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STATE OF WISCONSIN  
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DISTRICT III

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Appellate Case No. 2016AP000467-CR

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STATE OF WISCONSIN,  
Plaintiff-Respondent,

vs.

BRITTANIE JO PALAIA,  
Defendant-Appellant.

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RESPONSE BRIEF OF PLAINTIFF-RESPONDENT

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On Appeal from the Brown County Circuit Court,  
the Honorable Donald R. Zuidmulder presiding  
Trial Court Case No. 15CT1238

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## **ISSUE PRESENTED**

Whether a law enforcement officer has reasonable suspicion to conduct a brief investigatory stop of a vehicle based on the fact that at least one of the two registered owners of the vehicle does not have a Wisconsin operator's license.

The circuit court correctly ruled that Deputy Knepfel had ample basis for reasonable suspicion to conduct a traffic stop after learning one of a vehicle's registered owner had never been issued a Wisconsin operator's license.

## **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

The State of Wisconsin believes this is a one-judge case, in which the arguments can be adequately addressed in briefing and can be decided by straightforward application of law to the facts. Therefore, neither oral argument nor publication is requested.

## **STATEMENT OF THE CASE**

The facts in this case are not contested, and the Court may accept the facts as set forth by Palaia.

## ARGUMENT

### **THE CIRCUIT COURT CORRECTLY CONCLUDED DEPUTY KNEPFEL HAD RESONABLE SUSPICION TO STOP PALAIA**

#### **A. Standard of Review**

Where the facts are undisputed, whether there was a reasonable suspicion to justify an investigative stop is a question of constitutional fact, which is reviewed *de novo*. *State v. Colstad*, 2003 WI App 25, ¶ 8, 260 Wis.2d 406, 659 N.W.2d 394 (citation omitted). In reviewing such a decision, “appellate courts will uphold findings of evidentiary or historical fact unless they are clearly erroneous.” *State v. Kieffer*, 217 Wis.2d 531, 541, 577 N.W.2d 352 (1998) (citation omitted).

#### **B. The exceptions to the Wisconsin license requirement are so rare, Deputy Knepfel reasonably would not have considered these, especially since Palaia’s vehicle had Wisconsin plates.**

Palaia’s brief suggests that “the probability of finding a driver with no Wisconsin issued license, no Wisconsin driving record, and no valid out-of-state or foreign license is either minuscule or, at best, unknown.” (Defendant-Appellant’s Brief, p. 10). The State of Wisconsin is well aware that non-Wisconsinites often use its roads. It borders four other states and has a vibrant tourism industry supported by non-residents seeking the

beauty, culture, and friendly citizens of this State. However, this is not the analysis that would be going through Deputy Knepfel's mind when the totality of the circumstances is considered—the most significant factor being that the vehicle Palaia was driving was registered in Wisconsin. With the vehicle being registered in Wisconsin, with Wisconsin license plates, those other possibilities likely would not enter Deputy Knepfel's mind.

Palaia's brief correctly notes that the Wisconsin DOT's "Motorist's Handbook" identifies exceptions to the requirement that residents obtain a Wisconsin operator's license. But these exceptions are the factors which should be considered, in Palaia's own words, "either minuscule or, at best, unknown."

The first noted exception is that new residents to Wisconsin (transitioning from their original state) have 60 days to obtain a Wisconsin license under Wis. Admin. Code § Trans. 102.14(4)(b). Although this situation does happen, Deputy Knepfel would have to consider this possibility highly unlikely given the fact that the vehicle was properly registered in Wisconsin with Wisconsin license plates. For Deputy Knepfel's then-unknown driver to fit into this exception category would

mean that the driver moved to Wisconsin from another state less than 61 days prior, jumped through all of the bureaucratic and administrative hoops of changing a vehicle's registration, but waited to obtain a Wisconsin driver's license. Although this is a possibility, it is a possibility that Deputy Knepfel could reasonably dismiss when quickly determining whether there was reasonable suspicion that a law violation was in progress.

