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**DISTRICT I**

March 9, 2021

*To*:

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You are hereby notified that the Court has entered the following opinion and order:

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2020AP28-CR State of Wisconsin v. Eddie Lamont Virgil (L.C. # 2017CF2136)

Before Dugan, Donald and White, JJ.

**Summary disposition orders 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).**

Eddie Lamont Virgil, *pro se*, appeals from a judgment convicting him on one count of possession of a firearm by a felon and one count of possession of cocaine as a second or subsequent offense. Virgil contends the circuit court erroneously denied his pretrial suppression motion. Based upon our review of the briefs and record, we conclude at conference that this case

is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).[1] The judgment is summarily affirmed.

The basic facts of this case are undisputed. Three Milwaukee police officers on bicycle patrol in a crime "hot spot" observed a vehicle with suspected unlawful window tint. Two officers approached the driver's side, while Officer Peter Hauser approached the passenger side. Through the window, Hauser could see Virgil in the back seat. Virgil had a "clear plastic bag that contained a green-leafy substance that [Hauser] suspected to be marijuana," and Hauser observed Virgil "frantically attempt to … take that bag and put it down the back end of his pants[.]" Hauser opened the door and "guided" Virgil to the ground. Virgil struggled against Hauser but surrendered after one of the other officers threatened to tase him. Police recovered the marijuana, a semi-automatic handgun, and cocaine.

Virgil was charged with one count of possession of a firearm by a felon and one count of possession of cocaine as a second or subsequent offense. Virgil filed a pretrial motion to suppress evidence "obtained from the unlawful stop and seizure of Mr. Virgil, said stop and seizure being conducted without consent, without probable cause, and without a warrant." The circuit court held a hearing at which only Hauser testified. Following the hearing, the circuit court denied the suppression motion. Subsequently, Virgil entered guilty pleas and was given concurrent sentences totaling three years' imprisonment. Virgil now appeals. *See* WIS. STAT. § 971.31(10).

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

The United States and Wisconsin constitutions protect people from unreasonable searches and seizures. *See* ***State v. Young***, 2006 WI 98, ¶18, 294 Wis. 2d 1, 717 N.W.2d 729. "A seizure occurs 'when an officer, by means of physical force or a show of authority, restrains a person's liberty.'" ***State v. Kelsey C.R.***, 2001 WI 54, ¶30, 243 Wis. 2d 422, 626 N.W.2d 777 (citations omitted). Whether a person has been seized presents a question of constitutional fact. ***Young***, 294 Wis. 2d 1, ¶17. "[W]e accept the circuit court's findings of evidentiary or historical fact unless they are clearly erroneous, but we determine independently whether or when a seizure occurred." ***Id.*** We review the circuit court's decision on a motion to suppress under a similar standard; we uphold the circuit court's findings of fact unless clearly erroneous, then review *de novo* the application of constitutional principles to those facts. *See* ***State v. Roberson***, 2019 WI 102, ¶66, 389 Wis. 2d 190, 935 N.W.2d 819.

There are two types of seizure: the investigatory stop, which involves temporary questioning and a minor infringement on personal liberty, and arrest, a more permanent detention. *See* ***Young***, 294 Wis. 2d 1, ¶¶20, 22. The investigatory stop must be supported by reasonable suspicion, the "'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant' the intrusion of the stop." *See* ***State v. Post***, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (citation omitted). An arrest must be supported by probable cause, "'the quantum of evidence within the arresting officer's knowledge at the time of the arrest which would lead a reasonable police officer to believe that the defendant probably committed or was committing a crime.'" *See* ***State v. Weber***, 2016 WI 96, ¶20, 372 Wis. 2d 202, 887 N.W.2d 554 (citation omitted).

Virgil's motion to suppress claimed that the police lacked reasonable suspicion to approach the vehicle for an investigatory stop based solely on the suspicion of illegal window

tint. The circuit court concluded that there was no seizure at that moment, stating, "I don't think there's a prohibition to establishing contact with the occupants of the vehicle." While Virgil repeats the reasonable suspicion argument on appeal, we agree with the circuit court.

"[A] seizure does not occur simply because a police officer approaches an individual[.]" ***Florida v. Bostick***, 501 U.S. 429, 434 (1991); *see also* ***Young***, 294 Wis. 2d 1, ¶18 ("[N]ot all police-citizen contacts constitute a seizure[.]"). Someone "has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." ***United States v. Mendenhall***, 446 U.S. 544, 554 (1980).

There is nothing in the record that suggests the officers used any force or such an overt showing of authority that a reasonable person would not have felt free to leave. *See* ***County of Grant v. Vogt***, 2014 WI 76, ¶30, 356 Wis. 2d 343, 850 N.W.2d 253. The officers were on bicycles, so they lacked any meaningful ability to physically prevent the vehicle from leaving, and Hauser testified that they did not activate any of the bikes' emergency lights as they approached. *See* ***id.***, ¶32; *see also* ***Young***, 294 Wis. 2d 1, ¶¶68-69. The circuit court expressly stated that it had no reason to determine Hauser's testimony was not credible. Based on the information before us, the officers approaching the vehicle to speak to the driver about the window tint was simply "an inoffensive encounter between a citizen and police that intruded upon no constitutionally protected interest," not a seizure. *See* ***State v. Stout***, 2002 WI App 41, ¶21, 250 Wis. 2d 768, 641 N.W.2d 474; *see also* ***Vogt***, 356 Wis. 2d 343, ¶¶53-54 (An officer's "knock on a vehicle window does not automatically constitute a seizure…. "[A]n officer's interactions with people are not automatically adversarial.").

Virgil was, however, seized when Hauser pulled him from the vehicle. We need not decide whether Hauser had reasonable suspicion for an investigatory stop at the time of that seizure, though, because Hauser had probable cause for arrest, which is a higher standard. In order to have probable cause, there must be more than a possibility that the defendant committed an offense, but the evidence need not reach the level of proof beyond a reasonable doubt, or even that guilty is more likely than not. *See* ***Weber***, 372 Wis. 2d 202, ¶20. Hauser's observation of suspected marijuana and furtive movements consistent with attempts to conceal contraband provided sufficient probable cause to arrest Virgil for a marijuana violation, justifying Virgil's seizure. Thus, the suppression motion was properly denied.[2]

Upon the foregoing, therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*
*Clerk of Court of Appeals*

[2] In his brief, Virgil also complains that officers failed to properly identified themselves as required by WIS. STAT. § 968.24, which provides that an officer may conduct an investigatory stop based on reasonable suspicion "[a]fter having identified himself or herself as a law enforcement officer[.]" However, Virgil does not point to any portion of the record to show where this issue was raised in the circuit court, so this argument has been forfeited. *See* ***State v. Ndina***, 2009 WI 21, ¶30, 315 Wis. 2d 653, 761 N.W.2d 612. Further, Virgil does not develop an argument on appeal about what, if anything, the appropriate remedy for an officer's failure to identify is, and we need not consider undeveloped arguments. *See* ***State v. Butler***, 2009 WI App 52, ¶17, 317 Wis. 2d 515, 768 N.W.2d 46. Finally, Hauser testified that he was wearing a body camera which, presumably, is part of his official uniform. A uniform generally suffices to identify an officer. *See, e.g.*, ***Celmer v. Quarberg***, 56 Wis. 2d 581, 589, 203 N.W.2d 45 (1973).