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STATE OF WISCONSIN  
C O U R T O F A P P E A L S  
DISTRICT III

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Case No. 2023AP2311-CR

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STATE OF WISCONSIN,  
Plaintiff-Respondent,

v.

TOBIN J. JAGLA,  
Defendant-Appellant.

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ON APPEAL FROM A JUDGMENT OF CONVICTION  
ENTERED IN OUTAGAMIE COUNTY CIRCUIT COURT,  
THE HONORABLE MARK J. MCGINNIS, PRESIDING

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**BRIEF OF PLAINTIFF-RESPONDENT**

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JOSHUA L. KAUL  
Attorney General of Wisconsin

ANNA C. GANZ  
Assistant Attorney General  
State Bar #1099709

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-7741  
(608) 294-2907 (Fax)  
ganzac@doj.state.wi.us

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## INTRODUCTION

Defendant-Appellant Tobin J. Jagla pleaded no contest to operating while intoxicated as an eighth offense, after he was pulled over and showed signs of intoxication. Jagla sought to suppress evidence from the traffic stop on the ground that the officer who pulled him over lacked reasonable suspicion for the stop. The circuit court denied the motion because the officer stopped the vehicle after learning that the registered owner of the vehicle, who is not Jagla, did not have a Wisconsin driver's license, and the officer had no reason to believe that someone other than the registered owner was driving the vehicle.

This Court should affirm. As a threshold matter, this Court should not address Jagla's completely new argument that Wisconsin's driver's license exemptions negate the officer's reasonable suspicion. Because the State did not have the opportunity to develop the factual record with respect to this argument in the circuit court, this Court should not consider it. In any event, the license exemption argument lacks merit because reasonable suspicion requires considerably less than 51% certainty that a crime or traffic violation occurred,<sup>1</sup> and it is well-established that the officer did not need to rule out the possibility that the driver was driving legally before initiating the stop.

Jagla's other argument likewise lacks merit. He contends that the officer should have known that he was not the owner because the registered owner had a Hispanic name, and Jagla is white. Yet the circuit court found that the officer was unaware of either the registered owner's or Jagla's race, and Jagla does not attack that finding as clearly erroneous. Therefore, this Court should affirm.

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<sup>1</sup> *Kansas v. Glover*, 589 U.S. 376, 1188 (2020).

### **ISSUE PRESENTED**

Did the officer have reasonable suspicion to pull over the vehicle Jagla was driving?

The circuit court answered yes.

This Court should answer yes.

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

The State requests neither.

### **SUPPLEMENTAL STATEMENT OF THE CASE**

An officer pulled over Jagla after running the plates of the vehicle he was driving and finding that the registered owner of the vehicle had not been issued a Wisconsin driver's license. (R. 4:2.) Once the officer made contact with Jagla, Jagla showed signs of impairment. (R. 4:2–3.) The officer arrested Jagla after learning that Jagla's license was revoked for operating while intoxicated (OWI). (R. 4:3.) Jagla was charged with OWI as an eighth offense, and operating while revoked. (R. 4:1–2.)

Jagla moved to suppress, contending that the stop lacked reasonable suspicion because the officer pulled him over only because the registered owner of the vehicle did not have a valid license. (R. 19:1–2.) The court held a hearing at which arresting officer Dustin Muenster testified. (R. 71.)

Officer Muenster testified that he stopped Jagla because the registered owner of the vehicle Jagla was driving did not have a Wisconsin driver's license and he had no reason to doubt that the registered owner was the driver. (R. 71:9–11.) Specifically, he explained that at about midnight on the night of the stop, he was driving through a gas station, and he observed Jagla pumping gas and getting into the driver's side of a vehicle. (R. 71:7.) Muenster stated that he briefly saw “what the person was wearing,” that the driver “had general

features of a male,” but that his focus was more on surveilling the business and surroundings. (R. 71:17–18.) Muenster stated that as he finished his drive around the gas station and drove by the vehicle again, he could discern just that Jagla was a “male getting into the . . . driver seat of the vehicle.” (R. 71:18.)

At that point Officer Muenster ran the license plate of the vehicle Jagla was driving. (R. 71:8, 11.) That search returned the name of the owner of the vehicle, Santos Garcia, Garcia’s date of birth, and his address. (R. 71:8–9.) Muenster then ran a search of Garcia’s driving history, which showed that Garcia did not have a driver’s license issued. (R. 71:9.) Muenster stated that Garcia’s picture did not appear in his search because he would have to request it. (R. 71:20–21.) He explained that he did not feel it was necessary to look up the photo because he already had reason to make contact with the driver (R. 71:23–24), and because if Garcia never had a license, he would not have a DOT photo to pull up (R. 71:25–26).

