

2018 WL 2979473

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THIS DECISION DOES NOT CREATE LEGAL  
PRECEDENT AND MAY NOT BE CITED EXCEPT  
AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION  
See Ariz. R. Sup. Ct. 111(c)  
(1); Ariz. R. Crim. P. 31.19(e).  
Court of Appeals of Arizona,  
Division 2.

THE STATE OF ARIZONA, Appellee,  
v.  
SHELBY ARLINE GRAVETTE, Appellant.

No. 2 CA-CR 2017-0296

|  
Filed June 13, 2018

Appeal from the Superior Court in Pima County  
No. CR20165356001

The Honorable [Deborah Bernini](#), Judge**AFFIRMED****Attorneys and Law Firms**

[Mark Brnovich](#), Arizona Attorney General, [Joseph T. Maziarz](#), Chief Counsel, By Nicholas Chapman-Hushek, Assistant Attorney General, Phoenix, Counsel for Appellee

Joel Feinman, Pima County Public Defender, By David J. Euchner, Assistant Public Defender, Tucson, Counsel for Appellant

Judge [Espinosa](#) authored the decision of the Court, in which Presiding Judge [Vásquez](#) and Judge [Eppich](#) concurred.

**MEMORANDUM DECISION**[ESPINOSA](#), Judge:

\*1 ¶1 In July 2017, following a two-day jury trial, Shelby Gravette was convicted of theft, a lesser-included offense of the robbery with which she was charged. The trial court sentenced her to a three-year term of probation. On appeal, Gravette argues her “arrest was not supported by probable cause, and thus the fruits of the search incident to

her arrest must be **suppressed**.” For the following reasons, we affirm.

**Factual and Procedural Background**

¶2 “We review the denial of a motion to **suppress** evidence for an abuse of discretion, considering only the evidence presented at the **suppression** hearing and viewing the facts in the light most favorable to sustaining the trial court's ruling.” *State v. Wilson*, 237 Ariz. 296, ¶ 7 (2015). In November 2016, Tucson Police Department Officer Robert Rabert responded to a call regarding a purse snatching in a grocery store parking lot. Upon arrival, Rabert interviewed the victim, M.W., who told him that as she and her husband were walking through the parking lot, a man “came up from behind her, grabbed the purse[,] and then ran off.” The man jumped into the passenger side of “a dark green Jeep[-]like vehicle,” which immediately drove away.

¶3 Following the victim's report and that of another witness, Officer Rabert watched video surveillance footage of the parking lot, which showed that the getaway vehicle had “a white decal” “[i]n the rear window” and that it had been “doing like circles in the parking lot” while the thief waited by the store entrance. Within about thirty minutes, he “received a call for a suspicious vehicle” in a residential area approximately three miles away that other officers told him was likely the one in surveillance footage photos he had transmitted. A license plate check on the vehicle showed it was registered to Gravette, whose home address was between the store and where the vehicle had been found.

¶4 Rabert went to the vehicle's location, confirmed it matched the one in the surveillance video, and learned from other officers that they had found a purse and wallet matching M.W.'s description of her belongings “in the bushes adjacent to the vehicle that was parked there.” A witness at the scene had told another officer the vehicle originally pulled into a private driveway before a woman moved it to the road and placed a note on the windshield before walking away.<sup>1</sup> As the officers continued their investigation, Gravette approached the vehicle on foot. After they confirmed her identity and confirmed from the witness that Gravette was the woman he had seen moving the vehicle, she was arrested.

¶5 In searching Gravette pursuant to her arrest, Officer Rabert found cash, M.W.'s identification, and a receipt and bank and store cards with M.W.'s name on them. Gravette was charged with robbing M.W., and before trial she filed a motion to **suppress** the evidence obtained from her person, arguing the officers lacked probable cause to arrest her. Following a hearing, the trial court denied Gravette's motion, stating:

\*2 The Court finds that the officers did have probable cause to arrest and search the defendant based on information showing that she's the registered owner of the vehicle, that she was seen driving the vehicle within 45 minutes of the offense, that the vehicle was clearly identified as the vehicle used during the commission of the offense.

I don't have statistics, but I would guess that 80 percent, at least of the vehicles out on the road at this time are being driven by their registered owners.

Gravette was subsequently tried, convicted of theft, and sentenced as described above. We have jurisdiction over her appeal pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

### Probable Cause

¶6 Police may conduct a search incident to arrest, and the state may introduce at trial evidence seized pursuant to such a search, only if the officers had probable cause for the arrest. See *State v. Valle*, 196 Ariz. 324, ¶¶ 28-29 (App. 2000). Gravette argues the trial court erred in denying her motion to **suppress** because the search “was conducted pursuant to an unlawful arrest” not supported by probable cause, and the evidence obtained during the search “was fruit of the poisonous tree and must be **suppressed**.” The state responds that officers “had probable cause to arrest Gravette as an accomplice to robbery and theft.” We must determine “de novo whether the evidence supported the trial court's determination of probable cause.” *State v. Moran*, 232 Ariz. 528, ¶ 8 (App. 2013).

