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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2023AP2311-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TOBIN J. JAGLA,

Defendant-Appellant.

Appeal from the Judgment of Conviction Entered in the
Circuit Court for Outagamie County,
the Honorable Mark J. McGinnis Presiding
Circuit Court Case No: 22CF985

BRIEF OF
DEFENDANT-APPELLANT

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	3
STATEMENT OF THE ISSUES.....	5
STATEMENT ON ORAL ARGUMENT AND PUBLICATION.....	5
STATEMENT OF THE CASE AND OF THE FACTS.....	6
ARGUMENT.....	12
THE OFFICER LACKED REASONABLE SUSPICION TO PULL OVER THE VEHICLE OPERATED BY MR. JAGLA	12
A. Legal principles and standard of review.....	13
B. Because exemptions exist from the requirement that drivers possess a valid Wisconsin license, the sole fact that the registered owner of a vehicle has never been issued a Wisconsin driver's license does not provide reasonable suspicion of a traffic violation.....	15
C. The officer's observations of Mr. Jagla at the gas station provided additional facts to dispel reasonable suspicion that Mr. Jagla was the registered owner of the vehicle	19
CONCLUSION.....	22
CERTIFICATIONS.....	24

TABLE OF AUTHORITIES**CASES CITED**

<i>Kansas v. Glover</i> , 140 S. Ct. 1183 (2020).....	14, 20
<i>State v. Anderson</i> , 2019 WI 97, 389 Wis. 2d 106, 935 N.W.2d 285.....	19, 22
<i>State v. Carroll</i> , 2010 WI 8, 322 Wis. 2d 299, 778 N.W.2d 1.....	15
<i>State v. Griffin</i> , 131 Wis. 2d 41, 388 N.W.2d 535 (1986).....	13
<i>State v. Guzy</i> , 139 Wis. 2d 663, 407 N.W.2d 548 (1987).....	21, 22
<i>State v. Houghton</i> , 2015 WI 79, 364 Wis. 2d 234, 868 N.W.2d 143.....	13
<i>State v. Newer</i> , 2007 WI App 236, 306 Wis. 2d 193, 742 N.W.2d 923.....	14, 15, 17, 19, 20
<i>State v. Palaia</i> , 2017 Wis. App. 7 (No. 2016AP467-CR, unpublished).....	16, 17, 18
<i>State v. Popke</i> , 2009 WI 37, 317 Wis. 2d 118, 765 N.W.2d 569.....	13
<i>State v. Post</i> , 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634.....	13, 14, 19
<i>State v. Richey</i> , 2022 WI 106, 405 Wis. 2d 132, 983 N.W.2d 617.....	13
<i>State v. Waldner</i> , 206 Wis. 2d 51, 556 N.W.2d 681 (1996).....	19

Terry v. Ohio,
392 U.S. 1 (1968).....13, 19

Wong Sun v. United States,
371 U.S. 471 (1963).....15

**CONSTITUTIONAL PROVISIONS
AND STATUTES CITED**

United States Constitution
U.S. CONST. Amend. IV.....13, 21

Wisconsin Constitution
WIS. CONST. Art. I, Sec. 7.....13

Wisconsin Statutes
Wis. Stat. § 343.05(4)(b).....16
Wis. Stat. § 343.44(1)(b).....15
Wis. Stat. § 346.63(1)(a).....6
Wis. Stats. § 752.31(2).....17
Wis. Stat. § 809.23(3)(b).....17

OTHER AUTHORITIES CITED

Wis. Admin. Code § Trans 102.14(4)(b).....16

ISSUES PRESENTED

Mr. Jagla was pulled over after an officer saw him pumping gas and driving out of a gas station just after midnight, ran the plates of the vehicle he was driving, and learned that the registered owner had not been issued a Wisconsin driver's license.

- I. Was the stop of the vehicle, based solely on the officer's knowledge that the registered owner had not been issued a Wisconsin driver's license, unreasonable under the Fourth Amendment given Wisconsin law provides exemptions to the license requirement and the officer had no knowledge whether the registered owner fell within an exemption?

Trial Court Answered: No.