Officer Muenster stated that he knew nothing else about Garcia. (R. 71:9.) He stated that he stopped the vehicle because he believed that the person he observed driving the vehicle did not have a license, and that in Wisconsin it is “illegal to operate a vehicle without a license.” (R. 71:10.) Muenster stated that it was “quite common” for someone without a license to register a vehicle, although he was unsure how the DOT allows it. (R. 71:29.)

The circuit court also reviewed video footage of the gas station, from four different angles. (R. 71:13–15; 81.)

Defense counsel argued that Officer Muenster should have been able to discern that Garcia was not the individual he saw at the gas pumps because Jagla is white. (R. 71:33–34.) Counsel also faulted Muenster for failing to pull up a photograph of Garcia. (R. 71:34.) The prosecutor objected to



this argument because it was reasonable to infer that no photo existed and because a white individual could have a Hispanic last name. (R. 71:35.)

The circuit court denied the motion, recounting that Officer Muenster ran the plates of the vehicle and found that it was registered to Garcia, who “never had a valid driver’s license.” (R. 71:31.) The court concluded that if Garcia had been driving, “that would have been a violation of the law.” (R. 71:32.) As to whether Muenster had reason to believe the driver was Garcia, the court noted that the filings showed that “there’s a few year difference” in age between Garcia and Jagla, and that there was no “race or other information.” (R. 71:32.) The circuit court found that it was unnecessary for Muenster to further investigate who the driver was before stopping the vehicle, “especially with the second-by-second things that are going on.” (R. 71:36.) The circuit court thus concluded the stop was lawful. (R. 71:36.)

Jagla thereafter pleaded no contest to the OWI charge, and the State dismissed the operating while revoked charge. (R. 72:10; 13.) The circuit court sentenced Jagla to five years of initial confinement and five years of extended supervision, consecutive to any other sentence. (R. 62:1; 73:26.)

Jagla appeals.

### **STANDARD OF REVIEW**

When reviewing a decision on a motion to suppress evidence, this Court “uphold[s] the circuit court’s factual findings . . . unless they are clearly erroneous,” but it independently applies constitutional principles to the facts. *State v. Lonkoski*, 2013 WI 30, ¶ 21, 346 Wis. 2d 523, 828 N.W.2d 552.

## ARGUMENT

**As the circuit court concluded, there was reasonable suspicion that the driver of the vehicle was illegally operating without a license.**

**A. A traffic stop is a seizure and must be supported by reasonable suspicion.**

Both the United States and the Wisconsin Constitutions protect against “unreasonable searches and seizures.” U.S. Const. amend. IV; Wis. Const. art. I, § 11. Because section 11 of the Wisconsin Constitution is “substantively identical” to the Fourth Amendment to the U.S. Constitution, this Court has “historically interpreted [it] in accord with the Supreme Court’s interpretation of the Fourth Amendment.” *State v. Dumstrey*, 2016 WI 3, ¶ 14, 366 Wis. 2d 64, 873 N.W.2d 502. “The touchstone of the Fourth Amendment is reasonableness.” *State v. Tullberg*, 2014 WI 134, ¶ 29, 359 Wis. 2d 421, 857 N.W.2d 120 (quoting *Florida v. Jimeno*, 500 U.S. 248, 250 (1991)).

“[A] traffic stop is a seizure within the meaning of our Constitutions.” *State v. Floyd*, 2017 WI 78, ¶ 20, 377 Wis. 2d 394, 898 N.W.2d 560. A traffic stop is justified when an officer “reasonably believes the driver is violating a traffic law.” *State v. Betow*, 226 Wis. 2d 90, 93, 593 N.W.2d 499 (Ct. App. 1999); *see also Floyd*, 377 Wis. 2d 394, ¶ 20 (“Reasonable suspicion that a driver is violating a traffic law is sufficient to initiate a traffic stop.”). Reasonable suspicion is “a less demanding standard than probable cause.” *State v. Eason*, 2001 WI 98, ¶ 19, 245 Wis. 2d 206, 629 N.W.2d 625 (citation omitted). Indeed, “[t]he reasonable suspicion inquiry ‘falls considerably short’ of 51% accuracy.” *Kansas v. Glover*, 589 U.S. 376, 1188 (2020) (quoting *United States v. Arvizu*, 534 U.S. 266, 274 (2002)).

