IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN SANTIAGO FLORES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78321-COA

ORDER OF AFFIRMANCE

Juan Santiago Flores appeals from a judgment of conviction, pursuant to a jury verdict, of battery with the use of a deadly weapon resulting in substantial bodily harm. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

In 2016, Samuel Stephens and his friend Matthew Hawk were at a bar inside the Nugget Casino in Sparks, Nevada, where they were drinking, watching sports highlights, and conversing with other patrons.[1] At some point, Stephens decided to buy a round of drinks for everyone at the bar and notified the bartender of his intentions. Suddenly, and without provocation, Flores struck Stephens in the face and head with a beer bottle and immediately fled the scene on foot. Hawk gave chase, but to no avail.

When police arrived, Officer Mercer canvassed the crime scene and found a black cell phone on the ground near the bar in the area where the battery occurred. After determining that the phone did not belong to any of the bystanders or patrons, Officer Mercer opened the phone, which was not password protected, to retrieve the phone number associated with the device. Using a police computer and database, Officer Mercer determined that the cell phone number was associated with Flores. Based

[1]We do not recount the facts except as necessary to our disposition.

on this information, police created a photo array of possible suspects, including Flores. Officer Zolkos showed the photo array to Hawk, and Hawk identified Flores as the perpetrator.

The State charged Flores with battery with use of a deadly weapon resulting in substantial bodily harm. Flores moved to suppress all evidence related to the search of his cell phone, arguing that it was a warrantless search in violation of his rights under the Fourth Amendment. The district court conducted a pretrial hearing on the motion to suppress and concluded that the search was lawful because Flores had abandoned the cell phone and therefore relinquished his reasonable expectation of privacy in it. At trial, the State presented, among other things, testimony from Stephens, Hawk, and Officer Mercer, as well as surveillance video from the Nugget. During direct examination, Hawk identified Flores as the attacker. After a two-day trial, the jury returned a guilty verdict, and the district court sentenced Flores to serve a term of 48 to 120 months in prison with 176 days' credit for time served. This appeal followed.

Flores argues that the district court erred in denying his motion to suppress all evidence obtained from the warrantless search of his cell phone. Specifically, Flores contends that the district court erred in two ways: first, it incorrectly concluded that his cell phone was abandoned property; and second, because the district court concluded that the cell phone was abandoned, it erroneously admitted fruits of a warrantless search, which Flores argues violated the Supreme Court's holding in *Riley v. California*, 573 U.S. 373 (2014).

The State contends that the district court correctly determined that Flores' cell phone was abandoned property; that *Riley* does not control because that case involved a warrantless search that occurred incident to a

lawful custodial arrest; and that, alternatively, even if the phone was simply lost, and thus not intentionally abandoned, Flores' expectation of privacy was diminished, making the limited search of the phone reasonable. We agree with the State and therefore affirm.

"Suppression issues present mixed questions of law and fact." *State v. Beckman*, 129 Nev. 481, 485, 305 P.3d 912, 916 (2013). A reviewing court examines a district court's "findings of fact for clear error, but the legal consequences of those facts involve questions of law that we review de novo." *Id.* The Fourth Amendment guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures, shall not be violated . . . ." (Emphasis added.) As the text articulates, the "touchstone of the Fourth Amendment is reasonableness." *State v. Rincon*, 122 Nev. 1170, 1175, 147 P.3d 233, 236 (2006). "In order to assert a violation under the Fourth Amendment, one must have a subjective and objective expectation of privacy in the place searched or items seized." *State v. Taylor*, 114 Nev. 1071, 1077, 968 P.2d 315, 320 (1998); *see also Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

"Voluntarily abandoned property is not subject to Fourth Amendment protections." *State v. Lisenbee*, 116 Nev. 1124, 1130, 13 P.3d 947, 951 (2000). "Whether a person has abandoned his property is a question of intent, which we infer from words, acts, and other objective facts." *Taylor*, 114 Nev. at 1077, 968 P.2d at 320 (citing *United States v. Jackson*, 544 F.2d 407, 409 (9th Cir. 1976)). In the context of the Fourth Amendment, abandonment is *not* defined "in the strict property-right sense, but rests instead on whether the person so relinquished his interest in the property

that he no longer retained a reasonable expectation of privacy in it at the time of the search." *Jackson*, 544 F.2d at 409.

