

1 DANIEL G. KNAUSS  
United States Attorney  
District of Arizona

2 MARY BETH PFISTER  
3 Assistant U.S. Attorney  
Arizona State Bar No. 015103  
4 Two Renaissance Square  
40 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4408  
5 Telephone: (602) 514-7500  
[Mary.Beth.Pfister@usdoj.gov](mailto:Mary.Beth.Pfister@usdoj.gov)

6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF ARIZONA

8 United States of America  
9  
10 Plaintiff,  
11 v.  
12 Fernando Medina a/k/a  
Fernando Tapia-Quintero,  
13 Defendant.

CR-06-0886-PHX-EHC

**GOVERNMENT’S POST-HEARING  
MEMORANDUM REGARDING  
DEFENDANT’S MOTION TO  
SUPPRESS EVIDENCE**

14 The United States, by and through counsel undersigned, hereby asks that the Court deny  
15 defendant’s Motion to Suppress for the reasons set forth in the following Memorandum of Points  
16 and Authorities.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 I. **FACTS**

19 Phoenix Police Department (“PPD”) Officer Adam Applegate testified that on September  
20 22, 2006, at approximately 11:20 a.m., he conducted a traffic stop on the Interstate 10 freeway  
21 just west of 35<sup>th</sup> Avenue. The vehicle he stopped, a white Dodge Intrepid, had committed a lane  
22 infraction. The driver drove the right side of the vehicle off the road and onto the shoulder, then  
23 abruptly swerved back onto the road in a manner Officer Applegate described as dangerous.  
24 Officer Applegate stopped the vehicle for failure to remain in one lane. *See* 4/13/07 transcript,  
25 attached as Exhibit A, at 6. This testimony was uncontroverted and unchallenged at the hearing.

1           Officer Applegate testified that he approached the driver and asked him for identification,  
2 vehicle registration and insurance, while his partner, PPD Officer Dominick Roestenberg,  
3 approached the passenger of the vehicle. The driver, defendant, provided Officer Applegate  
4 with a Sinaloa, Mexico driver's license in the name Fernando Tapia-Quintero. *Id* at 7. The  
5 license defendant provided is attached as Exhibit B to this Memorandum and was introduced at  
6 the hearing as the government's Exhibit 1. This license had no date of birth, residence address  
7 or physical description of the driver. *See* Exhibit B.

8           During this traffic stop, PPD Officers Harland and Reed came to the scene to assist. Like  
9 Officers Applegate and Roestenberg, Officers Harland and Reed work on the crime suppression  
10 unit. These officers share a radio frequency. Officers Harland and Reed came to the scene as  
11 standard practice after hearing of the traffic stop on the radio. *See* 4/13/07 transcript at 8. Officer  
12 Applegate handed defendant's license to Officer Harland to conduct a records check. *Id.* at 8,  
13 10. Officer Harland reported back that defendant's license was a forged instrument. *Id.* at 9.  
14 Officer Applegate then placed defendant under arrest for possession of a forged instrument. *Id.*  
15 at 10. When defendant was booked into jail, he was charged with this offense and others. *Id.* at  
16 13. Although Officer Applegate has had some training on determining the validity of a Mexican  
17 driver's license, he relied on Officer Harland's determination here. As he often does, Officer  
18 Applegate stayed with driver for safety reasons rather than returning to his patrol car to check  
19 the driver's license himself. *Id.* at 10,17.

20           While Officer Applegate was speaking with the driver, Officer Roestenberg stayed with  
21 the passenger, Eligio Gaxiola, the co-defendant in this case. *Id.* at 10. Officer Roestenberg  
22 testified that when he contacted the passenger and asked him for identification, the passenger  
23 also provided a Sinoloa, Mexico license. *Id.* at 46. Like Officer Applegate, Officer Roestenberg  
24 handed this license to Officers Reed and Harland and asked them to check its validity. *Id.* at 46-  
25 47. Gaxiola also was placed under arrest for possession of a forged instrument. *Id.* at 10-11.

