

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 13, 2007

David R. Schanker
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. 2007AP188-CR

Cir. Ct. No. 2006CT143

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DUSTIN M. PRICE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
JAMES EVENSON, Judge. *Affirmed.*

¶1 BRIDGE, J.¹ Dustin M. Price appeals from a judgment convicting him of operating after revocation in violation of WIS. STAT. § 343.44(1)(b). He contends that he was improperly seized in violation of his rights under the Fourth

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution, by an officer asking him for identification and his drivers license after he was lawfully stopped for the purpose of picking up an acquaintance who had been given a citation for driving with a revoked drivers license. We conclude that there was not a violation under either the federal or State constitution and we therefore affirm.

BACKGROUND

¶2 The pertinent facts are not disputed. Lake Delton Police Officer Darren Jorgenson stopped a vehicle for speeding. During the stop, Officer Jorgenson determined that the operator of the vehicle, Jacqueline Gatling, was driving with a revoked drivers license and issued her a citation. Gatling informed Officer Jorgenson that she had phoned someone to pick her up.

¶3 A vehicle pulled over to the side of the road where Gatling and the officer were located. Officer Jorgenson approached the driver of the vehicle, Dustin Price, and Price told the officer that he was there to pick up Gatling. The officer then asked Price his name and asked to see his drivers license. Price provided his name and stated that he did not have his drivers license with him. The officer returned to his squad car and ran a records check on Price and learned that Price's license had been revoked. Price was then issued a citation for operating after revocation. Price moved to suppress the evidence contending that an unlawful seizure occurred when the officer asked for his drivers license. The court denied Price's motion and Price was subsequently convicted of operating after revocation. Price appeals.

DISCUSSION

¶4 The issue on appeal concerns the Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution. We decide questions of constitutional law independently and without deference to the circuit court. See *Bies v. State*, 76 Wis. 2d 457, 469, 251 N.W.2d 461 (1977).

¶5 The State contends that this case is controlled by our prior ruling in *State v. Ellenbecker*, 159 Wis. 2d 91, 464 N.W.2d 427 (Ct. App. 1990). We agree. In *Ellenbecker*, we held that a request for a drivers license from a driver whose vehicle was disabled, and a status check on the license, did not transform a lawful “motorist assist” into an unlawful seizure. In so ruling we reasoned in part that WIS. STAT. § 343.18(1) gives law enforcement officers the authority to require a driver of a motor vehicle to display his or her license on demand.² While we recognized that officers do not have unfettered discretion to stop drivers and request display of their licenses, we pointed out that *Ellenbecker* had not been singled out for a spot check of his license but was already stopped under lawful circumstances. *Id.* at 97-98. We concluded that the request for *Ellenbecker*’s license under these circumstances was reasonable. We also concluded that the check on the license’s validity was reasonable because the authority to demand the license would be meaningless without that, and would not promote the purpose of § 343.18(1), which is to deter persons from driving without a valid license. *Id.* at

² WIS. STAT. § 343.18 provides in part: (1) Every licensee shall have his or her license document, including any special restrictions cards issued under §§ 343.10(7)(d) or 343.17(4), in his or her immediate possession at all times when operating a motor vehicle and shall display the same upon demand from any judge, justice, or traffic officer.

97-98. We held that the public interest in requesting the license and running the check did not outweigh the very minimal intrusion on the driver. *Id.*

¶6 Here, Officer Jorgenson approached the driver of the vehicle who had arrived to transport Gatling, who did not have a valid license to operate a vehicle. Like *Ellenbecker*, Price was not singled out for a spot check of his license, but was already stopped. The officer was authorized under WIS. STAT. § 343.18(1) to request Price's drivers license. Under the ruling in *Ellenbecker*, even if Price had shown his license, Officer Jorgenson could check on the status of Price's license without violating the Fourteenth Amendment.

¶7 Price attempts to distinguish *Ellenbecker* by arguing that the officer in *Ellenbecker* was acting as a community caretaker, whereas Officer Jorgenson was not. A community caretaker action is not an investigative *Terry* stop and thus does not have to be based on a reasonable suspicion of criminal activity. *See Terry v. Ohio*, 392 U.S. 1, 21-22 (1968). However, as the State points out, we have previously applied *Ellenbecker* to circumstances not involving a police officer acting in a community caretaker role. In *State v. Williams*, 2002 WI App 306, 258 Wis. 2d 395, 655 N.W.2d 462, we determined that even though an officer had made the determination that a stopped driver was not the suspect the officer was seeking, the subsequent request for his drivers license and status check was reasonable because, as in *Ellenbecker*, the driver was lawfully stopped. *See Williams*, 258 Wis. 2d 395, ¶¶21-22.

¶8 We conclude that the reasoning and conclusion in *Ellenbecker* applies to the present case, and conclude that Officer Jorgenson did not violate Price's Fourth Amendment rights by requesting his drivers license. Accordingly, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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