¶7 “A peace officer, without a warrant, may arrest a person if the officer has probable cause to believe ... [a] felony has been committed and probable cause to believe the person to be arrested has committed the felony.” A.R.S. § 13-3883(A)(1). Probable cause exists “when

reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that a suspect has committed an offense.” *Moran*, 232 Ariz. 528, ¶ 10, quoting *State v. Hoskins*, 199 Ariz. 127, ¶ 30 (2000). An assessment of probable cause involves “probabilities,” or “the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Id.*, quoting *State v. Dixon*, 153 Ariz. 151, 153 (1987). And an officer, in determining whether probable cause exists, may “draw inferences based on his training and experience.” *Id.* ¶ 11.

¶8 Pursuant to A.R.S. § 13-301(2)-(3), an “accomplice” is someone who “[a]ids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense” or who “[p]rovides means or opportunity to another person to commit the offense.” Further, A.R.S. § 13-303(A)(3) provides that an accomplice may be “criminally accountable for the conduct of another.” “Accomplice liability attaches to ‘all persons who participate in the commission of a crime, whether ... as principals, aiders and abettors, or accessories before the fact.’” *State v. Cordero*, 174 Ariz. 556, 559 (App. 1992), quoting *State v. McNair*, 141 Ariz. 475, 480 (1984).

¶9 When Gravette was arrested, the officers knew her vehicle had been the getaway car for the thief after he snatched M.W.'s purse. Although they did not know who had been driving at the time, the officers knew it had been someone other than the thief. And they knew that, approximately half an hour after the crime's commission, Gravette had driven the vehicle from the private driveway, in an area only about five minutes from the parking lot crime scene, to a spot across the street, “adjacent to” the bushes in which M.W.'s purse and wallet were found. The witness at that location eventually told the officers that a second man had been driving the vehicle when it pulled into the driveway, but the record suggests this was not reported until after Gravette's arrest.

\*3 ¶10 Gravette cites *State v. Vaughn*, 104 Ariz. 240, 241-42 (1969), in which our supreme court concluded police had probable cause to arrest a man who was the same race as the robbers and froze when a police officer turned his spotlight on him as he was “walking away from the vicinity of the getaway car” “within 5 or 6 minutes after the robbery,” and *State v. Hansen*, 117 Ariz. 496, 497 (App. 1977), where this court concluded police lacked probable cause to arrest someone “sitting next to another

person who was smoking marijuana on a public park bench.” She argues this case is more like *Hansen* because “she never acted suspiciously.”

¶11 However, we conclude the facts supporting probable cause in this case are stronger than those in *Vaughn*, and *Hansen* is readily distinguishable. The court in *Hansen* noted that the only criminal activity observed “was being carried on by appellant’s companion and that companion alone.” 117 Ariz. at 498. But here, the officers knew the thief had an accomplice who drove him away from the crime scene, Gravette owned the getaway vehicle, and she was seen driving it within thirty minutes of the robbery, an amount of time insufficient to distinguish this case from *Vaughn* in light of all the surrounding circumstances.

¶12 We conclude the information officers had at the time they encountered Gravette gave them probable cause to believe she had acted as an accomplice to the robbery by driving the getaway vehicle. Although as Gravette argued below, she could have been “picked up” following the robbery or merely “loaned the vehicle” to the actual thieves, probable cause does not require certainty but rather involves a consideration of probabilities. See *Moran*, 232 Ariz. 528, ¶ 10; see also *State v. Sisco*, 239 Ariz. 532, ¶ 15 (2016) (“[P]robable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. ... [T]herefore, innocent behavior frequently will provide the basis for a showing of probable cause.”), quoting *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983) (alterations in *Sisco*).

¶13 Finally, although Gravette asserts, “at the time of the decision to arrest her, the police knew that [she] was not the driver,” she provides no support for this claim, nor does the record disclose any. As previously noted, viewing the evidence in a light supporting the trial court’s ruling, *Wilson*, 237 Ariz. 296, ¶ 7, the witness at the area where the vehicle was found told officers upon their arrival that a woman, soon after identified as Gravette, had moved the vehicle across the street. The witness later stated in an interview following Gravette’s arrest that a man had been driving when the vehicle first arrived, with a woman in the backseat. Even were we to assume the officers had this information before arresting Gravette, it would still suggest she had loaned her car for the offense, ridden along as it was committed or gotten in the car shortly after, attempted to hide the getaway car by parking it at a location other than her residence, and, most tellingly under either scenario, concealed M.W.’s purse and wallet, which were found in bushes next to where she had parked the car. This was enough for probable cause, see *Sisco*, 239 Ariz. 532, ¶ 15, and Gravette has not demonstrated that the trial court erred in denying her motion to **suppress**.

### Disposition

¶14 For the foregoing reasons, Gravette’s conviction and sentence are affirmed.

### All Citations

Not Reported in P.3d, 2018 WL 2979473

### Footnotes

- 1 It appears the note purportedly referred to a friend who lived near where the vehicle had been relocated, but no evidence was introduced on whether Gravette knew anyone in that vicinity.