26           PPD Officer Angelique Harland testified that she and her partner, Brad Reed, work with  
27 Officers Applegate and Roestenberg on a crime suppression unit and share a radio frequency.

1 Officer Harland testified that they heard over the radio that Officers Applegate and Roestenberg  
2 had conducted a traffic stop and so responded to the scene to assist, as is their usual practice.  
3 *Id.* at 19. Officers Applegate and Roestenberg gave the licenses they received from defendant  
4 and the passenger to Officer Harland to conduct a records check. *Id.* at 19, 47. Officer  
5 Applegate advised Officer Harland that there was a discrepancy between the name defendant  
6 gave him (Fernando Medina), and the name on the license (Fernando Tapia-Quintero). *Id.* at  
7 36-37. Officer Harland then checked the license against the International Edition Identification  
8 Checking Guide. *Id.* at 20. This guide was admitted at the hearing as Exhibit 2. The relevant  
9 excerpt is attached to this Memorandum as Exhibit C.

10 Officer Harland testified that she has had training from PPD on document crimes, that on  
11 a weekly basis as part of her duties she is presented with Mexican identification documents like  
12 the one presented by defendant, and that she has verified such documents as being invalid based  
13 on certain characteristics she looks for. In particular, when determining if the document she is  
14 presented is valid, she looks at the bar that runs under the header of the license *Id.* at 21. She  
15 further testified that based on her prior experience, when she looked at defendant's license she  
16 determined that there was an inconsistency between his license and a valid license. *Id.* at 30-31.

17 Officer Harland explained that this Guide is available on a website for law enforcement  
18 officers and that her Guide was ordered for her by her partner, Officer Reed. *Id.* at 21, 39, 43.  
19 She also testified that this Guide was recommended to her by other officers who had been  
20 through training on checking identifications, that she uses it on a regular basis in her duties as  
21 an officer and that it has proven to be reliable. *Id.* at 23-25. Officer Roestenberg testified that  
22 he has gone through squad briefing training, authorized and mandated by PPD, that included  
23 training on detection of fraudulent identifications and that in that training this Guide was  
24 recommended as a reliable resource for verifying identifications. *Id.* at 48. He also testified that  
25 when he purchased this book, he had to show law enforcement identification to get it. *Id.* at 49.

1 Officer Harland testified that she found defendant's license was a fictitious document  
2 based on her review of the Guide. The colored bar that runs across the upper third of the  
3 identification card should extend all the way from one side of the card to the other, past the state  
4 emblem, but the bar on the card defendant provided did not. *Id.* at 21, 35-36. A valid license  
5 also should have a UV-sensitive state decal on the back, and the card defendant provided lacked  
6 that feature as well. <sup>1/</sup> *Id.* at 36. Officer Harland therefore reported to Officer Applegate that  
7 defendant's identification was false. *Id.*

8 After Officers Applegate and Roestenberg placed defendant and Gaxiola under arrest for  
9 possessing a forged instrument, they searched the car incident to arrest. As the officers were still  
10 by the freeway, for safety reasons they moved the vehicle a short distance to 3500 West  
11 Moreland to conduct the search. *Id.* at 11. Officer Applegate testified that they observed  
12 suspicious electrical wires sticking out of carpeted sections of the driver's compartment. These  
13 wires did not appear to be part of the ordinary manufacture of the vehicle and looked out of  
14 place. Officer Applegate then called for a canine unit. *Id.* at 11-12.

15 Officer David Albertson responded to the scene with his canine, which gave a positive  
16 alert for drugs at the rear of the vehicle's passenger compartment. Officer Applegate removed  
17 the back seat cushion and saw the wires going into a hinged steel plate where the hole going to  
18 the trunk compartment should be. In order to remove the hinges, he transported the vehicle to  
19 the Maryvale Precinct, where there had additional equipment. There they removed the hinges  
20 and steel plate and discovered a hidden compartment with 13 saran-wrapped plastic boxes filled