**B. There is reasonable suspicion to stop a vehicle when an officer knows that the registered owner of the vehicle does not have a valid license, unless the officer has information indicating that the registered owner is not driving.**

Wisconsin Stat. § 343.05(3)(a) prohibits a person from operating a motor vehicle in Wisconsin “unless the person possesses a valid operator’s license issued to the person” by the DOT and that the license has not been “revoked, suspended, canceled or expired.” In general, a police officer can reasonably assume “that the person driving a particular vehicle is that vehicle’s owner.” *State v. Newer*, 2007 WI App 236, ¶ 7, 306 Wis. 2d 193, 742 N.W.2d 923. An officer can reasonably draw that “commonsense inference.” *Glover*, 589 U.S. 376 at 1185.

The assumption that the driver of a vehicle is the vehicle’s owner “is not, of course . . . an infallibl[e].” *Newer*, 306 Wis. 2d 193, ¶ 7. “If an 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.” *Id.* ¶ 8. Put another way, “if an officer knows that the registered owner of the vehicle is in his mid-sixties but observes that the driver is in her mid-twenties, then the totality of the circumstances would not ‘raise a suspicion that the particular individual being stopped is engaged in wrongdoing.’” *Glover*, 589 U.S. 376 at 1191 (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)).

**C. Jagla forfeited his argument that Wisconsin's driver's license exemptions negate Officer's Muenster's reasonable suspicion for the stop.**

Jagla asks that this Court consider the exemptions to Wisconsin's driver's license requirement as part of the reasonable suspicion analysis. Specifically, he points out that Wisconsin exempts certain nonresidents from possessing a valid driver's license issued by the Wisconsin Department of Transportation, Wis. Stat. § 343.05(4)(b), and that new residents of Wisconsin must apply for a Wisconsin license within 60 days of establishing residency, Wis. Admin. Code § Trans 102.14(4)(b). (Jagla's Br. 12, 15–19.) However, this is a completely new argument that Jagla failed to raise in the circuit court. Rather, in the circuit court Jagla's sole argument was that Officer Muenster lacked reasonable suspicion because he observed that Jagla is white, which should have suggested to him that Jagla was not Garcia, who is of Hispanic descent. (R. 71:32–33.)

This Court does not address issues raised for the first time on appeal. *State v. Huebner*, 2000 WI 59, ¶ 10, 235 Wis. 2d 486, 611 N.W.2d 727. That is because “appellants are limited to the same arguments they made in the circuit court.” *State v. Lock*, 2013 WI App 80, ¶ 40, 348 Wis. 2d 334, 833 N.W.2d 189 (citing *State v. Bustamante*, 201 Wis. 2d 562, 571, 549 N.W.2d 746 (Ct. App. 1996)).

Forfeiture applies even though it was the State's burden to prove reasonable suspicion. Under Wis. Stat. § 971.30(2)(c), all motions must “[s]tate with particularity the grounds for the motion and the order or relief sought.” “Neither the principle of notice, nor Wis. Stat. § 971.30 makes an exception for motions raising Fourth Amendment challenges.” *State v. Caban*, 210 Wis. 2d 597, 606, 563 N.W.2d 501 (1997). As this Court more recently explained, “[t]he fact that the State would bear the burden of proof at a hearing

does not mean [the defendant] simply gets to raise questions and put the State to its proof.” *State v. Radder*, 2018 WI App 36, ¶ 16, 382 Wis. 2d 749, 915 N.W.2d 180. Rather, “the State is entitled to notice of the factual disputes supporting a purported constitutional violation.” *Id.*

The State had no such notice of Jagla’s exemption argument. As a result, the State did not have a chance to ask Officer Muenster about his knowledge of exemptions to the driver’s license requirement or more broadly whether someone in Wisconsin could legally operate a vehicle without a valid license. Nor could the State put on evidence regarding whether or how Officer Muenster could have investigated whether Garcia fell under one of the exemptions without pulling him over. For example, the State had no notice that it should submit evidence about whether Muenster knew that Garcia was a Wisconsin resident, or whether Muenster could discern from Garcia’s driver’s history how long he had been a Wisconsin resident. Because this Court lacks factual findings relevant to Jagla’s exemption argument, this Court should not address this argument for the first time here.

