

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE REAL PROPERTY COMMONLY KNOWN AS 5920 E. 30TH ST.,
TUCSON, AZ, AND ADDITIONALLY KNOWN AS
PIMA COUNTY ASSESSOR PARCEL NO. 131-12-0400
(DESCRIBED AS CRAYCROFT ANNEX LOT 9 BLK 2),
INCLUDING ALL BUILDINGS, FIXTURES, STRUCTURES,
AND APPURTENANCES THERETO;
U.S. CURRENCY IN THE AMOUNT OF \$9,089.00;
ONE (1) LEINAD 9MM S/N 94-0033437;
ONE (1) HI-STANDARD .22 CALIBER S/N 673254;
ONE (1) HARRINGTON & RICHARDSON 20 GAUGE S/N AT342460;
ONE (1) RIVERSIDE ARMS 12 GAUGE SHOTGUN S/N 7460B;
ONE (1) MARLIN 30/30 S/N AD27005;
ONE (1) RUGER 41 MAGNUM BLACKHAWK S/N 9941;
ONE (1) BUSHMASTER LOWER RECEIVER .223 S/N L035463; AND
ONE (1) RUGER 10/22 BULLPUP CONVERSION RIFLE.

No. 2 CA-CV 2016-0197
Filed July 26, 2017

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NOT FOR PUBLICATION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. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20151382
The Honorable Jeffrey T. Bergin, Judge

AFFIRMED

IN RE 5920 E. 30TH ST.
Decision of the Court

COUNSEL

Law Office of Scott A. Ewing PLC, Tucson
By Scott A. Ewing
Counsel for Claimant/Appellant

Barbara Lawall, Pima County Attorney
By Christopher L. Straub, Deputy County Attorney, Tucson
Counsel for Appellee

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Staring and Judge Howard¹ concurred.

V Á S Q U E Z , Presiding Judge:

¶1 In this civil forfeiture action, Darren Tichenor appeals from the trial court's judgment forfeiting his real property seized in connection with a criminal narcotics investigation. On appeal, he argues that former A.R.S. § 13-4310(E)(3)² is unconstitutional. For the following reasons, we affirm.

Factual and Procedural Background

¶2 The facts underlying the seizure of the property are set forth in *State v. Tichenor*, No. 2 CA-CR 2015-0380, ¶¶ 2-8 (Ariz. App. Aug. 4, 2016) (mem. decision), an appeal in the parallel criminal

¹The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

²While this appeal was pending, the legislature removed paragraph (E)(3) from § 13-4310. See 2017 Ariz. Sess. Laws, ch. 149, § 6. All references in this decision are to the former version of the statute as in effect during proceedings before the trial court.

IN RE 5920 E. 30TH ST.
Decision of the Court

proceeding, and it would serve no useful purpose to restate them here. In that memorandum decision, we reversed a ruling suppressing evidence seized during the search, determining the search of the house at issue here was supported by a warrant issued upon probable cause. *Id.* ¶¶ 15-22. The Arizona Supreme Court denied review of that decision in April 2017.

¶3 In this forfeiture action, Tichenor and the state filed cross-motions for summary judgment. The trial court ultimately granted summary judgment for the state, ordered the property forfeited, and certified its judgment as final pursuant to Rule 54(b), Ariz. R. Civ. P. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Discussion

¶4 Tichenor argues the trial court erred in forfeiting his property “on the grounds that A.R.S. § 13-4310(E)(3) is clear and unambiguous, and does not allow the exclusion of evidence obtained in violation of the constitution.” The statute provides: “No evidence may be suppressed in any hearing pursuant to this chapter on the ground that its acquisition by search or seizure violated constitutional protections applicable in criminal cases relating to unreasonable searches or seizures.” § 13-4310(E)(3). Tichenor argues the statute violates the Supremacy Clause of the United States Constitution in light of *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 696 (1965), in which the Court held the exclusionary rule applies to forfeiture proceedings. *See* U.S. Const. art. VI, cl. 2.

¶5 However, we do not reach the question whether the forfeiture statute is constitutional because even if the exclusionary rule does apply in forfeiture cases, Tichenor is not entitled to relief. “We address the constitutionality of a statute only when circumstances require us to do so.” *Lerner v. DMB Realty, LLC*, 234 Ariz. 397, ¶ 11, 322 P.3d 909, 913 (App. 2014). A person who is not injured by a statute does not have standing to raise an objection to its constitutionality. *Cronin v. Sheldon*, 195 Ariz. 531, ¶ 54, 991 P.2d 231, 242 (1999); *see Bennett v. Brownlow*, 211 Ariz. 193, ¶ 17, 119 P.3d 460, 463 (2005) (“To establish standing, we require that petitioners show a particularized injury to themselves.”); *see also* A.R.S. § 12-1832 (one

IN RE 5920 E. 30TH ST.
Decision of the Court

“whose rights, status or other legal relations are affected” by statute may bring questions of its validity).

¶6 In the companion criminal case, this court has already determined that the search of Tichenor’s property did not violate his Fourth Amendment rights. *Tichenor*, No. 2 CA-CR 2015-0380, ¶¶ 18, 22; *see also* Ariz. R. Sup. Ct. 111(c)(1)(A) (allowing citation of memorandum decision to establish issue preclusion). That determination is final for purposes of issue preclusion. *See Elia v. Pifer*, 194 Ariz. 74, ¶¶ 33-34, 977 P.2d 796, 803 (App. 1998) (“[F]or purposes of issue preclusion . . . , “final judgment” includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect.”), *quoting* Restatement (Second) of Judgments § 13 (1982); *see also* Restatement § 13 & cmt. g. Thus, regardless of whether § 13-4310(E)(3) is constitutional, because the issue has already been decided, no basis exists to apply the exclusionary rule in this action. In other words, Tichenor cannot show that he has been injured by § 13-4310(E)(3), and he therefore lacks standing to challenge its constitutionality. *See Cronin*, 195 Ariz. 531, ¶ 54, 991 P.2d at 242.

Disposition

¶7 For the foregoing reasons, we affirm the trial court’s judgment. Although Tichenor has requested attorney fees and costs pursuant to A.R.S. § 13-2314(A), because he is not the prevailing party, we deny his request.