

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 25, 2016**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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. 2015AP1524-CR**

**Cir. Ct. No. 2015CT87**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DREW A. HEINRICH,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Portage County: JOHN V. FINN, Judge. *Affirmed.*

¶1 BLANCHARD, J.<sup>1</sup> Drew Heinrich appeals a judgment of conviction for operating a motor vehicle while intoxicated—second offense.<sup>2</sup>

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

<sup>2</sup> The Hon. Richard O. Wright presided over some proceedings, including the entry of the judgment of conviction. The Hon. John V. Finn presided over the suppression hearing.

Heinrich argues that the court should have suppressed evidence obtained following a traffic stop because the arresting officer did not have reasonable suspicion to conduct the stop. I affirm.

### **BACKGROUND**

¶2 There is no dispute about the pertinent facts, which were testified to by the arresting officer at a suppression hearing. One night at around 11:00 p.m. the officer was on patrol when he ran a check of Wisconsin Department of Transportation records regarding the registration of a vehicle that he was following in his police vehicle. The officer received information that the vehicle had two registered owners. Both were male, one with a 1993 birthdate (identified as Drew Heinrich) and the other with a 1989 birthdate. The records also reflected that the older of the two had an unrestricted, non-commercial driver's license, but that Drew Heinrich had a restricted license. More specifically, the records reflected that Drew Heinrich had an occupational license, and he was prohibited from driving at 11:00 p.m.

¶3 The street on which the two vehicles were travelling had street lighting, but the officer "had no way of seeing inside the vehicle" as the two vehicles proceeded down the street. For example, the officer could not determine the apparent sex of the driver as he or she drove. The officer initiated the challenged traffic stop in order to determine whether Drew Heinrich was driving the vehicle. When the officer approached the vehicle, the driver identified himself, accurately, as Drew Heinrich.

¶4 Evidence generated in the stop was used to support the charges that were filed in this case. Heinrich filed a motion to suppress that evidence, arguing that the arresting officer lacked reasonable suspicion to make the stop.

¶5 The circuit court denied Heinrich’s motion, concluding that the officer had reasonable suspicion to support the traffic stop to investigate once the officer learned that at least one of the two registered owners of the vehicle did not have a license that permitted him to drive at that time. Heinrich subsequently entered a no-contest plea to operating a motor vehicle while intoxicated—second offense. Heinrich now appeals the suppression decision.

### DISCUSSION

¶6 Whether a traffic stop is reasonable is a question of constitutional fact, which is a mixed question of law and fact. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. The circuit court’s findings of fact are upheld unless clearly erroneous, however the application of the facts to the law is reviewed de novo. *State v. Gammons*, 2001 WI App 36, ¶6, 241 Wis. 2d 296, 625 N.W.2d 623.

¶7 “[R]easonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops.” *State v. Houghton*, 2015 WI 79, ¶30, 364 Wis. 2d 234, 868 N.W.2d 143. “When weighed against the public interest in safe roads ... the ‘temporary and brief’ detention of a traffic stop is an ‘appropriate manner’ in which a police officer may ‘approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.’” *Id.* at ¶30 (quoting *Terry v. Ohio*, 392 U.S. 1 (1968)). In order to establish reasonable suspicion, “the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Id.*, ¶21 (quoting *Terry*, 392 U.S. at 21).

¶8 This case involves the principles outlined in *State v. Newer*, 2007 WI App 236, 306 Wis. 2d 193, 742 N.W.2d 923. In that case, an officer discovered that the operating privileges of the only registered owner of a vehicle had been revoked. *Id.*, ¶3. This court noted that, as a matter of common sense, “an officer may reasonably presume that the owner of a vehicle is also the driver,” and for this reason police had reasonable suspicion to make a traffic stop, “so long as the officer remain[ed] unaware of any facts that would suggest that the owner [was] not driving.” *Id.*, ¶¶2-7 (quoted source omitted).

