In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

MARIA ELENA LOPEZ,

Defendant and Respondent.

Case No. S238627

Third Appellate District, Case No. C078537
Yolo County Superior Court, Case No. CRF143400
The Honorable Samuel McAdam, Judge

ANSWERING BRIEF ON THE MERITS

XAVIER BECERRA
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
JOSHUA A. KLEIN
Deputy Solicitor General
CATHERINE CHATMAN
Supervising Deputy Attorney General
RACHELLE A. NEWCOMB
Deputy Attorney General
R. TODD MARSHALL
Deputy Attorney General
State Bar No. 155067
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5285
Fax: (916) 324-2960
Email: Todd.Marshall@doj.ca.gov
Attorneys for Plaintiff and Appellant

TABLE OF CONTENTS

Page

Issues Presented 11

Introduction 11

Statement of the Case 13

A. Facts from the Suppression Hearing 13

B. The Trial Court's Ruling 15

C. The Court of Appeal's Ruling 16

Argument 16

I. Officer Moe's Limited Search for Identification During Lopez's Investigatory Detention Was Proper Under the Fourth Amendment 16

A. The Search Was Proper Under *Arturo D.* 17

1. *Arturo D.* permits a limited vehicle search for satisfactory identification 17

2. Officer Moe scrupulously followed *Arturo D.* 19

3. *Arturo D.* allows state officers to comply with the Vehicle Code cite-and-release provisions 21

B. *Gant* Does Not Require Suppression of Evidence Obtained Pursuant to an *Arturo D.* Search 24

1. Gant does not apply to a limited vehicle search for identification where there has been no custodial arrest 24

2. Gant's reasoning does not undermine *Arturo D.* 27

C. *Arturo D.'s* Rule Does Not Violate *Knowles* or *Macabeo* 30

D. Lopez's Additional Arguments Are Incorrect 33

II. Suppression Would Be Improper Under the Good-Faith Rule 39

TABLE OF CONTENTS
(continued)

Page

A. Good-Faith Reliance upon Binding Precedent Precludes Suppression 39

B. The People Did Not Forfeit This Argument 41

Conclusion 45

TABLE OF AUTHORITIES

Page

CASES

Arizona v. Gant
(2009) 556 U.S. 332 ..... *passim*

Arizona v. Rider
(Aug. 14, 2008, 1 CA-CR 07-0352) 2008 WL 3846312 ..... 37, 38

Atwater v. City of Lago Vista
(2001) 532 U.S. 318 21

Auto Equity Sales, Inc. v. Superior Court
(1962) 57 Cal.2d 450 40

California v. Acevedo
(1991) 500 U.S. 565 36

California v. Carney
(1985) 471 U.S. 386 29

Cardwell v. Lewis
(1974) 417 U.S. 583 29

Crock v. City of Mt. Lebanon
(Dec. 3, 2010, 2:09-426) 2010 WL 5437266 ..... 37, 38

Davis v. United States
(2011) 564 U.S. 229 ..... 34, 39, 40, 43

Delaware v. Prouse
(1979) 440 U.S. 648 30

Devenpeck v. Alford
(2004) 543 U.S. 146 26

Gail v. Municipal Court
(1967) 251 Cal.App.2d 1005 26

Green v. Superior Court
(1985) 40 Cal.3d 126 42

TABLE OF AUTHORITIES
(continued)

Page

Herring v. United States
(2009) 555 U.S. 135 ..... 39, 40

Higgason v. Superior Court
(1985) 170 Cal.App.3d 929 42

Hill v. California
(1971) 401 U.S. 797 34

Hudson v. Michigan
(2006) 547 U.S. 586 39

In re Arturo D.
(2002) 27 Cal.4th 60 ..... *passim*

Indianapolis v. Edmond
(2000) 531 U.S. 32 29

Knowles v. Iowa
(1998) 525 U.S. 113 ..... 30, 31

Maryland v. Wilson
(1997) 519 U.S. 408 36

Michigan v. Long
(1983) 463 U.S. 1032 ..... 25, 36

Michigan v. Summers
(1981) 452 U.S. 692 ..... 36, 37

Navarette v. California
(2014) __ U.S. __, 134 S.Ct. 1683 19

New York v. Belton
(1981) 453 U.S. 454 24

New York v. Class
(1986) 475 U.S. 106 ..... *passim*

TABLE OF AUTHORITIES
(continued)

Page

Newell v. Cnty. of San Diego
(S.D. Cal. May 28, 2014, 3:12-cv-1696-GPC-BLM) 2014 WL 2212136 ..... 37, 38

Ohio v. Robinette
(1996) 519 U.S. 33 ..... 27, 35, 37

Pennsylvania v. Labron
(1996) 518 U.S. 938 29

Pennsylvania v. Mimms
(1977) 434 U.S. 106 35

People v. Celis
(2004) 33 Cal.4th 667 20

People v. Chardon
(1999) 77 Cal.App.4th 205 35

People v. Cole
(1994) 23 Cal.App.4th 1672 35

People v. Estrada
(1995) 11 Cal.4th 568 34

People v. Harris
(2015) 234 Cal.App.4th 671 43

People v. Jimenez
(2015) 242 Cal.App.4th 1337 43

People v. Johnson
(1991) 231 Cal.App.3d 1 20

People v. Lopez
(2016) 4 Cal.App.5th 815 ..... 12, 16, 19

People v. Macabeo
(2016) 1 Cal.5th 1206, 1219 ..... *passim*

TABLE OF AUTHORITIES
(continued)