- II. Was the stop of the vehicle unreasonable under the Fourth Amendment, where the officer's observations of Mr. Jagla at the gas station provided additional facts to dispel the reasonable suspicion that Mr. Jagla was the registered owner of the vehicle?

Trial Court Answered: No.

POSITION ON ORAL ARGUMENT AND PUBLICATION

The issues in this case involve the application of well-settled law to the facts of the case, therefore neither oral argument nor publication is requested.

STATEMENT OF THE CASE AND THE FACTS

This is an appeal from the Judgment of Conviction entered on June 27, 2023, in the Circuit Court for Outagamie County, the Honorable Mark J. McGinnis presiding, wherein the Court entered judgment after a guilty plea finding Tobin Jagla guilty of operating while intoxicated (8th offense), contrary to Wis. Stat. § 346.63(1)(a). (62; App.3-4.)

Mr. Jagla was pulled over shortly after leaving a gas station just after midnight on October 27, 2022, by Officer Dustin Muenster. (56:5-6.) Muenster had been conducting a routine patrol of the gas station, had seen Mr. Jagla pumping gas at the gas station, and ran the plates of the vehicle Mr. Jagla was driving. (56:5.) The records check showed that the vehicle was registered to a man named Santos Garcia, who had not been issued a Wisconsin driver's license. (56:5, 10.) Based only on that information, Muenster conducted a traffic stop on the vehicle. (56:5, 10)

When Muenster contacted Mr. Jagla at the vehicle, he observed an odor of intoxicants and that Mr. Jagla's speech was slurred and his eyes glassy. (56:6.) Mr. Jagla admitted that he had been drinking. (56:6.) Muenster observed that Mr. Jagla staggered upon exiting the vehicle. (56:7.) Mr. Jagla declined to perform field sobriety tests. (56:7.) Based on his observations, Muenster arrested Mr. Jagla for operating while intoxicated. (56:7.) During the course of his investigation, Muenster learned that Mr. Jagla had been convicted of operating while intoxicated on seven prior occasions and was subject to a 0.02 blood alcohol concentration restriction. (56:7-8.)

The State charged Mr. Jagla with operating while intoxicated (8th) and operating while revoked (due to alcohol related offense). (4:1-2.)

Suppression Motion

Mr. Jagla moved to suppress evidence seized from Mr. Jagla's vehicle on the basis that the officer lacked reasonable suspicion for the traffic stop. (19.)

At the suppression hearing, Officer Muenster testified that he was working as a patrol officer in the early morning hours of October 27, 2022, when he pulled into the Oneida One Stop gas station to conduct a routine check of the area. (71:6-7, 10-11; App.7-8, 11-12.) Muenster observed Mr. Jagla pumping gas, then entering the driver's seat of a vehicle. (71:7; App.8.) At that time, Muenster did not know who Mr. Jagla was. (71:7-8; App.8-9.) Muenster testified that he observed "a brief outfit of what the person was wearing. I could see that they had general features of a male. I was not specifically looking at the male. I was more focused on the business and the surroundings, the male being part of that." (71:17-18; App.18-19.)

In between observing Mr. Jagla pumping gas and checking the vehicle records, Muenster drove behind the gas station to shine lights around parked vehicles in a back lot, looking for suspicious behavior. (71:18; App.19.) As he pulled back in front of the gas station, Muenster observed the vehicle Mr. Jagla was driving exit the gas station and he ran the license plate as it entered the roadway. (71:8; 18-19 App.9, 19-20.) At that time, Muenster could see Mr. Jagla's "features, what he's wearing, nothing really further than that." (71:18; App.19.)

As a result of the records check, Muenster received a description of the vehicle and information regarding the owner, including the owner's name, date of birth and residential address. (71:8-9; App.9-10.) The name of the sole registered owner of the vehicle was Santos Garcia. (71:9, 20; App.10, 21.) Muenster then ran Garcia's driving history and learned that Garcia had not been issued a Wisconsin driver's license. (71:9, 21; App.10. 22.) Muenster testified that he did not know Garcia or anything about him, other than that he was male and did not have a license. (71:9-10, 28-29; App.10-11, 29-30.) The driving history indicated that Garcia had never been issued a Wisconsin driver's license – not that he had had a license that was then suspended or revoked. (71:25, 28; App.26, 29.) Garcia's driving history did not automatically load an associated picture, and Muenster chose not to pull one up to see if it matched the person he saw at the gas station pump. (71:20-21, 27-28; App.21-22, 28-29.)

