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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 09/06/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0635
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
STEVEN VINCENT SANTOSTEFANO,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-121283-003

The Honorable Samuel A. Thumma, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Angela Corinne Kebric, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Kathryn L. Petroff, Deputy Public Defender
Attorneys for Appellant

G O U L D, Judge

¶1 Steven Santostefano appeals from his convictions for two counts of possession of dangerous drugs for sale, one count of possession of narcotic drugs for sale, one count of

possession of marijuana for sale, and one count of possession of drug paraphernalia. Santostefano argues the trial court erred when it denied his motion to suppress. For the following reasons, we affirm.

Facts and Procedural Background

¶2 Pursuant to an unrelated investigation, police officers learned of suspected drug use at David Benz's residence. Police conducted surveillance on the residence to corroborate this information; on April 20, 2010, they performed a "trash rip" and found methamphetamines in a trash bag along with receipts listing the address of the residence and Benz's name.

¶3 Based on their investigation, police obtained a search warrant. The search warrant described the "premises" to be searched as a "primary structure" consisting of a "single family residence" and a "detached guest house" located "to the west of the primary structure." The search warrant authorized officers to search the property for evidence including "[a]ny items used to process, package, conceal, transport, weigh, measure or assist in the use of the dangerous drug methamphetamine."

¶4 During execution of the search warrant, police observed two vehicles in the back yard. Before the officers obtained the search warrant, they were unable to see into the

back yard because it was surrounded by a "large block wall." Consequently, the officers did not see the vehicles in the back yard before the search, and did not specifically include the vehicles in the search warrant.

¶15 While the officers were searching the premises, they discovered Santostefano in a bedroom of the guest house. Further search of the guest house revealed a baggie of methamphetamine on a table next to Santostefano's wallet.

¶16 One of the two vehicles located in the backyard, a Grand Marquis, was parked next to the guest house. Inside the Grand Marquis police found a large amount of methamphetamines, cocaine, marijuana, pills, drug ledgers, and paperwork containing Santostefano's name. Santostefano was arrested and charged with two counts of possession of dangerous drugs for sale, one count of possession of narcotic drugs for sale, one count of possession of marijuana for sale, and one count of possession of drug paraphernalia.

¶17 Santostefano filed a motion to suppress all evidence found during execution of the search warrant. He argued the search of the Grand Marquis was outside the scope of the search warrant. The State responded that Santostefano lacked standing to challenge the search because he abandoned his reasonable expectation of privacy in the car by failing to claim ownership

of it during the search. The State also argued the Grand Marquis was adequately described in the warrant as a logical part of the "premises."

¶8 The court denied Santostefano's motion to suppress. The court found that "[t]he Marquis was properly within the scope of the search warrant." Additionally, the court stated that Santostefano had the opportunity to claim ownership of the Grand Marquis and his failure to do so constituted abandonment of any reasonable expectation of privacy as to the vehicle.

¶9 At trial, Santostefano was convicted on all counts. The court sentenced him to concurrent prison sentences of 12 years for possession of dangerous drugs for sale (meth), 6 years for possession of narcotic drugs for sale, 6 years for possession of dangerous drugs for sale, 2.75 years for possession of marijuana for sale, and 1 year for possession of drug paraphernalia. Santostefano timely appealed.

Discussion

¶10 Santostefano challenges the court's denial of his motion to suppress. He argues the court erred when it determined he lacked standing to challenge the search because he abandoned the Grand Marquis. He also challenges the court's finding that the vehicle was within the scope of the warrant.

¶11 When reviewing a court's ruling on a motion to suppress "we view the facts in the light most favorable to upholding the trial court's ruling and consider only the evidence presented at the suppression hearing." *State v. Teagle*, 217 Ariz. 17, 20, ¶ 2, 170 P.3d 266, 269 (App. 2007). "[W]e evaluate discretionary issues for an abuse of discretion but review legal and constitutional issues de novo." *State v. Huerta*, 223 Ariz. 424, 426, ¶ 4, 224 P.3d 240, 242 (App. 2010). In our review we are mindful of the presumption "in favor of the validity of search warrants," and will only disturb a court's ruling if the court abused its discretion. *State v. White*, 145 Ariz. 422, 427, 701 P.2d 1230, 1235 (App. 1985).

¶12 The court did not abuse its discretion in finding the Grand Marquis was within the scope of the search warrant. "A search of the premises may include property that constitutes a logical part of the residential premises"; this includes a vehicle that is parked next to a house "within the legal concept of curtilage." *In re one 1970 Ford Van, I.D. No. 14GHJ55174, L. No. CB 4030*, 111 Ariz. 522, 523, 533 P.2d 1157, 1158 (1975) (stating that curtilage includes garages, driveways and parking areas).

