DIVISION ONE
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RUTH WILLINGHAM, ACTING CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. DANIELLE MEEDEN, Appellant.	)	1 CA-CR 09-0636 DEPARTMENT C **MEMORANDUM DECISION** (Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Yuma County

Cause No. S1400CR200801449

The Honorable Larry Kenworthy, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General By Kent E. Cattani, Chief Counsel Criminal Appeals/Capital Litigation Section Suzanne M. Nicholls, Assistant Attorney General Attorneys for Appellee	Phoenix
Michael A. Breeze, Yuma County Public Defender By Edward F. McGee, Deputy Public Defender Attorneys for Appellant	Yuma

K E S S L E R, Presiding Judge

¶1 Appellant Danielle Meeden ("Meeden") appeals the superior court's order denying her motion to suppress evidence which resulted in her convictions for possession of a dangerous drug and possession of drug paraphernalia.

For the following reasons, we affirm the superior court's ruling.

FACTUAL AND PROCEDURAL HISTORY

¶2 "When reviewing a ruling on a motion to suppress, we consider only the evidence presented at the suppression hearing and view that evidence in the light most favorable to upholding the court's ruling." *State v. Caraveo*, 222 Ariz. 228, 229 n.1, ¶ 1, 213 P.3d 377, 378 n.1 (App. 2009) (citation omitted).

¶3 On November 9, 2008, Officer A. was working undercover for the Narcotics Task Force, dressed in civilian clothing and driving an unmarked patrol car with the lights and siren concealed within the grill.

¶4 At 4:00 a.m. Officer A. noticed a vehicle leaving a small apartment complex in a known drug area. Officer A. testified that at the time he did not notice anything suspicious, nor did he have any knowledge or reason to believe that the passengers had engaged in illegal activity. Officer A. explained that he often follows vehicles leaving areas associated with narcotics with the purpose of conducting investigations, confirming reported information, and uncovering drug related activity.

¶5 Officer A. followed the vehicle for two blocks, at which point it pulled into a trailer park community and

parked next to a residence. Meeden and her friend J.H. exited the vehicle and were walking toward a trailer when Officer A. pulled in to park offset behind them.

¶6 As the area was dark and known for violence, Officer A. briefly initiated his red and blue grill lights to identify himself as a law enforcement officer. He then exited his patrol car and asked if he could speak with them. Although Officer A. could not remember if they answered him verbally, he stated that Meeden and J.H. responded by approaching him "in a friendly manner." He also testified that had they refused to speak with him, he would have driven away.

¶7 Officer A. began the conversation by informing them that they had done nothing wrong. He then asked them if they had any weapons, and when Meeden responded in the negative, asked if he could confirm with a pat-down search. Officer A. testified that he received permission from Meeden,[1] and proceeded to conduct an open hand pat-down of the areas where weapons are generally most accessible. During the pat-down a methamphetamine pipe dropped to the

[1] Officer A. testified that he did not ask Meeden to sign a consent form as it was not a customary practice to do so with the Narcotics Task Force. Officer A. also testified that he did not record his contact with Meeden at any time for safety reasons.

ground.[2] Officer A. then asked Meeden if he could search her pockets. Meeden again consented, and Officer A. found a bindle containing a crystalline substance consistent with methamphetamine.

¶8 Officer A. placed Meeden under arrest and called for assistance from a marked unit. When Officer M. arrived, Officer A. turned Meeden over to him and continued his investigation with J.H.[3] Officer M. placed Meeden in the back of his patrol vehicle and conducted a subsequent search of her person, which yielded another bindle of a crystalline substance. Officer M. then transported Meeden to the Sheriff's Office, where Officer A. *Mirandized* and interviewed her. Meeden stated that only the smaller bindle of methamphetamine was hers, and the rest of the contraband belonged to J.H.

¶9 Officer A. processed the evidence collected from Meeden by conducting a field test on the crystalline substance. It tested positive for methamphetamine. Further tests by a Substance Criminalist from the Department of Public Safety confirmed Officer A.'s results.

