

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 15, 1996

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

NOTICE

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

No. 96-1552-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

State of Wisconsin,

Plaintiff-Respondent,

v.

Lawrence Dean,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

WEDEMEYER, P.J.¹ Lawrence Dean appeals from a judgment entered after he pled guilty to possession of cocaine, contrary to §§ 161.16(2)(b)(1) and 161.41(3m), STATS. Dean claims the trial court erred in denying his motion to suppress because the cocaine was discovered pursuant to

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

an illegal *Terry*² stop. Because the trial court did not err in denying Dean's suppression motion, this court affirms.

I. BACKGROUND

On March 1, 1995, Dean was stopped in the 2400 block of West Wisconsin Avenue because he was driving a vehicle that did not display any license plate on the front or the rear of the car.

According to the arresting officers, Dean got out of the car and refused to provide them with any information. Based on this conduct, Dean was arrested for obstruction. Pursuant to the arrest, the officers conducted a pat-down search and discovered cocaine in Dean's pocket.

Dean was charged with possession. He moved to suppress the evidence, arguing that because he had an Illinois temporary registration permit affixed to the rear window of his car, that the officers' investigatory stop was illegal. The trial court found the police officers' testimony that they did not recall seeing the permit in Dean's car at the time of the stop to be more credible. As a result, the trial court ruled that the stop was not illegal and denied the motion to suppress.

Dean pled guilty. Judgment was entered. He now appeals.

II. DISCUSSION

A motion to suppress evidence raises a constitutional question, which presents a mixed question of fact and law. To the extent the trial court's decision involves findings of evidentiary or historical facts, those findings will not be overturned unless they are clearly erroneous. *State v. Krier*, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). The application of constitutional

² See *Terry v. Ohio*, 392 U.S. 1 (1968).

and statutory principles to the facts found by the trial court, however, presents a matter for independent appellate review. *Id.*

The trial court ruled in pertinent part:

In this case the vehicle in which the defendant was operating was a 1984 Cadillac that was stopped at 2400 West Wisconsin Avenue. When it was stopped, the driver got out of the car and he stated, according to the police officer, he didn't have a license. Then he refused to speak to the police officers. They then placed him under arrest for obstructing an officer. And that is a crime. It is a crime. You don't have to be articulate. You don't have to say, I refuse to cooperate. You just refuse to cooperate, and that is obstructing. That's what happened here. That is the findings of this Court, at least.

And the automobile he was driving had no front and back plates. The police officers say they cannot recall this document, [the Illinois permit] ... being on the car. Defendant says it was on the car. That is a credibility issue pure and simple, as far as this Court is concerned....

But I don't believe it was there at the time of the arrest. And the issue then becomes what happened next. What happened next was they got [the defendant] down, patted him down in a pat-down search for their own protection. And then when they placed him under arrest for obstructing, they did a custodial search and found some items.

Those items will not be suppressed. The officers' conduct was reasonable and articulable pursuant to Terry v. Ohio and 392 U.S. 1 and particularly in Sections 968.24 and 968.25 of the Wisconsin Statutes.

The critical findings made by the trial court are that the automobile Dean was driving had no front and back plates, and that the temporary Illinois permit was not in the window of Dean's car at the time of the stop. Based on a review of the record, this court cannot conclude that the trial court's findings are clearly erroneous.

The findings are based on the testimony of two police officers. Although Dean offers contradicting testimony, the trial court found the officers' testimony more credible. Because credibility determinations are matters for the trial court to decide, *see State v. Baudhuin*, 141 Wis.2d 642, 647, 416 N.W.2d 60, 62 (1987), this court defers to the trial court's determination.

This court concludes that the officers' testimony provides a basis to support the trial court's findings and that based on those findings, the stop was reasonable. In Wisconsin, the absence of license plates on a vehicle gives an officer reasonable suspicion sufficient to conduct a *Terry* stop. *State v. Griffin*, 183 Wis.2d 327, 515 N.W.2d 535 (Ct. App.), *cert denied*, 115 S. Ct. 63 (1994).

Dean argues that the testimony does not support a finding that the permit was not there because the officer did not affirmatively swear that the permit was not displayed. Rather, the officers stated they did not "recall" seeing it. This court is not persuaded by Dean's argument. It is reasonable to infer from the officers' testimony that the permit was not affixed to the window on the night in question. *See id.*, 183 Wis.2d at 330, 515 N.W.2d at 537 (trial court permitted to draw reasonable inferences from the facts). When asked whether he saw any temporary plate on Dean's car, one officer specifically stated that he did not "recall seeing anything on there." The second officer testified that he did not recall seeing the permit before it was shown to him in court.

It is reasonable to infer from this testimony that the permit was not affixed to the window. Based on the absence of plates, it was reasonable for the officers to conduct an investigatory stop. *Griffin*, 183 Wis.2d at 333-34, 515 N.W.2d at 538. Accordingly, the trial court did not err in denying Dean's motion to dismiss.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.