Another possibility noted in the appellant's brief is an exception for out-of-state students living in Wisconsin for less than a year. While this possibility *may* have made Deputy Knepfel's stop unreasonable had he pulled over a 1998 Ford Escort in October on Madison's University Avenue—that was not the case in this situation. When Deputy Knepfel saw Palaia, she was driving a late model SUV<sup>1</sup> with Wisconsin plates, in a city with a small student population, at a time of year when local colleges and universities had suspended classes for the summer. This possibility becomes even more remote when one considers the fact that Palaia's SUV was registered in Wisconsin and non-resident students would most likely have vehicles registered in their home state.

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<sup>1</sup> A 2014 Ford Escape. (30:31).

Additional possibilities noted in Palaia's brief are that the driver was either a non-resident tourist or an employee for an out-of-state company in town for business. It is reasonable that Deputy Knepfel did not consider this possibility because the vehicle he saw had a Wisconsin registration with *individual* persons listed as the registered owners. If a vehicle had out-of-state plates or the registered owner had been a business or car rental company, Deputy Knepfel could not have reasonably assumed that the driver should have a Wisconsin license. But these circumstances did not exist in this case.

The last possibility (and the one that turned out to be true in this case) is that active duty military (and their families) can use the driver's license of their home state of record. Had Deputy Knepfel been an officer of the Killeen, Texas Police Department observing a vehicle three blocks south of Ft. Hood's main gate, it might not have been reasonable for him to assume the driver needed a Texas license. However, Deputy Knepfel was not patrolling in a military town, or even a military state, for that matter. According to the Defense Manpower Data Center's most recent statistics, Wisconsin's military population ranks 45<sup>th</sup> in the nation with only 806 active duty members (which is quite trivial when compared to California's



169,000 or Virginia's 130,000).<sup>2</sup> Following the completion of the Black Hawk War, Wisconsin has ceased being a hotbed of military activity.

The State concedes that Palaia's husband was part of the .014% of Wisconsin's population not required to obtain a Wisconsin license due to the active duty military exemption.<sup>3</sup> However, the State contends that this possibility is so miniscule, it could not reasonably be expected to factor into Deputy Knepfel's analysis.

The fact that the Wisconsin Department of Transportation recognizes rare and limited exceptions to the Wisconsin license requirement does not change what Deputy Knepfel saw, or what was going through his mind. Deputy Knepfel saw a late model SUV, with valid, current Wisconsin license plates, with individual persons listed as registered owners, approximately 60 miles south of Wisconsin's closest border with another state and approximately 150 miles north of Wisconsin's busiest land border. It is reasonable for Knepfel to assume that when a vehicle is registered in Wisconsin, being driven in central Wisconsin, and owned by

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<sup>2</sup> MILITARY ACTIVE DUTY PERSONNEL, CIVILIANS BY STATE, <http://www.governing.com/gov-data/military-civilian-active-duty-employee-workforce-numbers-by-state.html> (last visited Jun. 5, 2016).

<sup>3</sup> Wisconsin has a population of approximately 5.77 million, with 806 of them serving as active duty military members.

individuals (rather than companies or rental agencies), that the driver should have had a valid Wisconsin driver's license in order to drive.

**C. Even though Anthony Palaia did not need a Wisconsin license, Deputy Knepfel had reasonable suspicion to stop the Palaia vehicle.**

The State contends above that the possible innocent explanations as to why a vehicle's registered owner would not need a Wisconsin operator's license are extremely unlikely given the facts Deputy Knepfel observed. However, it is important to note that Deputy Knepfel was not required to rule out every possible lawful explanation the defense brief identified, as "police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop." *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763, 766 (1990).

