

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

TANA NICHOLE ELLIOT, *Appellant*.

No. 1 CA-CR 12-0338

FILED 12-10-2013

Appeal from the Superior Court in Yavapai County
No. V1300CR201180071
The Honorable Jennifer B. Campbell, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix

By Joseph T. Maziarz
Michael T. O'Toole

Counsel for Appellee

William D. Shostak, Esq., Phoenix

Counsel for Appellant

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Patricia A. Orozco joined.

T H U M M A, Judge

¶1 Tana Nichole Elliot appeals her convictions and sentences for transportation of dangerous drugs for sale, use of electronic communication to facilitate a felony and possession of drug paraphernalia. Elliot argues her convictions are the result of incriminating items found during an unconstitutional warrantless vehicle search that should have been suppressed. Because the superior court did not err in denying Elliot’s motion to suppress, her convictions and sentences are affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 In February 2011, Yavapai County Sherriff’s Deputies Franklin, Stambaugh and Brazell were sent to investigate a possible burglary in progress at a home reported to be in foreclosure. Upon arrival, the deputies saw three people later identified as Elliot, C.G. and S.Q.² C.G. and S.Q. were loading items into a sport utility vehicle (SUV) owned by C.G, and Elliot was sitting in the passenger’s seat. The deputies ordered Elliot, C.G. and S.Q. away from the vehicle; C.G. and S.Q. complied immediately while Elliot appeared to be maneuvering something in the car for several seconds before complying. The deputies then handcuffed and secured Elliot, C.G. and S.Q. separately in the back of three police cars and performed a protective sweep of the house.

¹ On appeal, this court considers the evidence in the light most favorable to sustaining the conviction and resolves all reasonable inferences against Elliot. *State v. Karr*, 221 Ariz. 319, 320, ¶ 2, 212 P.3d 11, 12 (App. 2008).

² Initials are used to protect the identity of witnesses. *See State v. Maldonado*, 206 Ariz. 339, 341, ¶ 2 n.1, 78 P.3d 1060, 1062 n.1 (App. 2003).

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¶3 During the protective sweep, Deputy Stambaugh located a glass methamphetamine pipe inside a bedroom closet.³ S.Q. told the deputies that she was renting the house but that the SUV belonged to C.G. and the contents of the SUV belonged to C.G. and Elliot. Deputy Franklin then left, verified with the owner of the house that S.Q. had a right to be there and returned. Elliot remained secured by the police during this time.

¶4 When questioned, S.Q. told deputies that Elliot and C.G. had brought methamphetamine to the house to smoke but were interrupted by a neighbor, causing Elliot to place the methamphetamine in C.G.'s SUV. During a second search of the house that followed, the deputies found two more methamphetamine pipes. Other officers who had arrived at the scene reviewed S.Q.'s phone and found recent text messages discussing what they recognized as prices and weights for methamphetamine.

¶5 With Elliot, C.G. and S.Q. still handcuffed and held in different police cars, the detectives called for a drug detection dog. When the drug detection dog arrived ninety minutes later, it alerted to the presence of drugs while outside the SUV. The deputies then searched the vehicle and found methamphetamine and baggies behind the front passenger's seat and in the center console. By that time, Elliot, C.G. and S.Q. had been held for approximately four hours.

¶6 After being indicted, Elliot filed a motion to suppress the evidence obtained from the search of the SUV, which the superior court denied after an evidentiary hearing. Although finding Elliot was illegally arrested at an undesignated time at some point during the four hour detention, the court found "[t]he illegal detention did not lead to any evidence against [Elliot]." The court found probable cause existed to search the SUV once S.Q. told police Elliot and C.G. brought methamphetamine to her house.

¶7 After a four day trial, the jury found Elliot guilty of transportation of dangerous drugs for sale, use of electronic communication to facilitate a felony and possession of drug paraphernalia. Elliot timely appealed her convictions and resulting sentences, and this court has jurisdiction pursuant to Article 6, Section 9,

³ Although not immediately, Deputy Stambaugh relayed his finding of drug paraphernalia in the house to the two other deputies by the time the deputies verified S.Q. had a right to be at the house.