Muenster testified that he knew it was possible to register a vehicle in Wisconsin despite not having a Wisconsin license, saying "I am not entirely sure how, but you can register a vehicle and not have a driver's license issued." (71:28; App.29.) He testified that it was "quite common" in his experience for a registered owner of a vehicle to have no license issued. (71:29; App.30.) Muenster testified that at the time he reviewed Garcia's driving history, he understood that to be the case in this situation. (71:28; App.29.)

Muenster observed nothing suspicious at the gas station, no equipment violations on the vehicle, nor any driving violations. (71:17-19, 22; App.18-20, 23.) His reason

for running the vehicle's plate as it left the gas station was simply to investigate given the midnight hour. (71:17, 19; App.18, 20.) Muenster testified that his reason for pulling over the vehicle was the records check showing that the sole registered owner, who was male, did not have a license and that he observed a male at the pumps. (71:23; App.24.) He testified that he did not pull up the photo of the registered owner even after stopping the vehicle because, "[y]ou already have the reasonable suspicion for the stop. I don't feel like it's necessary to look up a photo of the individual if you already have a reason to make contact with the driver of the vehicle." (71:23-24; App.24-25.)

During his cross-examination of the officer, Mr. Jagla played surveillance video from the gas station depicting Mr. Jagla pumping gas and Officer Muenster's squad car patrolling the gas station area. (71:13-15; App.14-16.)¹ The court made the following findings based on the video:

[A]t approximately...12:03:55 is when the officer first passed the defendant's vehicle. The officer then...went to the back of the building, and then came back past the defendant's vehicle at 12:05:00. The defendant's vehicle started moving at 12:05:18, and – to leave. And then the red and blue just went on right there at that last camera at 12:06:20 down the highway.

(71:16; App.17.)

¹ The video was admitted as Exhibit 1 during the hearing. A copy of the video was transmitted to this court separate from the electronic record, labeled Item 81-1. (84.)

The court made the following findings of fact based on the testimony:

In this case, the facts are that the officer was on routine patrol, came across the defendant's vehicle, the defendant was pumping gas into a vehicle, the officer went about his business, came back around to the vehicle a second time and ran the license plate of that vehicle. At that time, the officer learned that the vehicle was properly registered, and that it was registered to an individual by the name of Santos Garcia. The officer then ran...a DOT records check involving Santos Garcia, and received a driver history that indicated that Mr. Garcia never had a valid driver's license.

You know, nobody mentioned this, but I think it's in the filings, Santos Garcia's date of birth is 1958. I am not sure what race or other information he had, nobody introduced it, but there was a male, and Mr. Jagla is a male. Mr. Jagla's date of birth is 1963, so, you know, there's a few year difference, but it's not like an 18-year-old compared to a 65-year-old. And I'm not even sure if the officer had that information. Nobody asked that. But we have a male driving, and a male who is a registered owner of the vehicle who doesn't have a license, and the officer knew that and then exercised the stop on that basis alone.

(71:31-32; App.32-33.)² The court further found, “I believe I asked [the officer] if he knew Santos Garcia, because I

² Defense counsel referred to the same officer's testimony during the preliminary hearing in which the officer agreed that Santos Garcia was “a Mexican individual.” (71:32; App.33, citing 56:10.) The

think if he knew who he was, or what he was about and what he looked like, and I think the officer answered no, he had no idea who Garcia was, and he had no idea who Mr. Jagla was.” (71:33; App.34.)

Circuit Court Ruling on Suppression

The court denied the suppression motion, holding that “the case law in Wisconsin is clear” that “if officers are aware of a vehicle moving on a highway or roadway, and the registered owner of that vehicle is – does not have a valid driver’s license, officers are able to execute the stop without further investigation. Unless, based on what they know from their personal observations or the information they have, that the person driving can’t be that person.” (71:35-36; App.36-37.) The court further held that “the reasonable suspicion to support the stop was based solely from the officer believing that there was reasonable suspicion that the driver on that morning, past midnight, was the individual who was a registered owner, Santos Garcia, and that Santos Garcia did not have a valid driver's license, so the stop was lawful.” (71:37; App.38.)

