

IN THE SUPREME COURT

STATE OF ARIZONA

STATE OF ARIZONA,)	Arizona Supreme Court
)	No. CR-15-0222-PR
Appellee,)	
)	Arizona Court of Appeals
v.)	No. 2 CA-CR 2014-0169
)	Department B
FRANCISCO L. ENCINAS)	
VALENZUELA,)	Cochise County Superior Court
)	No. CR2013-00076
Appellant.)	
_____)	

**BRIEF OF *AMICUS CURIAE* ARIZONA ATTORNEYS
FOR CRIMINAL JUSTICE IN SUPPORT OF PETITIONER**

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TABLE OF CONTENTS

PAGES

TABLE OF CASES AND AUTHORITIES ii

INTRODUCTION 1

INTERESTS OF *AMICUS CURIAE* 2

ARGUMENTS

I. THE VALIDITY OF A SEARCH OF A PERSON'S BLOOD OR BREATH IS GOVERNED BY THE FOURTH AMENDMENT 3

 A. Standards governing Fourth Amendment searches 3

 B. A claim of lawful authority requiring an arrestee to perform a blood or breath test is not authorized by Arizona law, and prohibited by the Fourth Amendment 6

 C. Acquiescence to a claim of lawful authority makes subsequent “consent” involuntary 7

 D. Claim of lawful authority in DUI Cases 9

II. THE COA MAJORITY’S REASONING IN SUPPORT OF THE ADMONITION’S VALIDITY WAS UNSOUND 10

 A. Failure to address the fundamental issue 10

 B. The majority’s reliance on *Neville* is misplaced 11

 C. Majority’s erroneous interpretation of extrajurisdictional cases 12

 D. Majority’s novel legal theories must be rejected 13

CONCLUSION 16

ADOT ADMONITION FORM SIGNED BY VALENZUELA Appendix

TABLE OF CASES AND AUTHORITIES

CASES	PAGES
<i>Amos v. United States</i> , 255 U.S. 313 (1921).....	8
<i>Bumper v. North Carolina</i> , 391 U.S. 543 (1968)	7-8, 13, 15
<i>Calnimpewa v. Flagstaff Police Dept.</i> , 200 Ariz. 567 (App. 2001).....	14
<i>Campbell v. Superior Court</i> , 106 Ariz. 542 (1971).....	13, 15
<i>Carrillo v. Houser</i> , 224 Ariz. 463 (2010).....	5, 13-15
<i>Cochran v. State</i> , 771 N.E.2d 104 (Ind.App. 2002)	10
<i>Commonwealth v. Krisco Corp.</i> , 653 N.E.2d 579 (Mass. 1995).....	8
<i>Cooper v. State</i> , 587 S.E.2d 605 (Ga. 2003).....	9, 12
<i>Hannoy v. State</i> , 789 N.E.2d 977 (Ind.App. 2003).....	9, 12
<i>Kunzler v. Superior Court</i> , 154 Ariz. 568 (1987).....	13
<i>McCoy v. N.D. Dept. of Transp.</i> , 848 N.W.2d 659 (N.D. 2014).....	12-13
<i>Missouri v. McNeely</i> , 133 S. Ct. 1552 (2013).....	13
<i>Orhorhaghe v. I.N.S.</i> , 38 F.3d 488 (9th Cir. 1994).....	7-8
<i>People v. Harris</i> , 184 Cal.Rptr.3d 198 (App. 2015).....	12-13
<i>People v. Pace</i> , 101 A.D.2d 336, 475 N.Y.S.2d 443 (1984).....	8-9
<i>Schmerber v. California</i> , 384 U.S. 757 (1966).....	3
<i>Schneckloth v. Bustamonte</i> , 412 U.S. 218 (1973).....	7-8
<i>Skinner v. Railway Labor Executives Assn.</i> , 489 U.S. 602 (1989).....	3-4