Page

People v. Mai
(2013) 57 Cal.4th 986 34

People v. Maury
(2003) 30 Cal.4th 342 33

People v. McKay
(2002) 27 Cal.4th 601 21

People v. Monroe
(1993) 12 Cal.App.4th 1174 22

People v. Nottoli
(2011) 199 Cal.App.4th 531 26

People v. Pryor
(2009) 896 N.Y.S. 2d 575 29

People v. Rathert
(2000) 24 Cal.4th 200 35

People v. Redd
(2010) 48 Cal.4th 691 34

People v. Robertson
(1990) 223 Cal.App.3d 1277 35

People v. Robles
(2000) 23 Cal.4th 789 ..... 42, 43

People v. Schmitz
(2012) 55 Cal.4th 909 ..... 28, 29

People v. Superior Court (Simon)
(1972) 7 Cal.3d 186 22

People v. Troyer
(2011) 51 Cal.4th 599 37

TABLE OF AUTHORITIES
(continued)

Page

People v. Webster
(1991) 54 Cal.3d 411 18

People v. Woods
(1999) 21 Cal.4th 668 43

Riley v. California
(2014) 573 U.S. __, 134 S.Ct. 2473 ..... 27, 32, 40, 41

Robey v. Superior Court
(2013) 56 Cal.4th 1218 ..... 42, 43

Rodriguez v. United States
(2015) 575 U.S. __ 30

Safford Unified Sch. Dist. No. 1 v. Redding
(2009) 557 U.S. 364 ..... 21, 33

South Dakota v. Opperman
(1976) 428 U.S. 364 29

State v. Keaton
(2015) 222 N.J. 438 29

Thornton v. United States
(2004) 541 U.S. 615 ..... 24, 26

Torrez v. Commonwealth of Kentucky
(Apr. 8, 2011, 2009-CA-000410-MR) 2011 WL 1327129 ..... 37, 38

United States v. Janis
(1976) 428 U.S. 433 39

United States v. Ramos
(D. N.M. 2016) 194 F.Supp.3d 1134 29

United States v. Ross
(1982) 456 U.S. 798 25

TABLE OF AUTHORITIES
(continued)

Page

United States v. Samuels
(6th Cir. 2011) 443 Fed. Appx. 156 29

United States v. Sharpe
(1985) 470 U.S. 675 ..... 20, 37

Whren v. United States
(1996) 517 U.S. 806 43

Wyoming v. Houghton
(1999) 526 U.S. 295 ..... 30, 33

STATUTES

Evidence Code
§ 210 27

Health & Safety Code
§ 11377, subd. (a) 13

Penal Code
§ 853.5 22

TABLE OF AUTHORITIES
(continued)

Page

Vehicle Code
§ 4000, subd. (a) 22
§ 4462 28
§ 4462, subd. (a) 18, 22
§ 12500 ..... 19, 21, 23
§ 12951 ..... 26, 28
§ 12951, subd. (a) 19, 21
§ 12951, subd. (b) 18, 19, 21, 23
§ 14601 ..... 19, 21, 26
§ 14601.2 23
§ 14601.2, subd. (a) 13
§ 40000.11 23
§ 40301 22
§ 40302 ..... 23, 28, 32
§ 40302, subd. (a) 19, 23
§ 40302, subds. (a)-(d) 23
§ 40303 22
§ 40500 22
§ 40504 22

CONSTITUTIONAL PROVISIONS

United States Constitution
Fourth Amendment ..... *passim*

COURT RULES

California Rules of Court
rule 4.103(a) 22
rule 8.516(a)(1) 34

OTHER AUTHORITIES

Judicial Council of California, Forms and Instructions
http://www.courts.ca.gov/documents/trinst.pdf (as of July 27, 2017) 22

LaFave, Search and Seizure: A Treatise on the Fourth Amendment (5th ed. 2012) 29, 30

ISSUES PRESENTED

During a detention of an unlicensed driver, may an officer conduct a limited search for valid identification in compliance with the long-standing principle articulated in *In re Arturo D.* (2002) 27 Cal.4th 60 (*Arturo D.*) that such searches are reasonable under the Fourth Amendment?

INTRODUCTION

This case concerns two features of California's laws regarding motor vehicle use. First, drivers on the public roads are required to be properly licensed, must have that license in their physical possession while driving, and must present their license and registration to a peace officer upon request. Second, in many circumstances California law either permits or requires that, when peace officers initiate enforcement proceedings against a driver for violations of the Vehicle Code, they do so by issuing a citation and releasing the driver with a "Notice to Appear." This requires positive confirmation of the offender's identity. In *Arturo D.* this Court held that during a peace officer's investigation of a vehicle offense the officer may conduct a limited search within the vehicle for the purpose of locating the driver's identity documents and vehicle registration.

Here, an officer who was investigating two separate dispatch reports about a particular car being driven unsafely by a drunk driver approached defendant Maria Elena Lopez after he saw her park that car near its registered address. When the officer asked for Lopez's license, Lopez said that she did not have a driver's license. At that point, the officer had a reasonable belief that Lopez had committed one or more offenses—driving while unlicensed, driving on a suspended license, driving without physical possession of her license, or failing to provide a license upon request. Driving without physical possession of a license is an infraction, while the other possible offenses are misdemeanors. After Lopez said that her

identification might be in the car, another officer retrieved Lopez's purse from the car's front seat so that it could be searched for identification. As the Court of Appeal recognized, the narrow search for identification was proper under *Arturo D.* and did not violate Lopez's Fourth Amendment rights. (*People v. Lopez* (2016) 4 Cal.App.5th 815, 821-828, review granted Jan. 25, 2017, S238627 (*Lopez*).)

