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**DISTRICT III**

January 29, 2019

To:

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Circuit Court Judge  
Bayfield County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2017AP1837

State of Wisconsin v. Lena Stecker (L. C. No. 2017CF45)

Before Stark, P.J., Hruz and Seidl, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

The State appeals from a suppression order issued in a criminal case. *See* WIS. STAT. § 974.05(1)(d)2. (2015-16)<sup>1</sup> (permitting the State to file an interlocutory appeal as of right from

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

an adverse suppression ruling). After reviewing the record, we have determined at conference that this case is appropriate for summary disposition pursuant to WIS. STAT. RULE 809.21. Specifically, we conclude the outcome of this case is controlled by *State v. Kerr*, 2018 WI 87, 383 Wis. 2d 306, 913 N.W.2d 787. Based upon *Kerr*, we reverse the suppression order.

While responding to a dispatch call on another matter, a deputy from Bayfield County was advised that Ashland County had a warrant for Lena Stecker. The deputy arrested Stecker based upon the warrant—without knowing the basis on which the warrant was issued<sup>2</sup>—and searched her person incident to arrest. The search revealed what the complaint alleged to be methamphetamine in Stecker’s pocket.

Stecker moved to suppress any items seized from her person. She did not allege any misconduct on the part of the deputy, but she asserted that suppression was required because the warrant for her arrest was invalid. At the suppression hearing, the parties agreed that the warrant was void ab initio. The circuit court then determined that suppression was required under the “judicial integrity” rule discussed in *State v. Hess*, 2010 WI 82, 327 Wis. 2d 524, 785 N.W.2d 568, regardless of whether the facts of the instant case raised any need for deterrence of police misconduct.

After the circuit court issued its suppression ruling in this case, the Wisconsin Supreme Court decided *Kerr*. In that case, as in this one, police had arrested a defendant after being told

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<sup>2</sup> In the circuit court, the parties stipulated that a parking citation was left on a vehicle registered to Stecker; that the circuit court entered a default judgment against Stecker after she failed to appear in court to contest the citation; that notice of the default judgment was mailed to Stecker but returned as undeliverable; and that after Stecker failed to pay the default judgment, the circuit court issued a commitment order—which was the “warrant” upon which Stecker was arrested.

by dispatch that the defendant had an outstanding warrant. *Kerr*, 383 Wis. 2d 306, ¶2. Also as in this case, the parties in *Kerr* disputed whether the warrant at issue was void ab initio.<sup>3</sup> However, the lead opinion in *Kerr*, joined by four members of the court, expressly stated that “[n]either judicial integrity nor judicial error is a standalone basis for suppression.” *Id.*, ¶6. Rather, the court held that suppression of evidence is required “only where suppression will likely serve to deter future police misconduct.” *Id.*, ¶20. The court explained that this rule comports with the sole purpose of the exclusionary rule—which is to deter future Fourth Amendment violations, not to remedy an injury to a person whose constitutional rights have been violated or to preserve judicial integrity or correct judicial error. *Id.* The court further noted that its decision was not in conflict with *Hess*, because the proposition expressed therein—namely, that judicial integrity could serve as a standalone justification for suppression—had not garnered the support of a majority of the court, and therefore had no precedential value. *Kerr*, 383 Wis. 2d 306, ¶6 n.4. The court ultimately concluded that the circuit court had erred in suppressing evidence on the basis of judicial integrity alone, where there had been no police misconduct. *Id.*, ¶24.

Despite our full consideration of Stecker’s appellate arguments and her call for a “deeper analysis” of the issues at play, we see no principled basis on which to distinguish the present case from *Kerr*. Because Stecker has not alleged any misconduct on the part of the deputy who arrested Stecker, suppression is not needed here to deter any future police misconduct. Under *Kerr*, the fact that the warrant upon which Stecker’s arrest was based was potentially void

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<sup>3</sup> In its reply brief on this appeal, the State withdraws the concession it made in the circuit court that the warrant in this case was void ab initio. We do not have to address that issue, however, because, (continued)

ab initio is not, alone, a sufficient basis for suppression. Therefore, the suppression order is reversed.

IT IS ORDERED that the suppression order is summarily reversed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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as we explain below, a majority of our supreme court in *Kerr* agreed that the exclusionary rule should not apply in circumstances like those in this case, regardless of whether the warrant was void ab initio.