South Dakota v. Neville, 459 U.S. 553 (1983).....11

State v. Brito, 183 Ariz. 535 (App. 1995).....15

State v. Brooks, 838 N.W.2d 563 (Minn. 2013) 12-13

State v. Butler, 231 Ariz. 42 (App. 2012).....14

State v. Butler, 232 Ariz. 84 (2013)..... 1, 5, 12-14

State v. Casal, 410 S.2d 152 (Fla. 1982)8

State v. Edgar, 294 P.3d 251 (Kan. 2013)9, 12

State v. Fierro, 853 N.W.2d 235 (2014).....10, 12

State v. Groshong, 175 Ariz. 67 (App. 1993).....6

State v. Oliver, [2 CA-CR 2014-0359](#) (Memo.Dec., August 18, 2015), CR-15-02782, 15

State v. Palenkas, 188 Ariz. 201 (App. 1996)4

State v. Quinn, 218 Ariz. 66 (App. 2008)..... 5-6

State v. Stevens, 228 Ariz. 411 (App. 2012).....4

State ex rel. Verburg v. Jones, 211 Ariz. 413 (App. 2005)4

United States v. Johnson, 994 F.2d 740 (10th Cir. 1993).....8

United States v. Prescott, 581 F.2d 343 (9th Cir. 1978).....4

ARIZONA REVISED STATUTES

A.R.S. §28-673.....5

A.R.S. §28-1321.....passim

ARIZONA RULES OF THE SUPERME COURT

Rule 111(c).....2

UNITED STATES CONSTITUTION

Fourth Amendmentpassim

Fifth Amendment11

OTHER AUTHORITIES

Webster’s Collegiate Dictionary, Tenth Edition6

INTRODUCTION

In *State v. Butler*, 232 Ariz. 84 (2013), this Court held that the implied consent statute does not abrogate the Fourth Amendment and that consent must be voluntary. Despite this clear precedent, the Court of Appeals (COA) held in this case that an arrestee's acquiescence to an officer's claim of lawful authority to conduct a warrantless search constitutes valid consent. This is contrary to every United States Supreme Court decision and *Butler*.

The admonition read to Valenzuela, and used throughout Arizona, informs arrestees accused of DUI that "Arizona law *requires the arrestee* to submit to a warrantless search of his or her breath or blood." This is not authorized by Arizona's Implied Consent law, A.R.S. §28-1321. More importantly, it violates the Fourth Amendment. The COA upheld the admonition's validity by misinterpreting case law and legal principles, using unsupported legal theories, and relying on cases with rejected legal reasoning.

The COA claimed that the record was inadequate to decide the issue presented, but issued a published opinion nevertheless. The missing admonition was easily obtainable, but the COA refused to expand the record. The Attorney General never questioned the authenticity of the cited admonition. *Response* p.12, n.5. The claim of inadequate record is unsustainable, particularly since, in a more recent case involving the identical issue, the COA held that the admonition

included in the record did not change the analysis or outcome from *Valenzuela*. *State v. Oliver*, [2 CA-CR 2014-0359](#) (Memo.Dec., August 18, 2015), CR-15-0278.¹

Amicus curiae Arizona Attorneys for Criminal Justice (AACJ) submits this brief because of its concern that the rights of thousands of persons accused of DUI are being violated by use of this improper admonition. The COA's majority opinion sanctions widespread violation of Arizona citizens' Fourth Amendment rights. Judge Eckerstrom's dissent correctly recognized that these warrantless searches cannot be justified by consent of an individual who is told he cannot refuse. Action by this Court is needed to reaffirm the principle that there is no "DUI exception to the Fourth Amendment."

INTERESTS OF *AMICUS CURIAE*

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of

¹ Cited pursuant to Ariz.R.Sup.Ct. 111(c)(2)-(3).

criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ offers this brief in support of Petitioner because the issues presented are critical to the right of those accused of DUI to be free of police coercion. Courts throughout the country, including this Court, are recognizing that the Fourth Amendment has for too long been ignored in DUI cases. AACJ asks this Court to give effect to the Fourth Amendment for motorists who receive the admin per se advisory from police and from whom police demand "consent" to take a sample of their blood or breath.