---

21  
22 <sup>1/</sup> Officer Harland testified regarding the deficiencies in defendant's license. The Court  
23 did not permit her testimony on the deficiencies in the passenger's license, but the government  
24 indicated it would like to make an offer of proof on the deficiencies in the passenger's license.  
25 4/13/07 transcript at 62-64. The government's offer of proof on this issue is that Officer Harland  
26 would testify that she examined the passenger's license on the scene of the traffic stop when she  
27 received it from Officer Roestenberg. She found the it had the same deficiencies as defendant's  
28 license (*i.e.*, the bar did not extend all the way from one side of the card to the other and the card  
lacked a UV-sensitive state decal on the back), but it said "automovolista" in a red bar, more like  
the license in the Guide, whereas defendant's license said "chofer" in a brown bar in the same  
location. Officer Harland further would testify that Exhibit D attached to this Memorandum is  
a true and correct copy of the passenger's license that she examined.

1 with methamphetamine. *Id.* at 12-13. From the time of the initial stop to the time the canine  
2 gave a positive alert on the vehicle, no more than 35-40 minutes had passed. *Id.* at 48.

3 Officer Roestenberg testified that defendant was Mirandized and interviewed at the police  
4 station in Spanish by Officer Roestenberg and Officer Marrero, both of whom are certified  
5 Spanish speakers by PPD. *Id.* at 49-51. Officer Roestenberg described his training and  
6 certification as a Spanish speaker and testified that he conducts interviews of suspects in Spanish  
7 as part of his duties. If he ever has difficulty understanding a suspect, he asks the suspect to  
8 slow down, rephrases the question so he understands the answer, or goes to another officer for  
9 help. Officer Roestenberg testified that he had no difficulty communicating with defendant.  
10 *Id.* at 51. After being advised of his rights, defendant said he understood his rights and agreed  
11 to waive them and spoke to the officers. Defendant initially lied to the officers but then admitted  
12 knowing there were drugs in the vehicle and having touched the boxes. *Id.* at 52-53.

13 Defendant's interview began at approximately 2:05 p.m. on the day he was arrested and  
14 lasted approximately 45-50 minutes. *Id.* at 51, 54. Defendant did not ask for an attorney during  
15 the interview and did not ask for a break or anything else that they denied him. *Id.* at 54. Officer  
16 Roestenberg testified that he made defendant no promises and that no physical force was used  
17 against defendant during the interview. *Id.* Defendant appeared to understand the officers, did  
18 not appear to be under the influence of drugs or alcohol and never indicated that he was  
19 experiencing any physical discomfort. *Id.*

20 II. LEGAL ANALYSIS

21 A. Officer Applegate Had Reasonable Suspicion for the Stop.

22 Officers may briefly stop and detain an individual or car if they have reasonable suspicion  
23 that a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806, 810 (1996); *United*  
24 *States v. Lopez-Soto*, 205 F.3d 1101, 1104 (9<sup>th</sup> Cir. 2000). Determining whether reasonable  
25 suspicion exists requires an examination of the totality of the circumstances. *United States v.*  
26 *Arvizu*, 534 U.S. 266, 750-51 (2002). Reasonable suspicion "need not rise to the level of  
27  
28

1 probable cause, and it falls considerably short of satisfying a preponderance of the evidence  
2 standard.” *Id.* at 751.

3 Even when an officer makes a mistake of fact and stops a vehicle for a violation that has  
4 not been committed, so long as his suspicion that a violation had occurred was a reasonable  
5 suspicion, the stop is valid. *See United States v. Wallace*, 213 F.3d 1216, 1219-20 (9<sup>th</sup> Cir. 2000)  
6 (officer had reasonable suspicion to stop vehicle for unlawful tint even though tint was unlawful  
7 for different reason than officer believed). *See also United States v. Dorais*, 241 F.3d 1124,  
8 1130-31 (9<sup>th</sup> Cir. 2001) (officer had reasonable suspicion to stop rented vehicle after receiving  
9 report from its owner that it was overdue even though report turned out to be wrong).

