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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

PASKLE ROBERT JACKSON, *Appellant*.

No. 1 CA-CR 17-0066
FILED 4-26-2018

Appeal from the Superior Court in Maricopa County
No. CR2015-142527-001
The Honorable Danielle J. Viola, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Michael T. O'Toole
Counsel for Appellee

The Stavris Law Firm PLLC, Scottsdale
By Christopher Stavris
Counsel for Appellant

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Kent E. Cattani joined.

P E R K I N S, Judge:

¶1 Paskle Jackson appeals his convictions for assault and escape. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 A limited liability partnership purchased Jackson's residence at a trustee's sale in July 2015. On the day of the sale, an agent of the purchaser hand-delivered a written demand for surrender of the premises to a male at the residence. Thereafter, Jackson contacted the purchaser's agent and discussed buying the residence from the new owner, but never reached an agreement. By August 2015, the purchaser had secured a default judgment granting it immediate possession of the residence. On September 9, 2015, Victim, a constable, posted an orange sticker on the outside of the residence and placed a Writ of Restitution between the door and door frame. The sticker and Writ directed the occupants to vacate and return the residence to its owner immediately.

¶3 The following day, September 10, Victim, accompanied by a locksmith and a representative of the new owner, arrived to take possession of the residence. Victim found the door unlocked, entered the residence while identifying himself as a constable, and encountered Jackson. Victim informed Jackson that the new owner was taking rightful possession of the residence, and told Jackson to vacate the premises. Jackson grabbed Victim, hit him in the chest, and forcefully pushed him toward the front door. Once outside, Victim and his companions reported the assault to law enforcement. Police officers arrived and spoke with Victim, who relayed the details of the eviction and assault. Officers then approached Jackson, who was standing inside the doorway of the residence, and reached inside the residence to arrest him. The officers did not have a warrant to arrest Jackson.

¶4 Officers handcuffed Jackson and removed him from the residence. As officers attempted to place Jackson into their vehicle, Jackson

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slipped away and ran from them. Officers quickly recaptured him and placed him in their vehicle. The State charged Jackson with one count of assault on a constable and one count of escape. Before trial, Jackson moved to dismiss the case, or alternatively, to suppress evidence of his arrest obtained in violation of his Fourth Amendment rights. The trial court held an evidentiary hearing on the motion and ruled Jackson lacked standing to assert a Fourth Amendment violation, as he had no reasonable expectation of privacy in a residence owned by a third party. A jury convicted Jackson on both counts and the court imposed eighteen months of probation. Jackson now appeals, challenging in particular the denial of his motion to dismiss or suppress.

DISCUSSION

¶5 On appeal, we view the facts in the light most favorable to upholding the verdict. *State v. Magnum*, 214 Ariz. 165, 166, ¶ 3 (App. 2007). We review denial of a motion to dismiss for abuse of discretion. *State v. Olcan*, 204 Ariz. 181, 183, ¶ 6 (App. 2003). Similarly, we will not reverse the trial court’s ruling on a motion to suppress “absent clear and manifest error.” *State v. Hyde*, 186 Ariz. 252, 265 (1996). However, we review questions of law, including constitutional interpretation, *de novo*. *Little v. All Phoenix S. Cmty. Mental Health Ctr.*, 186 Ariz, 97, 101 (1996).

¶6 The Fourth Amendment to the United States Constitution and Article 2, Section 8, of the Arizona Constitution protect individuals from unreasonable search and seizure. Generally, protections provided by the Fourth Amendment and Article 2, Section 8, of the Arizona Constitution require a defendant to show he had a “legitimate expectation of privacy” violated by the challenged search or seizure. *State v. Juarez*, 203 Ariz. 441, 443-44, ¶¶ 10, 12-13 (App. 2002). Our supreme court has held that Article 2, Section 8, of the Arizona Constitution provides greater protections for the home because the text of the constitution “reflect[s] the framers’ special concern that the sanctity of the home should be protected against warrantless entry.” *Id.* at 444, ¶ 13. However, any heightened protection for a home does not apply to a defendant trespassing on another’s property. *See State v. Bolt*, 142 Ariz. 260, 265 (1984) (“Our constitutional provisions were intended to give our citizens a sense of security in *their* homes.” (emphasis added)); *cf. State v. Peoples*, 240 Ariz. 244, 249, ¶ 17 (2016) (applying a reasonable expectation of privacy standard to an overnight guest).

¶7 Jackson argues the trial court erred in ruling that he lacked standing to challenge his warrantless arrest inside the residence. To support

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this argument, Jackson contends he and his family believed they were in the residence lawfully and, therefore, had an absolute right to privacy, absent some recognized exigency. In the alternative, Jackson argues he lacked sufficient notice of the eviction to deprive him of a reasonable expectation of privacy. The evidence at the suppression hearing clearly demonstrated Jackson did not own the residence when he was arrested. By September 10, the residence had been sold at a trustee's sale, the new owner had served Jackson with a surrender demand and formal eviction paperwork, and an eviction notice had been posted at the residence. Moreover, Jackson acknowledges on appeal that he was in negotiations to buy the residence back from its new owner, thereby impliedly conceding he did not own the residence at the time. Jackson argues that these negotiations gave him a reasonable expectation of privacy in the residence. However, because of the numerous notifications of impending eviction, Jackson knew or should have known he had no right to remain in the residence. Thus, Jackson's continued presence in the residence was unlawful; he therefore had no legitimate expectation of privacy in the residence. *United States v. Curlin*, 638 F.3d 562, 565 (7th Cir. 2011).

¶8 Finally, Jackson argues that the trial court erred in denying his motion based on standing because the Supreme Court of the United States dispensed with the standing inquiry in *Rakas v. Illinois*, 439 U.S. 128 (1978). However, *Rakas* did not dispense with the question of standing entirely but merely noted that standing is subsumed within the substantive law of the Fourth Amendment. *Id.* at 139-40. Privacy rights under the United States and Arizona constitutions remain personal rights that can only be asserted by a person with a legitimate, objective expectation of privacy. *Id.* at 139; *see also State v. Morrow*, 128 Ariz. 309, 312 (1981). Here, Jackson did not own and was not lawfully in the residence, thus he had no legitimate expectation of privacy and lacked standing to challenge his arrest based on the officers' entry. *Cf. State v. Peoples*, 240 Ariz. 244, 247, ¶ 8 (2016) (noting that Arizona courts sometimes refer to a person's ability to challenge a search "as 'standing' for the sake of brevity" even though the proper inquiry is the legitimacy of a defendant's expectation of privacy).

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CONCLUSION

¶9 Without a reasonable expectation of privacy, Jackson cannot assert a violation of the Fourth Amendment or Article 2, Section 8, of the Arizona Constitution. Accordingly, we affirm Jackson's convictions and the imposition of probation.



AMY M. WOOD • Clerk of the Court
FILED: AA