Lopez argues that *Arturo D.* has been superseded by the United States Supreme Court's later decision in *Arizona v. Gant* (2009) 556 U.S. 332 (*Gant*). But *Gant* held that a search of a car passenger compartment incident to a recent occupant's arrest was not allowed when the arrestee was secured outside the vehicle. It does not supersede *Arturo D.*'s holding addressing the quite different scenario of limited vehicle searches to retrieve a driver's identification papers where there has not been an arrest. Nor does *Gant*'s reasoning cast doubt on the continued correctness of *Arturo D.* An *Arturo D.* search for identification in the places where identification would likely be found constitutes a minimal intrusion on a driver's already low expectation of privacy with regard to vehicles operated on public streets. The search is allowed only when the driver has not provided satisfactory identification documentation that she is legally required to show to police, it occurs only in limited places in the car, and it must cease when the documents are found. A minimally intrusive search for required driver and vehicle documentation serves the liberty-preserving purpose of determining whether the offense should involve citation and release or a custodial arrest. Nothing in *Gant* leads to the conclusion that such a search is unreasonable. As a result, no California appellate decision in the eight years since *Gant* has cast doubt on *Arturo D.*'s continued validity, and numerous post-*Gant* decisions across the country have held that a limited search for identification that informs an officer whether an offender should be subjected to release on a citation or an arrest is

permissible under the Fourth Amendment. In this case, moreover, the inappropriateness of Lopez's contrary rule is made especially clear by the fact that the search here also would have been permissible under *Gant.*

In any event, even if this Court were to overrule *Arturo D.* now, the officer's good-faith reliance on that well-established precedent would preclude suppression in this case. The search here was carried out in strict compliance with *Arturo D. Gant* itself did not address the issue of a limited search for the identification of a person not under arrest, and even now there is no published California authority casting doubt on the continued validity of *Arturo D.* Should this Court now change the rule applicable to a limited *Arturo D.* search for documentation, the officer relied in good faith on this Court's binding precedent. Indeed, in this very case, the Court of Appeal unanimously concluded that the rule from *Arturo D.* is unaffected by *Gant.* To fault the officer here for reaching the same conclusion would not serve the purposes of the exclusionary rule.

STATEMENT OF THE CASE

A. Facts from the Suppression Hearing

Lopez was charged with possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and driving on a suspended license (Veh. Code, § 14601.2, subd. (a). (I Clerk's Transcript (ICT) 3-4.) She filed a motion to suppress the evidence on the ground that the evidence had been discovered and seized in violation of the Fourth Amendment. (ICT 11-15.)

At the suppression hearing, Officer Jeff Moe testified that around 10:30 the morning of July 4, 2014, he learned from dispatch that a dark-colored Toyota with license plate number 3CUC514 was being driven erratically at a particular location. (I Reporter's Transcript (IRT) 28-29.) Officer Moe went to the area where the car had been seen, but he could not find it. (IRT 29.) He attempted to locate the Toyota at the nearby address

where the dispatcher reported that it was registered, but it was not there either. (IRT 29-30.)

About three hours later, dispatch relayed a further citizen's complaint that "Marlena" had been drinking all day and was driving the same Toyota in the same area as the prior call. (IRT 30-32.) Once again, Officer Moe was unable to find the car in the reported location, so he drove to the registration address. (IRT 31-32.) Almost immediately, the Toyota arrived and stopped there. (IRT 32, 37, 41.) Officer Moe corroborated that the car matched the citizens' descriptions. (IRT 32, 37.)

Officer Moe walked over to the Toyota. (IRT 33.) Lopez looked "somewhat panicked" upon seeing the officer, then left the car and began to walk away. (IRT 33.) When Officer Moe asked Lopez if she had a driver's license, Lopez said that she did not. (IRT 33-34, 38.)

Officer Moe grasped Lopez's right wrist to detain her, but Lopez pulled away. (IRT 33-34, 41-42.) Officer Moe overcame her resistance and placed her in handcuffs. (IRT 33-34, 41-42.) When Officer Moe asked Lopez if she had any identification on her, Lopez responded that she believed it was in the car. (IRT 34-35; 39-40.)[1] Officer Moe did not move Lopez to his patrol car or place her on the curb. (IRT 38-39.)

Another officer, who had arrived to assist, saw a small purse on the front passenger seat of Lopez's car. (IRT 34-35, 38-39.) He retrieved the purse at Officer Moe's request, and Officer Moe opened the side pocket to look for Lopez's identification. (IRT 34-35, 39.) Inside, Officer Moe saw Lopez's identification and a small bag of apparent methamphetamine. (IRT 35.) Officer Moe used Lopez's identification to check with dispatch

---

[1] On direct examination, Officer Moe testified that Lopez stated that she believed that her identification was in the vehicle. (IRT 34.) On cross examination, after reviewing his report, he testified that she stated there might be identification in the vehicle. (IRT 39-40.)

whether Lopez had wants or warrants and to determine her license status. (IRT 36.)[2]

B. The Trial Court's Ruling

Lopez filed a suppression motion that asserted, without citation to *Gant*, that Lopez had been detained and that her vehicle and purse had been searched without a warrant. (ICT 11-13.) At the suppression hearing, after the close of testimony, Lopez for the first time argued that the case was "almost identical" to *Gant*. (IRT 48-49.)

In a written ruling (ICT 38-43), the trial court concluded that the initial contact between Officer Moe and Lopez was consensual because Officer Moe had not made any initial show of authority or given Lopez any command to stop. (ICT 40.) The court also concluded that Officer Moe's subsequent detention of Lopez was lawful because her admission that she did not have a driver's license gave the officer probable cause to believe she had driven without a valid license. (ICT 40.) And the court found that Lopez had resisted Officer Moe's attempt to detain her. (ICT 39.)

