

FILED
DOCKETED BY: _____

2010 DEC 14 PM 4: 29

SUE HALL, CLERK
APACHE COUNTY SUPERIOR COURT

1 Michael B. Whiting
2 Apache County Attorney
3 P.O. Box 637
4 St. Johns, AZ 85936
5 (928) 337-7560
6 Joshua Osborn
7 Deputy County Attorney
8 ASBN 026335
9 Attorney for the State

10 IN THE SUPERIOR COURT
11 IN AND FOR THE COUNTY OF APACHE
12

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 [REDACTED]

17 Defendant.

18 NO. CR2010-00061

19 MOTION TO DENY DEFENDANT'S MOTION
20 TO SUPPRESS

21 THE STATE OF ARIZONA, through the undersigned deputy county attorney, hereby
22 respectfully requests the Court deny the defendant's Motion to Suppress.


23 The K-9 used to sniff the defendant's vehicle was reliable and thus there is no basis for a
24 finding of lack of probable cause or application of the poisonous fruit doctrine. The State
25 concurs with the nonbinding authority cited by the defendant that K-9 reliability is tied to the
26 finding of probable cause to search, however jurisdictions differ with regard to the manner of
27 determining reliability. In the case at bar the defendant's motion to suppress hinges exclusively
28 on the reliability of the K-9 used in this case, ironically named Rico. When the defendant filed
his motion the State had not yet received the full file for Rico and his reliability logs and so the
records available at that time only covered September 2009 through April 2010. Since the filing
of the defendant's motion the State has received and shared with the defendant more than 500
pages of additional K-9 records, certificates and logs that date back as far as January 2006 and
show a long history of Rico's high reliability.

1 With respect to the previous records, the logs do not indicate whether further
2 investigation was performed and if it showed drugs had previously been located where the dog
3 alerted in 15 of the 16 instances. The defendant failed to include in his motion that on the
4 9/28/09 Rico alerted, no drugs were found, but the defendant corroborated that illegal drugs had
5 been present in the past by admitting to smoking marijuana. It is unknown if any of the
6 remaining 15 suspects admitted to smoking or possessing drugs at any point after Officer Clark
7 had left the scene. Additionally, during this same time period Officer Clark conducted 11
8 reliability exercises and records that Rico maintained a perfect record for alerting to hidden
9 illegal drugs in a variety of settings. Thus, although 15 of the 23 field alerts cited by the
10 defendant did not yield any drugs, there is a strong basis to believe that Rico is accurate when the
11 drugs have not yet been removed. It is worth noting that the defendant failed to mention another
12 of Rico's corroborated positive alerts, specifically on the defendant's own vehicle on March 12,
13 2010 which led to the seizure of 10.2 pounds of marijuana.

14 It is the State's position that K-9 Rico is and has been reliable since he was certified on
15 March 16, 2006. Based on the reasons enumerated above, the State believes the issue raised in
16 the defendant's Motion to Suppress is moot and should be denied.

17
18 RESPECTFULLY SUBMITTED this 14th day of December, 2010.

19 Michael B. Whiting
20 Apache County Attorney

21 
22 Joshua Osborn
23 Deputy County Attorney

24 A copy of the foregoing
25 mailed/delivered this
26 ___ day of December, 2010 to:

26 Marc J. Victor
27 Attorney for Defendant
28 marc@attorneyforfreedom.com

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

IN THE SUPERIOR COURT
IN AND FOR THE COUNTY OF APACHE

STATE OF ARIZONA,
Plaintiff,

vs.

████████████████████
Defendant.

NO. CR2010-061

ORDER

THE STATE OF ARIZONA having filed a Motion to Deny Defendant's Motion to Suppress, and for good cause appearing,

IT IS HEREBY ORDERED that the Defendant's Motion to Suppress is denied.

DATED this ____ day of _____, 2010.

Hon. Michael P. Roca