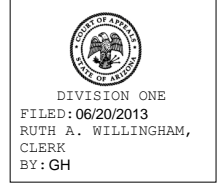


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0573
) 1 CA-CR 12-0576
Appellee,) (Consolidated)
)
v.) DEPARTMENT E
)
GERMAN FELIPE REYES-REYES,) **MEMORANDUM DECISION**
) (Not for Publication - Rule
Appellant.) 111, Rules of the Arizona
) Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-105623-001

Cause No. CR2012-103491-001

The Honorable Robert E. Miles, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Joseph T. Maziarz, Chief Counsel
Criminal Appeals
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 German Felipe Reyes-Reyes appeals from his convictions and sentences for possession or use of dangerous drugs and misconduct involving weapons, and as a result, his revocation of

probation in Maricopa cause number CR2010-105623-001. On appeal, he argues the superior court should have suppressed the drug and weapons evidence because police obtained this evidence after they searched him in violation of his Fourth Amendment rights. The superior court rejected this argument, finding the encounter between Reyes-Reyes and police consensual. Based on our review of the record, the superior court did not abuse its discretion in making this finding, and therefore, in refusing to suppress this evidence. *State v. Estrada*, 209 Ariz. 287, 288, ¶ 2, 100 P.3d 452, 453 (App. 2004) (appellate court reviews suppression order for abuse of discretion and only considers evidence presented at suppression hearing).

¶12 The Fourth Amendment protects the right of people to be secure in their persons against unreasonable searches and seizures. U.S. Const. amend. IV. It does not preclude, however, consensual police encounters. *Florida v. Bostick*, 501 U.S. 429, 434, 111 S. Ct. 2382, 2386, 115 L. Ed. 2d 389 (1991). An encounter is consensual if, from an objective view of the totality of the circumstances surrounding the incident, a reasonable person would have believed he or she was free to terminate the encounter with police. *Id.* In contrast, the Fourth Amendment is implicated when police "seize" a person. *Id.* A seizure occurs when police by means of physical force or

show of authority, have in some way restrained a person's liberty. *Id.*

¶13 Here, the encounter between Reyes-Reyes and the officers was consensual. While patrolling an apartment complex in a marked patrol cruiser in the evening, two police officers observed Reyes-Reyes driving in the complex parking lot. They saw him park his car, start driving again approximately 10 to 15 minutes later, then park again, but this time in front of an apartment the officers had been surveilling for selling drugs.

¶14 Without blocking Reyes-Reyes' car, the officer driving the cruiser ("first officer") parked it "five to six feet to the east of [Reyes-Reyes' car]." Because it was dark, the second officer "may have" used a flashlight or the cruiser's spotlight to illuminate the area. The first officer walked up to Reyes-Reyes and initiated a conversation with him. Although the officer could not remember exactly what he had said to Reyes-Reyes, he testified he would normally start the conversation by saying something like "hey, do you mind if I talk to you [for] a second?" or "hey, how is it going? [y]ou live here? [a]re you visiting here?"

¶15 The first officer asked Reyes-Reyes for his driver's license, which Reyes-Reyes did not have. After obtaining his name, the officers discovered he had an outstanding arrest warrant. The officers then arrested Reyes-Reyes, searched him,

and found methamphetamine in his pants pocket, and subsequently, a gun in his car. The officers testified that in their encounter with Reyes-Reyes and before they arrested him, they had not used any force or threat of force, drawn their weapons, used language that indicated he had to speak to them, issued any commands, activated their cruiser's overhead lights or sirens, or, as noted, blocked his car.

¶6 Although Reyes-Reyes described the encounter with police differently -- testifying he could not back his car out without hitting the cruiser, did not feel free to leave, and the first officer had allegedly knocked on the driver's side window and "told [him] to hang up" his cell phone -- the superior court was entitled to make credibility determinations in deciding whether to suppress the evidence. *Estrada*, 209 Ariz. at 288, ¶ 2, 100 P.3d at 453 (superior court determines credibility of witnesses; appellate court will not reweigh evidence). Accordingly, on this record, the superior court did not abuse its discretion in refusing to suppress the drug and weapons evidence. *State v. Hummons*, 227 Ariz. 78, 80, ¶ 7, 253 P.3d 275, 277 (2011) ("If an officer engaging in a consensual encounter with a citizen discovers an arrest warrant, the arrest is valid and any evidence discovered during a search incident to arrest is admissible.").

¶7 For the foregoing reasons, we affirm Reyes-Reyes' convictions and sentences.

/s/
PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/
MICHAEL J. BROWN, Judge

/s/
JOHN C. GEMMILL, Judge