ARGUMENTS

I. THE VALIDITY OF A SEARCH OF A PERSON'S BLOOD OR BREATH IS GOVERNED BY THE FOURTH AMENDMENT.

The argument presented is straightforward and simple: an invalid claim of lawful authority to conduct a warrantless search makes subsequent consent involuntary. The COA, however, embarked upon a confusing mixture of inapplicable case law and novel legal theories to justify its erroneous holding.

A. Standards governing Fourth Amendment searches

Drawing blood and obtaining breath samples are searches under the Fourth

Amendment. *Schmerber v. California*, 384 U.S. 757 (1966); *Skinner v. Railway Labor Executives Assn.*, 489 U.S. 602 (1989). Blood or breath tests must be in compliance with the procedures prescribed by the Fourth Amendment. *Skinner*, 489 U.S. at 619. A warrantless search is per se unreasonable and is only justified if it falls under specifically established exceptions. *Id.* Citizens have a constitutional right to refuse warrantless searches. *State ex rel. Verburg v. Jones*, 211 Ariz. 413 (App. 2005); *State v. Palenkas*, 188 Ariz. 201 (App. 1996); *State v. Stevens*, 228 Ariz. 411 (App. 2012); *United States v. Prescott*, 581 F.2d 343 (9th Cir. 1978). In order to justify a consensual, warrantless search, the State must prove *voluntary* consent.

The Fourth Amendment is neither abrogated nor superseded by Arizona's implied consent statute, A.R.S. §28-1321. The validity of searches for blood or breath is governed solely by the Fourth Amendment. In *State v. Quinn*, 218 Ariz. 66 (App. 2008), the COA rejected the state's argument that A.R.S. §28-673 (implied consent statute pertaining to those involved in traffic accidents) could thwart the Fourth Amendment's probable cause requirement in a criminal case. "On its face, the statute authorizes a warrantless blood draw in the context of a civil license suspension.... No other use of the test is explicitly authorized by the statute." *Id.* ¶14. Similarly, the "implied consent" contained in §28-1321(A) is only applicable to an administrative license suspension.

This Court has confirmed the recognition that implied consent could not trump the Fourth Amendment:

Neither the implied consent law nor decisions by this Court have ever suggested the “consent” referenced in subsection (A) authorizes warrantless searches of all persons arrested for driving under the influence.

Carrillo v. Houser, 224 Ariz. 463, ¶18 (2010). In *Butler*, this Court again rejected the argument that the language of subsection A of the statute constitutes an exception to the warrant requirement: “We hold now that independent of A.R.S. §28-1321, the Fourth Amendment requires an arrestee’s consent be voluntary to justify a blood draw.” *Butler*, 232 Ariz. 84, ¶18.

By its very language, §28-1321 was never meant to supplant, limit, or expand the exceptions to the Fourth Amendment’s warrant requirement. *Quinn; Carrillo; Butler*. Subsection B requires that the officer “request” the person submit to a test. “After an arrest, a violator *shall be requested to submit to* and successfully complete any test or tests prescribed by subsection A of this section...” (emphasis added). After a refusal, the statute requires that an arrestee be informed of the sanctions for refusal. This procedure was upheld in *Carrillo*: “Notwithstanding Subsection (A), Subsection (B) *requires* that the law enforcement officer ‘*shall request*’ the arrestee to take a test....” 224 Ariz. 463, ¶10 (emphasis added). The statute thus requires “a request” and a voluntary consent. It suffers no constitutional infirmities.

B. A claim of lawful authority requiring an arrestee to perform a blood or breath test is not authorized by Arizona law, and prohibited by the Fourth Amendment.

