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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHAN ALLEN HAWK,

Defendant-Appellant.

UNPUBLISHED
August 27, 2020

No. 352574
Oceana Circuit Court
LC No. 19-013712-FH

Before: SHAPIRO, P.J., and SERVITTO and LETICA, JJ.

PER CURIAM.

In this interlocutory appeal, defendant appeals by delayed leave granted[1] the trial court's order denying defendant's motion to suppress the evidence against him. We affirm.

On June 27, 2019, defendant attended the Electric Forest Music Festival with his girlfriend, Darby Zufall. Police had allegedly set up an undercover operation wherein they would purchase a quantity of the hallucinogenic drug LSD[2] at the festival from Zufall. When the undercover officers met with Zufall at the festival, defendant accompanied her. Officers initiated the arrest of both Zufall and defendant. Defendant purportedly threw the backpack he had slung over his shoulder away from him and also allegedly resisted the officers attempts to place him under arrest. Officers ultimately restrained defendant and arrested him. A later search of defendant's backpack allegedly revealed Psilocybin (hallucinogenic mushrooms). Defendant was charged with one count of delivery/manufacture of a controlled substance, MCL 333.7401(2)(b)(ii); and two counts of resisting or obstructing a police officer, MCL 750.81d(1).

Defendant filed a motion to suppress, arguing that defendant's arrest was not supported by probable cause and that the search of his backpack was also unsupported by probable cause and subject to no exception or mitigating circumstance such that any evidence obtained as the result of

[1] *People v Hawk*, unpublished order of the Court of Appeals, entered March 31, 2020 (Docket No. 352574).

[2] Lysergic acid diethylamide.

his arrest and the search of his backpack must be suppressed. The trial court disagreed and denied defendant's motion. As previously indicated, this Court granted defendant leave to challenge the trial court's ruling.

On appeal, defendant again argues that the police lacked probable cause to arrest him and to subsequently conduct a warrantless search of his backpack. We disagree.

We review de novo both any questions of law and a trial court's ultimate decision on a motion to suppress. *People v Mazzie*, 326 Mich App 279, 289; 926 NW2d 359 (2018). This Court reviews a trial court's findings of fact regarding a motion to suppress evidence for clear error. *People v Unger*, 278 Mich App 210, 243; 749 NW2d 272 (2008).

The Fourth Amendment protects people from "unreasonable searches and seizures" of their "persons, houses, papers, and effects." US Const, Am IV. An "arrest" is "[a] seizure or forcible restraint." *Ernsting v Ave Maria Coll*, 274 Mich App 506, 515; 736 NW2d 574 (2007), quoting Black's Law Dictionary (8th ed). "In order to be reasonable, an arrest must be justified by probable cause." *People v Hammerlund*, 504 Mich 442, 451; 939 NW2d 129 (2019). "Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *People v Cohen*, 294 Mich App 70, 75; 816 NW2d 474 (2011) (citation omitted).

"A search or seizure of a person must be supported by probable cause particularized with respect to that person." *Ybarra v Illinois*, 444 US 85, 91; 100 S Ct 338; 62 L Ed 2d 238 (1979). "Mere presence, even with knowledge that an offense is about to be committed or is being committed, is not enough to make a person an aider or abettor," or a principal, "nor is mere mental approval, sufficient, nor passive acquiescence or consent." *People v Worth-McBride*, 504 Mich 899; 929 NW2d 285 (2019), citing *People v Burrel*, 253 Mich 321, 323; 235 NW 170 (1931).

Defendant argues that there was no probable cause to arrest him because the officers had no information connecting him to the drugs Zufall agreed to sell. Defendant also asserts that he could not have been lawfully arrested under an aider-or-abettor theory because simply being aware that a principal intends to commit a crime is not enough to make a person an aider or abettor to that crime.

As the United States Supreme Court recognized in *Maryland v Pringle*, 540 US 366, 373; 124 S Ct 795; 157 L Ed 2d 769 (2003), drug dealing is "an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him." Thus, simply because defendant, himself, did not hand the drugs to the undercover trooper or admit to him that defendant was part of the drug operation is not dispositive.

Notably, in determining whether probable cause exists, "[t]he court must examine [an] officer's observations in light of [his] experience and training, not in a vacuum or from a hypertechnical perspective." *People v Levine*, 461 Mich 172, 185; 600 NW2d 622 (1999). Here, two police troopers testified at defendant's preliminary examination that they independently believed that there was probable cause, based on defendant's behavior, to arrest defendant. The undercover detective who actually met with Zufall at the festival testified that defendant arrived

with Zufall and shook his hand; additionally, defendant, who stood right next to Zufall, advised the detective that the LSD was strong and that he needed to "be careful with it." A trooper watching the interaction from a hidden location testified that he observed defendant's behavior and believed that he was involved in the illegal sale of the drugs because defendant arrived with Zufall, shook the undercover detective's hand, stood next to Zufall, and chatted with the detective, enabling the drug deal to go further. He further testified that, based on his training and experience, "there [are] only two reasons than an individual would accompany someone to a drugs transaction and that's to actively enable, whether that be for transportation or protection, and further that drug transaction." Viewing the troopers' observations in light of their experience and training, we conclude that under the totality of the circumstances, the facts within the reasonably cautious officers' knowledge were sufficient to believe that defendant was committing a crime. See *People v Cohen*, 294 Mich App 70, 74-75; 816 NW2d 474 (2011). Therefore, the trial court's findings of fact on this issue were not clearly erroneous. See *Unger*, 278 Mich App at 243.

