

Circuit Court for Baltimore City
Case No. 117340002

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2035

September Term, 2018

ELIJAH STRICKLAND

v.

STATE OF MARYLAND

Fader, C.J.,
Gould,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: August 21, 2019

*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.

A jury in the Circuit Court for Baltimore City convicted appellant, Elijah Strickland, of possession of a regulated firearm by a disqualified person and possession of cocaine. The trial court sentenced him to five years in prison without the possibility of parole. Mr. Strickland contends the trial court erred in denying his motion to suppress a statement that he had made to the police. For the reasons that follow, we find no error and affirm.

FACTS AND LEGAL PROCEEDINGS

Mr. Strickland was arrested in Baltimore City on November 21, 2017 by Officer Norman Jones. Mr. Strickland had in his possession seven black top vials of crack cocaine. Following his arrest, he was transported to the Eastern District precinct and later to the Homicide Unit to be debriefed, “standard protocol” for anyone arrested for a handgun violation. Officers Cody Holliday and Tayvon McCoy conducted the debriefing. After being given his Miranda¹ warnings, Mr. Strickland admitted to possession of a firearm and told the officers the location of a gun in his vehicle. At no time did Mr. Strickland ask for an attorney.

After charges had been brought against him, Mr. Strickland filed a boilerplate omnibus motion that included a demand that “all admissions, statements or confessions of the Defendant be suppressed as having been obtained involuntarily, forcibly and in violation of the Defendant’s Constitutional and other legal rights.” Subsequently, he filed a motion to suppress oral statement, stating only that “[t]he Defendant moves to suppress

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

the oral statement allegedly taken from him in the instant case.” Mr. Strickland provided no factual support in the omnibus motion, and no factual or legal support in his one-page motion to suppress.²

Pretrial Suppression Hearing

At the start of the pretrial suppression hearing, the State asked defense counsel to specify the statement Mr. Strickland was attempting to suppress. Defense counsel answered, “[t]he statement where Mr. Strickland is alleged to have stated that he had the weapon for protection and was able to describe to the officers the area in which the firearm was located inside the vehicle.”

The State called Officers Holliday and Jones, who testified that Mr. Strickland’s statement was freely and voluntarily given after he indicated his understanding of his Miranda rights and waived them.

Officer Holliday testified that he was involved in an investigation on November 21, 2017 that ended in Mr. Strickland’s arrest “[f]or narcotics and a handgun” at approximately 9:00 a.m. Officer Holliday testified that Mr. Strickland was “pretty cooperative from the very beginning” of the approximately ten-minute debriefing. He added that at the start, Officer McCoy presented Mr. Strickland with a form containing Miranda warnings. Mr. Strickland read the warnings aloud, acknowledged that he understood each warning, and

² The omnibus motion contained a section entitled “Points and Authorities,” which listed 13 legal citations that did not reference any specific contention.

initialed each line.³ Officer Holliday further testified that after Mr. Strickland acknowledged his rights, Officer McCoy proceeded to question him. Officer Holliday testified that Mr. Strickland admitted to possession of a firearm in “the vehicle” because “the streets are crazy and it was for protection.” Mr. Strickland also told the officers the location of the gun in the vehicle. Mr. Strickland refused to tell the officers where he got the firearm.

Officer Holliday further testified that neither he nor Officer McCoy promised Mr. Strickland anything in exchange for his statement, nor induced him to give it. Officer Holliday also testified that although he had seen Mr. Strickland consume “some type of prescription pill” prior to his arrest, Mr. Strickland did not appear to be under the influence of drugs during the debriefing.

On cross-examination, Officer Holliday explained that although at the time of his arrest the handgun had not yet been recovered from the vehicle, he had believed it was “[l]ocated inside the vehicle.” The gun was recovered “[m]aybe three or four hours” after Mr. Strickland’s arrest, after the vehicle was towed and prior to Mr. Strickland’s debriefing. Officer Holliday attributed the delay to the necessity of writing a search warrant for the vehicle and appearing before a judge to have it signed.

Officer Holliday denied the possibility that Mr. Strickland remained in police custody for more than 24 hours before presentment to a commissioner. Shown Mr.

³ The form signed by Mr. Strickland had been lost by the time of the suppression hearing. Officer Holliday acknowledged that the video recording of the debriefing was also missing, which he attributed to “the chaos” at the police department because a detective had been killed around the same time.

Strickland’s processing documents upon re-direct examination, Officer Holliday observed that Mr. Strickland was seen by the commissioner at 6:44 a.m. on November 22, 2017.

Officer Jones testified that he read Mr. Strickland his Miranda warnings upon his arrest, which was recorded on his body-worn camera.⁴

Neither the State nor defense counsel questioned either officer about the specifics of Mr. Strickland’s alleged crimes or his arrest.⁵

Mr. Strickland did not call any witnesses.

The State dismissed its witnesses and presented its closing argument, focusing on the police officers’ compliance with the dictates of Miranda and the voluntariness of Mr. Strickland’s statement. The State acknowledged that at the time of Mr. Strickland’s debriefing, he was in custody and subject to interrogation, necessitating the reading and understanding of his Miranda rights. The State also explained that despite the absence of both the video acknowledging Mr. Strickland’s receipt of those warnings and the Miranda form signed by Mr. Strickland, Officer Holliday had testified that Mr. Strickland read the form and initialed each warning, indicating his understanding, and that defense counsel had stipulated that Mr. Strickland had been read the Miranda warnings upon arrest. In light of Mr. Strickland’s understanding of his rights, the State’s lack of inducement or coercion in obtaining the statement, and presentment to a commissioner within 24 hours, the State

⁴ Defense counsel stipulated that Mr. Strickland had been read his Miranda warnings and that the officer had recorded the recitation.

⁵ Mr. Strickland’s counsel asked only why Mr. Strickland was arrested.

argued that, under the totality of the circumstances, the evidence demonstrated that Mr. Strickland’s statement was freely and voluntarily given.

After the State closed its case, defense counsel, for the first time, argued that the State did not have probable cause for the arrest, stating:

Your Honor, the first obligation of the State before being allowed to use a statement is that the State had probable cause to take the Defendant into custody. In this case, Officer Holliday testified the Defendant was taken into custody for narcotics violations and for a handgun violation. As to the handgun violation, it was not recovered until four or five hours after the Defendant was taken into custody and no further evidence of a handgun has been presented. The State has not fleshed that out in any way to present any further evidence.

Counsel further argued that despite Mr. Strickland’s arrest for a narcotics violation, the State had adduced no testimony about anything recovered from Mr. Strickland, much less anything illicit; Officer Holliday stated only that he had seen Mr. Strickland take what looked like a prescription pill. Defense counsel also argued that the recovery of the gun occurred hours after Mr. Strickland’s arrest for its possession. Based on these contentions, defense counsel argued that there was no probable cause for Mr. Strickland’s arrest, and therefore, his statement should be suppressed.

The suppression court disagreed that probable cause provided “an argument in this case,” as Officer Holliday had presented sufficient probable cause of Mr. Strickland’s possession of the gun to a judge in order to obtain a search warrant of Mr. Strickland’s vehicle. The court, focusing on Mr. Strickland’s understanding and voluntary waiver of his Miranda rights when he gave his statement and the absence of any improprieties by the police in obtaining the statement, denied the motion to suppress, stating:

Okay. All right, listen. The officer had enough probable cause to get a warrant from a judge to search that car because he obviously saw and knew and that's how he was able to get—if there wouldn't be probable cause, he wouldn't have been able to get a search warrant from a judge to search the car. So there had to be probable cause in order to get that search warrant. So I don't see that being an argument in this case. I think that, you know, there are not many times when I think that the police really, pretty much dotted every I and crossed every T, and I think that this would be an example of that. I mean, not only was he advised once, he was advised twice. I have no reason not to believe the officer's version of events. He, again, to me, testified truthfully and there's nothing to suggest that he's not being truthful. He said that they went through the form, he made sure that Mr. Strickland understood each point of the form even though he was already Miranda-ized by the other officer. He testified truthfully that he had seen Mr. Strickland take something, but as argued by [the State], it had to be at least three or four hours before this—before the questioning. He was taken to see the commissioner within 24 hours of the arrest, he got a search warrant from a judge to search the vehicle, he didn't even ask him about the gun until after the search was done. I don't see anything improper being done by the police in this instance and I do think that the Defendant was properly Miranda-ized. I have no evidence to suggest that this was not a free and voluntary statement, that he asked for a lawyer and was not given one, that he didn't understand what his rights were, and therefore the motion to suppress is denied.

The matter proceeded immediately to trial.

Trial

Officer Holliday testified that at approximately 8:45 a.m. on November 21, 2017, he was positioned in a covert location, observing the area of North Gay and High Streets in Baltimore City, when he saw a man, later identified as Mr. Strickland, park a white Nissan Altima in the 300 block of North Gay Street, exit the vehicle, walk across the street, and engage in conversation with a man known to Officer Holliday as Eric Hursey. Mr. Strickland approached a woman, who retrieved something from her bra and handed it to Mr. Strickland, who consumed it. Mr. Strickland returned to Mr. Hursey and both men went back to their cars, which were parked one in front of the other.

Mr. Strickland entered the Altima while Mr. Hursey leaned into a Toyota Prius before walking to Mr. Strickland's car. At that point, Officer Holliday was able to see that Mr. Hursey was carrying a black handgun. Mr. Hursey displayed the handgun to Mr. Strickland, who took it and leaned toward the center console of the Altima. Both men then walked away from the vehicles, empty handed.

