UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1206

September Term, 2014

ZACHARY GREER

v.

STATE OF MARYLAND

Krauser, C.J.,
Zarnoch,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: July 20, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Convicted of driving on a revoked license, appellant, Zachary Greer, contends that, because he was illegally stopped by police while he was driving his car, the suppression court erred in denying his motion to suppress unspecified evidence that presumably was seized as a result of that stop. We affirm.

I.

As this matter was tried without a jury, the court heard evidence, at trial, pertaining to the suppression motion. That evidence disclosed the following:

In October 2013, Detective Christopher Smith, of the Frederick County Sheriff's Office, began investigating a number of thefts of air conditioning copper coils after being informed that a large amount of similar coils were being taken from rooftop units and sold to scrap metal dealers, almost every day, by the appellant. As part of that investigation, Detective Smith went to the location of one theft, McShea Realty, where approximately 3,353 pounds of coils had been cut out of the units and stolen. Smith reviewed photographs, as well as Nike shoe prints, that were located on the roof of that building. Detective Smith also reviewed receipts from a pawn shop database showing that appellant was selling hundreds of pounds of air conditioning coils, for hundreds of dollars, to both Scrap Wire and Cable, as well as another business, Frederick Scrap, Incorporated.

Detective Smith then spoke to Ben Davies, at Scrap Wire and Cable, in Frederick, Maryland, and learned from him that appellant had sold more copper coils. Davies said that, over the course of a month, appellant had been "turning in mostly AC coils and air conditioning parts," for scrap, approximately twenty times. Davies explained that it was

unusual for someone to bring in the amount of material that appellant was providing to him during that time, adding that, when appellant arrived with the material, he was not driving any sort of company truck but was "bringing in a couple hundred dollars worth of material" in a black Jeep Cherokee.

At about 11:00 a.m. on November 5, 2013, the appellant brought in other material for scrap, whereupon Davies showed that material to Detective Smith. The detective noticed a shoe print impression on an air conditioning coil that looked "very similar" to the shoeprint he had seen on items stolen from the roof of the building owned by McShea Realty. Detective Smith asked Davies to contact him if the appellant returned.

Later that same day, at about 2:00 p.m., Davies called Detective Smith and told him that appellant had returned and was turning in more air conditioning coils and related components. Because Detective Smith believed he could not get to the scrap yard before appellant left, he contacted dispatch to have a unit detain appellant until he "figured out exactly what was going on." When Smith arrived about ten minutes later, appellant was still there, as he was then being detained by another deputy, Deputy McDowell.

Deputy McDowell testified that he was dispatched to Scrap Wire and Cable to stop a black jeep for Detective Smith. Able to respond "very quickly" because he was, at that time, just across the street from the scrap yard, McDowell, moments later, stopped a black jeep that appellant was driving in an area near the Scrap Wire business building.

When, after the stop, Detective McDowell requested appellant's license and registration, appellant could not produce a license, though he did give the deputy a Maryland Identification card. Then, upon learning from dispatch that appellant's Maryland license had been revoked, Deputy McDowell handcuffed appellant. Detective Smith arrived a few minutes later, which was approximately fifteen minutes after the stop.[1]

On cross-examination, Deputy McDowell said that, when he pulled into Scrap Wire and Cable, "some guy from Scrap Wire I guess came running out and he was pointing at Mr. Greer's jeep saying, 'There's the jeep, there's the jeep, there's the jeep,'" whereupon McDowell activated his emergency equipment and stopped the Jeep. There were no other Jeeps in the parking lot, noted the deputy.

The court ultimately denied appellant's motion to suppress, stating:

> All right. Well, first, let me be clear that I'm not ruling on any motion to suppress involving anything that was either statements made or items seized after this.
>
> Second, I'm not getting to [the Prosecutor's] second or last statement that he had probable cause to arrest without, or driving without a license when he pro [sic], produced the Maryland ID, because I don't think I have to get that far. I asked [Defense Counsel] and he wasn't sure that that was, that you could arrest for that. Maybe you can, maybe you can't, I don't have to look it up or take the research on that, because I find that he had reasonable articulable suspicion to stop Mr. Greer. That first, you know, in the opening statement we weren't sure about just an identification of a black jeep. Well, a black jeep that was just stopped on I-70 would be one thing a half hour later. This is a black jeep stopped almost immediately right, either right on or right

[1] Appellant's driving records from the Maryland Motor Vehicle Administration were admitted as State's Exhibit 1.

> at the property line with the person saying that's the guy. Now, that is more than enough to get by the identification issue, and when you couple that with Detective Smith saying to Detective McDowell, "stop him, we've got the call, he's back," and because they had the one for the morning around 10 a.m. on the horrible photo it's more than enough reasonable articulable suspicion to stop.
>
> When he stopped he knows Mr. Greer's driving, he gets Mr. Greer's ID, and that's really the essence of the driving while revoked. We don't go beyond that. We, nothing was recovered for purposes of this crime after he either placed him, after he placed him in handcuffs for the driving without a license. And, again, I'd have to look up, Mr. (Unclear – one word) is nodding I can do an arrest for that, and you may, I just didn't, I haven't looked that up because I thought the, uh – I think you might be able to, but the question, because that's now a crime of incarceration, but whether or not just producing Maryland ID is sufficient to show you're driving without a license is a, is a different stretch.
>
> Bottom line, the motion to suppress is denied . . .

