

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MANUEL ARNOLD AGUIRRE JR.,
Appellant.

No. 2 CA-CR 2015-0248
Filed May 17, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20140346001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Diane Leigh Hunt, Assistant Attorney General, Tucson and
Abraham J. Hamadeh, Pursuant to Rule 38(d),
Rules of the Supreme Court, Tucson
Counsel for Appellee

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Steven R. Sonenberg, Pima County Public Defender
By Katherine A. Estavillo, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

ECKERSTROM, Chief Judge:

¶1 Manuel Aguirre Jr. was convicted after a jury trial of two counts of armed robbery and three counts of aggravated assault with a deadly weapon or dangerous instrument. The trial court sentenced him to concurrent prison terms, the longest of which is 15.75 years. On appeal, Aguirre contends the trial court erred in denying his motion to suppress evidence, arguing law enforcement officers lacked probable cause to arrest him. We affirm.

¶2 Aguirre's convictions¹ stem from a 2014 incident in which he approached the victim as she sat by a gravesite in a cemetery. He demanded her "keys and [her] phone," intimating she would be shot by others if she did not comply. The victim began to call 9-1-1, and fled when she saw Aguirre was holding a box cutter. Aguirre grabbed her, cut her several times with the box cutter, and took her keys. As Aguirre began looking in the victim's nearby truck, she grabbed her fanny pack from the truck and ran. Aguirre gave chase, cut the victim's leg upon catching her, took her fanny pack, and left. Law enforcement officers apprehended Aguirre shortly thereafter.

¹We view the facts in the light most favorable to sustaining the jury's verdicts. *State v. Payne*, 233 Ariz. 484, n.1, 314 P.3d 1239, 1251 n.1 (2013).

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¶3 In reviewing a ruling on a motion to suppress, “we consider only the evidence presented at the suppression hearing and view the facts in the light most favorable to sustaining the trial court’s ruling.” *State v. Gonzalez*, 235 Ariz. 212, ¶ 2, 330 P.3d 969, 970 (App. 2014). A trial court’s decision on a motion to suppress involves a mixed question of fact and law. *State v. Evans*, 237 Ariz. 231, ¶ 6, 349 P.3d 205, 207 (2015). The court’s factual findings are reviewed for abuse of discretion, while its purely legal conclusions are reviewed de novo. *Id.*

¶4 At the suppression hearing, a police officer testified that he had responded to the notice about the robbery. The dispatch call text described the suspect as a “Hispanic male, possibly 20’s, plaid T-shirt, pants, last seen running,” and noted he was carrying a “book bag” and “was armed with a box cutter.” When the officer was a few blocks away, he saw Aguirre running from the cemetery carrying bloody clothing. Aguirre, who is Hispanic, was wearing a “white long-sleeved shirt and black pants.” The officer did not see a box cutter or book bag. Although the officer identified himself as law enforcement and instructed Aguirre to stop, he threw the clothing over a wall and continued to flee. After a brief chase, the officer took Aguirre to the ground and handcuffed him. A pocketknife was found in Aguirre’s possession. In a second search approximately fifty minutes after Aguirre was apprehended, an officer found a box cutter in Aguirre’s pocket.

¶5 In his motion to suppress and after the evidentiary hearing, Aguirre argued that he had been arrested when the officer first handcuffed him and that the officer had lacked probable cause or reasonable suspicion to detain him at that time because his appearance was inconsistent with the description provided. In the alternative, he argued that even if his initial detention had been a valid investigatory stop supported by reasonable suspicion, the detention became a de facto arrest because of the delay before an officer found the box cutter, which established probable cause for the first time. The trial court determined that the first officer had probable cause to arrest Aguirre at the time he detained him. The court further concluded the officer had probable cause to arrest Aguirre for committing misdemeanor criminal littering in violation

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of A.R.S. § 13-1603 by discarding the bloody clothing. *See* A.R.S. § 3-3883(A)(2) (permitting warrantless arrest, supported by probable cause, for misdemeanor offense “committed in the officer’s presence”).

¶6 A law enforcement officer has probable cause to arrest “when reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that a suspect has committed an offense.” *State v. Jackson*, 208 Ariz. 56, ¶ 31, 90 P.3d 793, 802 (App. 2004), *quoting State v. Hoskins*, 199 Ariz. 127, ¶ 30, 14 P.3d 997, 1007-08 (2000); *see also* § 13-3883(A)(1) (allowing warrantless arrest for felony offense if supported by probable cause). “When assessing whether probable cause exists, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *State v. Moran*, 232 Ariz. 528, ¶ 10, 307 P.3d 95, 99 (App. 2013), *quoting State v. Dixon*, 153 Ariz. 151, 153, 735 P.2d 761, 763 (1987).

¶7 We agree with the trial court that the officer had probable cause to arrest Aguirre for armed robbery after he discarded the bloody clothing and fled.² Aguirre, while holding bloody clothing, was running away from the scene of a recent armed robbery involving a knife. When confronted by the officer, he abandoned the bloody clothing and continued to flee. This clearly would permit a reasonable person to believe Aguirre was a suspect in the recent and nearby armed robbery. Although there were some inconsistencies between the description given the officer and Aguirre’s appearance, the trial court found Aguirre generally matched that description—a factual determination to which we

²Accordingly, we need not address Aguirre’s argument that the officer’s initial detention of him constituted an arrest, or that the delay between that detention and the discovery of the box cutter transformed any investigatory detention into a de facto arrest. *See State v. Boteo-Flores*, 230 Ariz. 105, ¶ 21, 280 P.3d 1239, 1243 (2012) (lack of diligence in investigation and lack of “ongoing safety threat or flight risk” transformed investigatory stop to de facto arrest).

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must defer. *State v. Barnes*, 215 Ariz. 279, ¶ 2, 159 P.3d 589, 590 (App. 2007).

¶8 Even if the officer lacked probable cause to arrest Aguirre for the robbery, the trial court was also correct that the arrest was justified based on Aguirre's apparent violation of § 13-1603 in the officer's presence. Although Aguirre complains the officer did not articulate that as a basis for arrest, the subjective beliefs of the officer about the basis of probable cause are not relevant. See *State v. Lopez*, 156 Ariz. 573, 577, 754 P.2d 300, 304 (App. 1987). Aguirre further suggests that the delay between his arrest and questioning would be "unreasonable in a littering case." But, even if we agreed with Aguirre the delay was unreasonable, he has not explained how that would transform a legal arrest into an illegal one. He cites no authority suggesting that delays in transporting a legally arrested suspect to a police station creates a constitutional violation, much less one that would require the suppression of evidence. The sole authority he cites, *State v. Boteo-Flores*, addresses a de facto arrest resulting, in part, from unwarranted delays in an investigatory stop. 230 Ariz. 105, ¶¶ 14-15, 280 P.3d 1239, 1242 (2012). It has no bearing on this issue.

¶9 Aguirre's convictions and sentences are affirmed.