Mr. Jagla pled no contest to operating while intoxicated (8th). (72:10.) Pursuant to the plea agreement, the charge of operating while revoked was dismissed on the prosecutor’s motion. (52.) The court sentenced Mr. Jagla to five years of initial confinement and five years of extended supervision, consecutive to any other sentence. (73:26; 62; App.3-4.)

court noted that it had presided over the preliminary hearing and accepted the information from that hearing as part of the record it was relying on in deciding the suppression motion. (71:36; App.37.)

Mr. Jagla filed a timely notice of intent to seek postconviction relief and notice of appeal. (66; 77.)

ARGUMENT

THE OFFICER LACKED REASONABLE SUSPICION TO PULL OVER THE VEHICLE OPERATED BY MR. JAGLA

The circuit court found the stop justified by reasonable suspicion because Officer Muenster believed that Mr. Jagla was the registered owner of the vehicle, Santos Garcia, and that Santos Garcia was violating Wisconsin traffic laws by driving without a valid driver's license. (71:37; App.38.) However, the circuit court incorrectly applied the law when it pronounced that "the case law in Wisconsin is clear...[that] if officers are aware of a vehicle moving on a highway or roadway, and the registered owner of that vehicle...does not have a valid driver's license, officers are able to execute the stop without further investigation." (71:35-36; App.36-37.) The circuit court ignored the fact that – unlike in a case dealing with a revoked or suspended license, where the prohibition on driving is clear – exemptions to Wisconsin's license requirements exist which allow some drivers to operate a Wisconsin-registered vehicle within the state even without possessing a valid Wisconsin-issued driver's license. Without any evidence to suggest that Santos Garcia did not fall within those exemptions, Officer Muenster could not reasonably suspect him of a traffic offense because he lacked a Wisconsin-issued license alone. Further, even if Officer Muenster did have reasonable suspicion that Santos Garcia was committing a traffic offense, his observations of Mr.

Jagla provided additional facts that dispelled a reasonable suspicion that Mr. Jagla was Santos Garcia.

A. Legal principles and standard of review

The Fourth Amendment of the United States Constitution and article I, section 11 of the Wisconsin Constitution protect citizens from unreasonable searches and seizures. *State v. Griffin*, 131 Wis. 2d 41, 50, 388 N.W.2d 535 (1986). The two provisions are nearly identical and the basic purpose of both is “to safeguard the privacy and security of individuals against arbitrary invasions by government officials.” *Id.* (internal quotes omitted). Traffic stops are seizures; therefore, a traffic stop must be constitutionally reasonable, or any evidence obtained therefrom is inadmissible. *State v. Popke*, 2009 WI 37, ¶ 11, 317 Wis. 2d 118, 765 N.W.2d 569. The burden is on the State to prove that a stop meets the constitutional standards. *State v. Post*, 2007 WI 60, ¶ 12, 301 Wis. 2d 1, 733 N.W.2d 634.

The Fourth Amendment requires a police officer to have “particularized reasonable suspicion” that a crime or non-criminal traffic violation has been or is being violated before performing a traffic stop. *State v. Richey*, 2022 WI 106, ¶ 1, 405 Wis. 2d 132, 983 N.W.2d 617; *State v. Houghton*, 2015 WI 79, ¶ 30, 364 Wis. 2d 234, 868 N.W.2d 143. Reasonable suspicion depends on an officer’s ability to “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct.1868 (1968). In determining reasonableness, the court examines “whether the facts of the case would warrant a

reasonable police officer, in light of his or her training and experience to suspect that an individual is committing, is about to commit or has committed an offense.” *Post*, 2007 WI 60, ¶ 13. A determination of reasonable suspicion is made based on the totality of the circumstances. *Id.*, ¶ 14.

