STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 20-08

Reasonable Suspicion for Traffic Stops to Check Insurance Coverage

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Question 1

If a law enforcement officer enters the license plate number of a moving vehicle into the insurance verification program and the program returns an "unconfirmed" result, does the officer have reasonable suspicion that the vehicle is uninsured?

Opinion 1

Whether reasonable suspicion exists is a highly fact-dependent inquiry, and the operation and details of the insurance verification system at the time of the reading would determine whether an "unconfirmed" result constituted reasonable suspicion in any given case.

Question 2

If a law enforcement officer has reasonable suspicion—either through the insurance verification program or through other means—that a moving vehicle is not insured, may the officer stop the vehicle?

Opinion 2

No. It is not a criminal act to drive without insurance coverage in Tennessee, and under current Sixth Circuit precedent, to stop a moving vehicle a law enforcement officer must have reasonable suspicion of criminal activity. To otherwise lawfully stop a moving vehicle the officer must have probable cause to believe a civil violation is occurring.

ANALYSIS

In 2015, Tennessee enacted the "James Lee Atwood Jr. Law," which has as its purpose "to develop and implement an efficient insurance verification program . . . in order to verify whether the financial responsibility requirements" of operating motor vehicles in the State have been met. Tenn. Code Ann. § 55-12-201, -202. The law instructs the Commissioner of Revenue to develop, implement, and administer the insurance verification program and requires that the program be able to "[v]erify, on an on-demand basis . . . the liability insurance status of a motor vehicle." Id. § 55-12-205(2). If the system indicates a particular motor vehicle is not insured, the law directs the Department of Revenue to notify the registered owner of the vehicle that he has thirty days to provide proof of insurance, proof of an exemption, or proof that that vehicle is either no longer in the owner's possession or no longer in use. Id. § 55-12-210(a)(1). An owner who fails to provide

this proof is subject to a $25 fee and has thirty days to pay the fee and provide proof of insurance. *Id.* § 55-12-210(b). If the owner fails to comply with these requirements, he is subject to a $100 fee and the suspension or revocation of the motor vehicle's registration. *Id.* § 55-12-210(c).

With this new insurance verification system, a law enforcement officer can enter a vehicle's license plate number into the system and determine immediately the status of the vehicle's insurance coverage. Currently, the system will provide one of three results: "confirmed," "exempt," or "unconfirmed." Under the current operation of the system, "unconfirmed' can mean a number of different things, including that the insurer has not yet updated its electronic records; that there is a numerical or other clerical error in the vehicle identification number,[1] that the system does not include records from the vehicle's insurer, or, in some cases, that the owner in fact does not have liability insurance for the vehicle.

The Department of Revenue presently does not consider an "unconfirmed" result to constitute evidence that the vehicle is uninsured. When the Department of Revenue receives an "unconfirmed" result in the system, it does not issue the notice to the owner of the vehicle that it is required to issue when the system provides "evidence" that a vehicle is "not insured." Tenn. Code Ann. § 55-12-210(a)(1). Instead, the Department attempts to determine the status of coverage by sending a request for information to the owner or by using other means.

1. Whether an "unconfirmed" result is sufficient by itself to create reasonable suspicion that a vehicle is uninsured depends on the precise operation of the system at the time of that result. The reasonable suspicion inquiry "takes into account the totality of the circumstances—the whole picture," and requires that the specific factual circumstances give rise to a "reasonable inference" that a violation is occurring. *Kansas v. Glover*, No. 18-556, --- S. Ct. ----, 2020 WL 1668283 (Apr. 6, 2020) (quoting *Navarette v. California*, 572 U.S. 393, 397 (2014)). In *Glover*, the Supreme Court held that a law enforcement officer had reasonable suspicion to stop a vehicle based solely on a result from a license plate database indicating the registered owner of the vehicle had a revoked license, at least when the officer had no contrary evidence suggesting the registered owner was *not* driving the vehicle at that time. *Id.* The Court deemed it "common sense" to infer that the driver of the vehicle may be driving with a revoked license when the license plate is registered to an owner who has a revoked license and the license plate is linked to a vehicle matching the vehicle observed on the road. *Id.*

As the position taken by the Department of Revenue shows, it is contrary to common sense to infer from an "unconfirmed" result alone under the current system that there is a reasonable suspicion that a vehicle is uninsured. The Department of Revenue has explained that, presently, a significant majority of "unconfirmed" results are *not* linked to uninsured vehicles but instead result from errors in data entry, out-of-date information, or the imperfect coverage of the national insurance database on which the system relies heavily. In short, "unconfirmed" in the present system means that the electronic system lacks the relevant information, which likely does not give