The admonition read to Valenzuela is identical to the admonition read to all Arizona DUI arrestees. ADOT form 40-5807, *Appendix*. Arrestees are told that Arizona Law *requires* them to submit. On four separate occasions, arrestees are told they are “required” to submit. Arrestees hesitant to give consent are informed that they are *not entitled to delay for any reason*.

The language of the admonition obtains “submission,” not consent. The word “require” is defined in Webster’s Collegiate Dictionary, Tenth Edition, as “to claim or ask by right and authority.” *Id.* By adding the word “submit” (“to yield to governance or authority,” *id.*), it is clear that the admonition is a demand based upon claim of authority. A person confronted with the current admonition could only conclude he or she had no right to refuse.

State v. Groshong, 175 Ariz. 67, 852 P.2d 1251 (App. 1993), provides a template for voluntary consent in a DUI case. The consent was voluntary because “[t]he officer stated that he did not threaten Groshong or tell him there would be any consequences if he refused and that it was entirely up to him whether to provide the sample.” *Id.* at 69, 852 P.2d at 1253. *Groshong*’s finding of voluntariness was based upon facts demonstrating a non-coercive request and an

explanation of the arrestee's right to refuse. The admonition read here is the mirror opposite; Valenzuela, like all other DUI arrestees in Arizona, was told he was required to submit.

C. Acquiescence to a claim of lawful authority makes subsequent “consent” involuntary.

Consent based upon an arresting officer's claim of authority to conduct a warrantless search is not voluntary:

When a law enforcement officer claims authority to search a home under a warrant he announces in effect that the occupant has no right to resist the search. The situation is implicit with coercion, albeit colorably lawful coercion. *Where there is coercion, there cannot be consent.*

Bumper v. North Carolina, 391 U.S. 543, 550 (1968) (emphasis added). *See also Orhorhaghe v. I.N.S.*, 38 F.3d 488, 500 (9th Cir. 1994) (“It is well-established that there can be no effective consent to a search or seizure if that consent follows a law enforcement officer's assertion of an independent right to engage in such conduct.”).

This standard is absolute. In *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), the Court held that generally a determination of voluntariness is based upon a totality of the circumstances. In cases involving a claim of lawful authority, however, no further inquiry is required. This standard has never been revoked. Dissenting in *Bumper*, Justice Black argued that voluntariness was demonstrated

within the testimony of the person whose “consent” was the basis for the police search. 391 U.S. at 555-57 (Black, J., dissenting). The *Bumper* Court rejected Justice Black’s entreaty to examine and weigh the factual circumstances in determining voluntariness. *Schneckloth* acknowledged *Bumper*’s continued validity. A claim of lawful authority is coercion resulting in a finding of involuntariness of consent; no balancing test is required.

Courts have uniformly held as such. In *Bumper*, the Court found the officer’s claim of a valid warrant rendered the subsequent consent invalid. In *Orhorhaghe*, agents asserted they did not need a warrant. In *Amos v. United States*, 255 U.S. 313 (1921), the Court held consent involuntary after agents stated, “we have come to search the premises.”

An officer’s use of a duty to submit to an administrative search as a subterfuge to gain evidence for a criminal investigation has been universally condemned. *Commonwealth v. Krisco Corp.*, 653 N.E.2d 579 (Mass. 1995) (invalid consent where the state conducted a search of a business for criminal wrongdoing by announcing that agents were on the premises for an administrative inspection); *State v. Casal*, 410 S.2d 152 (Fla. 1982) (finding consent involuntary where officers boarded a boat for a “registration and certificate inspection,” informing the owner that no warrant was needed because they were not conducting a search, but the real purpose was to investigate criminal violations); *United States*

v. Johnson, 994 F.2d 740 (10th Cir. 1993) (consent to search taxidermy shop for criminal violations obtained by federal agents by showing employee state statute requiring consent to administrative inspections made subsequent consent involuntary.); *People v. Pace*, 101 A.D.2d 336, 475 N.Y.S.2d 443 (1984) (statute authorizing warrantless administrative searches of junkyards cannot be used to justify police search in criminal investigation). Similarly, the State of Arizona cannot use a purported administrative duty under §28-1321(A) to obtain consent for a search as part of a criminal DUI investigation.