In analyzing the search of Lopez's purse to find her identification, the court agreed that the search of her purse was "directed at locating her driver's license and not indicia of alcohol and drug use." (ICT 42.) Treating the case as a search incident to arrest, however, the court concluded that, under *Gant*, the search was illegal, notwithstanding pre-*Gant* authorities to the contrary. (ICT 41-42.) The court therefore granted

---

[2] Based on Lopez's objection, the trial court did not allow Officer Moe to testify at the suppression hearing about the information he received from dispatch. (IRT 36.) According to the preliminary hearing transcript, dispatch reported that Lopez's driver's license had been suspended. (IRT 10-11.) Preliminary hearing testimony also shows that the suspected drugs in Lopez's purse field-tested positive for methamphetamine. (*Ibid.*)

Lopez's motion to suppress the evidence and dismissed the case. (ICT 38-43; I Second Supplemental CT (ISSCT) 2.)

C. The Court of Appeal's Ruling

The Court of Appeal reversed, holding that *Arturo D.* controlled. (*People v. Lopez, supra*, 4 Cal.App.5th at pp. 821-828.) Stressing the limited nature of the search at issue, the court noted that Officer Moe had not "search[ed] the entire passenger compartment, including all containers, rummaging at will through [Lopez's] personal belongings in search of incriminating evidence." (*Id.* at p. 827.) Instead, Officer Moe searched only "for identification" and only "in one specific location, i.e., defendant's purse, a traditional repository for identification documentation." (*Ibid.*) Furthermore, the court reasoned that Lopez, unlike the defendant in *Gant*, was not under arrest at the time of the search so the search was not a search incident to arrest. (*Id.* at pp. 827-828; see *id.* at p. 828 [noting that, if Officer Moe had "found identification in her purse that satisfied him as to her identity," then he could simply have released her on citation].) Because *Arturo D.* controlled, the trial court was wrong to have suppressed the evidence. (*Id.* at p. 828.)

ARGUMENT

I. OFFICER MOE'S LIMITED SEARCH FOR IDENTIFICATION DURING LOPEZ'S INVESTIGATORY DETENTION WAS PROPER UNDER THE FOURTH AMENDMENT

As the Court of Appeal correctly held, Officer Moe's search of Lopez's purse for her identification was objectively reasonable under *Arturo D.* Nothing in *Gant* requires reconsideration of *Arturo D.*, and the evidence was lawfully seized.

A. The Search Was Proper Under *Arturo D.*

1. *Arturo D.* permits a limited vehicle search for satisfactory identification

In *Arturo D.*, this Court addressed and upheld the searches of two individuals (Arturo D. and Randal Hinger) in a consolidated case. (*Arturo D.*, *supra*, 27 Cal.4th at p. 65.) Arturo D. had been pulled over for speeding, and he admitted that he lacked a valid driver's license and that he was not the owner of the truck. (*Ibid.*) He told police his name, date of birth, and address but provided no "documentary evidence as to his identity, proof of insurance, or vehicle registration." (*Ibid.*) The officer, who planned to issue Arturo D. a citation, asked the occupants to leave the vehicle, then felt and looked under the driver's seat for documentation relating to the driver and the vehicle. (*Ibid.*) In the process, the officer found drugs and a pipe. (*Ibid.*)

Hinger was stopped for making an unsafe lane change. (*Arturo D.*, *supra*, 27 Cal.4th at p. 66.) Hinger gave the officer a name, but did not have his driver's license or any documentation about the car. (*Ibid.*) The officer observed Hinger access the glove box, and Hinger told him that he either had recently purchased the car or was in the process of buying it. (*Ibid.*) The officer conducted a record check using Hinger's name and the car. (*Ibid.*) Hinger declined to consent to a search, but when the officer informed him that he would look for identification and registration in any event, Hinger stated that he might have a wallet in the glovebox after all. (*Ibid.*)

This Court upheld both searches, holding that the Fourth Amendment is not violated "when, following the failure of a traffic offender to provide [required registration and identification] documentation to the citing officer upon demand, the officer conducts a search for those documents in an area where such documents *reasonably may be expected to be found*." (*Arturo*

D., *supra*, 27 Cal.4th at pp. 66, 86.) *Arturo D.* noted that the Vehicle Code requires drivers to present their registration and identification upon a proper request from a police officer and that such information is mandatory for an officer to complete a traffic citation. (*Id.* at p. 67; see Veh. Code, § 12951, subd. (b) ["The driver of a motor vehicle shall present his or her license for examination upon demand of a peace officer enforcing" the Vehicle Code]; Veh. Code, § 4462, subd. (a) ["The driver of a motor vehicle shall present the registration or identification card or other evidence of registration of any or all vehicles under his or her immediate control for examination upon demand of any peace officer."].) *Arturo D.* also observed that the government had a significant interest in maintaining and regulating vehicles being driven on public roadways and that motorists had a corresponding reduction in privacy while driving. (*Arturo D.*, at p. 68.) This Court noted that searches for identification and vehicle documentation have been approved by numerous courts both within California and around the country. (*Id.* at pp. 68-71 [citing *People v. Webster* (1991) 54 Cal.3d 411 and other cases]; *id.* at p. 71 ["Prior to and subsequent to *Webster*, *supra*, 54 Cal.3d 411, California courts have held in analogous circumstances that it is constitutionally proper for an officer to conduct a limited warrantless search of a vehicle for the purpose of locating registration and other related identifying documentation."] (parallel citation omitted).)

