

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 30, 1999

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. 99-0729
99-0730**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CITY OF HORICON,

PLAINTIFF-RESPONDENT,

V.

KARL K. ALBERT,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Dodge County: ANDREW P. BISSONNETTE, Judge. *Affirmed.*

DEININGER, J.¹ Karl Albert appeals judgments convicting him of operating a motor vehicle while both his vehicle registration and operating privilege were suspended. Albert claims the trial court erred in entering these

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

judgments because it concluded that a law enforcement officer may run a random check on an individual's license plate without intruding upon that individual's constitutional rights. We conclude that the trial court did not err and affirm the judgments.

BACKGROUND

Albert was driving in the City of Horicon at approximately 1:00 a.m. A Horicon police officer noticed Albert's vehicle and radioed its license plate number to the Dodge County Sheriff's dispatcher for a registration check. The dispatcher informed the officer that the vehicle's registration was suspended. The officer pulled the vehicle over and identified Albert as its driver. The officer then learned that Albert's operating privilege was also suspended. The officer issued Albert citations for operating a motor vehicle while its registration was suspended and for operating a motor vehicle while his operating privilege was suspended.

Albert contested the two citations at a court trial, claiming that the officer violated his constitutional rights by conducting a random license plate check on his vehicle. The officer admitted that the license plate check had not been prompted by any illegal activity and explained that he routinely runs random license plate checks when on patrol. The trial court concluded that a random license plate check did not violate Albert's constitutional rights because it did not constitute a "search" or "seizure" under the Fourth Amendment. The court convicted Albert of the two violations and he appeals.

ANALYSIS

Both the Fourth Amendment to the United States Constitution and Article I, section 11 of the Wisconsin Constitution protect against unreasonable

searches and seizures.² These constitutional provisions, however, apply only if an individual invoking their protection can prove that the government has infringed upon a legitimate expectation of privacy. *See State v. Andrews*, 201 Wis.2d 383, 391, 549 N.W.2d 210, 213 (1996). Absent a legitimate expectation of privacy, there can be no “search” or “seizure.” *See Illinois v. Andreas*, 463 U.S. 765, 771 (1983).

A person has a legitimate expectation of privacy when two requirements are met. First, the person must have a subjective expectation of privacy in the place searched or item seized. *See State v. Rewolinski*, 159 Wis.2d 1, 13, 464 N.W.2d 401, 405 (1990). Second, the expectation of privacy must be one which society is prepared to recognize as legitimate. *See id.* Albert appears to argue that he had a subjective expectation of privacy in his license plate. He has not convinced us, however, that society would recognize an expectation of privacy in an automobile’s license plate number. To the contrary, we conclude that a license plate is an object which is constantly exposed to public view and in which a person thus has no reasonable expectation of privacy.³ *See New York v. Class*,

² The Fourth Amendment to the United States Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....” The language of Article I, section 11 of the Wisconsin Constitution is virtually identical. In interpreting this section of the Wisconsin Constitution, the Wisconsin Supreme Court consistently conforms to the law of search and seizure developed by the United States Supreme Court. *See State v. Guzman*, 166 Wis.2d 577, 586-97, 480 N.W.2d 446, 448 (1992).

³ There can be little doubt that the state may require vehicles operated on its highways to display registration plates. States have a “vital interest” in ensuring that automobile drivers comply with licensing and registration requirements. *See Delaware v. Prouse*, 440 U.S. 648, 658 (1979). These requirements guarantee that only qualified drivers are permitted to operate motor vehicles and that dangerous vehicles are kept off the road. *See id.* To protect these safety interests, Wisconsin has enacted regulations which require all automobiles to display at least one license plate in a “conspicuous place” where it can be “readily and distinctly seen and read.” *See* § 341.15(2), STATS.

475 U.S. 106, 114 (1986) (holding that “it is unreasonable to have an expectation of privacy in an object required by law to be located in a place ordinarily in plain view from the exterior of the automobile”).

The Supreme Court has held that an individual does not have a reasonable expectation of privacy in an automobile’s vehicle identification number. *See New York v. Class*, 475 U.S. 106 (1986). Other jurisdictions have extended this holding and determined that a law enforcement officer can randomly check license plate numbers without intruding on a defendant’s privacy rights. *See State v. Myrick*, 282 N.J. Super. 285, 659 A.2d 976 (1995); *see also United States v. Walraven*, 892 F.2d 972 (10th Cir. 1989). In *State v. Myrick*, the New Jersey Superior Court held that a computerized license plate check does not constitute a “search” or “seizure” and does not therefore invoke constitutional protections. *See Myrick*, 282 N.J. Super. at 293, 659 A.2d at 979. We agree with the reasoning of these decisions and adopt the holding of *Myrick*. We conclude that an individual has no privacy interest in his or her license plates, and that a random license plate check does not constitute a “search” or “seizure” within the meaning of the Fourth Amendment.

We further conclude that the investigative stop which followed this license plate check did not violate the Fourth Amendment. Under *Terry v. Ohio*, 392 U.S. 1, 20-22 (1968), a temporary investigative stop is constitutionally valid if a law enforcement officer has formed a reasonable suspicion of illegal activity. Reasonable suspicion must be based on “specific, articulable facts” or reasonable inferences from those facts. *See State v. Guzy*, 139 Wis.2d 663, 675, 407 N.W.2d 548, 554 (1987). We conclude that the result of the officer’s license plate check gave him sufficient facts upon which to form a reasonable suspicion of illegal activity—i.e., operation of a vehicle whose registration was suspended. *See*

§ 341.03(1), STATS. Consequently, the investigative stop of Albert's vehicle was not unlawful.

CONCLUSION

For the reasons discussed above, we affirm the judgments of the circuit court.

By the Court.—Judgments affirmed.

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

