

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

MANUEL BALDERRAMA, *Appellant*.

No. 1 CA-CR 16-0263
FILED 6-6-2017

Appeal from the Superior Court in Maricopa County
No. CR2014-116799-001
The Honorable Margaret R. Mahoney, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Jana Zinman
Counsel for Appellee

The Law Office of Kyle T. Green, Tempe
By Kyle T. Green
Counsel for Appellant

STATE v. BALDERRAMA
Decision of the Court

MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Jennifer B. Campbell joined.

NORRIS, Judge:

¶1 Manuel Balderrama appeals his conviction and sentence for one count of misconduct involving weapons. On appeal, Balderrama argues the superior court should have granted his motion to suppress a gun found in his car because police did not have reasonable suspicion to detain him. The superior court denied Balderrama’s motion to suppress, finding the “stop” was consensual. Reviewing the superior court’s ruling for an abuse of discretion, we reject Balderrama’s argument. *See State v. Peterson*, 228 Ariz. 405, 407-08, ¶ 6, 267 P.3d 1197, 1199-200 (App. 2011) (appellate court reviews suppression ruling for abuse of discretion) (citation omitted).

¶2 “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated” U.S. Const. Amend IV. Consensual encounters do not implicate the Fourth Amendment. *State v. Serna*, 235 Ariz. 270, 272, ¶ 8, 331 P.3d 405, 407 (2014) (citing *Florida v. Bostick*, 501 U.S. 429, 434, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991)); *see, e.g., State v. Wyman*, 197 Ariz. 10, 12-13, ¶¶ 3-8, 3 P.3d 392, 394-95 (App. 2000) (encounter consensual when police officer “yelled his request” to speak with defendant several times but did not physically compel a response or demand defendant speak with him). “So long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual and no reasonable suspicion is required.” *Bostick*, 501 U.S. at 434 (citation and quotation omitted).

¶3 At the suppression hearing,¹ a police officer testified he saw a car, which matched the description of a car possibly involved in an attempted robbery the day before, turn into a drug store parking lot. The officer followed the car into the parking lot. After the officer parked his car, he saw the driver of the car, Balderrama, and a passenger enter the store.

¹We consider the evidence presented at the suppression hearing in the light most favorable to sustaining the superior court’s ruling, *State v. Hausner*, 230 Ariz. 60, 70, ¶ 23, 280 P.3d 604, 614 (2012) (citation omitted), and we review only the evidence presented at the suppression hearing, *Wyman*, 197 Ariz. at 12, ¶ 2, 3 P.3d at 394 (citation omitted).

STATE v. BALDERRAMA

Decision of the Court

The passenger later came out of the store, while Balderrama remained inside. The officer approached the car and asked the passenger where the driver was. The passenger told him Balderrama was inside, and the officer asked the passenger, "would you mind going in to see if [Balderrama would] come out and talk to me?" The passenger responded, "yeah, no problem." The passenger then went into the store, and Balderrama came out and spoke to the officer.

¶4 Balderrama asked the officer if there was a problem, and the officer said, "[N]o. I need to ask you about the [car]." The officer explained the car Balderrama was driving matched the description of the car involved in an attempted robbery, and Balderrama "immediately said the [car] belonged to his brother and he didn't know where the vehicle was the day prior."

¶5 Eventually, the officer asked Balderrama for his name, and Balderrama gave the officer a false name. Balderrama then gave the officer his real name and explained he had a suspended driver's license. By then, according to the officer, Balderrama "was becoming more agitated. Kind of more nervous." Worried that Balderrama might run away, the officer detained Balderrama by handcuffing him. At that point, because Balderrama's license had been suspended and he had been unable to contact his brother to pick up the car, the officer decided to impound the car pursuant to police departmental policy. When the officer opened the driver's door to begin to search the car, he saw a gun.

¶6 Based on the foregoing evidence, the superior court did not abuse its discretion in denying Balderrama's motion to suppress. *See supra* ¶ 1. We acknowledge Balderrama's testimony at the suppression hearing conflicted in part with the officer's testimony. Any conflict in the evidence, however, is resolved by the superior court sitting as trier of fact, not this court. *See State v. Ellison*, 213 Ariz. 116, 128, ¶ 32, 140 P.3d 899, 911 (2006) (superior court resolves conflicts of testimony at suppression hearing).

¶7 Therefore, for the foregoing reasons, we affirm Balderrama's sentence and conviction.



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