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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

REPLY BRIEF OF
DEFENDANT-APPELLANT

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INTRODUCTION

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. Mr. Jagla moved to suppress evidence seized from the vehicle on the basis that the officer lacked reasonable suspicion for the traffic stop. The circuit court held that the stop was justified by reasonable suspicion "solely" because Officer Muenster believed that Mr. Jagla was the registered owner of the vehicle and was violating traffic laws by driving without a valid driver's license. (71:37; App.38.)

Mr. Jagla challenges this holding because the circuit court incorrectly applied the law when it pronounced that "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 State responds that Mr. Jagla forfeited this argument. Mr. Jagla raised the issue of reasonable suspicion for the stop in his suppression motion and at the hearing. However, even if the court finds that he forfeited this argument, the court can and should still address this argument and find that the officer lacked reasonable suspicion of a traffic offense.

Finally, because 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, the court erred in denying Mr. Jagla's suppression motion.

ARGUMENT

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

A. 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

1. The court should address Mr. Jagla's argument.

Mr. Jagla argues that the circuit court erred in finding reasonable suspicion for the stop by incorrectly applying the law regarding the requirement that a driver possess a valid Wisconsin driver's license. Mr. Jagla raised the issue of reasonable suspicion for the stop when he moved to suppress the evidence from the traffic stop on the basis that there was no reasonable suspicion for the officer to make the stop. (19.) Mr. Jagla's motion was sufficiently pled to warrant an evidentiary hearing on the issue (71), at which point it was the State's burden to show that the stop was reasonable under the Fourth Amendment. *State v. Post*, 2007 WI 60, ¶ 12, 301 Wis. 2d 1, 733 N.W.2d 634.

The two Fourth Amendment cases relied upon by the State do not support a finding that Mr. Jagla forfeited this

argument.¹ In *State v. Caban*, the defendant was found to forfeited his claim that officers lacked probable cause to search his vehicle because he did not raise that specific claim in his suppression motion or at the hearing – instead the search was challenged on the basis of the lack of a warrant, the illegality of his arrest, and the propriety of the search as incident to his arrest. 210 Wis. 2d 597, 602-03 & n.2, 563 N.W.2d 501 (1997). Here, Mr. Jagla specified in both his suppression motion and at the hearing that his challenge was to the existence of reasonable suspicion to stop his vehicle. Thus, he sufficiently raised the issue both in his motion and during the hearing.

Nor does *State v. Radder* support a finding of forfeiture. 2018 WI App 36, 382 Wis. 2d 749, 915 N.W.2d 180. Rather, that case establishes pleading standards for the initial motion to suppress. *Id.*, ¶¶ 10-16. Again, Mr. Jagla raised his challenge that the traffic stop was supported by

¹ The non-suppression cases cited by the State are also distinguishable in that they involved the failure to object procedures or evidence at trial. See *State v. Huebner*, 2000 WI 59, ¶¶ 3, 10, 235 Wis. 2d 486, 611 N.W.2d 727 (failure to object to six-person jury in misdemeanor trial, despite pending challenge to constitutionality of that procedure functioned as a waiver of that issue); *State v. Bustamante*, 201 Wis. 2d 562, 573, 549 N.W.2d 746 (Ct. App. 1996) (objection at motion in limine preserved right to appeal the pretrial ruling, but not arguments “based entirely” on evidence unobjected to at trial, where the evidence came in differently at trial than it was characterized in pretrial hearings). In *State v. Lock*, the court of appeals was addressing the appellant’s argument that the respondent had forfeited an argument. 2013 WI App 80, ¶ 40, 348 Wis. 2d 334, 933 N.W.2d 189.

reasonable suspicion in his initial motion. (19.) The motion was sufficiently pled because the court held an evidentiary hearing despite the State's objection. (26; 71.) Mr. Jagla's argument in support of his claim that the officer lacked reasonable suspicion is not forfeited.

Even if this court finds that Mr. Jagla did forfeit this argument, it can and should still address the argument. Forfeiture is a rule of judicial administration, and its application is a matter of the court's discretion. *State v. Kaczmarek*, 2009 WI App 117, ¶ 7, 320 Wis. 2d 811, 772 N.W.2d 702. It is appropriate for the court not to apply the forfeiture rule where, as here, "the issue is one of law, the facts are not disputed, the issue has been thoroughly briefed by both sides and the question is one of sufficient interest to merit a decision." *Id.*, ¶ 9 (quoting *City of News & Novelty, Inc. v. City of Waukesha*, 170 Wis. 2d 14, 20-21, 487 N.W.2d 316 (Ct. App. 1992); see also *State v. C.G.*, 2022 WI 60, ¶58, 403 Wis. 2d 229, 976 N.W.2d 318 ("Although [Petitioner] forfeited this argument, we choose to address it."); *State v. Erickson*, 227 Wis. 2d 758, 766, 596 N.W.2d 749 (1999) ("the [forfeiture] rule is one of judicial administration and ...appellate courts have authority to ignore the [forfeiture]"). *State v. Counihan*, 2020 WI 12, ¶ 27, 390 Wis. 2d 172, 938 N.W.2d 530 ("The forfeiture rule is a rule of judicial administration, and thus a reviewing court may disregard a forfeiture and address the merits of an unpreserved issue in an appropriate case.")

