IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 65114-5-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
PETER JAMES GREEN,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: August 1, 2011
	)	

Lau, J. — Peter Green challenges his convictions for five counts of identity theft and one count of second degree theft. He argues the trial court erred in admitting evidence seized from his car during two searches, only one of which he challenged in the trial court. For the search Green challenged, we reject his claim that the officer unlawfully exceeded the scope of a search warrant by looking at credit cards found inside a backpack while searching for papers of occupancy or evidence of the identity of an unknown passenger. For the search Green did not challenge, while the record is insufficient for us to resolve his claim in this appeal, under State v. Robinson, 171 Wn.2d 292, 305-06, 253 P.3d 84, (2011), we must reject the State's claim of waiver and

remand to the trial court to conduct another suppression hearing to allow Green to raise his argument of an unlawful search incident to arrest. Green raises additional pro se claims that are clearly without merit. We accordingly remand for further proceedings consistent with this opinion.

FACTS

On January 24, 2008, Peter Green was driving a Jeep Cherokee that collided with a pedestrian, who ultimately died because of injuries caused by the accident. Police arrested Green at the scene for driving under the influence (DUI) based on a suspicion that Green was intoxicated. Green was transported to a hospital for a mandatory blood draw. Seattle Police Detective Thomas Bacon conducted an initial search of Green's vehicle for inventory and investigatory purposes. He found a large screen television set in the back of the vehicle and paperwork indicating it had been purchased with three $500 Sears gift cards. In addition, he found a receipt from a different Sears store showing other purchases using the remaining balance on the cards. Finding these circumstances suspicious, the detective seized the receipts along with two disposable cell phones he found in the vehicle.

Green's vehicle was impounded, and on January 30, Detective Bacon sought and obtained a search warrant authorizing a search of the vehicle for items related to the DUI investigation. The warrant specifically authorized seizure of "papers of dominion and control," along with "any evidence of the use of alcohol and/or controlled substances, including marijuana and marijuana paraphernalia." Ex. 4PT at 1. In addition, because an eyewitness had reported seeing a passenger carrying beer cans

away from the vehicle after the collision, the warrant also authorized "evidence related to the identification of an unknown male passenger who was seen exiting the vehicle immediately after the collision occurred." Ex. 4PT at 1.

Detective Bacon executed the search warrant on January 31. He found a backpack in the rear seat of the vehicle. He opened the backpack to search for evidence of alcohol, drug use, papers confirming Green was the driver, or evidence to help identify the unknown passenger. Inside the backpack were five credit cards with the name "Jeanne Russell" on them. Detective Bacon observed that they were drawn on five different banks and had no security codes listed on them. Because he was at the time primarily investigating the DUI, he left the cards in the backpack. On February 8, Detective Bacon applied for and received a second warrant allowing him to search the car for items relating to fraud or identity theft. In executing this warrant, he seized the credit cards and also discovered and seized additional evidence related to fraudulent purchases and credit cards.

The State eventually charged Green with five counts of second degree identity theft, one count of second degree theft, and one count of DUI.

Before trial, Green brought a motion to suppress. He did not challenge the initial search of the vehicle and argued only that the discovery of the credit cards in the backpack exceeded the scope of the search authorized by the first warrant. The trial court found that Bacon's discovery and examination of the credit cards fell well within the scope of the search authorized by the warrant and went no further than necessary.

Green was tried for the DUI separately and acquitted of that charge. He was

convicted of the remaining counts, and received a standard range sentence. Green appeals.

ANALYSIS

Green first seeks to challenge the validity of the initial warrantless search of his vehicle under the Fourth Amendment and article I, section 7 of the Washington Constitution pursuant to Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009) and State v. Valdez, 167 Wn.2d 761, 224 P.3d 751 (2009); and State v. Afana, 169 Wn.2d 169, 233 P.3d 879 (2010).

The State correctly points out that because of the limited nature of the suppression motion Green brought, the record was not sufficiently developed to address this claim for the first time in this appeal. Green challenged only the second search, conducted pursuant to the January 30 warrant. Facts were not explored that could have justified the initial search as either a search incident to arrest for evidence of the crime of arrest or as an inventory search pursuant to the impound of the vehicle, both of which it would appear present at least facially arguable bases for the search. See, e.g., State v. Wright, 155 Wn. App. 537, 555, 230 P.3d 1063, (search for evidence of the crime of arrest), review granted, 169 Wn.2d 1026 (2010); State v. Morales, 154 Wn. App. 26, 48, 225 P.3d 311 (2010) (inventory search as exception to warrant requirement), review granted, 169 Wn.2d 1001 (2010). The State accordingly argues that Green waived this issue.

