

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ALLAN WRIGHT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39056

FILED

OCT 8 2002

ORDER OF AFFIRMANCE

JANETTE M. FLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance. The district court sentenced appellant Christopher Allan Wright to serve a prison term of 12 to 48 months.

Wright first contends that the district court erred in denying his motion to suppress. In particular, Wright contends that, due to racial profiling, he was illegally seized by the police at the time he abandoned the drugs, thereby rendering the abandonment involuntary. We conclude the district court did not err in finding that Wright voluntarily abandoned the drugs and, therefore, had no standing to bring a Fourth Amendment challenge.

In State v. Lisenbee, this court held that an individual who abandons property has no standing to thereafter raise a Fourth Amendment challenge.¹ Although Wright argues that he did not voluntarily abandon the contraband because it occurred in the context of an unlawful seizure, we conclude that no unlawful seizure occurred.

¹116 Nev. 1124, 1130, 13 P.3d 947, 951 (2000).

"[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street."² To determine whether a person is seized, thereby implicating the Fourth Amendment, "the crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'"³ Thus, "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may [the court] conclude that a "seizure" has occurred."⁴

In the instant case, the district court did not err in finding Wright was not seized because there is no indication that Officer Donohoe ever used physical force or a show of authority to restrain Wright's liberty. Indeed, the record reveals that Donohoe, while standing near a payphone, observed Wright drop a plastic bag on the ground that he believed contained narcotics. After observing Wright drop the contraband, Donohoe told Wright to stop. Because Donohoe did not move to restrain Wright from walking away from the encounter until he observed Donohoe drop the drugs on the ground, the abandonment did not occur in the context of an unlawful seizure. We therefore conclude that the district court did not err in ruling that Wright had no standing to raise a Fourth

²Florida v. Royer, 460 U.S. 491, 497 (1983).

³Florida v. Bostick, 501 U.S. 429, 437 (1991) (quoting Michigan v. Chesternut, 486 U.S. 567, 569 (1988)); see also State v. Stinnett, 104 Nev. 398, 401, 760 P.2d 124, 126 (1988).

⁴Bostick, 501 U.S. at 434 (quoting Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968)).

Amendment challenge because, prior to being seized, Wright voluntarily abandoned the evidence he sought to suppress.

Wright next contends that the district court erred in giving the jury two instructions on flight. Specifically, Wright contends that there was insufficient evidence that he fled from the officer. We conclude that Wright's contention lacks merit.

The giving of a flight instruction is not error "if evidence of flight has been admitted."⁵ "Flight is more than merely leaving the scene of the crime. It embodies the idea of going away with a consciousness of guilt and for the purpose of avoiding arrest."⁶ Because a flight instruction may place too much emphasis on one aspect of the evidence, "we will carefully scrutinize it to be certain that the record supports the conclusion that appellant's going away was not just a mere leaving but was with a consciousness of guilt and for the purpose of avoiding arrest."⁷

Our review of the record discloses that there was evidence sufficient to support the inference that Wright fled with a consciousness of guilt and for the purpose of avoiding arrest. After Donohoe pulled up to the curb, Wright hung up the phone and began to quickly walk away. Donohoe then observed Wright drop a plastic bag on the ground that he believed to contain narcotics. Donohoe told Wright to stop, but Wright did not heed his request. Instead, Wright ran, and Donohoe chased him. Although Wright contends that he had the right to walk away from

⁵Potter v. State, 96 Nev. 875, 875-76, 619 P.2d 1222, 1222 (1980).

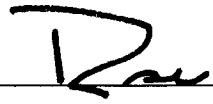
⁶Id. at 876, 619 P.2d at 1222.


⁷Miles v. State, 97 Nev. 82, 85, 624 P.2d 494, 496 (1981).

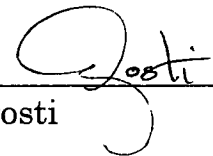
Donohoe, "[i]t was for the jury to decide whether the facts warranted an inference of flight."⁸

Having considered Wright's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

⁸Hutchins v. State, 110 Nev. 103, 113, 867 P.2d 1136, 1143 (1994).