In *State v. Newer*, the Court of Appeals held that an officer had reasonable suspicion to conduct an investigatory stop of a vehicle after learning the vehicle's registered owner had a revoked license despite not actually knowing who was driving the car. 2007 WI App 236, 742 N.W.2d 923, 306 Wis.2d 193. The state contends that Deputy Knepfel's knowledge that a registered owner of Palaia's vehicle was not properly licensed in

Wisconsin is similar to the reasonable suspicion the arresting officer had in *Newer*.

The appellant relies heavily on the unpublished decision in *State v. Vitek*, 2015 WI App 90, 367 Wis.2d 750, 877 N.W.2d 651,<sup>4</sup> to argue that the driver's license-related investigatory stops authorized by *Newer* are narrow in their applicability. Undoubtedly, the court in *Vitek* did apply a limitation to *Newer*-type stops, but it does not prevent the type of stop that occurred in Palaia's case, even if it were a published decision. *Vitek* is distinguishable in that the arresting officer in that case knew that "one of the registered owners was suspended, and"... "could not recall how many owners were registered to the vehicle." At ¶6. In this case, Deputy Knepfel knew that there were exactly two registered owners for the Palaia vehicle, unlike the unknown number in *Vitek*. (30:24.)

This important distinction was recently analyzed by this court in *State v. Heinrich*, 2016 WI App 26, 367 Wis.2d 750, 877 N.W.2d 651 (unpublished).<sup>5</sup> In *Heinrich*, the investigating officer ran the license plate of a vehicle and learned "the vehicle had two registered owners" and that

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<sup>4</sup> 2015AP421-CR, filed October 27, 2015.

<sup>5</sup> 2015AP1524-CR, filed February 25, 2016.

one “had an unrestricted, non-commercial driver’s license, but that Drew Heinrich had a restricted license.” *Id.* at ¶2. The offer stopped the vehicle based on that information which resulted in the arrest and conviction of Drew Heinrich for operating a motor vehicle while intoxicated.

On appeal, Heinrich made a similar argument to the one that Palaia makes here—namely that “because there were two registered owners... there could not have been a greater than 50 percent chance that that the owner with the invalid license was operating the vehicle, and therefore the officer did not have reasonable suspicion.” *Id.* at ¶10. The Court of Appeals in *Heinrich* rejected “this argument for at least the reason that it is based on a faulty explicit premise: that reasonable suspicion requires evidence suggesting a greater than 50 percent chance of a law violation.” *Id.* And the Court further stated, “I am satisfied that the reasoning supporting reasonable suspicion in *Newer* applies to a vehicle with two registered owners when only one is not properly registered to drive.” *Id.* at ¶11.<sup>6</sup>

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<sup>6</sup> Palaia’s case is slightly different, as she did not have a valid Wisconsin driver’s license at the time of this stop, either. Deputy Knepfel learned after the traffic stop that Palaia had a valid Minnesota driver’s license. (30:18, 25.)

The State acknowledges that the facts in this situation are different than those in *Newer*. The State also acknowledges that the Court of Appeals has reached different conclusions when analyzing how a vehicle with multiple registered owners affects *Newer* stops. The state contends, however, that the facts in this case are more similar to the two-registered-owners situation in *Heinrich* than the unknown number of registered owners in *Vitek*. Because of this distinction, the State believes the persuasive holding in *Heinrich* should be applied to this situation.

## CONCLUSION

For the reasons stated above, the State of Wisconsin respectfully requests that this court uphold Brittanie J. Palaia's conviction for OWI, and deny her appeal.

Respectfully submitted this \_\_\_\_\_ day of June, 2016.

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## **CERTIFICATION AS TO FORM/LENGTH**

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) for a brief and appendix in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 1853 words, including footnotes.

## **CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this \_\_\_\_\_ day of June, 2016.

Signed:

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## **CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)(2)(b)**

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this \_\_\_\_\_ day of June, 2016.

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**APPENDIX OF PLAINTIFF-RESPONDENT**

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