–26 (Wis. Ct. App. 2007)); *State v. Hess*, 648 S.E.2d 913, 917 (N.C. Ct. App. 2007); *People v. Jones*, 678 N.W.2d 627, 631 (Mich. Ct. App. 2004); *State v. Howard*, 766 N.E.2d 179, 183 (Ohio Ct. App. 2001); *Vill. of Lake in the Hills v. Lloyd*, 591 N.E.2d 524, 525–26 (Ill. App. Ct. 1992); *State v. Panko*, 788 P.2d 1026, 1027 (Or. Ct. App. 1990)).

45. Brief of Appellee at 5, *State v. Glover*, 400 P.3d 182 (No. 116,446-A) (Kan. Ct. App. 2017), *rev. granted* Oct. 27, 2017.

46. *Id.* at 2.

47. *Id.* at 5.

48. *Id.* at 8.

49. *Id.* at 11–13 (citing *People v. Close*, 939 N.E.2d 463, 470–71 (Ill. 2010); *Armfield*, 918 N.E.2d at 322; *Deramo*, 762 N.E.2d at 817; *Pike*, 551 N.W.2d at 922; *Jones*, 678 N.W.2d at 629; *Howard*, 766 N.E.2d at 182–83)).

50. *Glover*, 400 P.3d at 184.

reasonable suspicion by examining all facts known to the officer, including the inference the owner was the driver.⁵¹ Because *Hamic* did not rule on whether the officer's inference alone provides reasonable suspicion, the court looked to other jurisdictions for guidance.⁵²

The court stated other jurisdictions' supreme courts consistently held reasonable suspicion exists when "(1) the officer knows that the registered owner of a vehicle has a suspended license and (2) the officer is unaware of any evidence or circumstances which indicate that the owner is not the driver of the vehicle."⁵³ This rule promotes public safety because placing the onus on officers to investigate further would be impractical in adverse conditions, such as heavy traffic, at night, or when the vehicle has tinted windows.⁵⁴ Requiring officers to gather additional evidence before initiating a traffic stop "essentially raises the evidentiary standard from one of reasonable suspicion to the more demanding standard of probable cause."⁵⁵ Although other states' intermediate appellate courts support the requirement that police obtain additional information about the registered owner before conducting a traffic stop, the court was unpersuaded.⁵⁶ The court held an officer has reasonable suspicion to conduct a traffic stop:

[T]o investigate whether the driver has a valid driver's license if, when viewed in conjunction with all of the other information available to the officer at the time of the stop, the officer knows the registered owner of the vehicle has a suspended license and the officer is unaware of any other evidence or circumstances from which an inference could be drawn that the registered owner is not the driver of the vehicle.⁵⁷

Because no facts or circumstances known to the Deputy suggested the owner was not the driver, he had reasonable suspicion to conduct a traffic stop when he determined Glover, the registered owner of the truck, had a suspended license.⁵⁸

IV. COMMENTARY

In finding reasonable suspicion existed for the Deputy to initiate a traffic stop, the court looked at the totality of the information available to the

51. *Id.* at 186 (citing *State v. Hamic*, 129 P.3d 114, 120 (Kan. Ct. App. 2006)).

52. *Id.*

53. *Id.* at 186-87 (citing *State v. Edmonds*, 58 A.3d 961, 965 (Vt. 2012); *State v. Vance*, 790 N.W.2d 775, 781 (Iowa 2010); *State v. Neil*, 207 P.3d 296, 297 (Mont. 2009); *Armfield*, 918 N.E.2d at 321-22; *State v. Tozier*, 905 A.2d 836, 839 (Me. 2006); *Pike*, 551 N.W.2d at 922; *State v. Richter*, 765 A.2d 687, 689 (N.H. 2000)).

54. *Id.* at 187 (citing *Armfield*, 918 N.E.2d at 322; *Vance*, 790 N.W.2d at 782).

55. *Id.*

56. *Glover*, 400 P.3d at 188 (citing *State v. Cerino*, 117 P.3d 876, 878 (Idaho Ct. App. 2005); *State v. Parks*, 672 A.2d 742, 745 (N.J. Super. App. Ct. Div. 1996); *Worley v. Commonwealth*, No. 1913-94-2, 1996 WL 31949, at *1 (Va. Ct. App. Jan. 30, 1996)) (stating in those jurisdictions "officers must rely on additional investigation to confirm a vehicle owner's identity prior to conducting a vehicle stop").