The Court also found it significant that the United States Supreme Court, in *New York v. Class* (1986) 475 U.S. 106 (*Class*), had upheld officers' ability to open a car door and move papers from the dashboard in order to find a car's vehicle identification number (VIN). (*Arturo D.*, *supra*, 27 Cal.4th at pp. 71-76.) Indeed, this Court reasoned, "the basis for a search for identification and registration documentation preparatory to the issuance of a citation would appear to be more compelling than the justification for a search to discover the VIN of a vehicle for which the

driver already had produced apparently valid registration documentation" as in *Class*. (*Id.* at p. 73.)

The Court viewed the alternatives to a limited search for identification documents as likely to be considerably more intrusive. When officers do not receive satisfactory identification from a detained driver, they must decide whether to accept lesser identification or arrest the driver. (Veh. Code, §40302, subd. (a).) *Arturo D.* recognized that an arrest would be "considerably more intrusive" than a limited vehicle search for documentation. (*Arturo D.*, *supra*, 27 Cal.4th at p. 77, fn. 17; see also *ibid.* [noting that such an arrest would often result in inevitable discovery when the vehicle was impounded and subjected to an inventory search].)

2. Officer Moe scrupulously followed *Arturo D.*

Officer Moe had seen Lopez driving on public streets, and she had told him that she did not have a driver's license. (IRT 32-34.) This gave him at least reasonable suspicion to detain her for investigation of several possible traffic violations: driving without physical possession of a valid license or failing to provide a license to an officer upon request (Veh. Code, § 12951, subds. (a) and (b)), driving while unlicensed (Veh. Code, § 12500), and driving with a suspended license (Veh. Code, § 14601). (See generally *Navarette v. California* (2014) __ U.S. __ [134 S.Ct. 1683, 1687] [the Fourth Amendment permits brief investigative stops based upon particularized suspicion of criminal activity].) Officer Moe also had reasonable suspicion to justify detention while he investigated the two reports of reckless driving and driving under the influence. (IRT 28-30, 32.)

As both the trial court and the Court of Appeal correctly held, Officer Moe's actions at this point were not tantamount to placing Lopez under arrest within the meaning of the Fourth Amendment. (ICT 40; *Lopez*, *supra*, 4 Cal.App.4th at pp. 826-827.) A stop is a detention rather than an

arrest when an officer diligently pursues an investigation designed to quickly confirm or dispel the suspicion of criminal activity. (*United States v. Sharpe* (1985) 470 U.S. 675, 685-688.) And Officer Moe's use of handcuffs after Lopez resisted detention did not change the encounter into an arrest. An officer is justified in using handcuffs upon a detainee when the circumstances would lead a reasonable officer to believe that the detainee presents a physical threat to the officer or is a flight risk. Briefly handcuffing a detainee does not turn a detention into an arrest (*People v. Celis* (2004) 33 Cal.4th 667, 675-676)—particularly when the handcuffs were made necessary by the suspect's resistance of the temporary detention (see *People v. Johnson* (1991) 231 Cal.App.3d 1, 13-14), as the trial court found was the case here (ICT 39 [trial court's finding that Lopez resisted the officer's lawful detention]).

Because Lopez was merely detained and initially lacked satisfactory identification, this Court's precedent allowed police to retrieve the purse and look inside for the identification that would be critical to Officer Moe's ability to complete his duties and to determine whether to release Lopez on a citation. It is hard to see what else Officer Moe realistically should have done, given that Lopez said her identification might be in the car (IRT 34-35, 39-40), a purse was on the front seat (IRT 34-35), and Lopez's prior resistance made it unacceptably risky to allow her to retrieve the purse herself. (*Arturo D.*, *supra*, 27 Cal.4th at p. 70, fn. 6 [noting that officer safety may sometimes require police to retrieve a license themselves]; *id.* at p. 86 [following an offender's failure to provide identification documents, an officer may not conduct a "full-scale search for contraband" but may conduct "a search for [the] documents in an area where such documents *reasonably may be expected to be found*"].) The fact that evidence of further crimes surfaced when officers conducted that limited search for identification in a location where such identification would reasonably be

expected to be found (*id.* at p. 83) provides no basis for suppression. (Cf. *Safford Unified Sch. Dist. No. 1 v. Redding* (2009) 557 U.S. 364, 388 [the reasonableness of a search's scope generally "depends only on whether it is limited to the area that is capable of concealing the object of the search"].)[3]

3. *Arturo D.* allows state officers to comply with the Vehicle Code cite-and-release provisions

The reasonableness of an officer's conduct under the Fourth Amendment does not depend upon the officer complying with state statutes. (*Atwater v. City of Lago Vista* (2001) 532 U.S. 318, 354; *People v. McKay* (2002) 27 Cal.4th 601, 605, 607-608.) However, *Arturo D.* authorizes officers to conduct a limited search for identification so that they can diligently complete their duties in compliance with the state Vehicle Code.

Like other states, California maintains an extensive system of licensing and registration to ensure the safety of its public roadways. As part of that system, a California driver may not drive if he or she has not been licensed by the State to do so (Veh. Code, § 12500) or if his or her license has been suspended (Veh. Code, § 14601). Drivers must have their licenses in their physical possession at all times when driving (Veh. Code, § 12951, subd. (a)) and must show that license upon the request of any law enforcement officer enforcing the Vehicle Code (Veh. Code, § 12951, subd. (b)). Similarly, drivers must comply with registration requirements. (See

---

[3] Notwithstanding Lopez's arguments to the contrary (Opening Brief (OB) 22-27), an officer is not required to ask for and rely on a suspect's self-reporting of her name in lieu of searching for identifying documents. Under the Vehicle Code, Lopez could not be lawfully released on citation without satisfactory identification. Officer Moe was not required to believe the statements of a possibly drunk reckless driver who had admitted violating state vehicle laws and had resisted detention. (IRT 43; *Arturo D.*, *supra*, 27 Cal.4th at pp. 83-84.)