An officer’s knowledge that a vehicle’s owner’s license is revoked will support reasonable suspicion for a traffic stop, “so long as the officer remains unaware of any facts that would suggest the owner is not driving.” *State v. Newer*, 2007 WI App 236, ¶ 2, 306 Wis. 2d 193, 742 N.W.2d 923. Likewise, in *Kansas v. Glover*, the United States Supreme Court held that the officer’s knowledge that the license plate was linked to the vehicle and that the vehicle’s registered owner had a revoked license provided reasonable suspicion that the registered owner was driving with a revoked license. 140 S. Ct. 1183, 1190 (2020). However, “the presence of additional facts might dispel reasonable suspicion,” in which case, “the totality of the circumstances would not raise a suspicion that the particular individual being stopped is engaged in wrongdoing.” *Id.* at 1191 (internal quotes omitted).

Whether there is reasonable suspicion or probable cause to conduct a traffic stop is a question of constitutional fact, to which appellate courts apply a two-step standard of review. *Post*, 2007 WI 60, ¶ 8. First, the court will review the circuit court’s findings of historical fact and uphold them unless they are clearly erroneous. *Id.* Second, the circuit court’s determination of reasonable suspicion or probable cause to make a traffic stop will be reviewed de novo. *Id.*

Where an unlawful search or seizure occurs, the remedy is to suppress the evidence produced. *State v. Carroll*, 2010 WI 8, ¶ 19, 322 Wis. 2d 299, 778 N.W.2d 1; *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963).

B. Because exemptions exist from the requirement that drivers possess a valid Wisconsin license, the sole fact that the registered owner of a vehicle has never been issued a Wisconsin driver's license does not provide reasonable suspicion of a traffic violation

In *State v. Newer*, the court of appeals held that “an officer’s knowledge that a vehicle’s owner’s license is revoked will support reasonable suspicion for a traffic stop so long as the officer remains unaware of any facts that would suggest the owner is not driving.” 306 Wis. 2d 193, ¶ 2. Because, in the absence of facts suggesting otherwise, it is reasonable for an officer to assume the registered owner of the vehicle is driving, information that the owner’s driving privileges are suspended or revoked allows “a reasonable assumption of lawbreaking [to] be drawn from the circumstances.” *Id.*, ¶ 9 & n.4.

In this case, however, the registered owner of the vehicle that Mr. Jagla was driving did *not* have a revoked or suspended license; rather, he had never been issued a Wisconsin license. Thus, Officer Muenster did not have reasonable suspicion that the registered owner would be in violation of Wis. Stat. § 343.44(1)(b) (forbidding operating while suspended or revoked), as the officer did in *Newer*. 306 Wis. 2d 193, ¶ 5.

In fact, Wisconsin law provides exemptions to the general requirement that operators of a motor vehicle possess a valid driver's license issued by the Wisconsin Department of Transportation. Wis. Stat. § 343.05(4)(b) (listing exemptions to licensing requirements for the operation of noncommercial vehicles). For example, nonresidents of Wisconsin and nonresidents of the United States are exempted from the requirement of possession a Wisconsin driver's license, *id.*, as are new residents of Wisconsin who have resided in the state for fewer than 60 days. Wis. Admin. Code § Trans 102.14(4)(b).

When Officer Muenster ran the records check on the vehicle, the information he obtained was limited to the following: the sole registered owner of the vehicle was Santos Garcia and Garcia had not been issued a Wisconsin driver's license. (71:25, 28; App.26, 29.) Officer Muenster had no knowledge of whether Garcia was a Wisconsin (or United States) resident, when Garcia had established residency if he was, or whether Garcia was exempt from the requirement to possess a Wisconsin license for another reason under Wis. Stat. § 343.05(4)(b). Based on the limited facts known to Officer Muenster, there was no reasonable basis to suspect that the person operating the vehicle was doing so illegally.

