

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2016AP002383
Waukesha County Circuit Court Case Nos. 2016CV000121

CITY OF PEWAUKEE,

Plaintiff-Respondent,

v.

JOHN JAY KENNEDY,

Defendant-Appellant.

**AN APPEAL FROM THE JUDGEMENT OF
CONVICTION AND OF THE TRIAL COURT'S RULING
DENYING THE DEFENDANTS MOTION FOR
SUPPRESSION OF EVIDENCE IN THE CIRCUIT
COURT FOR WAUKESHA COUNTY, THE
HONORABLE MICHAEL P. MAXWELL, PRESIDING**

**THE REPLY BRIEF OF THE DEFENDANT-APPELLANT
JOHN JAY KENNEDY**

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TABLE OF AUTHORITIES

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CASES

Wisconsin Supreme Court

State v. Miller, 2012 WI 61, 341 Wis.2d 307, 815
N.W.2d 349. 2,3

Wisconsin Court of Appeals

State v. Newer, 2007 WI App 236, 306 Wis.2d 193, 742
N.W.2d 923. 1,2

ARGUMENT

Initially, undersigned counsel must address the City's contention that the defense misstated the facts in *State v. Newer*, 306 Wis.2d 193 (Ct. App. 2007). The City incorrectly argues that "in that case [*referring to Newer*], contrary to the Appellant's statement, the officer did not first run the plates through his squad computer and then confirm the information with dispatch." Brief of Plaintiff-Respondent page 4. The City argues that the officer "simply called dispatch and had them run Newer's plates." *Id.* The undisputed facts in *Newer* are:

On December 20, 2005, in the early morning, the officer was driving his squad car when he encountered a vehicle traveling in the opposite direction. The officer activated his radar and found that the oncoming vehicle was traveling at twenty-eight miles per hour, while the posted speed limit was twenty-five miles per hour. The officer continued past the vehicle, ***but ran the license plate and found that the vehicle was registered to Newer. He then contacted the sheriff's department and learned that Newer's license was revoked.*** (emphasis added)

Newer, at ¶3.

Clearly, the statement in the Brief of the Defendant-Appellant is accurate and does not misstate the facts in *Newer*. The officer did contact the sheriff's department and was provided information that Newer's license was revoked prior to conducting the traffic stop.

Newer stands for the proposition that knowledge that an owner's license is revoked justifies a traffic stop where there is nothing suggesting someone other than the owner is driving. Here, Mr. Kennedy is not stopped based on a suspected revoked status. *Newer* does not address whether knowledge of a suspected, but unconfirmed, warrant justifies a traffic stop. The City does not quarrel with the fact that Officer Becker only confirmed the validity of the warrant after the stop and contact. Rather, the City uses cases, with similar fact patterns to *Newer*, from Minnesota and Illinois as persuasive authority that a computer hit on an outstanding warrant is sufficient reasonable suspicion to stop a motor vehicle. Brief of Plaintiff-Respondent page 5. Again neither case addresses the issue herein. Similar to *Newer*, both cases address the validity of a traffic stop based on knowledge of a revoked license status.

At a minimum, reasonable suspicion requires that Officer Becker have a reasonable suspicion that Mr. Kennedy had a valid outstanding warrant for his arrest prior to conducting the traffic stop. In justifying a traffic stop, an officer must point to specific and articulable facts which, taken with rational inferences from those facts, reasonably warrant the intrusion. *State v. Miller*, 2012 WI 61, ¶29, 341 Wis.2d 307, 815 N.W.2d

349. The question is an objective one; would the facts known to the officer *at the moment* of the seizure warrant the intrusion. *Id.* Here, Officer Becker did not know that the warrant was valid at the moment of the stop. Had Officer Becker known that the outstanding warrant was valid, it would make little sense to determine the validity after the traffic stop. Becker was not, as the City suggests, “double checking”, he was determining the validity of the warrant. Officer Becker’s knowledge of the validity of the outstanding warrant came only after the contact. Because Becker did not have knowledge of the validity of the warrant at the moment of the stop, the stop cannot be justified on reasonable suspicion grounds.

CONCLUSION

Because of the above, Officer Becker did not possess the requisite level of suspicion to stop Mr. Kennedy's vehicle. Thus, the trial court erred in denying Mr. Kennedy's suppression motion. The Court should vacate the judgment of conviction and reverse the trial court's order.

Dated this 1st day of May, 2017.

Respectfully Submitted

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FORM AND LENGTH CERTIFICATION

The undersigned hereby certify that this brief and appendix conform to the rules contained in secs. 809.19(6) and 809.19(8) (b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 9 pages. The word count is 1231.

Dated this 1st day of May, 2017.

Respectfully Submitted

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**CERTIFICATION 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 s. 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of 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 1st day of May, 2017.

Respectfully submitted,

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