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[2] Although Officer A. testified that the pipe fell to the ground, both his report and prior interviews state that the pipe was found in Meeden's pocket. Officer A. explained that the report was not meant to be a verbatim recitation of the events as they occurred, but was intended to be used as a tool to refresh his recollection.

[3] No contraband was found on J.H.

Both bags, one containing 0.23 grams and the other 58 milligrams, were considered to be usable quantities.

¶10 Meeden was charged with possession of a dangerous drug, a class four felony, and possession of drug paraphernalia, a class six felony. Two days before trial, Meeden filed a motion to suppress, arguing that the stop, pat-down, and subsequent search incident to arrest were unconstitutional. After an evidentiary hearing, the court denied Meeden's motion. The trial court found that Officer A. did not convey a message that compliance was required and the seizure was consensual. Meeden was tried *in absentia* and found guilty on both counts. The court placed Meeden on intensive probation for 36 months.

¶11 Meeden timely appealed. *See* Ariz. R. Crim. P. 31.3. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, as well as Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and -4033(A)(1) (2010).

STANDARD OF REVIEW

¶12 On appeal, Meeden contends that the superior court erred in denying her motion to suppress evidence allegedly seized in violation of her rights under the Fourth Amendment of the United States Constitution. "We review rulings on motions to suppress evidence for a clear

abuse of discretion." *State v. Sanchez*, 200 Ariz. 163, 165, ¶ 5, 24 P.3d 610, 612 (App. 2001). An abuse of discretion exists when the reasons given for a court's decision are clearly invalid, legally incorrect, or result in a denial of justice. *State v. Childress*, 222 Ariz. 334, 338, ¶ 9, 214 P.3d 422, 426 (App. 2009) (citing *State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983)). On review, we examine the evidence presented at the suppression hearing in the light most favorable to sustaining the superior court's factual findings. *Id*. We review the court's legal conclusions *de novo*. *Id*. "We will uphold the court's ruling if legally correct for any reason supported by the record." *Id*. (citing *State v. Canez*, 202 Ariz. 133, 151, ¶ 51, 42 P.3d 564, 582 (2002)).

DISCUSSION

¶13 The Fourth Amendment guarantees protection against unreasonable searches and seizures. *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (quoting *Elkins v. United States*, 364 U.S. 206, 222 (1960)). Those conducted without a warrant are considered *per se* unreasonable absent an established exception to the warrant requirement. *Katz v. United States*, 389 U.S. 347, 357 (1967).

I. INVESTIGATORY STOP

¶14 A suspect may be stopped and detained for investigatory purposes if law enforcement officers develop a reasonable suspicion that the person is engaged or about to engage in illegal activity. *In re Steven O.*, 188 Ariz. 28, 29, 932 P.2d 293, 294 (App. 1997) (citation omitted). "To establish the constitutional validity of an investigatory stop, the officer must 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *Id*. (quoting *Terry*, 392 U.S. at 21). The State concedes that Officer A. lacked the reasonable suspicion required to conduct an investigatory stop, but argues the encounter was consensual and thus exempt from the requirements of a warrant, probable cause, or suspicion of criminal wrongdoing.

II. CONSENSUAL ENCOUNTER

¶15 "The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.'" *United States v. Mendenhall*, 446 U.S. 544, 553-54 (1980) (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976)). "Obviously,

not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry*, 392 U.S. at 19 n.16.

¶16 The Fourth Amendment is not violated when law enforcement officers approach and question people, *State v. Wyman*, 197 Ariz. 10, 13, ¶ 7, 3 P.3d 392, 395 (App. 2000) (citation omitted), provided that "the police do not convey a message that compliance with their requests is required." *Florida v. Bostick*, 501 U.S. 428, 435 (1991). A consensual encounter may become a detention when, based on the totality of the circumstances, a reasonable person would not have felt free to leave or otherwise terminate the encounter. *Mendenhall*, 446 U.S. at 554; see also *United States v. Drayton*, 536 U.S. 194, 201 (2002); *Childress*, 222 Ariz. at 338, ¶ 11, 214 P.3d at 426 (citation omitted). "The reasonable person inquiry is objective and presupposes an innocent person." *Childress*, 222 Ariz. at 338, ¶ 11, 214 P.3d at 426 (citation omitted). Examples of conditions that suggest a seizure include "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the

use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Mendenhall*, 446 U.S. at 554. "If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed." *Florida v. Royer*, 460 U.S. 491, 498 (1983).