This court has held similarly in an unpublished decision in *State v. Palaia*, 2017 Wis. App. 7 (No. 2016AP467-CR, Dec. 30, 2016, unpublished) (App.39-47).³

³ *State v. Palaia*, 2017 Wis. App. 7 (No. 2016AP467-CR, Dec. 30, 2016, unpublished) is a one-judge authored opinion decided

In *Palaia*, an officer stopped a vehicle with a Wisconsin license plate after running a registration check which revealed that the vehicle was registered to two owners, one of whom had not been issued a license by the State of Wisconsin. *Id.*, ¶ 2. The officer could not recall whether he ran a registration check on the second owner and did not determine whether either owner possessed any other valid license. *Id.* The officer stopped the vehicle solely because no license had been issued to one of the vehicle owners; he had not observed any unusual driving behavior before the stop. *Id.*, ¶ 3. The officer was unable to observe the driver before making the stop. *Id.* At the suppression hearing, the defendant offered proof that she and her spouse (the two owners of the vehicle) were exempt from the requirement to possess a Wisconsin driver's license because her spouse was an active duty member of the Armed Forces serving in Wisconsin. *Id.*, ¶ 4.

The court of appeals reversed the denial of Palaia's suppression motion, distinguishing the case from *Newer* and other cases applying *Newer*, in which cases "the officer knew the operation of the vehicle by one of the vehicle owners was illegal." *Id.*, ¶ 10. Based on Wisconsin's statutory scheme providing exemptions to the requirement to possess a Wisconsin driver's license, and the limited facts known to the officer at the time of the traffic stop, the court held that there was no reasonable basis to suspect the person operating the vehicle was doing so illegally: "The fact that one of the vehicle's two owners lacks a Wisconsin license,

pursuant to Wis. Stats. § 752.31(2) and is cited for its persuasive value pursuant to Wis. Stat. § 809.23(3)(b).

without more information, does not mean an owner is driving illegally.” *Id.*, ¶¶ 9-10.

Further, the court found that it was not reasonable to infer that the fact that the vehicle had Wisconsin license plates and was registered in Wisconsin did not support an inference that the owners were Wisconsin residents violating licensing requirements: “given the mobility of modern society, the jurisdiction of a vehicle’s registry or where that vehicle is observed on the road does not necessarily provide information as to where a vehicle’s *owner* resides, let alone that the vehicle’s owner has resided in this state for over sixty days or that the owner did not meet other licensing exceptions.” *Id.*, ¶ 12 (emphasis in original).

Here, as in *Palaia*, Officer Muenster failed to “objectively discern wrongful conduct based upon specific, articulable facts” that would permit a reasonable suspicion that a traffic offense was being committed. *Id.*, ¶ 13. Muenster testified that he knew it was possible to register a vehicle in Wisconsin despite not having a Wisconsin-issued license, and that it was “quite common” in his experience for a registered owner of a vehicle to have no license issued. (71:28-29; App.29-30.) Muenster testified that at the time he reviewed Garcia’s driving history, he understood that to be the case in this situation. (71:28; App.29.)

Driving a Wisconsin registered vehicle without a Wisconsin-issued license is not always a criminal or traffic offense. Without additional information suggesting that the registered owner would be in violation of criminal or traffic laws by driving without a valid Wisconsin license, Officer

Muenster lacked reasonable suspicion to stop the vehicle. *State v. Anderson*, 2019 WI 97, ¶ 32, 389 Wis. 2d 106, 935 N.W.2d 285 (an officer must have a particularized and objective basis for suspecting the person stopped of criminal activity); *Terry*, 392 U.S. at 27 (a stop based on an “inchoate and unparticularized suspicion or ‘hunch’” fails the constitutional test). The burden was on the State to show specific, articulable facts permitting reasonable suspicion that a traffic offense was being committed, *Post*, 301 Wis. 2d 1, ¶ 12; it failed to do so here, and the evidence should have been suppressed.

C. The officer’s observations of Mr. Jagla at the gas station provided additional facts to dispel reasonable suspicion that Mr. Jagla was the registered owner of the vehicle

Even if Officer Muenster had reasonable suspicion of a traffic violation by the registered owner of the vehicle, Santos Garcia, the totality of the circumstances which include Muenster’s observations of Mr. Jagla at the gas station dispel any reasonable suspicion that Mr. Jagla was Santos Garcia, due to the fact that Mr. Jagla was of a different ethnicity than Garcia. Reasonable suspicion is an objective and common-sense test. *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). While there *may* be a reasonable assumption that the person driving a particular vehicle is that vehicle’s owner, the reasonable suspicion inquiry must consider the totality of the circumstances. *Newer*, 306 Wis. 2d 193, ¶¶ 7-8. Considering the totality of the facts known to Officer Muenster, it was not reasonable to suspect that Santos Garcia was driving.

