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**IN THE
COURT OF APPEALS OF INDIANA**

JULIUS FINCH,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-1008-CR-496
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Eichholtz, Judge
The Honorable Peggy Hart, Master Commissioner
Cause No. 49G20-0908-FD-76513

March 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

When an officer approached Julius Finch to ask a question, Finch tossed aside a bag that he had been holding and dropped to the ground. The officer later searched the bag and discovered that it contained a large quantity of marijuana. As a result, Finch was convicted of dealing in marijuana as a class D felony. On appeal, Finch argues that the search of the bag was an impermissible warrantless search. Because the trial court's finding that Finch abandoned the bag is not clearly erroneous, we affirm.

Facts and Procedural History

On August 29, 2009, Officer Michael Mann and several other officers went to a residence on Forrest Manor Avenue in Indianapolis to execute an arrest warrant for Ashley Ward-Donald. As Officer Mann approached the residence, an unidentified person exited the residence and entered a van that was parked in front of the residence. The van pulled out of its parking space, drove a short distance, turned around, and parked facing the other way, which Officer Mann thought was unusual.

Finch exited the van, holding a red draw-string bag. Officer Mann asked him, "Hey, man, is this your house?" or "Hey, man can I talk to you?" Tr. at 14. Finch seemed surprised to see Officer Mann there. Finch tossed the bag to the side and dropped to the ground. The bag landed about four or five feet away in the yard. At that point, Officer Mann had not drawn his weapon or given Finch any orders.

Soon after this interaction, several people ran out of the residence. Because the officers were outnumbered, Officer Mann placed Finch in handcuffs for safety and moved

him to the porch. When the scene was secured, Officer Mann took the bag inside the house and opened it. He discovered that the bag contained almost a pound of marijuana.

Finch was charged with both possession of and dealing in marijuana as a class D felonies because the amount was greater than thirty grams. Finch filed a motion to suppress the evidence from the warrantless search of the bag. On January 25, 2010, a hearing was held on the motion. Officer Mann testified that he opened the bag because “it could have been any type of ... weapon in there. So mainly, curiosity and officer safety.” *Id.* at 23. He stated that the bag did not necessarily feel like it had a gun in it, but a gun “could have been concealed within the bulkiness.” *Id.* at 75. Officer Mann stated that he was aware that there had been drug activity at the residence and that people there had been known to be armed.

The trial court found that the initial encounter between Officer Mann and Finch was consensual. The court also found that Finch had abandoned the bag: “The Defendant voluntarily relinquished possession and/or control of the red bag without being asked or forced to do so. The Defendant’s decision to discard the red bag was not caused by improper police misconduct or by an illegal seizure.” Appellant’s App. at 43.

Finch was tried to the bench on May 27, 2010. He renewed his motion to dismiss, and the trial court stated that the previous proceedings would be incorporated into the trial. At the conclusion of the trial, the court reaffirmed its finding that Finch had abandoned the bag, found him guilty of possession of marijuana, and took the dealing charge under advisement. The trial court subsequently found Finch guilty of dealing and entered judgment of conviction on that count alone. Finch now appeals.

Discussion and Decision

Finch contends that the admission of evidence regarding the marijuana found in the bag violated his rights under the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Both provisions protect citizens from unreasonable searches and seizures. *Buckley v. State*, 886 N.E.2d 10, 14 (Ind. Ct. App. 2008). Searches conducted without a warrant are per se unreasonable, subject to a few established exceptions. *Bell v. State*, 818 N.E.2d 481, 484 (Ind. Ct. App. 2004), *trans. denied*. To trigger Fourth Amendment protections, the subject of the search must exhibit “an actual subjective expectation of privacy that society as a whole is prepared to recognize as objectively ‘reasonable.’” *State v. Seidl*, 939 N.E.2d 679, 683 (Ind. Ct. App. 2010). Our analysis under Article 1, Section 11 focuses on whether, given the totality of the circumstances, the officer’s conduct was reasonable. *Merchant v. State*, 926 N.E.2d 1058, 1066 (Ind. Ct. App. 2010), *trans. denied*.

In reviewing the trial court’s ruling on the admissibility of evidence from an allegedly illegal search, we do not reweigh the evidence, but defer to the trial court’s factual determinations unless clearly erroneous. *Meredith v. State*, 906 N.E.2d 867, 869 (Ind. 2009). We consider the conflicting evidence most favorable to the trial court’s ruling, but also consider any uncontroverted evidence in the defendant’s favor. *Cole v. State*, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007) (citation omitted). We consider afresh any legal question of the constitutionality of a search or seizure. *Meredith*, 906 N.E.2d at 869.

The trial court found that Finch had abandoned the bag. Abandoned property is not subject to protection under the Fourth Amendment or Article 1, Section 11. *Campbell v. State*, 841 N.E.2d 624, 627, 630 (Ind. Ct. App. 2006).

The question of abandonment is primarily a question of intent. Intent may be inferred from words, acts, and other objective facts. Abandonment rests upon whether the defendant 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.

State v. Machlah, 505 N.E.2d 873, 879 (Ind. Ct. App. 1987) (citations omitted), *trans. denied*.

Evidence obtained from a search is inadmissible if the property was abandoned after an unlawful detention. *State v. Smithers*, 256 Ind. 512, 513, 269 N.E.2d 874, 876 (1971). However, evidence is admissible if the property was abandoned before the defendant was detained. *Baker v. State*, 573 N.E.2d 475, 477 (Ind. Ct. App. 1991). When approached by an officer, Baker dropped a plastic bag, and a white powder spilled out of the bag. Suspecting that the powder was cocaine, the officer attempted to arrest Baker, but he fled. He was eventually apprehended and was convicted of dealing in cocaine. On appeal, Baker challenged the admission of the cocaine into evidence. We concluded that he abandoned the bag when he dropped it, and because he had not been seized at that point in time, the evidence was admissible. *Id.* at 476-77.

When Officer Mann asked Finch a question, Finch tossed his bag out of arm's reach and dropped to the ground without being ordered to do so. Officer Mann testified that he did not have his weapon drawn and did not give Finch any commands. Officer Mann did not

detain Finch until people began running out of the house; at that point, he placed Finch in handcuffs so he could secure the scene. Finch voluntarily threw aside his bag, and we cannot say that the trial court clearly erred by finding that he abandoned it. Because he was not detained at the time that he abandoned the bag, the search did not violate Finch's rights, and the evidence was properly admitted. *See Kendrick v. State*, 163 Ind. App. 555, 559, 325 N.E.2d 464, 467 (1975) (when approached by an officer, Kendrick discarded a matchbook, which was found to contain heroin; the drug evidence was properly admitted because Kendrick abandoned the matchbook).

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.