**D. There was reasonable suspicion that the driver of the vehicle was the registered owner.**

Forfeiture aside, the stop passed constitutional muster under well-established precedent. Officer Muenster correctly observed that the owner of the vehicle Jagla was driving did not have a valid Wisconsin driver’s license. That observation gave rise to reasonable suspicion that the driver was violating Wisconsin law. Officer Muenster did not need to rule out whether the exemptions applied to justify the stop because “[t]o be reasonable is not to be perfect” and the requisite level of certainty “falls considerably short of 51%.” *Glover*, 589 U.S. 376 at 1188 (citations omitted).

For that reason, Officer Muenster was “not required to rule out the possibility of innocent behavior.” *State v. Colstad*, 2003 WI App 25, ¶ 8, 260 Wis. 2d 406, 659 N.W.2d 394 (citing *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990)). As the Wisconsin Supreme Court recently reinforced under the more exacting probable cause standard, “[i]t is black letter law that ‘an officer is not required to draw a reasonable inference that favors innocence when there also is a reasonable inference that favors probable cause.’” *State v. Moore*, 2023 WI 50, ¶ 15, 408 Wis. 2d 16, 991 N.W.2d 412 (quoting *State v. Nieves*, 2007 WI App 189, ¶ 14, 304 Wis. 2d 182, 738 N.W.2d 125) (holding that although a smell could reasonably be inferred to be CBD, it was also reasonable to infer that the smell was THC, which supported the finding of probable cause); see also *State v. Nimmer*, 2022 WI 47, ¶ 30, 402 Wis. 2d 416, 975 N.W.2d 598 (citation omitted) (“While Nimmer could have been a random pedestrian out for a walk, the officers were not required to rule out any alternative explanation for his presence at the scene.”). Officer Muenster knew that the person who owned the vehicle did not have a Wisconsin driver’s license, and he had reason to believe the owner was the one driving the vehicle. Just as the officer in *Moore* did not need to rule out whether odor of THC might come from a legal substance to infer that a crime had been committed, *Moore*, 408 Wis. 2d 16, ¶ 15, Muenster did not need to rule out whether a license exemption applied to reasonably believe that the person driving the vehicle might be violating Wis. Stat. § 343.05(3).

Moreover, Officer Muenster observed nothing to suggest that someone other than Garcia was the driver. Muenster’s only observations of Jagla were from afar; he did not testify to observing Jagla’s facial features, race, or ethnicity. And the circuit court found that Muenster only observed that the driver was male and that Garcia and Jagla were close in age. (R. 71:31–32.) Jagla has not shown that this

finding was clearly erroneous. Nor can he; this finding was consistent with the video footage, which showed that Jagla's facial features were largely blocked by his cap, and that Officer Muenster was not close to him when he drove by. (R. 81.) Thus, it was a mere possibility that someone else may have been the driver, which does not negate the reasonableness of Officer Muenster's belief that Garcia was the driver. *Glover*, 589 U.S. 376 at 1188. Because Officer Muenster had reasonable suspicion to believe that the driver of the vehicle was violating Wis. Stat. § 343.05(3), this Court should affirm.

**E. Jagla's arguments fail.**

**1. Wisconsin's driver's license exemptions did not negate Officer Muenster's reasonable suspicion that the driver might be violating Wis. Stat. § 343.05(3).**

Jagla forfeited his argument that Officer Muenster lacked reasonable suspicion for the stop due to Wisconsin's driver's license exemptions. Regardless, this argument fails on the merits.

Jagla's entire argument hinges on *State v. Palaia*, an unpublished decision involving a vehicle owned by two individuals exempt from Wisconsin's license requirement due to military service. (A-App. 39–47.) In *Palaia*, an officer ran the plates of the vehicle the defendant was driving and found that one of the registered owners did not have a valid driver's license. *State v. Palaia*, No. 2016AP467, 2016 WL 7486194, ¶ 3 (Wis. Ct. App. Dec. 30, 2016) (unpublished). This Court concluded that the officer lacked reasonable suspicion to believe that a crime or traffic violation might be occurring because the officer did not have information about either owner's state of residency. *Id.* ¶ 9. This Court rejected the argument that it was reasonable to infer that the owners had



been residing in Wisconsin for longer than the 60-day grace period because they registered a vehicle in this state. *Id.* ¶ 12. It likewise rejected the argument that the officer did not need to rule out innocent explanations before initiating the stop because the officer did not have sufficient facts to infer wrongful conduct in the first place. *Id.* ¶ 13.