D. Claim of lawful authority in DUI cases.

State courts have addressed the validity of consent given after a claim of lawful authority in DUI cases. In *Hannoy v. Indiana*, 789 N.E. 2d 977, 988 (Ind.App. 2003), the court held that the officer's statement that "It's my duty to check your blood for blood alcohol" clearly implied that the blood draw was mandatory. This claim of authority by the officer rendered the subsequent consent involuntary.²

² The admonition approved by Indiana's courts, based upon an implied consent statute remarkably similar to Arizona's, reads: "I must give you the opportunity to submit to a chemical test." *Cochran v. State*, 771 N.E.2d 104 (Ind.App. 2002).

The Georgia Supreme Court in *Cooper v. State*, 587 S.E.2d 605 (Ga. 2003), held that informing the accused that the law required the arrestee to submit to the blood draw invalidated subsequent consent. Similarly, in *State v. Edgar*, 294 P.3d 251, 262 (Kan. 2013), the Kansas Supreme Court held that informing the arrestee you “do not have a right to refuse” a breath test made the subsequent consent involuntary, especially in light of the state statute requiring an officer to “request” a sample. In *State v. Fierro*, 853 N.W.2d 235 (S.D. 2014), the South Dakota Supreme Court also held that consent obtained after telling an arrestee she was required by law to give blood sample was invalid. Thus, there is a clear nationwide trend applying the Fourth Amendment to abuses by law enforcement of local implied consent statutes.

II. THE COA MAJORITY’S REASONING IN SUPPORT OF THE ADMONITION’S VALIDITY WAS UNSOUND.

The COA majority supports its position by misreading and misinterpreting case law. It cites cases whose legal reasoning has been rejected by this Court. It creates novel legal theories without legal precedent. It intermixes the issues of constitutionality of the implied consent statute and the unconstitutionality of the admonition.

A. Failure to address the fundamental issue

The majority never answered the basic question serving as the foundation for resolution of the issue. Does Arizona law require a person to submit to a warrantless search? The correct answer is “no.” From this finding, the legal consequences flowing from the admonition’s improper use can then be determined. Instead, the majority undertook a disjointed discussion which seemed to affirm the validity of this admonition. Because the majority ignored this fundamental issue, it erroneously relied on cases that answer the question above in the affirmative.

B. The majority’s reliance on *Neville* is misplaced

The majority finds solace in *South Dakota v. Neville*, 459 U.S. 553 (1983), reasoning that the Court’s finding that an officer’s reading of an implied consent admonition did not coerce Neville forecloses such finding in this case. *Neville* involved the validity of introducing a “refusal” into evidence; it was not concerned with validity of consent. The only similarity between *Neville* and this case is the conviction for DUI.

Neville claimed that introduction at trial of a coerced refusal violated the *Fifth Amendment*, and the Court found that since a “refusal” was non-testimonial, the Fifth Amendment was not implicated. *Valenzuela* is different; it involves a *Fourth Amendment* issue—validity of consent to a warrantless search. Additionally, *Neville* involved a refusal, not coerced consent. Most importantly,

there was no issue of coercion in *Neville*. The admonition read to the arrestee was, “I have arrested you for driving....I request you submit to a chemical test.... You have a right to refuse to submit to such test...” *Id.* at 555 n.2. Unlike *Neville*, the admonition in this case is coercive and directly implicates the Fourth Amendment.

C. Majority’s erroneous interpretation of extrajurisdictional cases

The majority acknowledged AACJ’s citation to *Cooper*, *Hannoy*, and *Edgar* (but not *Fierro*), but then stated that “in each of those cases, however, it was the officer’s misstatement of the law, rather than the correct use of the state’s implied consent statute, that resulted in coercion.” *Opinion* at 8 n.9. The majority also noted that several other cases cited by AACJ “involve law enforcement officers who implied or stated that a person had no choice but to consent to a search or that no warrant was necessary.” *Opinion* at 7-8 n.8. While the majority claims these cases are distinguishable, the average reasonable person hearing the words “Arizona law requires you to submit” would conclude he had no other legal option. Even in light of *Butler*, at oral argument the State argued that implied consent means no further consent is required.

The majority finds the above authorities inapplicable based on its assertion that the admonition merely advised Valenzuela of “the choice between two civil penalties.” *Opinion* at 8. The admonitions given in the above cases are

indistinguishable from that in the ADOT form read to all Arizona DUI arrestees.

Instead, the majority relies heavily on *People v. Harris*, 184 Cal.Rptr.3d 198 (App. 2015), *State v. Brooks*, 838 N.W.2d 563 (Minn. 2013), and *McCoy v. N.D. Department of Transportation*, 848 N.W.2d 659 (N.D. 2014). *Opinion* at 8. First, all three decisions state, contra to this Court, that statutory implied consent authorizes warrantless searches. But two of these cases actually *subvert* the majority's holding. *Brooks* involved an arrestee advised of his right to refuse (and the consequences of that choice) by the officer *and* an attorney prior to his giving consent. 838 N.W.2d at 571-72. *McCoy* is not a criminal case, and the Fourth Amendment is inapplicable in administrative settings. *See Campbell v. Superior Court*, 106 Ariz. 542, 554 (1971). Only *Harris* arguably supports the majority's reasoning. Its holding, however, dealt only with coercion created by informing arrestees of administrative penalties. Its reasoning that implied consent is a Fourth Amendment exception has been specifically rejected by this Court in *Carrillo* and *Butler*. 184 Cal.Rptr.3d at 204, 212.

D. Majority's novel legal theories must be rejected

The majority embarked upon unsupported novel legal theories that misconstrue the law. The majority posits that *Missouri v. McNeely*, 133 S. Ct. 1552 (2013), rejects *Bumper's per se* preclusion rule and substitutes a totality of

circumstances analysis. *Opinion* at 13. As *McNeely* was an exigent circumstances case and had nothing to do with consent, it cannot be read as providing a “test” for voluntariness. The comment that the principle (totality of circumstances) is the same is bereft of any legal authority. *Opinion* at 16 n.13. In *Response* p.5, the State argues that *McNeely* holds that statutory implied consent is sufficient to meet the consent exception to the Fourth Amendment—an argument specifically rejected in *Carrillo* and *Butler*.

The majority then relies upon *Butler*’s failure to find that the same admonition read to the arrestee was constitutionally infirm. As Judge Eckerstrom points out, this reasoning is similarly misplaced. In *Butler* there was no challenge to the admonition, and hence no finding of validity. A case cannot be used as precedent for an issue that was neither raised nor ruled upon. *Calnimpewa v. Flagstaff Police Dept.*, 200 Ariz. 567 (App. 2001).

The majority then reasons that if constitutional problems existed over the admonition’s extended use, it would be reasonable for courts to “signal anticipation” of an expected change.³ This argument is equally unconvincing. The COA had only recently ruled in *State v. Butler*, 231 Ariz 42, n.6 (App. 2012), that “the informed [sic] consent statute presents no Fourth Amendment issue,” before

³ The majority notes the admonition in *Butler* “presumably contained the same ‘requirement’ language,” *Opinion* at 14, while maintaining its statement that the record in this case is “incomplete.”

being overruled by this Court. As Judge Eckerstrom notes, lower courts have misinterpreted the statutory right to refuse for years. This misconception was corrected in *Carrillo* and *Butler*. There has been no “change” in the right to refuse warrantless searches. As *Carrillo* specifically states, neither statute nor the Supreme Court has ever authorized warrantless searches as a separate “DUI exception” to the Fourth Amendment.⁴

The majority further holds, unsupported by any authority, that an arrestee, after being told he has no right to refuse, should know that §28-1321(A) gives that right. Judge Eckerstrom points out that this statement would, if accepted, lead to violence caused by citizens rejecting officers’ claims of authority. Consent could never be deemed involuntary based upon an erroneous claim of authority and a person could never be misled by an officer’s misstatement of the law because that person would presumably know that the officer’s assertion is not true. Ironically, this posture contradicts the majority’s reason for rejection of cases cited by AACJ; because these cases were based upon “the “officer’s misstatement of the law.” *Opinion* at 8-9. *Bumper* and its progeny soundly reject the majority’s reasoning.

