

Circuit Court for Worcester County  
Case No. 23-K-16-75

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2381

September Term, 2016

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THOMAS DANIEL PALANCHAR

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Eyler, Deborah S.,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: February 7, 2018

\*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 Worcester County, Thomas Palenchar, appellant, was convicted of two counts of second-degree burglary, two counts of theft, malicious destruction of property, manufacturing marijuana, and possession of marijuana. On appeal, he contends that the circuit court erred in denying his motion to suppress his identifying information because, he claims, that information was obtained during a seizure that was not supported by reasonable suspicion. For the reasons that follow, we affirm.

In reviewing the grant or denial of a motion to suppress, this Court views the evidence “in the light most favorable to the prevailing party,” which, in this case, is the State, and the “trial court’s fact findings are accepted unless clearly erroneous.” *Williamson v. State*, 413 Md. 521, 531 (2010). “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.” *Belote v. State*, 411 Md. 104, 120 (2009) (citation omitted).

The State presented evidence that around 3:00 a.m. on December 23, 2015, someone stole food and alcohol from The Green Turtle in Ocean City. Surveillance footage showed that the perpetrator was a white male, wearing a “unique” camouflage hat with a short brim<sup>1</sup> and a blue or dark blue North Face jacket with an emblem on the right rear shoulder.

Approximately twelve hours after the break-in, Officer Edward Newcomb was canvassing the area around The Green Turtle when he observed Palenchar walking down

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<sup>1</sup> The hat was described as a “flat hat” and “not a baseball hat.”

the road wearing a navy North Face jacket with a logo on the right rear shoulder and a camouflage hat that was not like a baseball hat. Officer Newcomb believed Palenchar's clothing matched the clothing worn by the person in the surveillance video so he approached Palenchar on foot, introduced himself, and asked Palenchar for his identification. Palenchar told Officer Newcomb that he was going to the gym, refused to identify himself, and walked away.

Officer Newcomb then followed Palenchar into the gym and attempted to speak to him a second time.<sup>2</sup> Palenchar cursed at Officer Newcomb, told him that he was trespassing, and asked him to leave. Around this time, four more officers arrived in the gym lobby. Officer Newcomb walked away and Palenchar was approached by Corporal Andrew Yeager. Corporal Yeager spoke with Palenchar for a couple of minutes and stated that he only wanted to “know who [Palenchar] was, identify him, and that was it.” Palenchar gave Corporal Yeager his driver's license, a local address, and a phone number.<sup>3</sup> Thereafter, Corporal Yeager and the other officers left the gym.

After reviewing the surveillance footage of the break-in a second time, Corporal Yeager obtained an arrest warrant for Palenchar. Palenchar was arrested at his residence the following day and, during a subsequent search of that residence, officers recovered marijuana, items that had been stolen from The Green Turtle, and items that had been stolen

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<sup>2</sup> Palenchar claimed that Officer Newcomb grabbed him inside the gym, a claim that Officer Newcomb denied and that the suppression court did not find to be credible.

<sup>3</sup> Corporal Yeager later determined that the address and phone number provided by Palenchar were inaccurate.

from a synagogue the previous night. After hearing arguments from counsel, the circuit court denied Palenchar’s motion to suppress the identifying information that he gave to the police, and the fruits thereof, finding that there was “nothing unlawful about the obtaining of that information by the police[.]”

Palenchar contends that he was seized for Fourth Amendment purposes when the officers questioned him in the gym. But, even assuming that Palenchar was seized, the seizure was not unlawful as it was supported by reasonable suspicion. “There is no standardized test governing what constitutes reasonable suspicion,” and the concept is “not readily, or even usefully, reduced to a neat set of legal rules.” *Holt v. State*, 445 Md. 443, 459 (2013) (quotation marks and citations omitted). Instead, it is “a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.” *Cartnail v. State*, 359 Md. 272, 286 (2000) (citation omitted). The Supreme Court has therefore required that an officer conducting such a stop to be able to articulate “a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Illinois v. Wardlow*, 528 U.S. 119, 128 (2000) (citation omitted).

In the absence of a bright-line test, the Court of Appeals has highlighted certain factors that courts generally consider, when judging “whether a reasonable and prudent police officer would have been warranted in believing that [the individual stopped] had been involved in criminal activity.” *Cartnail*, 359 Md. at 289. These factors include:

“(1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime

occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender’s flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.”

*Id.* (quoting 4 Wayne R. LaFare, Search and Seizure § 9.4(g), at 195 (3d ed. 1996 & 2000 Supp.)) In considering these factors, we examine the totality of the circumstances and do not “parse out” every circumstance for individualized consideration. *Crosby v. State*, 408 Md. 490, 507 (2009). To satisfy the reasonable suspicion standard, these factors, considered together, “must serve to eliminate a substantial portion of innocent travelers.” *Id.* at 291 (citations and quotations omitted).

Applying the above principles to the facts of the case at hand, we conclude that the officers had a reasonable, articulable suspicion that Palenchar was engaged in criminal activity. The officers did not attempt to talk to Palenchar on a lark. Rather, he was observed walking next to The Green Turtle twelve hours after it was burglarized, wearing two distinctive articles that had been worn by the perpetrator of that burglary. The fact that Palenchar’s clothing so closely matched that of the suspect was sufficient to differentiate him from the “substantial portion of innocent travelers” that Officer Newcomb might have observed while canvassing the area. *See generally Haley v. State*, 398 Md. 106, 135 (2007) (holding that the officer had both reasonable suspicion to stop the defendant and probable cause to believe that the defendant had committed a felony when he noted that the defendant was wearing the same unique article of clothing as the perpetrator of the robbery whom he had seen four hours earlier). Consequently, to the extent that Palenchar was “seized,” we conclude that his seizure did not violate the Fourth Amendment.

Equally dispositive of Palenchar’s claim is the fact that the only “evidence” the police obtained from him during the encounter was his name, address, and phone number. However, that information, even if unlawfully obtained, is “not excludable evidence and may not serve either as second-generation excludable ‘fruits’ or as the first-generation ‘poisonous tree’ that may yield such fruits.” *Gibson v. State*, 138 Md. App. 399, 414 (2001); *see also INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984) (noting that the “identity of a defendant . . . in a criminal . . . proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred”). Consequently, even if Palenchar had been unlawfully seized, there was no evidence that the circuit court could have suppressed.

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