Veh. Code, § 4000, subd. (a) [registration requirement]; Veh. Code, § 4462, subd. (a) [requirement that driver "present the registration or identification card or other evidence of registration of any or all vehicles under his or her immediate control for examination upon demand of any peace officer"].)

When drivers commit Vehicle Code violations that are not felonies, a three-part system controls. (See generally *People v. Monroe* (1993) 12 Cal.App.4th 1174, 1180 (*Monroe*), quoting *People v. Superior Court (Simon)* (1972) 7 Cal.3d 186, 199; see also Pen. Code, § 853.5.)[4] In most cases violators receive a written notice to appear (known as a citation[5]) and must be immediately released. (*Monroe*, at p. 1180, citing Veh. Code, §§ 40500, 40504.) California officers issue traffic citations on Judicial Council Form TR-130. (California Rules of Court, rule 4.103(a).) A citation must comply with the Judicial Council's instructions in its "*Notice to Appear and Related Forms.*" (*Ibid.*) The Judicial Council Instructions include Form TR-130 as Appendix F. (*TR-Inst, Notice to Appear and Related Forms* (June 26, 2015), Judicial Council of California, http://www.courts.ca.gov/documents/trinst.pdf (as of July 27, 2017).) The officer completing the citation must indicate if the offense is a misdemeanor or infraction and must indicate if booking is required. (*Ibid.*) Misdemeanor violations require a court appearance. (*Ibid.*)

For certain violations, Vehicle Code section 40303 gives an officer discretion to decide between citing and releasing the offender or taking him or her immediately to the nearest magistrate. (*Monroe, supra*, 12

---

[4] For felony violations, the Penal Code provisions governing felony arrests control. (Veh. Code, § 40301.)

[5] Although the Vehicle Code describes a citation and release as an "arrest" (see Veh. Code, §§ 40500, 40504), "arrest" as used in that context is not the same as a custodial arrest for Fourth Amendment purposes (*Monroe, supra*, 12 Cal.App.4th at p. 1181).

Cal.App.4th at pp. 1180-1181.) Finally, Vehicle Code section 40302 requires an officer to take the violator to the magistrate under four circumstances:

> (a) When the person arrested fails to present both his or her driver's license or other satisfactory evidence of his or her identity and an unobstructed view of his or her full face for examination. [¶] (b) When the person arrested refuses to give his or her written promise to appear in court. [¶] (c) When the person arrested demands an immediate appearance before a magistrate. [¶] (d) When the person arrested is charged with violating Section 23152.

(Veh. Code, § 40302, subds. (a)-(d).)[6]

Officer Moe knew from Lopez's admission that she had driven illegally, but he did not initially know specifically which offense she had committed, and he did not know whether the offense was an infraction or a misdemeanor. Only driving without possession of a valid license is an infraction, the other possible driving offenses, including failure to turn over a license to an officer (Veh. Code, § 12951, subd. (b)), are misdemeanors. (Veh. Code, § 40000.11 [Veh. Code, §§ 12500, 12951, subd. (b), and 14601.2 are misdemeanors].)

In order to comply with the Vehicle Code, Officer Moe needed to determine which offense Lopez had committed and obtain satisfactory identification so that he could further determine whether Lopez should be cited and released or arrested and taken into custody. Officer Moe's limited search for identification evidence enabled him to comply with the Vehicle Code and was reasonable under the Fourth Amendment. Simply put, *Arturo D.* provides officers with the necessary tools to reasonably complete

---

[6] In July 2014, Vehicle Code section 40302, subdivision (a), provided: "When the person arrested fails to present his driver's license or other satisfactory evidence of his identity for examination."

their duties and comply with both the Fourth Amendment and the state Vehicle Code.

B. *Gant* Does Not Require Suppression of Evidence Obtained Pursuant to an *Arturo D.* Search

Lopez focuses on the United States Supreme Court's decision in *Gant*, claiming that it supersedes *Arturo D.* and requires suppression in this case. (OB 8-15.) But *Gant*'s rule about evidentiary searches incident to arrest does not apply to this case's limited vehicle search for identification documents during a detention to investigate a traffic offense. Nor does *Gant*'s reasoning give cause to overrule *Arturo D.* with respect to such searches.

1. *Gant* does not apply to a limited vehicle search for identification where there has been no custodial arrest

Gant addresses Fourth Amendment law pertaining to vehicle searches in a specified context. Before *Gant*, Supreme Court precedent was widely understood as categorically permitting the warrantless search of a car's passenger compartment incident to a recent occupant's contemporaneous arrest—a rule designed for officer safety and the preservation of evidence. (See *New York v. Belton* (1981) 453 U.S. 454, 457, 460; *Gant, supra*, 556 U.S. at p. 341.) *Gant* held that a search of a vehicle incident to arrest would be allowed only (1) when the arrestee is "unsecured within reaching distance of the passenger compartment at the time of the search" or (2) "'when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" (*Gant*, at pp. 343-344, 346, 351, quoting *Thornton v. United States* (2004) 541 U.S. 615, 632 [conc. opn. of Scalia, J.] (*Thornton*).)

