

2019 WL 181411

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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NOT FOR PUBLICATION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. Crim. P. 31.19(e).

Court of Appeals of Arizona, Division 2.

The STATE of Arizona, Appellee,

v.

Luis A. SANCHEZ, Appellant.

No. 2 CA-CR 2018-0129

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Filed January 14, 2019

Appeal from the Superior Court in Graham County,
No. CR201500297, The Honorable Michael D. Peterson,
Judge. **AFFIRMED**

Attorneys and Law Firms

Mark Brnovich, Arizona Attorney General, Joseph
T. Maziarz, Chief Counsel, By Alexander M. Taber,
Assistant Attorney General, Tucson, for Appellee

E.M. Hale Law PLLC, Lakeside, By Elizabeth M. Hale,
for Appellant

Presiding Judge Eppich authored the decision of the
Court, in which Chief Judge Eckerstrom and Judge
Espinosa concurred.

MEMORANDUM DECISION

EPPICH, Presiding Judge:

*1 ¶1 After a jury trial, Luis Sanchez was convicted of
possession of drug paraphernalia. In this appeal, he argues
the trial court should have suppressed evidence obtained
during a search of his car. For the reasons that follow, we
affirm.

Factual and Procedural Background

¶2 We review the evidence presented at the suppression
hearing “in the light most favorable to upholding the
trial court's ruling.” *State v. Teagle*, 217 Ariz. 17, ¶ 2
(App. 2007). Just before midnight, a San Carlos Police
Department officer stopped Sanchez for driving without
a properly illuminated license plate. During the stop,
Sanchez told the officer that his driver license was
suspended. The officer asked Sanchez to get out of the
car and follow him to his patrol car to complete the
necessary steps to issue him a citation. While Sanchez
was at the officer's patrol car, among other things, the
officer asked “whether there was anything illegal inside
[Sanchez's] vehicle.” About five minutes after the initial
stop, two more officers arrived on the scene.

¶3 The contacting officer wrote Sanchez a citation
and returned his registration, intending to release him.
However, as Sanchez “was walking back to his car with
his registration and citation in his hand,” the officer asked
him if he could search his car. There is no indication
the officer informed Sanchez that he was free to leave
before asking for his consent, but the officer testified that
if Sanchez would have refused the search, he “would have
let him leave.” Sanchez agreed to the search.

¶4 Although the San Carlos Police Department had forms
for obtaining consent to search, its policy did not require
the officer to use one, and he did not do so during the
encounter with Sanchez. At the time the officer requested
to search the car, he did not have reasonable suspicion
of any wrongdoing other than the aforementioned traffic
infractions. After Sanchez consented to the search, the
officer walked around its exterior with a police dog, and
the dog alerted to the presence of drugs inside the car.
A subsequent search of the car revealed drugs and drug
paraphernalia.

¶5 Sanchez moved to suppress all evidence obtained as
a result of the extended encounter, contending, in part,
the officer “illegally detained [Sanchez] after issuing the
citation and returning the vehicle documents.” He also
suggested Sanchez's consent was not lawfully obtained
based on the officer's failure to use the department's
consent to search form and the presence of three armed
officers. After an evidentiary hearing, the court denied the
motion. Sanchez was later convicted as described above
and sentenced to a prison term of 1.75 years.¹ We have
jurisdiction over his appeal pursuant to A.R.S. §§ 13-4031
and 13-4033(A)(1).

Discussion

¶6 Sanchez argues the trial court should have **suppressed** evidence obtained as a result of the search because he was detained beyond the permissible scope of the initial traffic stop, in violation of his constitutional rights.² The state concedes that the traffic detention ended when the officer returned Sanchez's documents, but argues the continuing contact with Sanchez constituted a consensual encounter. "In reviewing a trial court's decision on a motion to **suppress** evidence based on an alleged Fourth Amendment violation, we defer to the trial court's factual findings, ... but we review de novo mixed questions of law and fact and the trial court's ultimate legal conclusions" *Teagle*, 217 Ariz. 17, ¶ 19.

*2 ¶7 The Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const. amend. IV. A traffic stop is a seizure within the Fourth Amendment, but is considered reasonable as long as the stop is supported by founded suspicion and lasts no longer than necessary to effectuate the purpose of the stop. See *State v. Sweeney*, 224 Ariz. 107, ¶¶ 16-17 (App. 2010). Once an officer has issued a traffic citation and concluded the purpose of a traffic stop, "the driver must be permitted to proceed on his way without further delay or questioning" unless (1) the encounter becomes consensual or (2) the officer gains reasonable suspicion of other illegal activity. *Teagle*, 217 Ariz. 17, ¶ 22. If police otherwise prolong the stop, the seizure becomes unlawful, see *Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015), and evidence obtained therefrom is subject to exclusion, see *Wong Sun v. United States*, 371 U.S. 471, 484-86 (1963).³ Neither party suggests the officer in this case had reasonable suspicion to extend the encounter with Sanchez prior to asking for consent to search the car. Thus, in order for the continued contact to be lawful, it must have been a consensual encounter.

