COURT OF APPEALS
DECISION
DATED AND RELEASED

January 7, 1997

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. 96-2232

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

IN THE INTEREST OF JERRY O.,
a Person Under the Age of 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

JERRY C.O.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Milwaukee County: MICHAEL G. MALMSTADT, Judge. *Affirmed*.

CURLEY, J. Jerry C.O., a juvenile, appeals from a dispositional order adjudging him delinquent for possession of a controlled substance with intent to deliver—cocaine. He raises one issue for review—whether the trial court erred in denying his motion to suppress the crack cocaine found on his body during a stop by police. Because the trial court properly determined that the police acted reasonably in patting down Jerry C.O. during an investigatory stop and, further, because the police had probable cause under the "plain

touch" doctrine to seize the crack cocaine hidden in Jerry C.O.'s underwear, the dispositional order is affirmed.[1]

I. BACKGROUND.

City of Milwaukee police officers were dispatched to investigate a possible burglary on the city's near north side. As they were investigating, the officers noticed Jerry C.O. and another male in an alley. According to the officers, the alley was a known problem area for drug-dealing and prostitution. The officers heard Jerry C.O. ask the other male, "Are you looking?" One officer testified later that he knew that this question was street slang for, "Are you looking for drugs?" The police then stopped Jerry C.O. and asked if they could search him. According to the officers, he stated, "I don't care."

Officer Gary Cole testified at trial that while conducting the patdown for weapons, he felt "something folded up like letters" in Jerry C.O.'s groin area. He also felt something like "little rocks" or "stones." Officer Cole testified that he "couldn't determine what the folded object was," but that he "knew almost exactly what the little rocks or stones" were. He testified that he "could have swore [sic] they were crack cocaine individually packaged up." Officer Cole removed folded currency and 29 baggies containing crack cocaine from Jerry C.O.'s underwear. The officers arrested him and the State filed delinquency petitions against him.

Jerry C.O. then moved the juvenile court to suppress the cocaine, arguing that police uncovered it as a result of a constitutionally improper search and seizure. The juvenile court denied the motion, concluding that the officers had a reasonable suspicion that criminal conduct was occurring and therefore could properly conduct an investigatory stop. Further, the court concluded that given the connection between drug crimes and guns, the officers could properly conduct a patdown search of Jerry C.O. to locate any weapons that might endanger their safety. The court also concluded the patdown was nonconsensual. Finally, the juvenile court concluded that the police had probable cause to seize the crack cocaine hidden in Jerry C.O.'s underwear.

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

A jury found Jerry C.O. delinquent after a trial. This appeal follows.

II. ANALYSIS.

Jerry C.O. does not contest the juvenile court's conclusion that the investigatory stop was proper. Nor does he contest the conclusion that the police had the "right to search his outer clothing for weapons." He argues only that the actual search which uncovered the secreted cocaine was illegal because it went beyond the patdown for weapons. He is incorrect.

The essence of this case is whether the police had probable cause to seize the cocaine hidden in Jerry C.O.'s underwear. When the dispositive historical facts are undisputed, whether police had probable cause is a question that this court reviews *de novo*. *See* ***Ornelas v. U.S.,*** 116 S. Ct. 1657, 1651 (1996). Further, an appellate court may inspect the entire record when reviewing a Fourth Amendment challenge; thus, this court is not limited to the evidence presented at the suppression hearing. ***State v. Gaines,*** 197 Wis.2d 102, 106 n.1, 539 N.W.2d 723, 725 n.1 (Ct. App. 1995).

Under ***Terry v. Ohio,*** 392 U.S. 1 (1968), "a police officer may, under the appropriate circumstances, detain a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest." ***State v. Waldner,*** No. 95-1291, slip op. at 3 (Wis. S.Ct. Dec. 13, 1996). Further, police officers "may seize contraband detected during the lawful execution of a Terry search." ***Minnesota v. Dickerson,*** 508 U.S. 366, 374 (1993). A lawful ***Terry*** search is limited to a protective patdown search of a suspect "`to determine whether the person is in fact carrying a weapon.'" ***Id.*** At 373 (citation omitted). "If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under ***Terry*** and its fruits will be suppressed." ***Id.***

In ***Minnesota v. Dickerson,*** the United States Supreme Court extended the "plain view" doctrine to "tactile discoveries of contraband" uncovered during a ***Terry*** search:

> If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no

> invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain view context.