⁴ Inexplicably, in *Oliver* ¶24, the COA resurrects this erroneous concept by relying on *State v. Brito*, 183 Ariz. 535 (App. 1995) (power, but no right to refuse), and *Campbell*, which was not a criminal case.

CONCLUSION

The admonition given in this case is not authorized by §28-1321. Telling a person the law requires submission directly conflicts with the person's Fourth Amendment right to refuse, rendering any consent involuntary. Accordingly, this Court should reverse.

DATED: (electronically filed) September 25, 2015.

ARIZONA ATTORNEYS FOR
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Appendix A

ADOT Form 40-5807

SEP 17 2012



Motor Vehicle Division

Mail Drop 533M
Motor Vehicle Division
PO Box 2100
Phoenix AZ 85001-2100

ADMIN PER SE/IMPLIED CONSENT AFFIDAVIT

LE or DR Case Number 2012-038039

Complaint Numbers Issued 2207

SEP 14 2012

Charges: ARS 28-1381 28-1382 28-1383 4-244.34 13-1201 Yes No While transporting hazardous material? (ARS 28-1011)
 13-1204 Other Title 13, Chapter 11 charge: _____ Yes No While operating a commercial motor vehicle?

Driver Name (first, middle, last, suffix) <u>Francisco Encinas</u>	Date of Birth <u>05/29/1980</u>	Driver License Number <u>DOB491146</u>	Class <u>AL</u>	State <u>AZ</u>
Address <u>17151 S Sierra Bluff Trl</u>	City <u>Vail</u>	State <u>AZ</u>	Zip <u>856412</u>	

On (date) 8/23/12 at (time) 1455 at (location) SR 80 mp 298

I had probable cause to believe that the person named caused or was cited for an accident resulting in death or serious physical injury while driving a motor vehicle. (State the probable cause on the lines below.)

I had reasonable grounds to believe that the person named was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor and/or drugs, and I placed the named person under arrest therefor.

Among the facts leading to that belief were: Subject had driven off highway - Passed out w/ keys in drive, rumbling strong odor alcoholic beverage, open container center console beer 3/4 gone

The admonitions on the back of the original copy were read to the person. Officer Initials: as

The admonitions were not read because the person was either unconscious or incapable of refusal.

The person submitted to breath blood tests
Test results: Indicated alcohol concentration of: .223 .241 Indicated positive for _____ (drug) Results not available

The person refused to take or did not complete the tests in the following manner: _____

Yes No Did the person cause serious physical injury or death as defined in ARS 13-105 during this incident?

OFFICER CERTIFICATION I certify that the above is true and correct. I request that any hearing be held in Cochise County.

Law Enforcement Officer Name <u>C. Garraway</u>	Badge Number <u>5452</u>	Law Enforcement Officer Signature <u>[Signature]</u>
Law Enforcement Officer Agency <u>AZ DPS</u>	ORI Number <u>0799</u>	Law Enforcement Officer Station <u>Sierra Vista</u>
Agency Address <u>2539 E Tauma</u>	City <u>Sierra Vista</u>	State <u>AZ</u>
Test Operator Name <u>C. Garraway</u>	Badge Number <u>5452</u>	Test Operator Signature <u>[Signature]</u>
		Zip <u>85635</u>

SURRENDER OF ARIZONA DRIVER LICENSE

Pursuant to ARS 28-1321 and 28-1385, the law enforcement officer must require the surrender of all Arizona driver licenses or permits in the person's possession. If no license or permit is attached, state reason: Lost Destroyed Nonresident Other: Suspended

ORDER OF SUSPENSION One box must be checked. Date Served: 8/23/12 Time Served: 1655 Please see reverse side to request a Summary Review or Hearing.

