

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

TIMMY RAY FELIZ, *Appellant*.

No. 1 CA-CR 21-0187

FILED 2-24-2022

Appeal from the Superior Court in Mohave County

No. S8015CR201800857

The Honorable Richard D. Lambert, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix

By Jana Zinman

Counsel for Appellee

Mohave County Legal Advocate, Kingman

By Jill L. Evans

Counsel for Appellant

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MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge David D. Weinzweig and Judge Brian Y. Furuya joined.

P E R K I N S, Judge:

¶1 Timmy Ray Feliz appeals his convictions for possession of methamphetamine and drug paraphernalia. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 We view the facts in the light most favorable to sustaining the verdict. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013).

¶3 Mesa police stopped a tan car in April 2018, and Feliz sat in the front passenger seat with a backpack between his legs. The officers recognized Feliz from a wanted poster and detained Feliz in the back of Officer Stefick's patrol car. Feliz's backpack remained on the tan car's front passenger floorboard. Stefick confirmed Feliz's outstanding warrant and placed him under arrest.

¶4 Stefick asked Feliz if he wanted to bring the backpack with him. Feliz responded, "I got no bag." Stefick asked again, prompting Feliz to say, "I don't have a bag." As Stefick closed the patrol car's door, Feliz reiterated, "I don't have no bag." The officers seized the backpack and turned it over to Mesa's street crimes unit.

¶5 Later that month, police used a K-9 to conduct an open-air sniff of the backpack. Because the K-9 alerted, police obtained a search warrant. Sergeant Jacobs found a methamphetamine pipe wrapped in a small white towel inside the backpack. The State charged Feliz with possession of dangerous drugs, a class 4 felony, and possession of drug paraphernalia, a class 6 felony.

¶6 Feliz moved to suppress any evidence found in the backpack, arguing police illegally seized the backpack and then failed to establish proper chain of custody. After an evidentiary hearing, the superior court denied Feliz's motion. The court found Feliz lacked standing to challenge the backpack's seizure because he abandoned it with his "two emphatic

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statements” denying ownership. The court also found the State established a reasonable chain of custody because “[e]very officer was able to talk about where the backpack was at any given time.”

¶7 The jury found Feliz guilty of both offenses. Feliz timely appealed, and we have jurisdiction under Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 13-4031 and -4033(A).

DISCUSSION

¶8 Feliz argues the superior court erred by concluding he lacked standing to challenge the backpack’s seizure.

¶9 The Fourth Amendment to the United States Constitution and Article 2, Section 8, of the Arizona Constitution protect against unlawful searches and seizures. *State v. Wilson*, 237 Ariz. 296, 298, ¶ 7 (2015). Only a person with a “legitimate expectation of privacy in the invaded place” may assert Fourth Amendment protections. *See Rakas v. Illinois*, 439 U.S. 128, 143 (1978); *see also State v. Harding*, 137 Ariz. 278, 291 (1983).

¶10 A person “retains no privacy interest . . . in abandoned property.” *See State v. Huerta*, 223 Ariz. 424, 426, ¶ 5 (App. 2010); *see also Abel v. United States*, 362 U.S. 217, 241 (1960). Property is abandoned when “the person prejudiced by the search . . . 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.” *Huerta*, 223 Ariz. at 426, ¶ 5 (cleaned up).

¶11 “Whether a defendant has abandoned property is a factual determination that we review for clear and manifest error.” *Id.* at ¶ 4 (cleaned up). Courts must evaluate objective factors, and not the defendant’s subject intent, to determine whether he abandoned the property. *Id.* at ¶ 5. Denying ownership or interest in property may constitute abandonment, but the court must consider the totality of the circumstances. *State v. Huffman*, 169 Ariz. 465, 466–67 (App. 1991); *see also Huerta*, 223 Ariz. at 428, ¶ 15.

¶12 We find no clear and manifest error in the superior court’s finding that Feliz abandoned the backpack. After seeing the backpack between Feliz’s legs, Officer Stefick twice asked Feliz whether he wanted to take the backpack. And Feliz denied ownership of the backpack three times. Feliz’s words, acts, and other objective indications would leave a reasonable person to believe he abandoned the backpack.

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¶13 Feliz asserts the Arizona Constitution confers automatic standing for defendants charged with possessory crimes. *See* Ariz. Const. art. 2, § 8. But we rejected that argument in *State v. Juarez*, 203 Ariz. 441, 447, ¶ 24 (App. 2002), and our Supreme Court has applied *Juarez*. *See Peoples*, 240 Ariz. at 247, ¶ 8; *see also State v. Mixton*, 250 Ariz. 282, 292-93, ¶ 41 (2021).

¶14 Because Feliz had no reasonable expectation of privacy, we need not address the merits of his other Fourth Amendment argument. Feliz did not challenge the superior court's chain of custody ruling in his opening brief and thus waived that claim. *See State v. Carver*, 160 Ariz. 167, 175 (1989) (failure to assert a claim may constitute abandonment and waiver of that claim).

CONCLUSION

¶15 We affirm Feliz's convictions and sentences.



AMY M. WOOD • Clerk of the Court
FILED: AA