Gant's holdings concerned limitations only on the warrant exception for automobile searches incident to an arrest. (See *Gant, supra*, 556 U.S. at

p. 335 ["we hold that *Belton* does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle"; "we also conclude that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle"].) In *Gant,* the Court specifically preserved "[o]ther established exceptions to the warrant requirement." (*Gant*, at p. 346.) The Court relied on those other exceptions as evidence that *Gant*'s limitations on vehicle searches incident to arrest would be practical. (*Id.* at p. 347).[7] As the cases cited by *Arturo D.* make clear, the rule allowing non-arrest limited vehicle searches for identification is precisely such an established exception, supported by decades of case law across the country. (*Arturo D., supra*, 27 Cal.4th at pp. 68-71 [citing cases].) The limited search during a traffic detention in this case was not governed by *Gant,* and the superior court was wrong to hold otherwise.

Indeed, on the facts of this case, the search here still would have been proper under *Gant* even if Lopez had been under arrest. Where *Gant* applies, officers may search "the passenger compartment ... and any containers therein" when it is "'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" (*Gant, supra*, 556 U.S.

---

[7] See *Gant*, 556 U.S. at pp. 346-347 (noting that a search of the car based on probable cause to believe it contained evidence of criminal activity would still be permitted under *United States v. Ross* (1982) 456 U.S. 798, 820-821, and that a search of the car based on reasonable suspicion that a dangerous individual could access the vehicle and get a weapon would still be permitted under *Michigan v. Long* (1983) 463 U.S. 1032). The Court made clear that its list of unaffected exceptions to the warrant requirement was not exclusive. (See *Gant*, at p. 347 [noting that "there may be still other circumstances in which safety or evidentiary interests would justify a search"].)

at pp. 344, 343, quoting *Thornton, supra,* 541 U.S. at p. 632.) Not all traffic violations would reasonably support such a belief. For instance, in *Gant* itself, the record provided no reason to believe that evidence of the Arizona offense of driving upon a suspended license would be in the car. (*Gant*, at pp. 343.) But Lopez's case is different. In *Gant*, the officers already knew Gant's identity and knew that his license was suspended. (*Id.* at pp. 335-336.) In contrast, Officer Moe had reasonable suspicion, and indeed probable cause, to believe that Lopez had committed one of four offenses—but until he could verify her identity by searching the place where her identification card or license would likely be found, he could not know for sure whether the correct charge was for the infraction of driving without physical possession of a license or the misdemeanor of driving while unlicensed, driving on a suspended license, or refusing to show a license upon request. An arrest for a violation of Vehicle Code section 12951 (failure to turn over a license to an officer) would have been lawful under the Fourth Amendment. (See *Devenpeck v. Alford* (2004) 543 U.S. 146, 152-156 [an arrest is reasonable so long as probable cause supports some offense even if not the offense of arrest]; see also *Gail v. Municipal Court* (1967) 251 Cal.App.2d 1005, 1006-1008 [arrest for a violation of Vehicle Code section 12951 before facts establishing a violation of Vehicle Code section 14601 (driving on a suspended license) are discovered].) However, California officers are not authorized under the Vehicle Code to take a traffic offender into custody except under specifically identified circumstances. (*People v. Macabeo* (2016) 1 Cal.5th 1206, 1219 (*Macabeo*).) Assuming an officer has properly arrested a driver for an unspecified restricted license offense, the information gleaned from a search would be relevant evidence as to which of these offenses had been committed. (See generally *People v. Nottoli* (2011) 199 Cal.App.4th 531,

553 ["Evidence need not directly prove an element of an offense to be relevant"], citing Evid. Code, § 210.)

2. *Gant*'s reasoning does not undermine *Arturo D.*

The Supreme Court's reasoning in *Gant* does not cast doubt on the correctness of *Arturo D.* Nor does it provide reason to extend the *Gant* rule to *Arturo D.*'s non-arrest context.

The overarching concern of the Fourth Amendment is reasonableness. (See U.S. Const., Amend. IV ["The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"]; *Ohio v. Robinette* (1996) 519 U.S. 33, 39.) *Gant* was fundamentally about the unreasonableness of "broad searches resulting from minor crimes such as traffic violations." (*Riley v. California* (2014) 573 U.S. __ [134 S.Ct. 2473, 2492].) As this case illustrates, *Arturo D.* does not authorize broad searches. (See *Arturo D.*, *supra*, 27 Cal.4th at p. 86 [permitting a search for specific documents "in an area where such documents reasonably may be expected to be found" but not "the equivalent of [a] full-scale search for contraband"] (italics omitted); IRT 40 [after Lopez said her identification might be in her car, officers searched only a purse that was visible on the front seat].)

The United States Supreme Court has held that an analogous limited search for required vehicle information is fully permissible without a warrant. In *Class*, the Court considered whether an officer who had stopped a car for traffic violations could search specific places in the interior of the car where the car's vehicle identification number could likely be found. (*Class*, *supra*, 475 U.S. at p. 108 [noting that the officer first opened the door to look for the VIN on the doorjamb then "reached into the interior of [the] car to move some papers obscuring the area of the dashboard where the VIN is located"].) The Court found that such a search did not require a warrant because "the physical characteristics of an

automobile and its use result in a lessened expectation of privacy," the information contained in the VIN served "important interests" as "part of the web of pervasive regulation that surrounds the automobile," and a driver "must surely expect that such regulation will on occasion require the State to determine the VIN of his or her vehicle" after a traffic violation. (*Id.* at pp. 112-113.) *Gant* did not purport to overrule or cast doubt upon *Class*, which continues to be binding law. And *Class*'s justifications for allowing a limited search for a car's VIN in the area it would likely be found are fully applicable to the limited searches for documentation envisioned by *Arturo D.*[8]