¶17 Meeden contends that she was "seized" within the meaning of the Fourth Amendment as the encounter was not consensual. She specifically asserts that Officer A. communicated his authority through the activation of his grill lights and the placement of his patrol car. Meeden argues that under these circumstances, no reasonable person would have felt free to terminate the encounter. We disagree.

¶18 Viewing the evidence in the light most favorable to upholding the factual findings, *Childress*, 222 Ariz. at 338, ¶ 9, 214 P.3d at 426, there was sufficient evidence for the superior court to conclude that Officer A. did not convey that compliance with his request was required. Officer A. was alone, wore no uniform, drove an unmarked patrol car, and at no time did he display or brandish his weapon. Although he parked in such a way that it ultimately blocked the suspect's vehicle from leaving, Meeden had already exited and was walking toward a

residence. As a result, Officer A.'s actions in no way immobilized her or made it impossible for her to terminate the encounter. *See Mendenhall*, 446 U.S. at 554 ("As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized objective justification."); *State v. Robles*, 171 Ariz. 441, 443, 831 P.2d 440, 442 (App. 1992) ("Given the fact that [he] had parked his car voluntarily and not in response to any action on the part of the police, we are unable to discern from the officers' actions . . . anything which would lead a reasonable person to conclude that he was not free to leave or to terminate the encounter . . . .").

¶19 In addition, Officer A. did not threaten Meeden, nor did he use language or a tone of voice that may have indicated compliance was required. *See State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996) (explaining that deference is given to the trial court's factual findings, including the determination of credibility). He did not issue any commands or orders, but

instead identified himself, explained that Meeden had done nothing wrong, and asked permission to speak with her.[4]

¶20 Meeden further argues that Officer A.'s initiation of his front grill lights amounted to a display of authority requiring compliance: "When the blue lights on the patrol car begin to flash, the person being followed does not feel free to ignore them and drive on." *State v. Richcreek*, 187 Ariz. 501, 505, 930 P.2d 1304, 1308 (1997). However, Officer A. testified that he flashed his front grill lights for only seconds as a safety precaution. He explained that given the area's reputation for violence, his action was meant to identify himself as a police officer and not someone approaching to conduct a criminal act. Although courts have identified the absence of overhead lights as a factor indicating an encounter was consensual, *see Washington v. Nettles*, 855 P.2d 699, 702 (Wash. App. 1993); *Idaho v. Page*, 103 P.3d 454, 457 (Idaho

[4] We find this case to be distinguishable from both *State v. Rogers*, 186 Ariz. 508, 509, 924 P.2d 1027, 1028 (1996) (where officers approached the defendant and stated, "police officers, we *need* to talk to you.") (emphasis added) and *Childress*, 222 Ariz. at 337, ¶ 3, 214 P.3d at 425 (where officer yelled, "the occupants in the black truck, pull in front of me" and pointed to a designated area). In both cases, the language and any accompanying movement implied commands that could not be ignored. Here, nothing in the officer's language ("You've done nothing wrong. Can I talk to you?") or movement indicated that compliance was required.

2004); *California v. Bouser*, 32 Cal.Rptr.2d 163, 167 (Cal. App. 1994), we are not persuaded given the context and totality of the circumstances that the activation of grill lights for only seconds turned the encounter into a 'seizure' within the meaning of the Fourth Amendment. *See Commonwealth v. Evans*, 764 N.E.2d 841, 844 (Mass. 2002) (activation of lights as a safety measure during a community caretaking inquiry did not transform the encounter into a seizure); *State v. Hanson*, 504 N.W.2d 219, 220 (Minn. 1993) ("A reasonable person would know that while flashing lights may be used as a show of authority, they also serve other purposes."). While Officer A.'s actions were not justified under a community caretaking function, the brief activation of lights in combination with the statement explaining Meeden had done nothing wrong, support the court's finding that the encounter was ultimately not a seizure.