57. *Id.*

58. *Id.*

Deputy—the registered owner of a truck being driven on a public roadway had a revoked license—and found reasonable suspicion existed because there was no evidence indicating the owner was not the driver.⁵⁹ However, the State did not provide enough evidence to sustain the inference that the owner is the driver of the vehicle.⁶⁰ As the district court stated, the registered owner is not always the driver of the vehicle.⁶¹ This is especially true for families with multiple licensed members.⁶²

Moreover, the Deputy had only two articulable facts to justify reasonable suspicion: a vehicle was being driven and the registered owner of the vehicle had a revoked license.⁶³ Both facts create a suspicion regarding the vehicle; however, driving without a license is a personal, individual wrongdoing of the driver.⁶⁴ It is a crime to operate a vehicle while one's driver's license is revoked; however, it is not a crime to own a vehicle while one's driver's license is revoked.⁶⁵ Therefore, to meet reasonable suspicion, the Deputy must be aware of specific and articulable facts linking the driver of the vehicle as the registered owner.⁶⁶ Requiring the Deputy to gather more information does not “essentially raise[] the evidentiary standard” to probable cause as the court suggested.⁶⁷ Instead, it ensures the Deputy has enough specific and articulable facts to stop the vehicle based on the reasonable suspicion the driver is violating a law.⁶⁸ By adopting the bright-line rule, the burden now is on the defendant to prove reasonable suspicion did not exist at the time of the seizure.⁶⁹ However, the burden should always be on the State to prove reasonable suspicion existed at the time of the seizure.⁷⁰

As adopted, the bright-line rule creates a presumption that if the registered owner of a vehicle has a suspended license, the vehicle can be stopped unless the officer is aware of evidence that the registered owner is not the driver.⁷¹ Because the officer is not required to gather more information to meet the reasonable suspicion threshold, law enforcement may intrude too far into an individual's Fourth Amendment privacy interest.⁷² Less invasive options

59. *Id.*

60. See Brief of Appellant, *supra* note 9, at 6–9.

61. *Glover*, 400 P.3d at 185.

62. See *id.*

63. *Id.* at 184.

64. See *Navarette v. California*, 134 S. Ct. 1683, 1687 (2014) (“The Fourth Amendment permits brief investigative stops—such as the traffic stop in this case—when a law enforcement officer has a particularized and objective basis for suspecting the *particular person stopped* of criminal activity.”) (emphasis added) (citing *United States v. Cortez*, 449 U.S. 411, 417–418 (1981)); *Terry v. Ohio*, 392 U.S. 1, 21–22, 27 (1968) (stating when determining if an officer acted reasonably, due weight must not be given “to [the officer’s] inchoate and unparticularized suspicion or hunch”); see also KAN. STAT. ANN. § 8-287 (2017).

65. See § 8-287.

66. See *Delaware v. Prouse*, 440 U.S. 648, 661 (1979) (stating that there must be an “articulable basis amounting to reasonable suspicion that the driver is unlicensed”); *Terry*, 392 U.S. at 21–22, 27.

67. *Glover*, 400 P.3d at 187.

68. See *Navarette*, 134 S. Ct. at 1687; *Prouse*, 440 U.S. at 661; *Terry*, 392 U.S. at 21–22, 27.

69. See *Glover*, 400 P.3d at 188.

70. See KAN. STAT. ANN. § 22-3216(2) (2017).

71. *Glover*, 400 P.3d at 188.

72. As the district court noted, families that have multiple family members and multiple vehicles will

include gathering facts showing the owner is the driver of the vehicle or continuing observation of the vehicle until a traffic infraction occurs.⁷³ To hold reasonable suspicion is present when an officer merely determines the registered owner of a vehicle has a revoked license would justify the “indiscriminate stop of every vehicle owned by an individual with” a revoked license.⁷⁴ As the United States Supreme Court stated in *Prouse*, “[w]ere the individual subject to unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed.”⁷⁵

V. CONCLUSION

In conclusion, the court failed to balance the government’s interest against the individual’s Fourth Amendment privacy interest. By not weighing those interests, the court intruded too much on the individual’s privacy interest and created a presumption that the owner-is-the-driver of a vehicle if the officer is unaware of evidence that indicates otherwise. Instead, under the Fourth Amendment, the officers should be required to provide specific and articulable facts linking the registered owner and the driver before reasonable suspicion exists. In other words, the owner-is-the-driver inference should only be used when it and other facts known to the officer create a reasonable suspicion the owner is the driver. Because of this ruling, drivers of cars they do not own should be aware of the registered owner’s driver’s license status before driving on a public roadway.

likely have someone other than the registered owner driving a vehicle at some point. *Id.* at 185. Furthermore, it is reasonable to assume high school and college students will be driving a vehicle of which they are not the registered owner. *See id.* Also, if a person borrows a vehicle from a registered owner who has a suspended license, the person is susceptible to being stopped because of the status of the registered owner, even if the person and registered owner are of opposite genders or there is an age difference of multiple decades. *See State v. Cerino*, 117 P.3d 876, 878 (Idaho App. 2005) (“It is not unlawful for a person to drive a vehicle that is registered to an unlicensed owner, nor for the unlicensed owner to allow another to drive his vehicle.”).

73. *Whren v. United States*, 517 U.S. 806, 819 (1996) (holding that a violation of the traffic code renders a traffic stop reasonable under the Fourth Amendment).

74. *See Worley v. Commonwealth*, No. 1913-94-2, 1996 WL 31949, at *1 (Va. Ct. App. Jan. 30, 1996); *see also Delaware v. Prouse*, 440 U.S. 648, 662–63 (1979).

75. 440 U.S. at 662–63.