[1] The Department of Revenue's system operates by querying whether the vehicle identification number, or VIN, of a vehicle in the insurance database is an exact match for a registered vehicle. An error in the VIN on either entry—the insurance side or the registration side—will lead to mismatch. While the Department of Revenue's system relies solely on the VIN, law enforcement officers have the ability to search this database by license plate number as well, which relies on the correct entry of additional information and data.

rise to a reasonable inference that the vehicle is uninsured. The precise operation of the insurance verification is always subject to change, however, and the Department of Revenue is constantly working to improve the accuracy and scope of the system. Any determination of reasonable suspicion would thus depend on the particular facts of the system and the meaning of "unconfirmed" at the time of the query.

In sum, whether reasonable suspicion exists is a highly fact-dependent inquiry. Accordingly, the operation and details of the insurance verification system at the time of the query would determine whether an "unconfirmed" result constituted reasonable suspicion in any given case.

2. Even if a law enforcement officer did have reasonable suspicion—whether through the insurance verification system or through other means—that a moving vehicle was uninsured, that suspicion alone would not be legally sufficient under the U.S. and Tennessee Constitutions to allow the officer to stop the vehicle. A traffic stop is a "seizure" within the meaning of the Fourth Amendment to the U.S. Constitution and article I, section 7 of the Tennessee Constitution, which the Tennessee Supreme Court has interpreted to be "coextensive with the protections afforded by the Fourth Amendment." *State v. Donaldson*, 380 S.W.3d 86, 92 (Tenn. 2012). The "ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Hein v. North Carolina*, 574 U.S. 54, 60 (2014) (quoting *Riley v. California*, 573 U.S. 373, 381 (2014)). Under the Supreme Court's precedents, "the Fourth Amendment permits an officer to initiate a brief investigative traffic stop when he has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Glover*, 2020 WL 1668283, at *3 (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)).

The Sixth Circuit, uniquely among federal courts, has "developed two separate tests to determine the constitutional validity of vehicle stops: an officer must have probable cause to make a stop for a civil infraction and reasonable suspicion of an ongoing crime to make a stop for a criminal violation." *United States v. Collazo*, 818 F.3d 247, 253-54 (6th Cir. 2016) (quoting *United States v. Blair*, 524 F.3d 740, 748 (6th Cir. 2008)). Probable cause is a "stricter" standard than reasonable suspicion and requires a "reasonable ground for belief supported by less than prima facie proof but more than mere suspicion." *Blair*, 524 F.3d at 748. Thus, while reasonable suspicion requires only that circumstances give rise to a "reasonable inference" that a violation is occurring, *Glover*, 2020 WL 1668283, at *3, probable cause requires that circumstances demonstrate a "probability or substantial chance" of a violation," *United States v. Ferguson*, 8 F.3d 385, 392 (6th Cir. 1993) (en banc). And although "virtually every other circuit court of appeals has held that reasonable suspicion suffices to justify an investigatory stop for a traffic violation," the Sixth Circuit's constitutional standard currently governs Tennessee law enforcement officers and requires that they have probable cause to stop a car for a civil violation. *United States v. Huff*, 630 Fed. App'x 471, 495 (6th Cir. 2015) (quoting *United States v. Simpson*, 520 F.3d 531, 540-41 (6th Cir. 2008)).

Accordingly, under current Sixth Circuit precedent, law enforcement officers in Tennessee may stop moving vehicles only if they have reasonable suspicion of a *crime* or probable cause of a civil violation. But Tennessee law does not currently make driving without insurance a stand-alone crime. The James Lee Atwood Jr. Law creates only civil penalties—as $25 fee, a $100 fee,

and revocation of the vehicle owner's registration—for the failure to insure a motor vehicle. Tenn. Code Ann. § 55-12-210(a)-(c). It does not criminalize the failure to insure a motor vehicle. And other statutory provisions governing vehicle insurance coverage criminalize only the act of failing to provide evidence of insurance to a law enforcement officer when the officer requests it *after* the driver has been charged with a traffic violation or has been in an accident. Tenn. Code Ann. § 55-12-139(b)(1)(A), (c)(1).

In sum, driving an uninsured vehicle is not a stand-alone crime in Tennessee, and, therefore, under current Sixth Circuit precedent, reasonable suspicion that a moving vehicle is uninsured is not legally sufficient justification to stop the vehicle. Because the failure to insure the vehicle is only a civil violation punishable by a civil fee, the law enforcement officer would need to have *probable cause*—not just reasonable suspicion—that the vehicle was uninsured in order lawfully to stop the vehicle.

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