¶9 Heinrich does not challenge the following fact finding of the circuit court: “It was dark, and even with [the officer’s] lights he could not see inside the vehicle” in order to make an identification of the driver, even assuming that there could have been a basis to distinguish between the appearances of these two young men. Instead, Heinrich makes two arguments, one concerning the relationship between probability and reasonable suspicion, and the other based on the wording of a passage in *Newer*. I address the arguments in turn.

¶10 First, Heinrich argues that reasonable suspicion requires evidence supporting a reasonable conclusion that there is a greater than 50 percent chance that the driver of the vehicle is violating the law. And here, because there were two registered owners, Heinrich contends, there could not have been a greater than 50 percent chance that the owner with the invalid license was operating the vehicle, and therefore the officer did not have reasonable suspicion. I reject this argument for at least the reason that it is based on a faulty explicit premise: that reasonable suspicion requires evidence suggesting a greater than 50 percent chance of a law violation.

¶11 It is well established that even *probable cause*, a standard distinctly higher than reasonable suspicion, need not be established at a level exceeding a 50 percent probability. See *State v. Tompkins*, 144 Wis. 2d 116, 123-26, 423 N.W.2d 823 (1988) (proof that contraband was located at any one of three separate locations sufficient to establish probable cause). And, as our supreme court has explained:

Although it is not possible to state precisely what the term reasonable suspicion means, it is a “commonsense nontechnical conception(s) that deal[s] with ‘the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’” What is certain is that reasonable suspicion is “a less demanding standard than probable cause.” The information necessary to establish reasonable suspicion can be less in both content and reliability than the information needed to establish probable cause. In other words, the required showing of reasonable suspicion is low, and depends upon the facts and circumstances of each case.

*State v. Eason*, 2001 WI 98, ¶19, 245 Wis. 2d 206, 629 N.W.2d 625 (citations omitted). I am satisfied that the reasoning supporting reasonable suspicion in *Newer* applies to a vehicle with two registered owners when only one is not properly licensed to drive.

¶12 Having rejected Heinrich’s first argument, I turn to his second, which involves the fact that one owner was licensed to operate the vehicle at 11:00 p.m. Heinrich contends that this fact was, in the words of *Newer*, a fact that “would suggest that the owner [was] not driving,” thus dissipating reasonable suspicion. However, the court in *Newer* explained in the following terms what it meant by “unaware of any facts that would suggest that the owner [was] not driving,” and it did not involve anything like the instant scenario:

If an officer comes upon information suggesting that the assumption is not valid in a particular case, 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. There would simply be no reason to think that the nonowner driver had a revoked license.

Here, the officer did not observe the driver of the vehicle and had no reason to think that it was anyone other than the vehicle's owner at any time during the stop. The officer was entitled to rely on the reasonable assumption that the owner of a vehicle is most likely the driver.

*Newer*, 306 Wis. 2d 193, ¶¶8-9. When an officer has an objective basis to conclude that the particular person who is not properly licensed to drive is not in fact behind the wheel, that necessarily directly undermines a reasonable suspicion that the disqualified person is driving. However, at issue here is the merely somewhat increased possibility that a person other than the disqualified person might be driving. There is a large qualitative difference between observing that the person behind the wheel does not resemble the disqualified driver and being aware of a fact that only marginally increases the possibility that the disqualified driver is not behind the wheel.

¶13 In sum, I see no merit in the only arguments that Heinrich makes to distinguish *Newer*. In addition, I see no other reason that the rationale of *Newer* does not apply here. When one of two registered owners may not lawfully operate a vehicle, and there is no objective reason for an officer not to suspect that the disqualified registered owner is operating a vehicle, this is a “sufficient probability” to constitute reasonable suspicion based on the totality of the circumstances. See *id.*, ¶¶7-8 (quoted source omitted).

¶14 For the foregoing reasons, I affirm the judgment of conviction.

*By the Court.*—Judgment and order affirmed.

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

