COURT OF APPEALS
DECISION
DATED AND FILED

July 20, 2017

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. 2016AP1689-CR **Cir. Ct. No. 2015CF148**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JIMMANE THOMAS PITTMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Grant County: ROBERT P. VANDEHEY, Judge. *Affirmed*.

Before Kloppenburg, P.J., Sherman and Blanchard, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Jimmane Pittman appeals a criminal judgment that convicted him of one felony and two misdemeanor charges. The sole issue on

appeal is whether the circuit court properly denied Pittman's suppression motion. We affirm.

BACKGROUND

¶2 At just before 4:00 a.m. on the morning of October 11, 2015, a Grant County Deputy Sheriff observed Pittman exit the passenger side of a white or silver vehicle that was parked with its headlights on, walk up to the front door of a closed supper club and pull on the door's handle several times, and then walk away. The deputy radioed in the license plate of the vehicle, then activated his squad car lights and made contact with Pittman.

¶3 Pittman told the deputy that his name was Demarcus Williams. When the deputy asked Pittman why he was attempting to gain entrance to the closed supper club, Pittman responded that he was attempting to get a motel room. The deputy acknowledged that the supper club was adjacent to a motel with the same name, and that the buildings could be confused in the dark due to lack of clear signage.

¶4 After making the initial contact with Pittman, the deputy went back to his squad car to relay the name Demarcus Williams to dispatch, directing Pittman to remain where he was. At that time, dispatch notified the deputy that the license plate he had run was associated with a vehicle that may have been involved in a hit and run about half an hour earlier.

¶5 The deputy then directed Pittman to walk with him toward the potential hit-and-run vehicle, which its driver, Hannah Garrigus, had moved closer to the motel while the deputy had been engaged with Pittman. As the deputy approached the white or silver vehicle, he observed red paint transfer and what

appeared to be fresh scuff marks on it. The deputy then made contact with Garrigus, who had exited the vehicle, and asked her to provide identification and proof of insurance. When Garrigus opened up the passenger door, the deputy could smell the odor of marijuana and observed a marijuana grinding device in an open storage compartment of the passenger door.

¶6 At that point, the deputy placed both Pittman and Garrigus in handcuffs, and executed a search of the vehicle. During the search, the deputy discovered a dozen Ziploc baggies containing marijuana and Pittman's ID card.

STANDARD OF REVIEW

¶7 When reviewing a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2); *see* ***State v. Hindsley***, 2000 WI App 130, ¶22, 237 Wis. 2d 358, 614 N.W.2d 48. However, we will independently determine whether the facts found by the circuit court satisfy applicable constitutional provisions. ***Hindsley***, 237 Wis. 2d 358, ¶22.

DISCUSSION

¶8 The Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures. *See* ***State v. Drogsvold***, 104 Wis. 2d 247, 263-64, 311 N.W.2d 243 (Ct. App. 1981). However, it is constitutionally permissible for a law enforcement officer to briefly detain an individual for investigative questioning when the officer possesses a reasonable suspicion, based upon specific and articulable facts together with rational inferences drawn from those facts, that criminal activity may be afoot, and that action would be appropriate. ***Terry v. Ohio***, 392 U.S. 1, 21-22

(1968). An investigatory stop "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." ***Florida v. Royer***, 460 U.S. 491, 500 (1983). Thus, when the initially-justified detention of an individual extends beyond the purpose of the stop, the detention becomes illegal. ***State v. Griffith***, 2000 WI 72, ¶54, 236 Wis. 2d 48, 613 N.W.2d 72.

¶9 Here, Pittman contends that: (1) the deputy lacked reasonable suspicion to detain him in the first instance; or alternatively, (2) even if the initial stop was warranted, the deputy exceeded the permissible scope of the detention once he ascertained that Pittman had a valid reason for pulling on the door handle of the closed supper club. From either of those premises, Pittman then argues that the marijuana and drug paraphernalia that were recovered from the vehicle should be excluded from evidence because they were seized during a period of illegal detention. *See* ***Royer***, 460 U.S. at 501 (1983); ***State v. Armstrong***, 223 Wis. 2d 331, 361, 588 N.W.2d 606 (1999).

¶10 In order to invoke the exclusionary rule, the defendant bears the initial burden of establishing a minimal nexus, *i.e.*, a "but-for" relationship, between the unlawful police conduct and the seizure of the challenged evidence. ***State v. Verhagen***, 86 Wis. 2d 262, 265, 272 N.W.2d 105 (1978) (burden); ***State v. Hogan***, 2015 WI 76, ¶¶66, 71, 364 Wis. 2d 167, 868 N.W.2d 124 ("but-for" nexus). Once a minimal nexus has been established, the exclusionary rule applies unless the State demonstrates that an exception such as the attenuation doctrine, the inevitable discovery doctrine, or the independent source doctrine applies. ***State v. Gant***, 2015 WI App 83, ¶15, 365 Wis. 2d 510, 872 N.W.2d 137. We agree with the State that, even if Pittman's detention was unsupported by reasonable suspicion in the first instance or was illegally extended once suspicion had dissipated, suppression is not required here.

¶11 First, the nexus between Pittman's detention and the seizure of evidence from the vehicle is tenuous at best. Pittman's detention was not a traffic stop, and it is clear that Garrigus was not detained at the same time that Pittman was, because the deputy made no attempt to stop Garrigus when she drove the vehicle away from the spot where the officer was detaining Pittman.

¶12 Assuming without deciding that Pittman's detention was unsupported by reasonable suspicion or illegally extended, we agree with the State that the independent source doctrine applies here. The independent source doctrine allows the admission of evidence obtained following police misconduct when the challenged evidence would still have been seized if the misconduct had not occurred, the principle being that the "'exclusion of [the] evidence would put the police in a worse position than they would have been in absent any error or violation.'" ***State v. Carroll***, 2010 WI 8, ¶44, 322 Wis. 2d 299, 778 N.W.2d 1 (quoted source omitted) (applying the independent source doctrine in the context of a search warrant based upon both tainted and untainted information).

¶13 Here, it is apparent that the marijuana and drug paraphernalia would have been seized regardless of whether or how long the deputy detained Pittman. The deputy radioed in the license plate of the vehicle that Pittman had exited *before* the deputy made any contact with Pittman. The deputy did not need any reasonable suspicion to run a license plate. If the deputy had either waited for the results of the license plate run before making contact with Pittman, or had let Pittman go after obtaining his explanation for trying the door of the closed supper club, dispatch would still have provided the deputy with the information that the vehicle may have been involved in a recent hit and run incident. In short, it was the deputy's subsequent investigation of the hit-and-run incident that led to the discovery of the challenged evidence, not any information gained as the result of

the deputy's detention of Pittman. Therefore, the circuit court properly denied Pittman's motion to suppress.

By the Court.—Judgment affirmed.

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