10 Officer Applegate had reasonable suspicion that a traffic violation had occurred. He  
11 observed defendant swerve out of his lane and onto the shoulder of the road and so stopped the  
12 vehicle for failure to remain in one lane. Officer Applegate’s recollection of defendant’s traffic  
13 violation was clear and specific, and the fact that defendant indeed committed this traffic  
14 violation was uncontroverted at the hearing. Officer Applegate’s traffic stop of defendant thus  
15 was lawful. *See Whren, supra.*

16 B. Officer Applegate Had Probable Cause to Arrest Defendant for Presenting a Forged  
17 Identification.

18 An officer has probable cause to arrest when the facts known to the arresting officer at  
19 the time of the arrest support a reasonable conclusion that the suspect has committed an offense.  
20 *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). If an officer has probable cause to believe a  
21 suspect has committed even a very minor criminal offense, his arrest of the suspect does not  
22 violate the Fourth Amendment. *Atwater v. City of Lago-Vista*, 532 U.S. 318 (2001).

23 After the stop in this case, defendant gave Officer Applegate a Mexican driver’s license.  
24 Officer Harland, having been advised by Officer Applegate that the name on the license did not  
25 match that provided by defendant, compared defendant’s license to the International Edition  
26 Identification Checking Guide, and it appeared to be a forged document. She relayed her  
27 conclusion to Officer Applegate. These facts support a reasonable conclusion by Officer  
28

1 Applegate that defendant had committed a criminal offense. That Officer Harland told Officer  
2 Applegate defendant's license was forged was uncontroverted at the hearing, as was her  
3 conclusion that the license was forged. The testimony also established that it was not uncommon  
4 or improper for Officer Applegate to rely on checks run by fellow officers on licenses so that he  
5 can stay with the suspect for safety reasons. Based on his reasonable belief under the  
6 circumstances that defendant possessed and presented a forged license, Officer Applegate had  
7 probable cause to arrest defendant for the felony offense of presenting a forged instrument, in  
8 violation of A.R.S. § 13-2002A3, a crime with which he did ultimately charge defendant.<sup>2/</sup>

9 The information known to Officer Applegate at the time of defendant's arrest need not  
10 be sufficient to sustain a finding that defendant is guilty beyond a reasonable doubt of any  
11 offense. Probable cause does not require evidence sufficient to convict a defendant, merely  
12 enough to warrant a reasonable belief that he is engaged in criminal activity. *See Adams v.*  
13 *Williams*, 407 U.S. 143, 149 (1972). "[S]ufficient probability, not certainty, is the touchstone  
14 of reasonableness under the Fourth Amendment . . . ." *Hill v. California*, 401 U.S. 797, 804  
15 (1971).

16 Nor does it matter whether Officer Applegate made a correct subjective determination  
17 that he had probable cause to arrest defendant. If a reasonable police officer under the  
18 circumstances would have believed there was probable cause to arrest the defendant, the arrest  
19 is valid. *See Devenpeck v. Alford*, 543 U.S. 146, 154 (2004). The circumstances here supported  
20 a reasonable conclusion there was probable cause to arrest defendant, making the arrest lawful.

21 . . .

---

22  
23 <sup>2/</sup> Defendant pointed out in cross-examination that the identification in the Guide that  
24 Officer Harland referred to had the word "Automovilista" in a red bar running across the upper  
25 third of the license, whereas defendant's identification had the word "Chofer" in a brown bar  
26 running across the upper third of the license. 4/13/07 transcript at 61-62. This fact does not  
27 undermine the lawfulness of the arrest. It is undisputed that the colored bar on defendant's  
license did not extend across the entire width of the card and that it lacked the required  
hologram. There was no evidence presented that his was some type of special license that has  
different characteristics but was valid. The discrepancies between defendant's license and that  
in the Guide only further support the officer's reasonable conclusion that defendant's license  
differed from a valid license and therefore was forged.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

...

C. Officer Applegate Had Probable Cause to Arrest Defendant for Failure to Provide Valid Proof of Identification.

Officer Applegate also had independent probable cause to arrest defendant for a second offense, failure to provide an officer with sufficient proof of his identity, a violation of A.R.S. § 28-1595. This law requires that, when stopped by an officer and upon his request, the operator of a motor vehicle must provide a valid driver’s license or proof of identity that contains the following information:

1. The driver’s full name;
2. The driver’s date of birth;
3. The driver’s residence address;
4. A brief physical description of the driver, including the driver’s sex, weight, height, and eye and hair color; and
5. The driver’s signature.