¶13 Given the totality of the circumstances, it was reasonable for the officers to search the Grand Marquis as

"property necessarily a part of the premises" subject to the search warrant. *State v. Caldwell*, 20 Ariz. App. 331, 334, 512 P.2d 863, 866 (1973) (stating that where police could reasonably believe large quantities of marijuana for sale were being stored on the premises, automobiles and surrounding sheds are also possible storage places subject to the warrant). The Grand Marquis was parked in the backyard of the subject property in front of the guest house. The search warrant included the guest house in the description of the "premises" to be searched. The warrant authorized a search of the premises for "[a]ny items used to . . . conceal, transport . . . or assist in the use of the dangerous drug methamphetamine." (Emphasis added.) The search warrant affidavit described the history of illegal drug activity occurring at the premises that involved several different people. The affidavit stated that many people lived on the subject property, and numerous others went there "to use drugs and party." Additionally, the affidavit stated "that there is usually a lot of methamphetamine and drug paraphernalia at the residence."

¶14 The facts alleged in the search warrant affidavit were sufficient to establish probable cause to believe that a crime was being committed on the premises that involved the use of vehicles found on the property. As a result, the Grand Marquis

was within the scope of the search warrant. See *White*, 145 Ariz. at 427-28, 701 P.2d at 1234-35 (upholding search of a bus not listed in the search warrant that was parked on the property but was not visible from the road and was discovered upon execution of the warrant).

¶15 Santostefano next argues the court erred when it concluded he abandoned the Grand Marquis and thus had no standing to challenge the search. A defendant bears the burden of proving he has a legitimate expectation of privacy in property in order to challenge its search. *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980). "Whether a defendant has abandoned property is a factual determination," and we will review it for "clear and manifest error." *Huerta*, 223 Ariz. at 426, ¶ 4, 224 P.3d at 242. Property will be deemed abandoned for Fourth Amendment purposes if "the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search." *State v. Walker*, 119 Ariz. 121, 126, 579 P.2d 1091, 1096 (1978) (quoting *United States v. Colbert*, 474 F.2d 174, 176 (5th Cir. 1973)). In making a determination, the court must consider the totality of the circumstances. *Huerta*, 223 Ariz. at 428, ¶ 14, 224 P.3d at

244. A denial of ownership or interest in property may constitute abandonment. *State v. Huffman*, 169 Ariz. 465, 466-67, 820 P.2d 329, 330-31 (App. 1991); *Walker*, 119 Ariz. at 127, 579 P.2d at 1097.

¶16 Viewing the totality of the circumstances, we find no clear and manifest error in the court's ruling that Santostefano abandoned his interest in the Grand Marquis. Santostefano was detained along with the other individuals located on the property prior to conducting the search, yet he did not claim ownership of the Grand Marquis prior to or during its search. When he was interviewed by a detective later that day, he denied ownership of the vehicle.¹ See *Huerta*, 223 Ariz. at 428, ¶ 14, 224 P.3d at 244 (stating that defendant who had ample opportunity to claim property but failed to do so despite being specifically asked if it was his, abandoned the property).

¶17 Santostefano argues he could not have abandoned his interest in the Grand Marquis because police knew, independent of his statements, that the vehicle belonged to someone other

¹ The record is unclear as to whether Santostefano denied ownership of the vehicle *before* it was searched. In the absence of any evidence that the search occurred before Santostefano disclaimed his interest in the vehicle, Santostefano has failed to carry his burden of proving he had a reasonable expectation of privacy in the vehicle. See *Rawlings v. Kentucky*, 448 U.S. at 104; see also *State v. Teagle*, 217 Ariz. at 20, ¶ 2, 170 P.3d at 269 ("[W]e view the facts in the light most favorable to upholding the trial court's ruling.").

than the target of the search warrant. However, this claim is unsupported by the record. Testimony presented at the hearing indicates that the police learned the vehicle was registered to Santostefano after running a DMV search of his license plate; however, there is no testimony to indicate whether the police learned this before or after searching the vehicle.

Conclusion

¶18 For the reasons above, we affirm Santostefano's convictions and sentences.

/S/

ANDREW W. GOULD, Judge

CONCURRING:

/S/

MAURICE PORTLEY, Presiding Judge

/S/

JON W. THOMPSON, Judge