

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 3, 2015**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP162-CR**

**Cir. Ct. No. 2013CT381**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**EMILIANO CALZADAS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Jefferson County:  
JENNIFER L. WESTON, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.<sup>1</sup> Emiliano Calzadas was charged with operating without a license.<sup>2</sup> Calzadas moved the circuit court to suppress all

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

evidence obtained as a consequence of a traffic stop and subsequent seizure. The court denied the motion. Calzadas plead no contest and a judgment of conviction was entered.<sup>3</sup>

¶2 On appeal, Calzadas argues that he was subject to an unreasonable seizure when the deputy requested and verified his identification following an otherwise lawful traffic stop. He concedes that the deputy who stopped the vehicle he was driving had reasonable suspicion for the stop based on the deputy's knowledge that the registered owner of the automobile, a female, had a suspended driver's license. However, Calzadas argues that reasonable suspicion evaporated after the deputy saw that the person driving the vehicle was a male, and that the deputy was therefore required under the Fourth Amendment to terminate the stop without requesting and verifying Calzadas' identification. For the reasons that follow, we reject Calzadas' argument and affirm the circuit court.

### **BACKGROUND**

¶3 Jefferson County Deputy Thomas Klemke was on a routine traffic patrol at approximately 3:12 a.m. when he decided to run the registration of a vehicle traveling southbound in Johnson Creek. Deputy Klemke learned that the vehicle was registered to a female who did not have a valid driver's license. Deputy Klemke observed that there was only one person in the vehicle although he could not determine whether the driver was a male or female. Deputy Klemke

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<sup>2</sup> In violation of WIS. STAT. § 343.05(3)(a), third and subsequent offense within three years.

<sup>3</sup> The circuit court imposed and stayed Calzadas' sentence pending the outcome of this appeal.

followed the vehicle into a Kwik Trip parking lot where the driver, later identified as Calzadas, backed into a parking stall. Deputy Klemke pulled his vehicle in a position angled toward the front of the vehicle Calzadas was driving. Deputy Klemke shined his headlights on the vehicle.

¶4 Deputy Klemke testified that he realized that Calzadas was male as soon as Calzadas got out of his vehicle. Deputy Klemke further testified that he made this realization when he was walking up to Calzadas' vehicle.

¶5 Deputy Klemke advised Calzadas the reason for the stop and then asked Calzadas for identification. Calzadas presented Deputy Klemke with a Wisconsin identification card and Deputy Klemke returned to his squad to run Calzadas' information to determine his driving status. Deputy Klemke learned that Calzadas did not have a valid Wisconsin driver's license and issued a citation to Calzadas for this offense.

¶6 Calzadas moved to suppress all evidence obtained directly or indirectly as a consequence of the stop of his vehicle and his subsequent detention and arrest. In support, Calzadas argued that, although the officer had reasonable suspicion to stop the motor vehicle, once the reason for the stop had dissipated, the deputy unlawfully continued the seizure by then requesting Calzadas' identification and verifying Calzadas' driver's status.

¶7 The circuit court denied the motion, finding that the deputy's request and verification of Calzadas' identification did not transform a lawful stop into an unlawful seizure. Applying the rationale in *State v. Ellenbecker*, 159 Wis. 2d 91, 464 N.W.2d 427 (1980), the court reasoned that the continued seizure was lawful for several legitimate reasons, such as Deputy Klemke may have needed to write up a report regarding the contact; Deputy Klemke may have needed to defend

himself against a legal claim; that the vehicle may later be reported as stolen; and, that there is a public interest in deterring people from driving without a valid license. In addition, the court found that the seizure was temporary and lasted no longer than necessary to effectuate its purpose.

¶8 Calzadas then plead no contest to the charge of driving without a valid driver's license. The court found Calzadas guilty and stayed his sentence pending the outcome of this appeal. Calzadas appeals.

### DISCUSSION

¶9 The constitutionality of a seizure is a question of constitutional fact. *State v. House*, 2013 WI App 111, ¶4, 350 Wis. 2d 478, 837 N.W.2d 645. This court upholds a circuit court's findings of historical fact unless clearly erroneous, but whether those facts "pass constitutional muster" is a question of law reviewed de novo. *Id.*

¶10 On appeal, Calzadas does not dispute that Deputy Klemke had reasonable suspicion to stop Calzadas based on Deputy Klemke's knowledge that the vehicle's registered owner had a suspended driver's license.<sup>4</sup> See *State v. Newer*, 2007 WI App 236, ¶2, 306 Wis. 2d 193, 742 N.W.2d 923. We assume without deciding that the reason for the traffic stop dissipated after the deputy learned that Calzadas was not the registered owner. Therefore, the issue on appeal

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<sup>4</sup> The State argues that Deputy Klemke's initial stop with Calzadas was a consensual encounter and not a stop for which the protections of the Fourth Amendment apply. Although we determine independently whether a seizure has occurred, we make that determination based upon the evidentiary or historical facts as found by the trial court unless the findings are clearly erroneous. *State v. Young*, 2006 WI 98, ¶17, 294 Wis. 2d 1, 717 N.W.2d 729. The circuit court's findings support our conclusion that a stop occurred within the meaning of the Fourth Amendment and the State does not argue that these findings are clearly erroneous.

is whether Deputy Klemke's request and verification of Calzadas' identification transformed what was initially a lawful stop into an unreasonable seizure. We conclude that it did not.

¶11 Our holdings in *State v. Williams* and *State v. Ellenbecker* provide support for our conclusion. In *Ellenbecker*, a state patrol officer pulled his squad car behind a disabled vehicle stopped on the side of the road. The officer asked for the driver's license, called dispatch, and learned that the license was revoked. *Ellenbecker*, 159 Wis. 2d at 94. We held that the license request and status check did not transform a lawful "motorist assist" into an unlawful seizure. *Id.* at 97-98. We identified three reasons for permitting an officer performing a motor assist to request identification of a motorist: (1) the officer may be required to make written reports of contacts with citizens; (2) an officer may need to know whom he or she is assisting in the event of a citizen complaint against the officer; and (3) the information may assist in the subsequent investigation of a crime, such as theft of a car. *See id.* at 97. Important to this case, we explained that the public interest identified by these factors outweighs the incremental liberty intrusion, since "[r]equesting a license and conducting a status check after a lawful contact is but a momentary occurrence" where "[t]he intrusion is minimal at best." *Id.* at 98.

¶12 The reasoning applied in *Ellenbecker* applies equally here. It was reasonable for Deputy Klemke to request and verify Calzadas' identification and his driver's status, even after reasonable suspicion for the stop had assumingly dissipated. The public has an interest in permitting a police officer to conduct a status check of a driver's license, which is to deter persons from driving without a license. *Id.* at 97-98. Conducting a status check on a license under circumstances

where it is reasonable for an officer to ask for a license is “simply carrying out this deterrent function of the law.” *Id.* at 98.<sup>5</sup>

¶13 Calzadas argues that *Ellenbecker* does not apply since it is a community caretaker case involving a disabled vehicle where the stop was not based upon reasonable suspicion. We are not persuaded. In *Williams*, we applied the reasoning in *Ellenbecker* to a case where an officer had reasonable suspicion to stop a vehicle, but learned shortly thereafter that he was mistaken about the identity of the driver. *State v. Williams*, 2002 WI App 306, ¶¶18, 22, 258 Wis. 2d 395, 655 N.W.2d 462. In *Williams*, an officer stopped a vehicle on the suspicion that the driver was a suspect in a domestic abuse case. The officer learned that the driver, Williams, was not the suspect but the officer nonetheless had Williams’ name and birth date run through the dispatcher. *Id.* ¶¶2-4. Relying on *Ellenbecker*, we concluded that because Williams was lawfully stopped, it was reasonable for the officer to ask him for his name and driver’s license, even if the officer had already realized Williams was not the domestic abuse suspect since the officer may have needed to make a report of the incident. *Id.* ¶22. We conclude that *Ellenbecker* and *Williams* dictate that Officer Klemke’s request and verification of Calzadas’ identification did not transform a lawful stop into an unlawful seizure. That Calzadas presented a Wisconsin identification card as opposed to a driver’s license does not alter our analysis. *See id.*, ¶¶3, 22 (finding

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<sup>5</sup> Calzadas argues, without support, that the facts in *Williams* are more likely to give rise to a complaint or lawsuit than the facts here, since Williams was detained for a greater length of time than was Calzadas. *State v. Williams*, 2002 WI App 306, 258 N.W.2d 395, 655 N.W.2d 462. We may decline to review issues that are inadequately briefed. *See Roehl v. American Family Mut. Ins. Co.*, 222 Wis. 2d 136, 149, 585 N.W.2d 893 (Ct. App. 1998); *State v. Petti*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

that the officer's request for identification of the motorist was valid where Williams provided his name and date of birth to the officer orally).

¶14 Relying on *Delaware v. Prouse*, Calzadas also argues that, without any basis for continued detention, the Fourth Amendment required Deputy Klemke to terminate the stop. *Delaware v. Prouse*, 440 U.S. 648 (1979). We disagree. Whether a seizure is reasonable within the context of a traffic stop depends on whether, (1) “the seizure was justified at its inception,” and (2) the officer's actions were reasonably related in scope to the circumstances justifying the interference. *House*, 350 Wis. 2d 478, ¶5 (quoting another source). As we stated, Calzadas does not challenge the initial stop. As such, the issue turns on whether Deputy Klemke's request and verification of Calzadas' identification after he realized that Calzadas was not the registered driver was reasonably related in scope to the circumstances justifying the initial stop. We conclude that it was. Under *Williams*, it is reasonable for the officer to request the name and identification of a driver who is lawfully stopped, even if the suspicion supporting the stop has dissipated. *Williams*, 258 Wis. 2d 395, ¶¶18, 21-22.

¶15 Calzadas also argues that our holding in *Newer* dictates that his seizure should have ended once Deputy Klemke realized Calzadas was not the registered owner. *Newer*, 306 Wis. 2d 193. In *Newer*, we held that an officer has reasonable suspicion for a traffic stop based on his knowledge that the owner of the vehicle has a revoked license since it was reasonable for the officer to believe that the owner of the vehicle is most likely the driver. *See id.*, ¶¶2, 9. Calzadas relies on the limiting language in *Newer* that “[i]f an officer comes upon information suggesting that [the driver is not the registered owner of the vehicle], 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. Calzadas argues that the directive that an officer may not conduct a stop if reasonable suspicion dissipates before the stop applies equally here. We disagree.

¶16 *Newer* not only does not support Calzadas’ argument, *Newer* supports our conclusion that the deputy in this case acted lawfully when he asked for Calzadas’ driver’s license and checked the status of the license. *Newer* is a reasonable suspicion to stop case and here Calzadas concedes that there was reasonable suspicion to stop his vehicle. *Newer*’s limitation applies to information an officer learns *before* a stop is made. Obviously, once an officer who initially assumes that the owner of a vehicle is most likely the driver, but then learns before the stop that the assumption is not valid, reasonable suspicion for the stop dissipates. Here, it was not until *after* the stop that Deputy Klemke realized that Calzadas could not be the female registered owner of the vehicle.

¶17 Accordingly, we affirm the circuit court’s denial of Calzadas’ suppression motion and judgment of conviction.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.