Pursuant to ARS 28-1321, your Arizona driving privilege is suspended effective 15 days from Date Served. The suspension is for 12 months, or 2 years if there is a prior implied consent refusal, within the last 84 months, on your record. This order is final unless a hearing is requested online or in writing and received within 15 days from Date Served. This action is a result of your failure to successfully complete or refusal to submit to tests to determine alcohol concentration or drug content. This suspension will not end until all reinstatement requirements are met including completion of alcohol or drug screening.

Pursuant to ARS 28-1385, your Arizona driving privilege is suspended for not less than 90 consecutive days effective 15 days from Date Served. If a review of your driver record indicates that you have completed alcohol or drug screening and are eligible for a 60-day restricted driving permit, one will automatically be mailed to your address of record within 45 days from Date Served. This order is final unless a summary review or hearing is requested online or in writing and received within 15 days from Date Served. This suspension is a result of tests to which you submitted. This suspension will not end until all reinstatement requirements are met including completion of alcohol or drug screening.

TEMPORARY DRIVER PERMIT - This entire form will serve as a temporary driver permit that will expire 15 days from the Date Served. However, if you request a summary review or hearing, then this permit will remain valid until the summary review or hearing decision has been made. If your Arizona driver license/permit is currently suspended or revoked, this permit does not authorize you to operate a motor vehicle.

Sex <u>M</u>	Weight <u>180</u>	Height <u>5-8</u>	Eyes <u>Bru</u>	Hair <u>Blk</u>	Class <u>---</u>	Restrictions <u>---</u>
Permit Not Issued Because <u>Subjects Suspended License</u>					Licensee Signature <u>[Signature]</u>	

Original - Motor Vehicle Division Pink and Yellow - Licensee Blue - Law Enforcement Agency

LE or DR Case Number
2012-086035

ADMONITIONS

For the reasons stated on the front of this form, I read the following to the person named on the front:

- Arizona law requires you to submit to and successfully complete tests of breath, blood or other bodily substance as chosen by the law enforcement officer to determine alcohol concentration or drug content. The law enforcement officer may require you to submit to two or more tests. You are required to successfully complete each of the tests.
- If the test results are not available or indicate your alcohol concentration is 0.08 or above (0.04 or above in a commercial vehicle) or indicate any drug defined in ARS 13-3401 or its metabolite, without a valid prescription, your Arizona driving privilege will be suspended for not less than 90 consecutive days.
- If you refuse to submit or do not successfully complete the specified tests, your Arizona driving privilege will be suspended for 12 months, or for two years if there is a prior implied consent refusal, within the last 84 months, on your record. You are, therefore, required to submit to the specified tests.

Yes No Will you submit to the specified tests?

If person unreasonably delays the completion of test, read the following to him or her:
You are not entitled to further delay taking the tests for any reason. Further delay will be considered refusal to submit to the tests.

Yes No Will you submit to the specified tests?

Additional Comments

Officer Signature
[Signature]



Motor
Vehicle
Division

62-8405 R04/07 www.azdot.gov

CERTIFICATE OF AUTHENTICATION

The duly appointed Division Director, Arizona Department of Transportation, Motor Vehicle Division, certifies that the signature on the accompanying document(s) is that of the Custodian of Records related to the issuance of Arizona titles and driver licenses for the Motor Vehicle Division, Arizona Department of Transportation, and is incumbent in the office and the signature is genuine.



A handwritten signature in cursive script, reading 'Gary K. Stanton'.

DIVISION DIRECTOR
Motor Vehicle Division
Arizona Department of Transportation

Date: October 19, 2012