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of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1), 13-4031 and -4033.⁴

DISCUSSION

I. Standard Of Review.

¶8 This court reviews the denial of a motion to suppress for an abuse of discretion and views the facts in the light most favorable to sustaining the ruling. *State v. Manuel*, 229 Ariz. 1, 4, ¶ 11, 270 P.3d 828, 831 (2011). This court restricts its review to the evidence presented at the suppression hearing. *Id.* Constitutional and legal issues are reviewed de novo. *State v. Moody*, 208 Ariz. 424, 445, ¶ 62, 94 P.3d 1119, 1140 (2004).

II. Elliot Lacked A Legitimate Expectation Of Privacy In C.G.'s SUV.

¶9 Elliot argues the warrantless search of the SUV violated her constitutional rights. The Fourth Amendment to the United States Constitution, made applicable here through the Due Process Clause of the Fourteenth Amendment, and Article II, Section 8, of the Arizona Constitution protect “against unreasonable searches and seizures.” U.S. Const. amend. IV; *see also* Ariz. Const. art. 2, § 8.

¶10 Fourth Amendment rights are personal and may not be asserted vicariously. *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978). A person challenging a search bears the burden of proving she had a legitimate expectation of privacy in the area searched. *State v. Tarkington*, 218 Ariz. 369, 370, ¶ 7, 187 P.3d 94, 95 (App. 2008). This requires a showing of “both an ‘actual (subjective) expectation of privacy’ and that the expectation is one that society is prepared to recognize as ‘justifiable’ under the circumstances.” *State v. Allen*, 216 Ariz. 320, 323, ¶ 13, 166 P.3d 111, 114 (App. 2007) (citations omitted). “[A] person aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person’s premises or property has not had any of his Fourth Amendment rights infringed.” *Rakas*, 439 U.S. at 128.

¶11 Elliot argues she had a legitimate expectation of privacy in the SUV because she “rode in her boyfriend’s vehicle, with a substantial amount of clothes over an hour and fifteen minutes.” This claim, however,

⁴ Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

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is insufficient to show a legitimate expectation of privacy in the SUV because Elliot was neither the owner nor driver and did not establish a property or possessory interest in the SUV. *See State v. Nadler*, 129 Ariz. 19, 21, 628 P.2d 56, 58 (App. 1981) (upholding denial of motion to suppress where appellant was “neither the owner of the car nor its driver”); *Rakas*, 439 U.S. at 134, 148 (concluding no legitimate expectation of privacy existed for passengers who “asserted neither a property nor a possessory interest” in vehicle searched). Thus, Elliot has failed to show she had a legitimate expectation of privacy in the SUV, meaning the items recovered in that search properly could be admitted at Elliot’s trial.⁵

III. Length Of Detention.

¶12 Elliott argues her length of detention “was patently unreasonable” and “[t]herefore the evidence gained from the warrantless search should have been suppressed by the trial court.” The superior court found that, at some unspecified point in time, Elliot’s detention became illegal but denied the motion to suppress, finding Elliot’s illegal detention did not lead to the seizure of any evidence against her.

¶13 For exclusion to be a proper remedy, the evidence sought to be suppressed must have come about “by exploitation of [the] illegality.” *Hudson v. Michigan*, 547 U.S. 586, 592 (2006). Here, none of the evidence was seized because of Elliot’s detention. Moreover, while detained, Elliot made no incriminating statements regarding the investigation. Rather, the evidence was seized as a result of S.Q.’s detention, specifically from an initial protective sweep of S.Q.’s house, from a later investigation of S.Q.’s house, purse and phone and from statements made by S.Q.⁶ Moreover, S.Q. was not a party to the suppression hearing and therefore the superior court did not address S.Q.’s rights in challenging the seizure. On these

⁵ Although the superior court did not expressly rule on this issue, it was raised by the State and both parties were given the opportunity to brief the matter before the superior court and on appeal. Accordingly, it is proper for this court to consider this issue on appeal. *See State v. Box*, 205 Ariz. 492, 496, ¶ 13, 73 P.3d 623, 627 (App. 2003) (affirming ruling using different reasoning).

⁶ Elliot does not argue that she has standing to raise possible constitutional violations for S.Q., nor does this court address whether she could do so. *See United States v. Leon*, 468 U.S. 897, 910 (1984).

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facts, the superior court did not abuse its discretion in finding any illegal detention of Elliot did not lead to the seizure of evidence against her.

CONCLUSION

¶14 Elliot's convictions and resulting sentences are affirmed.



Ruth A. Willingham - Clerk of the Court
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