II.

Appellant maintains that, because he was illegally detained by police, the suppression court erred in denying his motion to suppress. The State responds that this issue is not properly before us because appellant did not identify, below nor on appeal, the evidence he sought to suppress and thus there is nothing to suppress. The State further points out that "[b]y failing to identify what evidence admitted at trial should have been suppressed, it is not clear how Greer was harmed by the allegedly illegal seizure." In short, the State's position is that, absent an identification of evidence to be suppressed, there is no viable remedy available to appellant and that there is nothing for this Court to review. In any event,

contends the State, there was a reasonable articulable suspicion to support the stop in question.

As the State points out, Greer did not identify at the suppression hearing what evidence the State intended to admit at trial that was the fruit of the allegedly illegal seizure. *See* Md. Rule 4-252(e) (requiring a motion to suppress based on an unlawful seizure to "state the ground upon which it is made" and "set forth the relief sought"). Nor does he do so now. Instead, as the State notes, he claims only that "the stop was illegal" and that the "court's denial of the motion to suppress was error."

At least one state appellate court has observed that, where a defendant was not harmed by the allegedly illegal seizure, they had nothing left to review. In *Johnson v. State*, 548 S.W.2d 700 (Tex. Crim. App. 1977), Johnson argued there was no probable cause to stop the vehicle in which he was a passenger and that there was no probable cause to arrest him for aggravated assault on a police officer. *Id.* at 706. The Court declined to address the issue, stating, "[s]ince the appellant fails to state what evidence, if any, was obtained as a result of the alleged unlawful arrest and what evidence, if any, obtained incident to the alleged unlawful arrest was introduced, we perceive no error in the overruling of his motion to suppress." *Id.* Moreover, the Court observed that "[a] reversal of the judgment is necessary when fruits of a search and seizure made incident to an unlawful arrest are admitted over a timely objection, but an unlawful arrest itself does not necessarily require the reversal of a judgment of conviction." *Id.* And, at least one legal authority appears to

agree that a defendant must set forth what evidence is sought to be suppressed. *See* W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 11.2(a) at 42 (5th ed. 2012) (Stating that a motion to suppress "must . . . identify the items which the defendant seeks to suppress"); *see also O'Neal v. United States*, 222 F.2d 411, 412 (D.C. Cir. 1955) ("The articles which appellant desired to be suppressed for use as evidence were not enumerated or described in the motion, nor were they identified at the hearing on the motion. The motion was therefore insufficient and need not have been considered").

Furthermore, none of the evidence used to support Greer's conviction for driving on a revoked license was subject to suppression because it was not the fruit of an illegal seizure. His identity as the driver of the car, as he concedes, was not subject to suppression. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984) (holding that the identity of a defendant is never suppressible as the fruit of an illegal seizure); *Gibson v. State*, 138 Md. App. 399, 415 (2001) (noting that a person's name and address are not suppressible as a result of an illegal search or seizure). Nor were the MVA records that established that Greer's license was revoked subject to suppression. *See People v. Tolentino*, 926 N.E.2d 1212, 1215 (N.Y.) (holding that motor vehicle records were not suppressible as the fruit of a purportedly illegal traffic stop); *see also United States v. Crews,* 445 U.S. 463, 475 (1980) ("The exclusionary rule enjoins the Government from benefitting from evidence it has unlawfully obtained; it does not reach backward to taint information that was in official hands prior to any illegality").

Since appellant did not identify what evidence he wished suppressed and since appellant's identity, as well as his driving status, are not suppressible, further review is unnecessary. Nonetheless, we shall briefly address why his claim, that he was unlawfully stopped by police, is without merit.

To begin with, we note that it is well settled that police may, under the Fourth Amendment, stop and briefly detain a person for purposes of investigation if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968); *accord Crosby v. State*, 408 Md. 490, 505 (2009); *see also Stokes v. State*, 362 Md. 407, 415-16 (2001) (reasonable suspicion is a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act") (citations omitted); *accord Bost v. State*, 406 Md. 341, 356 (2008). Further, "[t]he Fourth Amendment permits brief investigative stops – such as the traffic stop in this case – when a law enforcement officer has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Navarette v. California*, 572 U.S. __, 134 S. Ct. 1683, 1687 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417-418 (1981)).

Even seemingly innocent behavior, under the circumstances, may permit a brief stop and investigation. *Illinois v. Wardlow*, 528 U.S. 119, 125-26 (2000) (recognizing that even in *Terry*, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation, but that, because another reasonable interpretation was that the individuals were

casing the store for a planned robbery, "*Terry* recognized that the officers could detain the individuals to resolve the ambiguity"). Reviewing courts "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273-74 (2002); *see also Bost*, 406 Md. at 356 ("The test is 'the totality of the circumstances,' viewed through the eyes of a reasonable, prudent, police officer." (citation omitted)). And, "the court must . . . not parse out each individual circumstance for separate consideration." *Crosby*, 408 Md. at 507 (quoting *Ransome v. State*, 373 Md. 99, 104 (2003)); *see also In re: David S.*, 367 Md. 523, 535 (2002) ("Under the totality of circumstances, no one factor is dispositive").

We are persuaded there was reasonable articulable suspicion to stop and detain the black Jeep appellant was driving at the scrap yard. During the course of his investigation, Detective Smith learned that over three thousand pounds of copper coil had been cut out of and stolen from air conditioning units and that appellant was selling large quantities of similar coil to Scrap Wire and Cable, on a daily basis, over the course of the past month. Further, appellant brought the unusually large quantities of coil to the scrap yard, not in a company van, but in his Jeep Cherokee.

On the morning of the stop, appellant brought in coil for sale. When Detective Smith later arrived to investigate this matter, he saw shoe prints on those items. Those shoe prints matched the shoe prints found on some of the coils stolen from another business. Detective

Smith asked Ben Davies to contact him if the appellant returned to sell more scrap. When the appellant returned, Davies immediately contacted Smith, and a police unit was dispatched to the scrap yard. When Deputy McDowell arrived in response to the dispatch, he saw a black Jeep Cherokee near the business and was repeatedly informed by someone in the parking lot that this was the vehicle that was the subject of the call to police. There were no other vehicles in the lot matching the description of the Jeep. Thus the police had a reasonable articulable suspicion to stop the appellant's vehicle to conduct further investigation.

In contrast, appellant contends that the police in this case did not have reasonable articulable suspicion and were only acting on a "hunch" to justify the stop. In support of that argument, appellant relies on *Jones v. State*, 319 Md. 279 (1990); *Cartnail v. State*, 359 Md. 272 (2000); and *Stokes v. State*, 362 Md. 407 (2001). We conclude that reliance is misplaced. In *Jones*, a police officer observed Jones riding his bicycle at 3:20 a.m. with clothes on hangers across his shoulders, and plastic bags hanging from the handlebars. *Jones*, 319 Md. at 281. The officer knew of recent burglaries in the area and knew that Jones was traveling from the direction of a dry cleaner. However, the officer did not receive any calls for a burglary on the night in question. *Id.* The Court of Appeals concluded there was no reasonable articulable suspicion to stop Jones. *Id.* at 287. The Court stated that the stop "was based on a 'hunch' that Jones may be carrying clothing from the dry cleaners located

nearby. Mere hunches are insufficient to justify the stop of a citizen riding a bicycle on a public street." *Id.* at 288.

In *Cartnail*, the Court of Appeals, after reviewing the requisite factors, held that a radio lookout for a gold or tan Mazda with unknown tags, occupied by three black men, and that had fled the scene of a robbery in no known direction, did not give the police reasonable articulable suspicion to stop a gold Nissan occupied by only two black men, approximately one hour and fifteen minutes after the reported robbery, in a different section of the city than where the robbery occurred. *Cartnail*, 359 Md. at 277-78. The Court concluded that there was no legal basis for the stop and that "[t]here is no question that the police officer in this case was operating on a "hunch" that Petitioner and his passenger may have been two of the three suspects associated with the reported robbery . . ." *Id.* at 289-90.

And, in *Stokes*, "a lookout" was broadcast that described a robbery suspect as a black man wearing a black t-shirt or dark top; no description of a getaway vehicle had been given. *Stokes*, 362 Md. at 410. Within a half hour of receiving the description, a police officer stopped Stokes, a black male who was wearing a black top, after Stokes parked his vehicle in a residential parking lot located around the corner from where the robbery had been committed. *Id*. at 409-11. The police officer said that Stokes was driving at a high rate of speed and parked in a hurried manner. *Id*. In finding that the stop was not supported by reasonable suspicion, the Court of Appeals noted that it was not unusual for there to be vehicular traffic in this residential area at that particular time of day. *Id.* at 426. Further,

although "[s]peeding and parking hurriedly, even recklessly, certainly generates a reasonable articulable suspicion that the driver is violating the traffic laws;" "here, such conduct is better characterized as inconsistent with the belief that the driver has committed a robbery thirty minutes earlier just around the corner." *Id.* at 426-27.

Unlike these three cases, here, there was more than a mere hunch that appellant was involved in some sort of criminal activity, namely, the apparent theft of copper air conditioning coils and parts that he sold for scrap. He was seen at the scrap yard in the black Jeep, early on the day of the stop, and when he returned, the police were promptly notified and responded to the scene. The subsequent detention of appellant was supported by reasonable articulable suspicion, and the suppression court properly denied the motion to suppress.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.