Officer Holliday alerted other officers to “come grab Mr. Strickland.” Mr. Strickland was detained by Officer Jones, read his Miranda warnings, and searched. Seven vials of cocaine were recovered from his person. Officer Holliday returned to the police station to write search warrants for the Altima and Prius; a judge signed the warrants, and both vehicles were searched.⁶ The black handgun that Officer Holliday had seen Mr. Hursey give to Mr. Strickland was recovered from the center console area of the Altima.⁷

Officer Holliday further testified that Mr. Strickland was then transported from the Eastern District precinct to the Homicide Unit for a “standard debrief” with Officers Holliday and McCoy. After waiving his Miranda rights, Mr. Strickland told the officers where the gun was located in the car and that he had it for protection. The parties stipulated that Mr. Strickland was prohibited from possessing a regulated firearm due to a prior conviction.

The jury convicted Mr. Strickland of both crimes. He timely noted this appeal.

⁶ Mr. Hursey was not arrested with Mr. Strickland, but a gun was recovered from his vehicle pursuant to the execution of the search warrant. Hursey was arrested a short time later.

⁷ The gun was loaded, but it was later determined to be inoperable.

DISCUSSION

Courts review a denial of a motion to suppress based on the evidence submitted at the suppression hearing in the light most favorable to the prevailing party, in this case, the State. Lewis v. State, 237 Md. App. 661, 672 (2018). The findings of the trial court are accepted if not clearly erroneous. Sinclair v. State, 444 Md. 16, 27 (2015). “The ultimate determination of whether there was a constitutional violation, however, is an independent determination that is made by the appellate court alone, applying the law to the facts found in each particular case.” Id. (quotations omitted).

Mr. Strickland argues that the suppression court erred in denying his motion to suppress his statement regarding the gun, contending that the facts established at the suppression hearing did not demonstrate that the police had probable cause to arrest him for possession of the gun and the cocaine. Mr. Strickland argues that, as a result, his statement to Officers Holliday and McCoy was “fruit of the poisonous tree” and in violation of his Fourth Amendment rights and should have been suppressed. According to Mr. Strickland, the court concluded that there was sufficient probable cause to arrest him only because a judge had determined that there was sufficient probable cause to issue a search warrant for his vehicle. Mr. Strickland argues that probable cause for a search warrant does not necessarily establish probable cause to arrest a person without a warrant and that the evidence at the suppression hearing did not link Mr. Strickland to the vehicle prior to his arrest.

In opposition, the State argues that Mr. Strickland’s argument should be rejected because he failed to challenge his arrest for lack of probable cause prior to or during the

presentation of evidence at the suppression hearing and therefore waived any claim that the statements should be suppressed as “fruit of the poisonous tree.” According to the State, Mr. Strickland’s failure to reveal this theory until the final minutes of the suppression hearing, after the witnesses had been questioned and excused and the State had presented its case, amounts to a “bait and switch” approach to litigation that cannot be countenanced. We agree and therefore find it unnecessary to reach the merits of Mr. Strickland’s probable cause argument.

I. MR. STRICKLAND DID NOT COMPLY WITH THE REQUIREMENTS OF MARYLAND RULE 4-252

Mr. Strickland’s omnibus motion was governed by Rule 4-252, which provides, in part:

(a) In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so *raised* are waived unless the court, for good cause shown, orders otherwise:

- (1) A defect in the institution of the prosecution;
- (2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;
- (3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;
- (4) An unlawfully obtained admission, statement, or confession; and
- (5) A request for joint or separate trial of defendants or offenses.

* * *

(e) A motion filed pursuant to this Rule shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. *A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific*

factual averments. Every motion shall contain or be accompanied by a statement of points and citation of authorities.

(emphasis added). “[T]he word ‘raise,’ as used in subsection (a) of Rule 4-252, is properly defined as meaning ‘[t]o bring up for discussion or consideration; to introduce or put forward.’” Ray v. State, 435 Md. 1, 14 (2013) (quoting Black’s Law Dictionary 1373 (9th ed. 2009)).

Maryland Rule 1-201 provides guidance for the application of the Maryland Rules, as follows:

These rules shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay. When a rule, by the word “shall” or otherwise, mandates or prohibits conduct, the consequences of noncompliance are those prescribed by these rules or by statute. If no consequences are prescribed, the court may compel compliance with the rule or may determine the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the rule.

As with a statute, when construing a rule, courts “first look to the normal, plain meaning of the language [and] [i]f that language is clear and unambiguous, [there is no need to] look beyond the provision’s terms.” Lisy Corp. v. McCormick & Co., Inc., 445 Md. 213, 221 (2015) (quotations omitted). As stated by the Court of Appeals, “[w]hen construing ... rules, we must bear in mind that they are ‘precise rubrics,’ established to promote the orderly and efficient administration of justice, and thus are to be strictly followed.” Duckett v. Riley, 428 Md. 471, 477 (2012) (quotations omitted).

