

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 16, 2014

Diane M. Fremgen
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. 2013AP25-CR

Cir. Ct. No. 2012CF4427

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

**ANDRE DERRICK WINGO,
A/K/A ANDRE CAIN,**

DEFENDANT-APPELLANT.

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

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Andre Derrick Wingo appeals a judgment convicting him of operating a vehicle without the owner's consent. He contends that his rights under the Fourth Amendment were violated when a deputy sheriff

stopped him to investigate whether his car windows were illegally tinted. We affirm.

¶2 Wingo argues that the deputy sheriff who pulled his car over to investigate did not have a reasonable suspicion that he was engaged in criminal activity. The touchstone of Fourth Amendment analysis “is reasonableness, which is measured in objective terms by examining the totality of the circumstances.” *State v. Gaulrapp*, 207 Wis. 2d 600, 607, 558 N.W.2d 696 (Ct. App. 1996). A police officer may “approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.” *Terry v. Ohio*, 392 U.S. 1, 22 (1968). “In order to execute a valid investigatory stop, *Terry* requires that a police officer reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place.” *State v. Allen*, 226 Wis. 2d 66, 71, 593 N.W.2d 504 (Ct. App. 1999). The police officer’s reasonable suspicion “must be based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.” *Id.* (internal quotation marks and citation omitted). “Reasonable suspicion ... is dependent upon both the content of the information possessed by police and its degree of reliability.” *State v. Williams*, 2001 WI 21, ¶22, 241 Wis. 2d 631, 623 N.W.2d 106 (internal quotation marks and citation omitted).

¶3 At the suppression hearing, Milwaukee County Deputy Sheriff Joel Streicher testified that he has been a police officer for sixteen years and has received training to identify by sight windows that are illegally tinted too dark. Streicher explained that during his training he tested cars with various levels of window tint with a tint meter to learn how to recognize windows that are tinted in violation of the law. He testified that he has stopped around 200 vehicles during his career based on his suspicion that windows were excessively tinted. He also

testified that he performed a window tint test on ninety percent of the cars he stopped and his suspicion that the windows were excessively tinted was confirmed in the vast majority of those cases. Based on Streicher's testimony about his knowledge about levels of window tint and his experience in accurately identifying cars with improper window tint, we conclude that Streicher did not violate Wingo's rights under the Fourth Amendment because he reasonably suspected that Wingo's windows were excessively tinted.

¶4 Wingo argues that Streicher did not have a reasonable suspicion to stop him based on *State v. Conaway*, 2010 WI App 7, ¶1, 323 Wis. 2d 250, 779 N.W.2d 182. In *Conaway*, we held that a police officer lacked a reasonable suspicion to stop a car to investigate a suspected window tint violation. *Id.* The police officer in that case did not explain at the suppression hearing how his prior training and experience gave him the ability to differentiate between legally tinted and illegally tinted car window glass and he did not address whether, when he previously stopped cars to investigate window tint violations, his suspicions were verified by subsequent testing. *Id.*, ¶¶9-11. *Conaway* is distinguishable on the facts because the police officer in that case did not provide the level of detail at the suppression hearing necessary to establish that he had a reasonable suspicion that there was a window tint violation.

¶5 Wingo raises other arguments, but we do not consider them because Wingo entered a plea of no contest. It is well established that a no-contest plea waives non-jurisdictional defects and defenses, including claimed violations of constitutional rights, except for claims that the circuit court erred in denying a suppression motion. See *State v. Riekkoff*, 112 Wis. 2d 119, 122-23, 332 N.W.2d 744 (1983); WIS. STAT. § 808.03(3) (2011-12). Wingo has waived his right to raise these arguments on appeal.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5. (2011-12).