While *Newer* and *Glover* both hold that it is reasonable for an officer to assume that the registered owner of the vehicle is the person driving it, both decisions limit this assumption to circumstances where the officer is unaware of any facts that would suggest the owner is not driving. *Newer*, 306 Wis. 2d 193, ¶ 2; *Glover*, 140 S. Ct. at 1190-91. Both decisions are clear that where the officer has information to suggest the owner is not driving, that officer does not have reasonable suspicion that the driver of the vehicle is committing a traffic offense based on the revoked license of the registered owner alone. *Newer*, 306 Wis. 2d 193, ¶ 8 (if officer “comes upon information suggesting that the assumption is not valid in a particular case, for example that the vehicle’s driver appears to be much older, much younger, or of a different gender than the vehicle’s registered owner, reasonable suspicion would, of course, dissipate”) *Glover*, 140 S. Ct. at 1191 (“the presence of additional facts might dispel reasonable suspicion...then the totality of the circumstances would not raise a suspicion that the particular individual being stopped is engaged in wrongdoing”) (internal cites and quotes omitted).

Here, Officer Muenster had additional facts that dispelled reasonable suspicion that the registered owner was the driver of the vehicle. Muenster knew from his records check that the registered owner was Santos Garcia, a name indicating Hispanic ethnicity. (71:9, 20; App.10, 21; 56:10.) He was able to observe the driver of the vehicle, Mr. Jagla, who is white, when Mr. Jagla was outside of the vehicle pumping gas. (71:17-18; App.18-19.) Muenster specifically testified that he observed Mr. Jagla’s “features.” (71:18; App.19.) The fact that Mr. Jagla appear to match the ethnicity of the registered owner dispels reasonable

suspicion in this case and should have indicated to Officer Muenster that he should obtain more information before initiating the traffic stop.

During the suppression hearing, the State argued that it would have been discrimination for the officer to assume that the white man pumping gas could not have a Hispanic name. (71:34-35; App.35-36.) But “the particularity of the description of the offender” is a relevant part of the reasonable suspicion analysis. *State v. Guzy*, 139 Wis. 2d 663, 677, 407 N.W.2d 548 (1987). And because the focus of Fourth Amendment inquiries is reasonableness, other factors such as whether further investigation can be made short of a traffic stop weigh on the reasonableness determination. *Id.* at 678 (“Are alternative means of further investigation available, such as a license plate check, closer observation of the suspects, or obtaining additional information? If so, the reasonableness of the stop based on scant facts may well be questionable.”) Here, additional information about the registered owner – including a photo or description – could have been available to Officer Muenster had he simply clicked to access it within his records check; he chose not to do so. (71:20-21, 27-28; App.21-22, 28-29.)

The circuit court acknowledged the testimony regarding the ethnicity of Santos Garcia during the preliminary hearing but focused solely on the facts that Garcia and Mr. Jagla were the same gender and around the same age in finding that the officer had reasonable suspicion to stop the vehicle. (71:36; App.37.) But there is no reason why observations of an individual’s race or ethnicity – that is, the “description of the offender” – are not also

appropriately considered in determining the reasonableness of the officer's suspicion. *See Guzy*, 139 Wis. 2d at 677.

An officer must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. *Anderson*, 389 Wis. 2d 106, ¶ 32. Because the facts known to Officer Muenster suggested that Mr. Jagla, observed pumping gas and driving the vehicle, was of a different ethnicity than the registered owner of the vehicle, Officer Muenster lacked reasonable suspicion that Mr. Jagla was committing a traffic offense.

CONCLUSION

For the foregoing reasons, Mr. Jagla respectfully requests the Court reverse the judgment of conviction and remand the case to the circuit court with directions that the judgment be vacated, that the suppression motion be granted, and that all evidence obtained as a result of the violation of Mr. Jagla's Fourth Amendment rights be suppressed.

Dated this 27th day of February, 2024.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. the length of this brief is 4,583 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with 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 rules 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 or 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 27th day of February, 2024.

Electronically signed by:

JENNIFER A. LOHR
State Bar No. 1085725