Failure to provide an officer with proof of identification meeting these criteria is a Class 2 misdemeanor. *See* A.R.S. § 28-1595.

Pursuant to A.R.S. §§ 13-3883(A)(2) and (4), an officer may arrest a suspect if the officer has probable cause to believe that the suspect has committed a misdemeanor. In this case, Officer Applegate clearly had probable cause to arrest defendant for this offense. The identification defendant presented to Officer Applegate is not sufficient proof of identification under the law for several reasons. It lacks a date of birth, residence address and any physical description. Officer Applegate’s arrest of defendant thus was lawful because there was probable cause to arrest defendant for this offense.

It is irrelevant which offense Officer Applegate actually invoked as the basis for arresting defendant. So long as the facts support a reasonable finding that there was probable cause to arrest defendant for any offense, his arrest was lawful. The United States Supreme Court has explicitly rejected the view that probable cause to arrest must be predicated upon the offense invoked by the arresting officer, or even an offense “closely related” to the offense invoked by

1 the arresting officer. In *Devenpeck*, the Court, in striking down this limitation that had  
2 previously been imposed by the Ninth Circuit, stated:

3 Our cases make it clear that an arresting officer’s state of mind (except for the facts that  
4 he knows) is irrelevant to the existence of probable cause. [citations omitted] That is to  
5 say, **his subjective reason for making the arrest need not be the criminal offense as  
6 to which the known facts provide probable cause.** As we have repeatedly explained,  
7 “the fact that the officer does not have the state of mind which is hypothecated by  
8 reasons which provide legal justification for the officer’s action does not invalidate the  
9 action taken as long as the circumstances, viewed objectively, justify that action.”

10 *Id.* 543 U.S. at 153 (emphasis added) (quoting *Whren v. United States*, 517 U.S. 806, 812-813,  
11 116 S. Ct. 1769, 1785 (1996)). See also *Jaegly v. Couch*, 439 F.3d 149, 154 (2<sup>nd</sup> Cir. 2006) ([I]t  
12 is not relevant whether probable cause existed with respect to each individual charge, or, indeed,  
13 any charge actually invoked by the arresting officer at the time of the arrest.”); *Wright v. City  
14 of Philadelphia*, 409 F.3d 595, 603-04 (3<sup>rd</sup> Cir. 2005) (“[I]t is irrelevant to the probable cause  
15 analysis what crime a suspect is eventually charged with [citations and quotations omitted],  
16 [p]robable cause need only exist as to any offense that could be charged under the  
17 circumstances.”); *United States v. Jones*, 432 F.3d 34, 41 (4<sup>th</sup> Cir. 2005) (“[T]he probable cause  
18 inquiry is not necessarily based upon the offense actually invoked by the arresting officer, but  
19 upon whether the facts known at the time of the arrest objectively provided probable cause to  
20 arrest.”) In other words, the Fourth Amendment requires only that the actions taken be  
21 reasonable, regardless of the officer’s subjective intent. *Devenpeck*, 543 U.S. at 153.

22 D. The Search of the Vehicle Was Lawful as a Search Incident to Arrest.

23 Once there was probable cause to arrest defendant (for any offense, regardless of the  
24 reason stated for the arrest), the search of the vehicle was lawful as a search incident to that  
25 arrest. *Thornton v. United States*, 541 U.S. 615 (2004). When conducting a search incident to  
26 arrest, the officer may search the suspect and his area of immediate control to ensure the absence  
27 of weapons and prevent the destruction and concealment of evidence. *Chimel v. California*, 395  
28

1 U.S. 752, 762-63 (1969). Officer Applegate’s search of the vehicle was a lawful search of the  
2 area of defendant’s immediate control.<sup>3/</sup>

3 E. The Search of the Vehicle Was Lawful Because of the Canine Alert.

4 The Fourth Amendment allows brief detention of a vehicle so that a canine sniff may be  
5 conducted so long as it is based on an articulable suspicion of criminal activity. *United States*  
6 *v. Taylor*, 934 F.2d 218, 221(9th Cir. 1991) (brief detention for canine sniff after defendant  
7 exhibited nervousness at border checkpoint was permissible). A canine sniff “is much less  
8 intrusive than a typical search.” *United States v. Place*, 462 U.S. 696, 707 (1983).