The plain language of Rule 4-252, by the use of the word “shall,” requires a motion to suppress to contain specific and precise facts supported by points and authorities. Any deviation from this rule may only be excused with good cause. Sinclair, 444 Md. at 29.

The requirements of Rule 4-252 were not satisfied here. Mr. Strickland’s omnibus motion demanded that “all admissions, statements or confessions of the Defendant be suppressed as having been obtained involuntarily, forcibly and in violation of the Defendant’s Constitutional and other legal rights.” His later supplemental motion stated only that “the Defendant moves to suppress the oral statement allegedly taken from him in the instant case.” Nothing in either the motion or supplement indicated that Mr. Strickland sought to suppress his statement based on the contention that the statement was derived from an arrest that lacked probable cause. Mr. Strickland’s omnibus motion and supplement were similarly devoid of factual allegations or legal authority in support of this theory. These motions also failed to mention, let alone establish, good cause for his failure to comply with the rule.

In Denicolis v. State, 378 Md. 646, 660 (2003), the Court of Appeals frowned upon the use of “omnibus” motions to suppress:

It has apparently become the practice for some defense counsel to file this kind of motion, seeking a panoply of relief based on bald, conclusory allegations devoid of any articulated factual or legal underpinning, presumably in the belief that if the motion complies with the time requirement of Rule 4–252(b), compliance with Rule 4–252(e) is unnecessary. That is not the case. If a motion fails to provide either a factual or legal basis for granting the requested relief, it cannot be granted.

378 Md. at 660; see also Ray, 435 Md. at 18 (“recent opinions of the Court of Special Appeals are in accord with the principle of law that a claim for suppression of evidence must be advanced *and* litigated at the trial court level in order to avoid waiver under Maryland Rule 4-252”); Phillips v. State, 425 Md. 210, 216 n.4 (2012) (“a motion that fails to provide either a factual or legal basis for granting the requested relief should not be

granted”); Carroll v. State, 202 Md. App. 487, 513 (2011) (if a defendant fails to raise a ground seeking suppression of evidence, in a timely manner, the defendant has waived his or her right to appellate review of that issue), aff’d on other grounds, 428 Md. 679 (2012). Thus, Mr. Strickland’s motion and supplement were insufficient to establish the lack of probable cause for his arrest.

II. THE STATE WAS PREJUDICED BY THE INADEQUACY OF MR. STRICKLAND’S MOTION

“The obvious and necessary purpose” of the requirement that a motion to suppress set forth the grounds upon which it is made, supported by “precise and specific factual averments” and legal authority, “is to alert both the court and the prosecutor to the precise nature of the complaint, in order that the prosecutor have a fair opportunity to defend against it and that the court understand the issue before it.” Denicolis, 378 Md. at 660; see also Jones v. State, 395 Md. 97, 116 (2006) (“a defendant must state sufficient information to put the court and the State on notice of the evidence he or she wishes to suppress and the basis therefore. Neither the trial court nor the prosecutor should be surprised at the hearing.”).

The Court has recognized that “some courts have routinely overlooked the impermissible generality of such motions” and have allowed these motions to be supplemented at or in preparation for the motion hearing. Denicolis, 378 Md. at 660. And, generally, appellate courts do not disturb these decisions unless the non-compliance results in undue prejudice to the State. Id.

Here, however, Mr. Strickland’s actions unduly prejudiced the State. At no point prior to the suppression hearing did Mr. Strickland supplement the bald conclusory statements in his motion to provide the State with the requisite notice, factual allegations, or legal authority to alert the State that he challenged the probable cause for his arrest. Nor did Mr. Strickland present any evidence at the motions hearing. Rather, Mr. Strickland raised this argument only in the last moments of the suppression hearing, after the State’s witnesses had been excused and after the State had presented its case. This new theory of suppression unduly prejudiced the State by catching it flat-footed, as it had no prior notice that Mr. Strickland was making this challenge.⁸ See Denicolis, 378 Md. at 660.

We therefore hold that Mr. Strickland failed to preserve the challenge to both the existence of probable cause for his arrest and the propriety of suppression of the statement he made thereafter.⁹

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS ASSESSED TO APPELLANT.**

⁸ The State responded, “Your Honor, we have, at the time that the officers made an arrest for narcotics and [CDS]—I’m sorry, for narcotics as well as for a handgun violation—I’ll just submit on that.”

⁹ In his appellant brief, Mr. Strickland does not challenge the suppression court’s ruling that his statement had been freely and voluntarily given or its denial of his motion to suppress on that ground.