This Court should not adopt the reasoning from *Palaia* because it implies a certainty requirement contrary to what *Glover* instructs and what the Wisconsin Supreme Court emphasized in *Moore*, 408 Wis. 2d 16, ¶ 15. Under *Glover* and *Moore*, the proper inquiry is not whether Officer Muenster ruled out the exemptions, but whether one available inference from the facts was that a traffic violation was occurring. *Glover*, 589 U.S. 376 at 1188; *Moore*, 408 Wis. 2d 16, ¶ 15. As the circuit court concluded, Muenster pointed to such facts: he observed someone driving a vehicle registered to a person who did not have a valid Wisconsin license. The possibility that the driver was not the registered owner or that the registered owner did not need a Wisconsin driver's license does not diminish the possibility that the driver was violating Wis. Stat. § 343.05(3)(a).

Officer Muenster's choice was to either let someone that may be driving illegally continue to break the law, or to initiate a stop to conclusively determine whether the law was being broken. Because he had no reason to believe the person was driving legally, the stop was reasonable. The State anticipates that Jagla might reply that Officer Muenster should have investigated whether Garcia was exempt from Wisconsin's driver's license requirement before initiating the stop. But this argument would only serve to highlight why this Court should reject this argument as forfeited: the State could not develop the record about whether Muenster could have investigated further because Jagla failed to properly raise it first in the circuit court.



**2. Jagla's argument about Officer Muenster's observations of him fails because Officer Muenster made no observations that dispelled his belief that Garcia may have been the driver.**

Finally, Jagla contends that Officer Muenster had reason to believe that Garcia was of Hispanic descent, which dispelled his belief that Garcia was the driver because Jagla is white. (Jagla's Br. 20–22.) This argument is belied by the record.

Without record support, Jagla contends that Officer Muenster had reason to know Garcia's ethnicity because of his name alone, and that he had reason to believe that Jagla is white because he testified that he observed Jagla's "features." (Jagla's Br. 20.) Officer Muenster never stated that he observed Jagla's race or ethnicity. Rather, Muenster couched his testimony; he stated that he just observed what Jagla was wearing, and "nothing really further than that." (R. 71:18.) Still Jagla extrapolates from Muenster's testimony at the preliminary hearing that Muenster knew Garcia was Hispanic. (Jagla's Br. 10–11 n.2.) This is incorrect: during the suppression hearing, defense counsel conceded that Muenster had not explicitly confirmed that he knew that Garcia was Hispanic. (R. 71:32–33.)

More importantly, the circuit court made no findings as to either Garcia's or Jagla's race or ethnicity. In fact, the court's only factual findings regarding their appearances noted similarities: that they were both male and were similar ages. (R. 71:32.) Again, Jagla has not shown that those findings were clearly erroneous, and the video footage does not suggest that Muenster could have observed Jagla's race or ethnicity. Rather, it shows Jagla wearing a baseball hat while pumping gas; when Officer Muenster drives by there are two gas pumps in between them, and Jagla's body is partially blocked by the pump. (R. 81.)

Even if Officer Muenster observed that Jagla was white, it still made sense for Muenster to initiate the stop. It should go without saying that a person with a Hispanic last name need not have Hispanic features. In addition, although Jagla contends that Muenster should have pulled up a photo of Garcia to confirm that the person driving looked like the photo (Jagla's Br. 21), as the circuit court noted, it was reasonable for him not to investigate further due to "the second-by-second" nature of the encounter (R. 71:36) and because Muenster already had a basis to stop him.

Jagla forfeited his Wisconsin driver's license exemption argument, and it fails on the merits. Jagla's second argument that reasonable suspicion was dispelled by Officer Muenster's observations lacks record support. Officer Muenster had reasonable suspicion to believe that the person driving Garcia's vehicle was violating Wisconsin law. Therefore, this Court should affirm.

## CONCLUSION

This Court should affirm the judgment of conviction.

Dated this 24th day of April 2024.

Respectfully submitted,

JOSHUA L. KAUL  
Attorney General of Wisconsin

Electronically signed by:

Anna C. Ganz  
ANNA C. GANZ  
Assistant Attorney General  
State Bar #1099709

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-7741  
(608) 294-2907 (Fax)  
ganzac@doj.state.wi.us

### FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 3,403 words.

Dated this 24th day of April 2024.

Electronically signed by:

Anna C. Ganz

ANNA C. GANZ

Assistant Attorney General

### CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 24th day of April 2024.

Electronically signed by:

Anna C. Ganz

ANNA C. GANZ

Assistant Attorney General