Defendant next argues that the search of his backpack was unlawful because he did not abandon his backpack nor relinquish his expectation of privacy of its contents and the incident-to-arrest warrantless search exception does not apply. Again, we disagree.

Not all searches implicate the Fourth Amendment. "Because the Fourth Amendment protects people, as opposed to places or areas, the United States Supreme Court emphasized that a search for purposes of the Fourth Amendment occurs when the government intrudes on an individual's reasonable, or justifiable, expectation of privacy." *People v Taylor*, 253 Mich App 399, 404; 655 NW2d 291 (2002). "Whether the expectation exists, both subjectively and objectively, depends on the totality of the circumstances surrounding the intrusion." *Id*. at 405. A person can also abandon personal effects or property and thus entirely deprive himself of the ability to contest a search and seizure of that property. *Taylor*, 253 Mich App at 406. The search and/or seizure of abandoned property is presumptively reasonable, because the owner no longer has an expectation of privacy in the abandoned property. *People v Mamon*, 435 Mich 1, 6; 457 NW2d 623 (1990). Whether an owner has abandoned his or her property is an ultimate fact that turns on a combination of act and intent. *Taylor*, 253 Mich App at 407.

Of relevance here, an individual can have a reasonable expectation of privacy in personal effects. *People v Mead*, 503 Mich 205, 214; 931 NW2d 557 (2019). In *Mead*, our Supreme Court found that the passenger in an automobile had a legitimate expectation of privacy in a backpack he held on his lap. The Court's holding in that case, however, was premised in part upon the facts that the defendant was a passenger in a car that had been pulled over only for an expired plate and that "the record establishe[d] that the defendant asserted a clear possessory interest in his backpack by clutching it in his lap. . . ." *Id*. at 214. This case, in contrast, presents a situation more akin to that in *People v Henry*, 477 Mich 1123; 730 NW2d 248 (2007).

In that case, the defendant placed a bag containing illegal objects on an electric box attached to a utility pole when he saw an unmarked police car approaching him. Our Supreme Court held that, "[i]n doing so, defendant left the bag in a public place where any passerby could have access to it. Defendant thus voluntarily 'left behind or otherwise relinquished his interest' in the bag. He had no reasonable expectation of privacy in the bag once he abandoned it by the pole."

Similarly, in *People v Rice*, 192 Mich App 512, 514; 482 NW2d 192 (1992), the defendant got off a plane at the airport and, according to police officers present, acted in a suspicious manner as he proceeded to the baggage carousel. When approached by police officers and asked if they could search his checked luggage, the defendant replied that they could not. The defendant then denied that any of the few remaining bags left on the carousel belonged to him, even though bags with numbers matching the numbers on the defendant's baggage checks were found on the carousel. *Id*. at 515-517. This Court found that the defendant abandoned the bags that were later found to contain marijuana, and thus had no justifiable expectation of privacy in the bags, nor any meritorious claim that the search of the bags violated his Fourth Amendment rights. *Id*.

Here, a police trooper testified at defendant's preliminary examination that he approached defendant from behind, intending to arrest him. According to the trooper, he grabbed one of defendant's wrists and defendant "threw" the backpack away from himself, shoved the trooper, and attempted to run when the trooper attempted to lawfully (as this Court has found) place him under arrest. Clearly, defendant was attempting to disassociate himself from the backpack, rather than asserting a clear possessory claim over the bag. The incident also took place in a public place, at a music festival, and once defendant threw the bag away from himself and onto the ground, anyone could have access to it. Moreover, there is no indication that when defendant attempted to run away, he also attempted to retrieve the backpack. It would stand to reason that had defendant intended to assert an interest in the backpack, he would not have thrown it and *then* attempted to run. Rather, he would have kept the backpack on his shoulder and attempted to run while it was still on his shoulder.[3]

As a result, the search of defendant's abandoned backpack did not violate his Fourth Amendment rights and the trial court did not err in declining to suppress the evidence found in the backpack. Given our above conclusion, we need not address defendant's remaining argument on appeal.

Affirmed.

/s/ Deborah A. Servitto
/s/ Anica Letica

[3] Even if defendant did not abandon the backpack, the circuit court did not err when it determined that the later search of defendant's backpack incident to his arrest was reasonable. See *United States v Edwards*, 415 US 800, 803; 94 S Ct 1234; 39 L Ed 2d 771 (1974) ("It is also plain that searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention.")