Here, "[t]he values protected by the forfeiture and waiver rules would not be protected in the instant case by applying a forfeiture or waiver rule." *State v. Ndina*, 2009 WI 21, ¶ 38, 315 Wis. 2d 653, 761 N.W.2d 612. The record

contains the evidence needed to determine the argument that the Officer Muenster's knowledge that the registered owner had never been issued a Wisconsin driver's license was insufficient to provide reasonable suspicion of a traffic violation, because the determination is made based on "everything observed by and known to the officer." *State v. Genous*, 2021 WI 50, ¶ 10, 397 Wis. 2d 293, 961 N.W.2d 41. Officer Muenster testified that his records check of the vehicle he saw Mr. Jagla driving indicated that the registered owner had never been issued a Wisconsin driver's license. (71:9, 21, 25, 28; App.10, 22, 26, 29.) Muenster also testified that he knew at the time that he reviewed these records that, "you can register a vehicle [in Wisconsin] and not have a [Wisconsin] driver's license issued," and that it was in his experience, "quite common" for a registered owner of a vehicle to have no license issued. (71:28-29; App.29-30.)

The State argues that additional evidence from Officer Muenster would be needed to determine the question, (Resp. at 13, 16), but reasonable suspicion is determined based on what the officer knew and observed at the time of the traffic stop.² *Genous*, 2021 WI 50, ¶ 10. The

² In his opening brief, Mr. Jagla cited for its persuasive value *State v. Palaia*, 2017 Wis. App. 7 (No. 2016AP467-CR, Dec. 30, 2016, unpublished), which similarly dealt with a traffic stop made solely because the registered owner of a vehicle had never been issued a Wisconsin license. *Id.*, ¶¶ 2-4. In that case, the defendant produced evidence at the suppression hearing explaining why she and her husband, the two registered owners of the vehicle, were exempt from the requirement to obtain a valid Wisconsin license. *Id.*, ¶ 4. However, this information was not the basis for the court's finding that the officer lacked reasonable suspicion, because it was not known to the officer at

test for reasonable suspicion focuses on an objectively reasonable officer and “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; *see also State v. Pugh*, 2013 WI App 12, ¶ 11, 345 Wis. 2d 832, 826 N.W.2d 418 (“simple good faith on the part of the arresting officer is not enough”). Because reasonable suspicion for the stop is based on what a reasonable officer would suspect based on what Officer Muenster observed and learned from the records check – and not Officer Muenster’s subjective beliefs – the record is fully developed.

Further, the argument has been fully briefed by the parties and the circuit court’s determination of reasonable suspicion or probable cause to make a traffic stop is reviewed de novo by this court. *Post*, 2007 WI 60, ¶ 8.

This court should address the argument.

the time of the stop. Instead, the basis for the court’s decision was that, given Wisconsin’s statutory scheme providing exemptions to the license requirement, *and the limited facts known to the officer at the time of the traffic stop*, 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, without more information, does not mean an owner is driving illegally.” *Id.*, ¶¶ 9-10. Therefore, the officer 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.

2. The officer's knowledge at the time of the traffic stop did not provide reasonable suspicion of a traffic violation.

At the time of the traffic stop, Officer Muenster knew that the registered owner of the vehicle that Mr. Jagla was driving had never been issued a Wisconsin license. This is distinguishable from learning that the owner had a revoked or suspended license, which would provide reasonable suspicion that the owner was driving in violation of Wis. Stat. § 343.44(1)(b) (forbidding operating while suspended or revoked). *See State v. Newer*, 2007 WI App 236, ¶ 5, 306 Wis. 2d 193, 742 N.W.2d 923. Because Wisconsin law provides exemptions to the general requirement that operators of a motor vehicle possess a valid Wisconsin driver's license, Wis. Stat. § 343.05(4)(b), the knowledge that a valid Wisconsin license has not been issued *by itself* is insufficient to provide reasonable suspicion of a traffic violation. *Terry v. Ohio*, 392 U.S. 1, 2 (1968) (a search based on an "inchoate and unparticularized suspicion or 'hunch'" fails the constitutional test).

The State argues that Officer Muenster "did not need to rule out whether the exemptions applied to justify the stop," because officers are not required to rule out the possibility of innocent behavior. (Resp. at 13-14.) This is true where the totality of the circumstances raises suspicion of criminal activity. However here, where the sole basis for suspecting a violation is that the owner had never been issued a Wisconsin driver's license, the State is essentially asking for a bright line rule that law enforcement will have reasonable suspicion to stop any vehicle whose registered owner has not been issued a Wisconsin driver's license.

Such a standard “can be interpreted to cover conduct that many innocent drivers commit” and would “permit the arbitrary invasions of privacy by governmental officials addressed by the Fourth Amendment and Article I, Section 11.” *Post*, 2007 WI 60, ¶ 21.

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; it failed to do so here, and the evidence should have been suppressed.

B. 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 that Santos Garcia was committing a traffic offense, his observations of Mr. Jagla at the gas station provided additional facts that dispelled a reasonable suspicion that Mr. Jagla was Santos Garcia. *Newer*, 2007 WI App 236, ¶ 2

(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.")

Officer Muenster testified that when he observed Mr. Jagla at the gas station, he could see both Mr. Jagla's "features" and clothing, and while he did not elaborate on those "features," Officer Muenster clearly looked at Mr. Jagla closely because he determined that Mr. Jagla was male. (71:17-18; App.18-19.) The State argues that the video footage indicates the officer could not determine Mr. Jagla's race or ethnicity, but the footage – surveillance video of the gas pumps and parking lot (71:13, 15; App.14, 16) – does not provide the same view that Officer Muenster would have had from his squad car. Considering the totality of the facts known to Officer Muenster, it was not reasonable to suspect that Santos Garcia was driving.

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, and for those argued in his opening brief, 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 9th day of May, 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 2,497 words.

Dated this 9th day of May, 2024.

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