It is not proper, however, for us to find that Green waived his claim, at least to the extent that it is based on article I section 7 of the constitution, since the cases

Green seeks to rely on for his argument had not yet been decided at the time of his trial. State v. Robinson, 171 Wn.2d 292, 305-06, 253, P.3d 84 (2011). Because Green did not bring a motion to suppress on this basis and the record is therefore insufficient to address his claim, the proper response is to remand for the trial court to conduct a new suppression hearing at which Green can bring his new motion to suppress and both parties will have the opportunity to appropriately develop the record. Robinson, 171 Wn.2d at 305-06.

Next, Green presents the same argument for suppression that he raised in the trial court—that Detective Bacon's discovery of the credit cards unlawfully exceeded the scope of the search authorized by the warrant. With this contention, we disagree.

We review a trial court's denial of a suppression motion to determine whether substantial evidence supports the challenged findings of fact and whether these findings support the trial court's conclusions of law. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), overruled on other grounds by Brendlin v. California, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007). When the appellant does not challenge any of the trial court's findings of fact, they are considered verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). We review the court's suppression hearing conclusions de novo. State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

Under the Fourth Amendment, a search warrant must describe with particularity the person or place to be searched, which means that it must be sufficiently definite to inform an officer executing the warrant what is being sought with reasonable certainty.

State v. Stenson, 132 Wn.2d 668, 691-92, 940 P.2d 1239 (1997). A search pursuant to a warrant exceeds the scope authorized if officers seize property not specifically described in the warrant. State v. Kelley, 52 Wn. App. 581, 585, 762 P.2d 20 (1988). In determining the scope of a search warrant, courts give the words used in the warrant their commonsense meaning. State v. Cheatam, 112 Wn. App. 778, 783, 51 P.3d 138 (2002), aff'd, 150 Wn.2d 626, 81 P.3d 830 (2003).

Green argues that because the warrant did not specifically identify evidence of fraud or identity theft, Detective Bacon's discovery of the credit cards necessarily exceeded the scope of the warrant. But Green simply ignores the part of the warrant that authorized the seizure of evidence of papers of occupancy related to the vehicle and evidence relating to the identity of the passenger seen removing the beer cans. Had the credit cards carried Green's name, they would have fallen under the former category, and had they contained any other arguably male name, they would have fallen under the latter. Our Supreme Court has long recognized the commonsense reasoning that the authority to seize such items necessarily includes the authority to conduct at least a cursory examination to determine whether papers or other similar items come within the ambit of the warrant. See Stenson, 132 Wn.2d at 694 ("'[S]ome innocuous documents will be examined, at least cursorily, in order to determine whether they are, in fact, among those papers authorized to be seized.'") (quoting Andresen v. Maryland, 427 U.S. 463, 482 n.11, 96 S. Ct. 2737, 49 L. Ed 2d 627 (1976)).

Green has not challenged the trial court's finding that Detective Bacon's brief

view of the credit cards "went no further than was physically (and inevitably) necessary to remove the cards from the backpack and briefly glance at the front and back." That finding is therefore binding on this court. Hill, 123 Wn.2d at 644. Because, under Stenson, it was appropriate for the detective to conduct a cursory examination to determine if the credit cards were among the items authorized to be seized, his actions were properly within the scope of the warrant. We accordingly reject Green's claim.

Finally, Green has filed a pro se statement of additional grounds. None of the claims has even debatable merit, and only two justify specific comment here. Green apparently seeks to raise a claim of a double jeopardy violation based on a unit of prosecution analysis for his multiple counts of identity theft. It is clear that the trial court did not err, however, because, in accordance with the governing law regarding the unit of prosecution for identity theft at the time of Green's offense, each count was properly based on a separately named individual whose identity Green unlawfully appropriated. See State v. Leyda, 157 Wn.2d 335, 345, 138 P.3d 610 (2006).[1] Green also seeks relief because the same judge who had authorized the first search warrant considered his motion to suppress. But this claim clearly fails under our Supreme Court's controlling decision in State v. Chamberlin, 161 Wn.2d 30, 162 P.3d 389 (2007).

Green's challenge to the trial court's rulings is without merit. Under Robinson, we must remand to allow him to bring his new motion to suppress in the trial court.

Remanded for further proceedings

1 For purposes of this case, Leyda is good law; however, the case has since been overturned by a statutory amendment. See Laws of 2008, ch. 207, §§ 3, 4.

consistent with this opinion.

WE CONCUR: