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**DISTRICT IV**

October 23, 2013

To:

Hon. Stephen E. Ehlke  
Circuit Court Judge  
215 South Hamilton, Br. 15, Rm. 7107  
Madison, WI 53703

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

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2012AP492-CR

State of Wisconsin v. Christian D. Peterson (L.C. # 2010CF1791)

Before Lundsten, Higginbotham and Kloppenburg, JJ.

Christian Peterson appeals a judgment of the circuit court, which convicted him of operating while intoxicated, as a fourth offense. *See* WIS. STAT. § 346.63(1)(a) (2009-10).<sup>1</sup> On appeal, Peterson argues that the officer who arrested him lacked probable cause to do so. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

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

This case arises from an incident in which Peterson entered a police station late at night and asked at the walk-up window if someone could call a taxi for him. Peterson was placed under arrest after a police officer conversed with him and suspected that Peterson was intoxicated and had driven to the station. Prior to trial, Peterson filed a motion to suppress evidence obtained at the time of his arrest, arguing that the officer lacked probable cause to arrest him. The circuit court denied the motion, and Peterson now challenges that ruling on appeal.

Peterson does not dispute that he was intoxicated at the time of his arrest. Rather, he argues that the record does not contain any evidence that he had driven a vehicle prior to his arrest. When determining whether probable cause existed for arrest, we examine whether “the totality of the circumstances within the arresting officer’s knowledge at the time of the arrest would lead a reasonable police officer to believe ... that the defendant was operating a motor vehicle while under the influence of an intoxicant.” *State v. Nordness*, 128 Wis. 2d 15, 35, 381 N.W.2d 300 (1986). Whether a set of facts constitutes probable cause is a question of law that we review de novo. *State v. Babbitt*, 188 Wis. 2d 349, 356, 525 N.W.2d 102 (Ct. App. 1994).

We conclude there was probable cause to believe that Peterson drove a vehicle to the police station and, therefore, probable cause supporting Peterson’s arrest.

Deputy Mohr testified at the hearing on the suppression motion that the police station is not in the middle of a busy area, so it was “kind of odd” that Peterson would show up in the middle of the night and ask for a taxi ride. Mohr also testified that, while Peterson was standing at the walk-up window inside the police station, another officer came in from outside and said, “you ... left your lights on.” Peterson responded, “They turn off on their own.” Mohr testified

that, after Peterson made that statement, Peterson's eyes "got real wide and he looked shocked." Mohr thought that Peterson's statement about the lights was inconsistent with the previous story Peterson had been telling, which was that his wife had dropped him off at the station.

The time of night and the location of the police station would not, on their own, satisfy us that probable cause existed. However, Peterson's response that the lights turned off on their own is the type of response that would be expected from someone who had recently pulled up in a car, left the car lights on, and knew that the lights on his car turned off automatically. A person would not ordinarily say "[t]hey turn off on their own" in response to a statement about someone else's car. Additionally, a reasonable officer could infer that Peterson's subsequent "shocked" reaction was the result of a realization that he had made an admission that was inconsistent with the story he had previously been telling to the police about his wife dropping him off.

We are satisfied that, under the totality of the circumstances, there was probable cause for Peterson's arrest, such that the circuit court did not err in denying Peterson's suppression motion.

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

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