¶8 We have previously determined a traffic stop concludes once an officer returns a driver's documents. See *Teagle*, 217 Ariz. 17, ¶ 23. After that occurs, an officer may ask additional, unrelated questions, creating a consensual encounter if the driver agrees to answer those questions. *Id.* But, there is not "a litmus-paper test for distinguishing a consensual encounter from a seizure." *Florida v. Royer*, 460 U.S. 491, 506 (1983). Rather, we look to "all the

circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter." *Florida v. Bostick*, 501 U.S. 429, 439 (1991). If a reasonable person would feel free to leave, the encounter is consensual, and evidence obtained therefrom is not subject to exclusion as the fruit of an unlawful seizure. See *State v. Serna*, 235 Ariz. 270, ¶ 8 (2014) ("Encounters that are entirely consensual do not implicate the Fourth Amendment."); see also *Wong Sun*, 371 U.S. at 484-86 (unlawfully obtained evidence subject to exclusion).

¶9 Sanchez argues the continued contact was not consensual. We disagree. The contacting officer returned all of Sanchez's documents and allowed him to turn towards his car—implicitly signaling Sanchez was free to leave—before initiating further questioning. None of the officers on scene brandished a weapon, and there is no evidence that any of them conveyed that Sanchez was required to continue the encounter. Sanchez's freedom of movement was not restricted in any way. And although other officers were present, the only testimony regarding their interaction with Sanchez was that one of the officers was "joking around and talking" with Sanchez during the extended encounter. Given the levity of their minimal interaction with Sanchez, we give the presence of additional officers little weight in our analysis. And in the absence of any other cue that Sanchez's detention had not ended, the fact that the encounter took place at night in a rural area is of little significance.

¶10 The strongest factor supporting Sanchez's argument is the contacting officer's failure to explicitly advise him he was free to leave. Although such an advisement would have arguably removed any ambiguity as to whether Sanchez was still being detained, Sanchez cites no authority, and we are aware of none, requiring that the officer advise him he was free to leave for the encounter to become consensual. Under the circumstances at hand, we cannot fault the trial court's implicit conclusion that a reasonable person, given the opportunity to leave with all the necessary documentation to proceed on his or her way, would feel free to refuse the officer's request or otherwise terminate the encounter. See *Bostick*, 501 U.S. at 434 (encounter is consensual if a reasonable person would feel free "to disregard the police and go about his business" (quoting *California v. Hodari D.*, 499 U.S. 621, 628 (1991))).

*3 ¶11 Sanchez also contends evidence obtained during the search of his car should have been **suppressed** because his consent was involuntary. See *Schneckloth v. Bustamonte*, 412 U.S. 218, 228 (1973) (“[T]he Fourth and Fourteenth Amendments require that a consent not be coerced.”). In evaluating whether a suspect's consent to a search was voluntary we look to the totality of the circumstances to determine whether consent “was the product of duress or coercion, express or implied.” *Id.* at 227. Here, Sanchez's consent to continue the encounter was explicitly for purposes of allowing the officer to conduct a search, and the same factors that demonstrate the continued encounter was consensual also demonstrate that his consent to allow the search was voluntary.⁴ By

consenting to the search of his vehicle at the conclusion of the stop, Sanchez transformed what had been a seizure into a consensual encounter for Fourth Amendment purposes and rendered the evidence seized as a result of the search admissible.

Disposition

¶12 Sanchez's convictions and sentences are affirmed.

All Citations

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Footnotes

- 1 The jury was unable to reach a verdict as to two additional, drug-related charges.
- 2 Sanchez's argument is premised upon the protections afforded by the United States Constitution. Although he includes a citation to analogous protections included in our state constitution, he does not develop any argument relying upon that authority. Accordingly, we consider any state constitutional claim waived. See *State v. Bolton*, 182 Ariz. 290, 298 (1995) (“Failure to argue a claim on appeal constitutes waiver of that claim.”).
- 3 Sanchez cites *Rodriguez* for the proposition that a traffic stop may only be extended based upon reasonable suspicion of an offense other than that for which the stop was made. See 135 S. Ct. at 1615. But consent was not a consideration in *Rodriguez*. At the conclusion of the stop in that case the defendant was asked if he would consent to a dog sniff of his car and refused. *Id.* at 1613. He was then ordered from the vehicle, and detained until another officer arrived. *Id.* Nothing in *Rodriguez* suggests that a seizure cannot turn into a consensual encounter as noted in *Teagle*.
- 4 In light of our decision, we need not address the state's contention that Sanchez's consent was not required after the officer developed probable cause to search the car from the dog sniff.