

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 6, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-1254-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DESHAWN REED,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
JOHN W. ROETHE, Judge. *Affirmed in part; reversed in part and cause
remanded.*

Before Eich, Vergeront and Roggensack, JJ.

PER CURIAM. DeShawn Reed appeals from a judgment convicting him as a party to the crime of possessing cocaine with intent to deliver, keeping a drug trafficking vehicle and violating the Wisconsin Drug Tax Stamp Law. The State agrees, as do we, that conviction on the latter count must be

vacated under the holding in *State v. Hall*, 207 Wis.2d 54, 65, 557 N.W.2d 778, 782 (1997), that the Drug Tax Stamp Law is unconstitutional. And we do so by this decision. The remaining issue is whether the circuit court erred by refusing to suppress the principal evidence used to convict Reed on the other two charges. We conclude that the circuit court properly allowed the evidence, and therefore affirm in that regard.

Police received reports of a large street disturbance involving several young black men and possibly a weapon. A responding officer reported that a four-door gray Buick was involved in the disturbance. Captain Roden of the Town of Beloit Police heard the report, spotted a gray Buick parked in a driveway near the scene, and detained four men, including Reed, either standing by or getting out of the vehicle.

Meanwhile, Detective Markey of the Beloit Police Department had detained two men he suspected were involved in the disturbance. They told Markey that someone in the gray Buick had the gun. Markey then learned that Roden had stopped the Buick, or one like it, a short distance away, and went to that location. After he and other Beloit police officers assumed control of the scene from Roden, Markey told a fellow officer that the car should be searched for weapons. Reed heard and objected vociferously to the search of what he said was his car, until he was handcuffed and led away. The subsequent search revealed no firearms, but Markey did discover the large quantity of cocaine that resulted in this prosecution.

The circuit court found probable cause to justify Markey's warrantless search of the car, and allowed the State to introduce evidence of the

seized cocaine at his trial. The jury returned guilty verdicts, resulting in this appeal.

The reduced expectation of privacy in an automobile justifies a warrantless search if probable cause exists to believe the vehicle contains contraband. *State v. Tompkins*, 144 Wis.2d 116, 128-29, 423 N.W.2d 823, 828 (1988). This rule applies even where no exigent circumstances exist. *Id.* Probable cause exists if where a police officer can reasonably believe from the available information that contraband is likely to be found in the place searched. *Id.* at 124, 423 N.W.2d at 826.

Under the standards articulated above, Markey had probable cause and therefore the right to search Reed's car. At the time of the search, Markey knew of a nearby disturbance involving black males and a gun. He also knew that a gray Buick was linked to the disturbance. He had just interviewed witnesses claiming knowledge that someone in the car had a gun, and knew that the car or one just like it had been discovered very near the scene. Upon arriving at the Buick's location, Markey found four black males being detained, with one very upset and objecting to the search. Nothing was visible by looking into the car, leading Markey to conclude that if a gun was there it was illegally concealed. Under these circumstances, Markey had reasonable grounds and therefore probable cause to search the car, even if the subsequent search revealed no gun.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5., STATS.