Id. at 375-76; *accord* ***State v. Guy,*** 172 Wis.2d 86, 101-02, 492 N.W.2d 311, 317-18 (1992), *cert. denied*, 509 U.S. 914 (1993); ***State v. Buchanan,*** 178 Wis.2d 441, 449 & n.3, 504 N.W.2d 400, 404 & n.3 (Ct. App. 1993) (stating ***Guy*** is in "complete harmony" with ***Dickerson***).

The juvenile court, in denying the suppression motion, ruled that:

> "[W]hen you're carrying stuff in your underwear … no matter what the mass of it is, if you're a police officer who's just observed something that anybody would suspect is a drug transaction and then you find a package in the person who you suspect to be the dealer's underwear, it doesn't matter how big the package is. I think at that point you've gone beyond suspicion and have reached the level of probable cause.

The juvenile court's ruling extends beyond the boundaries of "plain touch" doctrine as set down by the Supreme Court in ***Dickerson***. Just uncovering an object hidden in a suspect's undergarments is not enough, the object's identity must be "immediately apparent," before the police have probable cause to seize the contraband. ***Id.*** Nonetheless, if the juvenile court reached the correct result, even if its reasoning was incorrect, this court must affirm. *See* ***State v. Holt,*** 128 Wis.2d 110, 124, 382 N.W.2d 679, 687 (Ct. App. 1985). Accordingly, we must review the entire undisputed record to determine whether the police officer's action in this case met the ***Dickerson*** standard.

Officer Cole testified at trial that when conducting the patdown of Jerry C.O. he felt "something folded up like letters" and something like "little rocks" or "stones." Officer Cole testified that he "couldn't determine what the folded object was," but that he "knew almost exactly what the little rocks or

stones" were. He testified that he "could have swore [sic] they were crack cocaine individually packaged up." It is clear from this testimony that the identity of the crack cocaine hidden in Jerry C.O.'s underwear was immediately apparent to Officer Cole when he "frisked" the outside clothing.[2] He also testified that he had conducted many drug arrests in the past and that frequently suspects hid contraband in their underwear. This bolsters his testimony that the identity of the cocaine was immediately apparent to him, because he had conducted such searches before and this experience "would help an officer know how drugs are stored and recognize the feel of a baggie containing cocaine." ***Guy,*** 172 Wis.2d at 102, 492 N.W.2d at 317. Further, there is no evidence that he manipulated the contraband to identify it, conducted a further search in order to uncover its identity, or in any other manner went beyond the limited scope of ***Dickerson***. ***Dickerson,*** 508 U.S. at 378-79 (stating that if contraband's identity is not immediately apparent, police cannot manipulate object or search further to uncover its identity).

In his reply brief, Jerry C.O. makes much of the fact that the contraband was hidden in his groin area and then states that: "A legitimate search for weapons would be in the chest area, the back area, the side, and the legs. One does not search the groin area for weapons just as one does not search the shoes or body cavities for weapons." This argument is unpersuasive. Clearly, suspects could hide weapons dangerous to police underneath their clothes, including their groin area, and police could be justified in a limited search to uncover such weapons. To suggest that police should be prohibited from conducting a patdown in a suspect's groin area flies in the face of the entire purpose of the protective patdown.

In sum, the record clearly supports the juvenile court's decision to deny Jerry C.O.'s suppression motion. The undisputed evidence shows that the police uncovered the contraband in a proper patdown executed during a lawful investigatory stop. Further, it is clear that the identity of the contraband was immediately apparent to the officer conducting the patdown, and therefore, the

[2] On appeal, Jerry C.O. does not contest the seizure of the currency. Accordingly, this court need not reach any conclusion on whether the seizure of the currency met the standards of ***Minnesota v. Dickerson***, 508 U.S. 366 (1993). *See* ***Waushara County v. Graf***, 166 Wis.2d 442, 451, 480 N.W.2d 16, 19, *cert. denied*, 506 U.S. 894 (1992).

officers had probable cause to seize the hidden cocaine and subsequently arrest Jerry C.O.

By the Court.—Order affirmed.

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