9 In this case, the sniff of the vehicle driven by defendant was not intrusive and was not  
10 designed to disclose any information other than the presence or absence of narcotics. It was a  
11 reasonably brief detention justified by Officer Applegate’s reasonable suspicion based on  
12 objective facts (his observation of the odd wiring running along the car under the carpet) that the  
13 vehicle may contain contraband. *See United States v. Mondello*, 927 F.2d 1463, 1471 (9<sup>th</sup> Cir.  
14 1991) (finding 30-minute detention pending canine sniff reasonable). Once the canine gave a  
15 positive alert, Officer Applegate had probable cause to search the vehicle. *United States v.*  
16 *Hillison*, 733 F.2d 692, 696 (9<sup>th</sup> Cir. 1984). 465, 466-67.

17 F. Defendant’s Statements Were Voluntary.

18 Under the standard articulated by the Supreme Court in *Colorado v. Connelly*, 479 U.S.  
19 157 (1986), there must be improper coercion by the government for the Court to find that  
20 defendant’s statements were not voluntarily given. There is no basis whatsoever for finding  
21 improper coercion was used to obtain defendant’s incriminating statements in this case. The

---

22  
23 <sup>3/</sup> If the Court considers the government’s offer of proof on the passenger’s license or  
24 permits presentation of this additional evidence, as the government has requested, this evidence  
25 establishes that the search of the vehicle also was lawful as a search incident to the arrest of the  
26 passenger. There was probable cause to arrest Gaxiola for presenting a forged document, as the  
27 license he presented suffered from the same deficiencies as defendant’s license. When an officer  
28 lawfully arrests any occupant of an automobile, he may search the entire passenger compartment  
and examine the contents of any open or closed containers found therein. *New York v. Belton*,  
453 U.S. 454, 460-61 (1981). This search includes every part of the vehicle and its contents,  
regardless of ownership. *Wyoming v. Houghton*, 526 U.S. 295, 302 (1999).

1 uncontroverted evidence is that defendant, without the use of physical force or other coercion,  
2 agreed to make statements to Officers Roestenberg and Marrero and did so. Accordingly,  
3 defendant's statements should not be suppressed.

4 III. CONCLUSION

5 Defendant's Fourth Amendment rights were not violated. The undisputed fact that  
6 defendant swerved off the road gave rise to a reasonable suspicion that a traffic violation had  
7 occurred, which justified stopping defendant's vehicle. Once defendant presented his  
8 identification, there were reasonable grounds to conclude both that it was forged and that it was  
9 an invalid identification under Arizona law. Both of these reasons gave Officer Applegate  
10 probable cause to arrest defendant, which justified the search of the vehicle. The search also was  
11 justified by the canine sniff that took place within 40 minutes of the initial stop and gave Officer  
12 Applegate independent probable cause to search the vehicle. Defendant's statements should  
13 not be suppressed because they were voluntarily made and not the product of any unlawful  
14 police action.

15 For all of these reasons, the United States asks that the defendant's Motion to Suppress  
16 be denied.

17 Respectfully submitted this 20th day of April, 2007.

18 DANIEL G. KNAUSS  
19 United States Attorney  
District of Arizona

20 S/Mary Beth Pfister  
21 MARY BETH PFISTER  
22 Assistant U.S. Attorney

23  
24  
25  
26  
27  
28

1 I hereby certify that on April 20, 2007,  
2 I electronically transmitted the attached document  
3 to the Clerk's Office using the CM/ECF System  
4 for filing and transmittal of a Notice of Electronic  
5 Filing to the following CM/ECF registrants:

6 Charles Thomas  
7 Attorney for Defendant

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 By: s/Raquel Lopez