¶21 In reviewing the totality of the circumstances, the court had sufficient evidence to find that the situation was not so intimidating that a reasonable person would not have felt free to leave. Thus, no reasonable suspicion was needed, and the request to speak with Meeden was well within the constraints of a consensual encounter.

III. PRIVATE PROPERTY

¶22 Meeden contends that as the stop occurred in the driveway of a residence in a trailer park, consent does not apply as the stop occurred on private property. *See Bostick*, 501 U.S. at 434 ("[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another *public place* . . . .") (emphasis added) (citation and internal quotations omitted). We disagree. Although the protections of the Fourth Amendment extend to the curtilage of a home, "[r]esidents generally do not have a legitimate expectation of privacy in a path across their driveway to and including their front porch and front door, because that area is implicitly open to the public, thereby 'necessarily negat[ing] any reasonable expectancy of privacy in regard to observations made there.'" *State v. Olm*, 223 Ariz. 429, 433, ¶ 13, 224 P.3d 245, 249 (App. 2010) (citation omitted); *see id*. ("[N]o Fourth Amendment violation occurs when an officer, without a warrant, crosses the curtilage to knock on the front door to ask questions of the resident.") (citation omitted). In any event, Meeden's encounter was not even within the curtilage of a home, but on a dirt access road to multiple residences in a trailer park. This area was publicly accessible, and nothing

suggested that the property was private. "[N]one of the traditional markers of privacy appeared: no wall or fence obstructed entry onto [the] property, and no signs alerted the officer[] that such entry was prohibited." *State v. Guillen*, 223 Ariz. 314, 318, ¶ 19, 223 P.3d 658, 662 (2010).

IV. PAT-DOWN SEARCH

¶23 We now turn to the question of whether Meeden was subjected to an unreasonable search of her person. Prior case law does not "authorize a pat down search as part of a mere consensual encounter." *In re Ilono H.*, 210 Ariz. 473, 476, ¶ 11, 113 P.3d 696, 699 (App. 2005). "[P]olicemen have no more right to 'pat down' the outer clothing of passers-by, or persons to whom they address casual questions, than does any other citizen . . . ." *Id*. (quoting *Terry*, 392 U.S. at 32 (Harlan, J., concurring)). However, if an officer obtains consent to the search, neither a warrant nor probable cause is needed. *Caraveo*, 222 Ariz. at 233, ¶¶ 22-23, 213 P.3d at 382 (finding that "*Ilono* does not stand for the proposition that officers may not frisk an individual who voluntarily consents to a frisk."). As with consensual encounters, the voluntariness of a consent to search is determined based on the totality

of the circumstances. *State v. Acinelli*, 191 Ariz. 66, 70, 952 P.2d 304, 308 (App. 1997).

¶24 In situations "such as these, where the question of voluntariness pervades both the search and seizure inquiries, the respective analyses turn on very similar facts." *Drayton*, 536 U.S. at 206. As discussed above, Officer A. did not convey at any time that compliance with his requests was required. He never brandished a weapon, made threats, or used aggressive language. Additionally, "[t]he Court has rejected in specific terms the suggestion that police officers must always inform citizens of their right to refuse when seeking permission to conduct a warrantless consent search." *Drayton*, 536 U.S. at 206.

¶25 Accordingly, in reviewing the totality of the circumstances, there was sufficient evidence for the trial court to have found that Meeden voluntarily consented to the search of her person.[5]

[5] We find this case to be distinguishable from *In re Ilono H.*, 210 Ariz. at 474, ¶ 2, 113 P.3d at 697 (where the officer initiated a consensual encounter and then immediately conducted a search without any further questions) because Officer A. asked for additional consent before conducting the pat-down search.

CONCLUSION

¶26 For the above reasons, we affirm the superior court's order denying Meeden's motion to suppress evidence and affirm her conviction and sentence.

/S/
DONN KESSLER, Presiding Judge

CONCURRING:

/S/
DANIEL A. BARKER, Judge

/S/
SHELDON H. WEISBERG, Judge