Flores asserts that the cell phone was not abandoned property, but rather mislaid or lost property, and he argues that "abandoned property in the legal sense must be distinguished from lost or mislaid property." But lost, abandoned, and mislaid property are terms and concepts related to and imported from the law of property. *See, e.g.*, *Property*, Black's Law Dictionary (11th ed. 2019) (defining and discussing lost, abandoned, and mislaid property). And in the context of Fourth Amendment jurisprudence, these property-law concepts do not retain their rigid contours and are thus not strictly applied. *See Jackson*, 544 F.2d at 409. Consequently, the analysis focuses on whether the person relinquished his reasonable expectation of privacy in the property, not whether he intended to renounce his ownership interest in the same.

We conclude that the district court's finding that Flores abandoned his phone and therefore relinquished his reasonable expectation of privacy was not clearly erroneous. The record shows that Flores struck Stephens in the face with a beer bottle and immediately fled the scene without accounting for his phone's whereabouts, thus voluntarily leaving it behind (i.e., abandoning it). Further, any reasonable expectation of privacy in the phone that Flores may have had after fleeing was severely diminished, especially considering the phone was not password protected and anyone, including the police, may have found the phone and opened it in an attempt to identify and locate its owner. Moreover, when a person drops or discards

personal property while fleeing from the police or the scene of a crime, he has abandoned that property for purposes of the Fourth Amendment.[2]

Assuming, but without granting, Flores' argument that his phone was merely lost or mislaid and not abandoned, the search was still reasonable in light of the circumstances. This is so because the search was limited to uncovering the phone's owner, and courts have consistently held that the state has a legitimate interest in identifying the owner of lost property. *See, e.g., United States v. Sumlin*, 909 F.2d 1218, 1220 (8th Cir. 1990) (holding government's interest in identifying the owner of a purse matching the description of a stolen purse justified officer's search of the purse for identification purposes and outweighed owner's privacy interest); *United States v. Ching*, 678 P.2d 1088, 1092-93 (Haw. 1984) (concluding that police may validly search lost property to extent necessary to identify owner).

Here, Officer Mercer testified that his search was limited to finding the phone number associated with the device—a fact that Flores does not dispute. Once Officer Mercer acquired the phone number, he ceased searching the device and immediately ran the phone number through a police database to find the phone's owner, which turned out to be Flores.

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[2]*See, e.g., California v. Hodari D.*, 499 U.S. 621, 629 (1991) (providing that defendant abandoned his cocaine when he discarded it while running from the police); *United States v. Taylor*, 462 F.3d 1023, 1026 (8th Cir. 2006) (concluding that defendant's cell phone, which he dropped while fleeing and was later recovered by police, was abandoned property); *United States v. Willis*, 967 F.2d 1220, 1223 (8th Cir. 1992) (providing that a bag containing crack cocaine and a loaded firearm that defendant dropped while fleeing was abandoned); *State v. Lisenbee*, 116 Nev. 1124, 1130, 13 P.3d 947, 951 (2000) (holding that drugs recovered along defendant's flight path from illegal seizure were not fruits of the poisonous tree because defendant abandoned them).

Mercer did not search or look through Flores' pictures, contacts, or any other folders located on the device. Thus, the record shows the search was limited to finding the phone's owner. Based on this record, we conclude that the district court's findings were not clearly erroneous and therefore the motion to suppress was properly denied.

Flores also argues that the search violated his Fourth Amendment rights pursuant to *Riley*. We find this argument unpersuasive. In *Riley*, the United States Supreme Court concluded that before police can lawfully search a cell phone that is seized incident to an arrest they must "get a warrant." 573 U.S. at 403. In this case, the phone was not seized and searched incident to an arrest, making *Riley* inapposite. Moreover, *Riley* does not, as Flores suggests, stand for the broad proposition that cell phones can never be searched absent a warrant, especially where, as here, the phone was abandoned or lost. *See, e.g., United States v. Green*, 954 F.3d 1119, 1123 (8th Cir. 2020) ("As we have explained elsewhere, *Riley's* holding is *limited to cell phones seized incident to arrest.*" (emphasis added) (internal quotation marks omitted) (quoting *United States v. Crumble*, 878 F.3d 656, 660 (8th Cir. 2018))). Therefore, we conclude that Flores' reliance on *Riley* is misplaced and the district court did not err in denying his motion to suppress. For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Elliott A. Sattler, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk