Circuit Court for Caroline County
Case No. C-05-CR-16-65

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2712

September Term, 2016

TIONNE DIAZ AUSTIN

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 11, 2017

*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.

Following a bench trial in the Circuit Court for Caroline County, Tionne Diaz Austin, appellant, was convicted of attempting to elude uniformed police, driving on a suspended license, and reckless driving. Austin raises two issues on appeal: (1) whether the initial stop of his vehicle violated the Fourth Amendment, and (2) whether there was sufficient evidence to sustain his convictions. For the reasons that follow, we affirm.

Austin's claim that he was illegally stopped is not preserved for appellate review. A motion to suppress must be presented with particularity in order to preserve an objection. *See, e.g., Jackson v. State*, 52 Md. App. 327, 332 (1982) ("If a hearing is granted but the defendant presents no grounds to support the motion, his failure amounts to waiver"). Indeed, "[a] party must bring his argument to the attention of the trial court with enough particularity that the court is aware first, that there is an issue before it, and secondly, what the parameters of the issue are. The trial court needs sufficient information to allow it to make a thoughtful judgment." *Harmony v. State*, 88 Md. App. 306, 317 (1991).

When moving for a judgment of acquittal at the close of the State's evidence, defense counsel briefly argued that Deputy Strivers had lacked probable cause to stop Austin's vehicle, thereby resulting in an "illegal stop."[1] However, defense counsel never stated that he was moving to suppress any evidence, did not identify any specific evidence that he wanted suppressed, and did not request a ruling on whether the stop was unlawful.

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[1] Because Austin was charged in the district court and then requested a jury trial, the district court rules governing pre-trial motions applied. *See* Maryland Rule 4-301(b)(2). We assume, without deciding, that the trial court had the discretion to consider an oral motion to suppress pursuant to Maryland Rule 4-251(b)(5), which provides that "other motions may be determined at any appropriate time."

Therefore, we are not persuaded that the Fourth Amendment issue that Austin now raises on appeal was properly presented to the trial court.

Moreover, even if preserved, Austin's claim that he was unlawfully seized lacks merit. When moving for a motion for judgment of acquittal, defense counsel conceded that Austin's vehicle was "never effectually stopped." Although Austin briefly pulled over after Deputy Strivers activated his lights and sirens, the undisputed evidence demonstrated that he then drove away before Deputy Strivers could exit his vehicle. Because Austin never submitted to Deputy Strivers' show of authority, no seizure occurred and, therefore, the Fourth Amendment was not implicated. *See Lawson v. State*, 120 Md. App. 610, 614 (1998) ("A seizure also does not occur when law enforcement officers attempt to stop a suspect who fails to comply with either a show of authority or application of physical force." (citation omitted)).

Austin also contends that there was insufficient evidence to sustain his convictions because the State failed to prove that he was the person driving the vehicle. In analyzing the sufficiency of the evidence admitted at a bench trial to sustain a defendant's convictions, we "review the case on both the law and the evidence," but will not "set aside the judgment . . . on the evidence unless clearly erroneous." Maryland Rule 8–131(c). "We review sufficiency of the evidence to determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *White v. State*, 217 Md. App. 709, 713 (2014) (internal quotation marks and citation omitted).

At trial, Deputy Strivers testified that he observed a vehicle drive past him while he was assisting another officer with an unrelated traffic stop and that he was able to identify Austin as the driver of that vehicle. Although it was 3:00 a.m., Deputy Strivers had previously interacted with Austin on numerous occasions, the area was illuminated by street lamps, and he was only ten to fifteen feet from Austin's vehicle. Deputy Strivers then got into his police cruiser, caught up with Austin's vehicle, and followed the vehicle until it crossed the Delaware state line. During that pursuit, Deputy Strivers observed Austin commit the traffic violations for which he was convicted.

Austin's arguments regarding the reliability of Deputy Strivers' identification ultimately go to the weight of the evidence, not the sufficiency. *See Handy v. State*, 201 Md. App. 521, 559 (2011) (noting that "it is settled that [w]eighing the credibility of witnesses and resolving conflicts in the evidence are tasks proper for the fact finder" (internal quotation marks and citation omitted)). Moreover, "[i]t is well settled that the evidence of a single eyewitness is sufficient to sustain a conviction." *Id*. (citation omitted). Because assessing the credibility and reliability of Deputy Strivers' identification testimony was the province of the trial court, acting as the fact-finder, and Austin does not raise any other challenges to the sufficiency of the evidence, we conclude that there was sufficient evidence to sustain his convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.