

1 LAWRENCE S. KOPLOW, No. 019853

2 **KOPLOW & PATANE**

3 Telephone: (480) 222-3444

4 Facsimile: (480) 222-3445

5 Attorney for Defendant

6
7 **IN THE [REDACTED] COURT**
8 **IN AND FOR THE STATE OF ARIZONA**

9
10 STATE OF ARIZONA,

11 Plaintiff,

12 vs.

13 [REDACTED],

14 Defendant

Docket No. : 2007 [REDACTED]

MOTION TO SUPPRESS
(Oral Argument & Evidentiary Hearing
Requested)

15
16
17 Defendant, by and through undersigned counsel, hereby requests that this court
18 suppress any evidence obtained against the Defendant after his arrest. The basis of
19 this motion is that the officer had no probable cause to arrest the Defendant. This
20 motion is supported by the following memorandum of points and authorities.

21 Submitted [REDACTED], 2007

22
23 [REDACTED]
24 Lawrence S. Koplow
25 Attorney for Defendant
26

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3
4 **I. FACTUAL BACKGROUND¹**

5 The factual basis for this motion under Arizona Rules of Criminal Procedure,
6 Rule 35.1 is as follows: on [REDACTED], Defendant [REDACTED] was
7 driving North on [REDACTED] from the US 60 freeway in Mesa, and was stopped by Officer
8 [REDACTED], for speeding. There were no other traffic citations.

9 Officer [REDACTED] began a DUI investigation on Defendant after noting dilated
10 pupils. Officer [REDACTED] conducted a one leg stand test, in which the officer only noted
11 the clue of Defendant swaying while balancing. No clues were detected on the HGN
12 test. The officer performed the 30 second internal clock test, and stated that
13 Defendant's estimation of the 30 second time was 20 seconds.

14 Defendant was subsequently placed under arrest without a warrant.

15 **II. LEGAL ARGUMENT**

16
17 **A. Officer [REDACTED] did not have Probable Cause to Arrest [REDACTED]
[REDACTED] for DUI**

18
19 Arizona law provides an officer may, without a warrant, arrest a person only if: (1)
20 he has probable cause to believe a misdemeanor has been committed in his presence
21 and (2) probable cause to believe the person arrested committed the offense. See
22 A.R.S. 13-3883.

23 Probable cause is defined as "such a state of facts as would lead a man of
24 ordinary caution or prudence to believe and consciously entertain a **strong** suspicion of

25
26 ¹ All information contained herein has been gathered through review of police reports, state's disclosure,
and witness statements. [REDACTED] makes no admission as to any elements of the charges.

1 guilt.” *State v. Emery*, 131 Ariz. 493, 642 P.2d 838 (1982). When the constitutional
2 validity of an arrest is challenged, the court must decide if the facts available to the
3 officer at the moment of arrest “warrant a man of reasonable caution in the belief” that
4 an offense has been committed. *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280,
5 69 L.Ed. 543 (1925).

6 A warrantless search is presumptively unreasonable under the 4th amendment
7 “subject to only a few specifically established, jealously and carefully drawn exceptions.”
8 *State v. Fisher*, 141 Ariz. 227, 686 P.2d 750 (1980); *Jones v. United States*, 357 U.S.
9 493, 78 S.Ct. 1253. The same presumption has been attributed to Article 2 §8 of the
10 Arizona Constitution. *State v. DeWitt*, 184 Ariz. 464, 910 P.2d 9 (1996). A warrantless
11 investigative detention is only lawful if the officer is “able to point to specific and
12 articulable facts which, taken together with rational inferences from those facts,
13 reasonably warrant...[the officer’s] intrusion” upon the person’s 4th Amendment rights.
14 *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

15 Here, Officer ██████ did not have probable cause leading to a strong suspicion
16 that ██████ was under the influence of drugs or alcohol. Prior to arrest there
17 was totally insufficient evidence to make a probable cause determination. Specifically,
18 ██████ **did not fail** any of the standardized field sobriety tests (i.e. HGN, Walk
19 & Turn, One Leg Stand.) As matter of record, ██████ did not exhibit any clues
20 on the Horizontal Gaze Nystagmus test. Officer ██████ performed the one leg stand
21 test, and only noted one clue. Furthermore, the Defendant had an injured left ankle
22 which he noted to the officer at the time of this test.

23 On the contrary, according to Officer ██████, prior to arrest, ██████
24 demonstrated a lack of impairment. Prior to arrest, the officer observed that ██████
25 ██████ (1) had a normal gait walking; (2) had appropriate dexterity while walking;
26 (3) had no deficiencies in his fine motor skills when providing documents; and (4) had

1 no smell or alcohol of drugs. In addition, there was no admission to drug or alcohol use
2 by [REDACTED] prior to arrest.

3 In sum, there was insufficient probable cause to arrest [REDACTED] for
4 driving under the influence of alcohol or drugs.

5 **B. Because there was No Probable Cause to Arrest [REDACTED],**
6 **All Evidence Obtained Must be Suppressed.**

7 It is the Defendant's position that a court would not have issued a warrant for
8 arrest had the police requested one, so probable cause did not exist, and evidence
9 obtained thereafter violates the "fruit of the poisonous tree doctrine" laid out in *Wong*
10 *Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441. Moreover, a
11 Defendant who establishes that evidence was seized pursuant to a warrantless search
12 has satisfied the burden of going forward on a motion to suppress. *Rodriguez v.*
13 *Arellano*, No.1 CASA 99-0051, (Ariz. App. 1, 1999), 979 P.2d 539.

14 For these reasons, the Defendant requests this court to suppress all evidence
15 obtained after the arrest.

16 Submitted this [REDACTED], 2007

17
18
19 [REDACTED]
20 Attorney for Defendant

21 Copy of the foregoing filed:
22 this [REDACTED] 2007, with:

23 [REDACTED]
24 Clerk of the [REDACTED]
25 [REDACTED]
26 [REDACTED]