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**DISTRICT IV**

February 2, 2023

*To:*

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Circuit Court Judge  
Electronic Notice

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Electronic Notice

Tina McDonald  
Clerk of Circuit Court  
Grant County Courthouse  
Electronic Notice

Michael C. Sanders  
Electronic Notice

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

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2021AP1538-CR

State of Wisconsin v. Karen Dorothy Steffen (L.C. # 2020CF201)

Before Fitzpatrick, Graham, and Nashold, 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).**

Karen Steffen appeals a judgment, which was entered upon her guilty pleas, that convicted her of one count of possession of methamphetamine and one count of operating a motor vehicle with a detectable amount of a restricted controlled substance in her blood, as a third offense. *See* WIS. STAT. §§ 961.41(3g)(g); 346.63(1)(am)(2019-20).<sup>1</sup> On appeal, Steffen challenges the circuit court's denial of her motion to suppress evidence gathered during a traffic stop. For the reasons discussed below, based upon our review of the briefs and record, we summarily affirm the judgment of the circuit court. *See* WIS. STAT. RULE 809.21.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version.

The following facts are based on testimony at the suppression hearing and are undisputed. A police officer stopped the vehicle that Steffen was driving at approximately 11:00 p.m. on September 23, 2020. The officer who made the stop testified that he recognized the vehicle because he had previously run its registration and knew that the female owner had a revoked driver's license. The officer determined that the driver was female due to the length of her hair. Prior to conducting the stop, the officer contacted dispatch, and dispatch confirmed that the vehicle was registered to Steffen, as well as a male owner, and that Steffen's license was revoked. The officer stopped the vehicle and made contact with Steffen. Based on the evidence gathered during the traffic stop, Steffen was charged with operating with a restricted controlled substance in the blood as a third offense, possession of methamphetamine, and possession of drug paraphernalia. Steffen moved to suppress the evidence collected as a result of the stop. The circuit court denied the motion and found that the officer had reasonable suspicion for the stop.

Steffen's sole argument on appeal is that the police officer did not have reasonable suspicion to stop her vehicle based on the information known to the officer at the time of the stop. Steffen asks us to reverse the circuit court's denial of her suppression motion. In reviewing a motion to suppress, we uphold the circuit court's factual findings unless they are clearly erroneous, and we decide independently whether those facts violate constitutional principles. *State v. Eason*, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625. Because the facts here are not in dispute, we independently review whether the traffic stop was supported by reasonable suspicion.

An officer may lawfully perform a traffic stop where, based on specific and articulable facts, he or she reasonably suspects that criminal activity is afoot. *Terry v. Ohio*, 392 U.S. 1, 21, 30 (1968). Reasonable suspicion is "a less demanding standard than probable cause." *Eason*,

245 Wis. 2d 206, ¶19 (internal citation omitted). “The reasonable suspicion inquiry ‘falls considerably short’ of 51% accuracy.” *Kansas v. Glover*, 140 S. Ct. 1183, 1188 (2020) (quoting *United States v. Arvizu*, 534 U.S. 266, 274 (2002)).

In *State v. Newer*, this court held “that an officer’s knowledge that a vehicle’s owner’s license is revoked will support reasonable suspicion for a traffic stop so long as the officer remains unaware of any facts that would suggest that the owner is not driving.” 2007 WI App 236, ¶2, 306 Wis. 2d 193, 742 N.W.2d 923.<sup>2</sup> A police officer is entitled to rely on the reasonable assumption that the registered owner of a vehicle is most likely the driver; however, that assumption is not infallible. *Id.*, ¶7.

Here, Steffen asserts that the officer who stopped her was aware of facts that would suggest that Steffen was not the person driving the vehicle. Specifically, Steffen points to testimony that, earlier in the day on September 23, 2020, a female friend of Steffen named Tammy Stanton had been operating Steffen’s vehicle. At the suppression motion hearing, Stanton testified that the same officer who stopped Steffen around 11:00 p.m. had also driven past Stanton earlier in the day, when it was still light outside. Stanton testified that she saw the officer when she was getting out of the driver’s seat of Steffen’s vehicle, and that she and the officer waved at each other. Based on this interaction, Steffen argues that the officer could have inferred that Stanton was also driving the vehicle later that night.

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<sup>2</sup> The parties’ briefs address two unpublished opinions of the court of appeals that discuss *State v. Newer*, 2007 WI App 236, 306 Wis. 2d 193, 742 N.W.2d 923. These unpublished opinions are *State v. Vitek*, No. 2015AP421-CR, unpublished slip op. (WI App Oct. 27, 2015); and *State v. Heinrich*, No. 2015AP1524-CR, unpublished slip op. (WI App Feb. 25, 2016). Both are one-judge authored opinions decided pursuant to WIS. STAT. § 752.31(2) and therefore may be cited as persuasive authority pursuant to WIS. STAT. § 809.23(3)(b). However, because *Vitek* and *Heinrich* are not binding precedent, we do not discuss them further here except to say that they support our decision in this case.

Although such an inference could be reasonable, it does not negate the reasonableness of the officer's inference that Steffen, the registered owner of the vehicle, was driving at the time of the stop. *See Glover*, 140 S. Ct. at 1188 (the fact that the registered owner of a vehicle is not always the driver of the vehicle did not negate the reasonableness of the officer's inference that the owner was driving).

The facts in this case are distinguishable from the types of facts that the *Newer* court suggested may invalidate an officer's reasonable assumption that the person driving a particular vehicle is that vehicle's owner. *Newer*, 306 Wis. 2d 193, ¶¶7-8. The court stated, "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." *Id.*, ¶8. That is not what occurred here.

The record does not show that, at the time of the traffic stop, the officer made any contemporaneous observation about the driver that would suggest she was not the owner of the vehicle. Stanton testified that the officer saw her driving Steffen's vehicle during the daylight hours, and it was not until hours later, around 11:00 p.m., that the officer saw the vehicle again. The officer did not see Stanton driving Steffen's vehicle immediately before, or even shortly before, he conducted the traffic stop. Nor did the officer see Stanton driving the vehicle, begin to follow it but lose track of it, and then catch up to the vehicle and stop it on suspicion that Steffen was driving with a revoked license. At the time of the stop, the officer did not observe someone driving the vehicle who was obviously not the same gender or age range as the registered owner. To the contrary, the officer observed a driver that he assumed to be female, based on the length of her hair. The officer combined that contemporaneous observation with his knowledge,

confirmed by dispatch, that the vehicle was registered to a female owner with a revoked license. It was reasonable, then, for the officer to infer that Steffen was driving her own car at the time of the stop, and was doing so without a valid license. We conclude that the officer had reasonable suspicion to justify the stop of Steffen's vehicle, such that the circuit court properly denied the suppression motion.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*