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**DISTRICT IV**

September 16, 2013

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You are hereby notified that the Court has entered the following opinion and order:

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2012AP289-CR

State of Wisconsin v. Michael J. Lindholm (L.C. # 2011CF106)

Before Blanchard, P.J., Higginbotham and Kloppenburg, JJ.

Michael Lindholm appeals a judgment convicting him of a fourth offense of operating a motor vehicle under the influence of an intoxicant. The sole issue on appeal is whether the police had reasonable suspicion to execute a traffic stop after learning that the registered owner of the vehicle Lindholm was driving had a revoked driver's license, without first taking an available opportunity to observe the driver. After reviewing the briefs and record, we conclude

at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2011-12).<sup>1</sup> We affirm.

According to *Terry v. Ohio*, 392 U.S. 1 (1968), the reasonable suspicion necessary to detain a suspect for investigative questioning must be based on specific and articulable facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity may be afoot, and that action would be appropriate. *Id.* at 21-22. “The question of what constitutes reasonable suspicion is a common sense test. Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience?” *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989).

This court has previously held that it is reasonable for an officer to assume that the person driving a particular vehicle is the vehicle’s owner and, therefore, that an officer observing the operation of a vehicle whose owner’s license is suspended or revoked has the necessary reasonable suspicion to conduct a traffic stop of that vehicle based solely upon that observation. *State v. Newer*, 2007 WI App 236, ¶7, 306 Wis. 2d 193, 742 N.W.2d 923. Such reasonable suspicion would dissipate, however, “[i]f an officer comes upon information suggesting that the assumption is not valid in a particular case,” such as a visual observation that the driver does not match the age or gender of the vehicle’s owner. *Id.*, ¶8.

The facts produced at the suppression hearing in this case are that a police officer on patrol ran a routine registration check on a vehicle that drove past her while she was stopped at

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

an intersection and discovered that the vehicle's female owner had a revoked license. As the officer ran the registration check while still parked, the vehicle drove ahead and pulled into a gas station and convenience store parking lot. Lindholm's wife got out of the passenger side of the car, went into the store to make a purchase, and returned to the car within five minutes. Meanwhile, the officer moved her squad car forward past the parking lot to try to observe the vehicle from the street, then decided to double back and find a better position to be able to follow the car. By the time the officer pulled into one of the driveways into the parking lot, the other vehicle was exiting the parking lot via another driveway, about 75 to 100 feet away. The officer proceeded to stop the vehicle without ever having seen the driver.

On this appeal, Lindholm does not dispute that the officer knew that the vehicle was registered to a woman with a revoked license, and that the officer did not actually observe the driver was a male until after stopping the vehicle. He attempts to distinguish this case from *Newer* on the theory that the officer here "unreasonably failed to pursue an alternative, less intrusive means of investigation" than a traffic stop by taking advantage of the time the vehicle was parked at the convenience store to view the physical characteristics of the driver. However, we are not persuaded that the officer's actions were unreasonable under the totality of the circumstances present in this case.

First, the circuit court explicitly found that there was no evidence in the record to support an inference that the officer was trying to avoid obtaining an identification of the driver or otherwise acting in bad faith by first attempting to view the vehicle from the street rather than immediately pulling into the parking lot. Moreover, even if the officer had pulled into the parking lot soon enough to see that the passenger returning to the car was a female, that fact alone would not have dissipated the officer's reasonable suspicion, because the age and gender

of the passenger would not tell the officer anything about the age or gender of the driver. This was also not a situation in which a vehicle was jointly registered to two owners, only one of whom was revoked, increasing the odds that a non-revoked driver was operating the vehicle. We therefore conclude that *Newer* controls the outcome of this case, and the circuit court properly denied the suppression motion.

IT IS ORDERED that the judgment of conviction is summarily affirmed under WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*