IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

SANTIAGO RENE RODRIGUEZ,
Appellant.

No. 2 CA-CR 2013-0561
Filed October 22, 2014

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20113997001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

COUNSEL

Thomas C. Horne, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

Lori J. Lefferts, Pima County Public Defender
By Erin K. Sutherland, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

E C K E R S T R O M, Chief Judge:

¶1 Following a jury trial, appellant Santiago Rodriguez was convicted of four counts of aggravated driving under the influence of an intoxicant and sentenced to enhanced, concurrent prison terms of seven years each. On appeal, Rodriguez challenges only the trial court's ruling denying his motion to suppress the evidence resulting from his traffic stop. We affirm the court's ruling because, despite any procedural irregularities below that Rodriguez alleges on appeal, the court reached the legally correct result on the dispositive question of whether there was reasonable suspicion for the stop of the vehicle. *See State v. Cañez*, 202 Ariz. 133, ¶ 51, 42 P.3d 564, 582 (2002) (noting appellate court must affirm legally correct suppression ruling).

¶2 The arguments presented on appeal concern technical questions about the parties' respective burdens of proof and production under Rule 16.2(b), Ariz. R. Crim. P. We need not resolve these questions given the undisputed facts in this case. An investigatory stop of a vehicle and its occupants is justified under the Fourth Amendment if the police officer's action "is supported by reasonable suspicion to believe that criminal activity 'may be afoot.'" *United States v. Arvizu*, 534 U.S. 266, 273 (2002), *quoting United States v. Sokolow*, 490 U.S. 1, 7 (1989).[1] Whether an officer acted with

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[1]Rodriguez presents arguments based on both the Fourth Amendment to the United States Constitution and article II, § 8 of the Arizona Constitution. The latter provision, however, has been interpreted more broadly than the former only in the home-search context, *see State v. Hummons*, 227 Ariz. 78, ¶ 16, 253 P.3d 275, 279 (2011), and our supreme court has never formulated an alternative

reasonable suspicion is a mixed question of law and fact that we review de novo. *Id.* at 275; *State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

¶3 Rodriguez's suppression motion acknowledged that police officers stopped the vehicle he was driving because it generally matched the description of a suspect vehicle in a report to police of gunshots fired in the area. That vehicle was described as a white, older-model car, such as a Buick Regal or Chevrolet Monte Carlo, with very large chrome rims. Defense counsel also confirmed at the hearing that police officers had seen "the original driver flee[] from the vehicle" before Rodriguez assumed control of it and police initiated the stop.

¶4 Reasonable suspicion is a standard lower than probable cause, *State v. O'Meara*, 198 Ariz. 294, ¶ 10, 9 P.3d 325, 327 (2000), and requires only that "police have a particularized and objective basis for suspecting that a person is engaged in criminal activity." *Id.* ¶ 7. As the state points out, reasonable suspicion for an investigatory stop may be based on an emergency call to police that bears "adequate indicia of reliability." *Navarette v. California*, ___ U.S. ___, ___, 134 S. Ct. 1683, 1688-89 (2014); *accord State v. Gomez*, 198 Ariz. 61, ¶¶ 18-19, 6 P.3d 765, 768 (App. 2000). Factors tending to show reliability include (1) descriptions or statements that suggest eyewitness knowledge, (2) contemporaneous reporting, (3) stress or excitement caused by a startling event, and (4) use of the 9-1-1 emergency system, in which calls are traceable and recorded, and callers are consequently subject to potential prosecution for false reports. *Navarette*, ___ U.S. at ___, 134 S. Ct. at 1689-90.

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test for assessing the legality of stops and detentions. *See, e.g.*, *State v. Boteo-Flores*, 230 Ariz. 105, ¶¶ 11-13, 280 P.3d 1239, 1241-42 (2012); *State v. O'Meara*, 198 Ariz. 294, ¶¶ 10-11, 9 P.3d 325, 327 (2000). Instead, the court has determined that the analysis called for by the Fourth Amendment is "dispositive" of the issue. *State v. Rogers*, 186 Ariz. 508, 510 n.1, 924 P.2d 1027, 1029 n.1 (1996).

¶5 Here, the 9-1-1 call provided a contemporaneous report based on firsthand knowledge of gunshots being fired. The caller also described, in some detail, the suspect vehicle involved. The reliability of the call was further enhanced when police located a fairly distinct vehicle matching that description in the nearby area. *See id.* at ___, 134 S. Ct. at 1689. Together, these facts established reasonable suspicion for the stop, as a matter of law, and provided a sufficient basis for denying the suppression motion.

¶6 Defense counsel's additional concession that the original driver fled the vehicle only strengthens our conclusion that the report was reliable and that law enforcement officers had reasonable suspicion of criminal activity to stop the car suspected in the shooting. *See Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (recognizing flight as evidence of wrongdoing and factor relevant to reasonable suspicion). While an attorney's statements or arguments ordinarily are not evidence, admissions or concessions by counsel to the trier of fact may be treated as evidence and avoid the need for more complete proof. *See State v. Gray*, 231 Ariz. 374, ¶ 9, 295 P.3d 951, 954 (App. 2013).

¶7 We note that there did not appear to be any genuine dispute about a material fact by the time of the suppression hearing, and the apparent absence of a real factual controversy contributed to the informality of the proceeding below. As Rodriguez points out, the state presented no evidence at the suppression hearing before the trial court ruled on the question of reasonable suspicion for the stop. Rodriguez predicated his motion to suppress, however, on the mistaken belief that there was only one "anonymous" 9-1-1 call to the police reporting gunshots and describing the vehicle involved. The state indicated in its response that the caller was not anonymous, that she had actually witnessed the front passenger of the vehicle displaying a gun before shooting it, and that there were multiple calls to 9-1-1 reporting that shots had been fired. Rodriguez expressly declined to respond to these assertions in his reply. In any event, the record does not indicate that the trial court erred in denying the motion to suppress, even if we consider only the facts stated in Rodriguez's motion and defense counsel's

concession at the suppression hearing, viewing those facts and the inferences therefrom in the light most favorable to Rodriguez.

¶8 Because the motion to suppress was correctly denied, Rodriguez's convictions and sentences are affirmed.