Judicial opinions since *Gant* thus have continued to recognize the permissibility of limited vehicle searches for required documentation of the sort at issue here. For example, in the concurring and dissenting opinion in *Schmitz*, Justice Liu recognized limited documentation searches. (See *People v. Schmitz* (2012) 55 Cal.4th 909, 943 (conc. and dis. opn. of Liu, J.) [recognizing the separate warrant exception permitting a search for "a vehicle identification number, license, registration, or other information that a driver is legally obligated to disclose (*New York v. Class* (1986) 475 U.S. 106; *In re Arturo D.* (2002) 27 Cal.4th 60)" (parallel citations omitted)].) Federal courts and the courts of other states continue to uphold

---

[8] In *Class*, federal law required the VIN on late-model cars to be at a place on the dashboard that would ordinarily be visible from outside the car. But the location of the VIN provides no basis for distinction. California requires drivers to make their license, other identification, and registration accessible to police by requiring drivers to have those documents with them while driving and provide them to a peace officer upon request. (Veh. Code, §§ 4462, 12951, 40302.) The fact that a California officer may need to take an affirmative action to access those documents (i.e., requesting them or undertaking a limited search) provides no distinction from *Class*, which allowed the officer to affirmatively reach into the car and move items to see the VIN.

limited vehicle searches for documentation as reasonable under the Fourth Amendment. (*State v. Keaton* (2015) 222 N.J. 438, 448 [collecting cases permitting limited warrantless search to discover proof of car ownership or insurance]; *People v. Pryor* (2009) 896 N.Y.S. 2d 575, 581-582 [permitting "police intrusion into the vehicle to conduct a limited search" for license, registration, and proof of insurance based on "circumstances that develop during a lawful traffic stop of a vehicle"]; *United States v. Samuels* (6th Cir. 2011) 443 Fed. Appx. 156, 160-161; *United States v. Ramos* (D. N.M. 2016) 194 F.Supp.3d 1134, 1163-1164.) And a leading treatise agrees. (See 3 W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, § 7.4(d), p. 870 (5th ed. 2012) [The preferred view permits a search for required vehicle documentation, like registration, where such documents may reasonably be expected to be found when a driver has been unable to provide the documents to an officer. The officer may search even if the driver asserts that the documents are not inside the car because the officer is not required to accept such an assertion at face value in every case.].)

The view that limited vehicle searches for required documentation remain permissible post *Gant* accords with general principles of Fourth Amendment law. Individuals have a significantly reduced expectation of privacy in their automobiles. (*People v. Schmitz, supra*, 55 Cal.4th at p. 920, citing *Indianapolis v. Edmond* (2000) 531 U.S. 32, 54, and *South Dakota v. Opperman* (1976) 428 U.S. 364, 367.) Cars travel upon public roadways and seldom serve as permanent storage for personal items. (*Cardwell v. Lewis* (1974) 417 U.S. 583, 590.) They are subject to police stops for Vehicle Code violations and for enforcement of the extensive web of governmental controls over the operation of automobiles upon public roadways. (*Pennsylvania v. Labron* (1996) 518 U.S. 938, 940; *California v. Carney* (1985) 471 U.S. 386, 391-392; *Opperman*, at p. 368.) And those

driving or riding in cars know full well that cars are subject to accidents that may render all of the contents open to public view. (*Wyoming v. Houghton* (1999) 526 U.S. 295, 303.)

The Supreme Court has recognized the many duties required during a traffic stop. (*Rodriguez v. United States* (2015) 575 U.S. __ [135 S.Ct. 1609, 1614] [authority for seizure lasts until tasks tied to traffic violation are or should be completed].) Those duties will commonly include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." (*Id.* at p. 1615, citing *Delaware v. Prouse* (1979) 440 U.S. 648, 658-660, and 4 W. LaFave, Search and Seizure, *supra*, § 9.3(c), pp. 507-517.) Such checks serve the same important governmental objective as enforcement of the traffic code, namely, ensuring vehicles on the road are being operated safely and responsibly. (*Rodriguez,* at p. 1615.) Thus, it is unreasonable for a driver to expect that the most likely locations for her driver's license and registration would not be subject to search when she has been detained for a traffic offense and has not produced satisfactory identification or evidence that she is currently licensed to drive.

C. *Arturo D.*'s Rule Does Not Violate *Knowles* or *Macabeo*

Lopez asserts that the search of her purse was unreasonable in light of *Knowles v. Iowa* (1998) 525 U.S. 113 and *People v. Macabeo, supra,* 1 Cal.5th 1206. (OB 18-22.) She is wrong.

Knowles invalidated a "full field search" for contraband in the passenger compartment of a stopped vehicle after the driver had been issued a traffic citation, holding that such a post-citation search did not reasonably serve the goals of officer safety or evidence preservation. (*Knowles, supra*, 525 U.S. at pp. 116-118.) As *Arturo D.* itself recognized, *Knowles* addressed itself only to full-scale post-citation searches and cast no doubt upon "longstanding authority ... permitting a police officer to

conduct under certain circumstances a limited warrantless search of a vehicle for required regulatory documentation, prior to issuing a traffic citation." (*Arturo D., supra*, 27 Cal.4th at pp. 75-76, footnotes omitted.) Indeed, the reasoning behind *Knowles* simply does not apply in this critically different context of a limited search for identification documents necessary to issuing a traffic citation. *Knowles* reasoned that the concern for officer safety was important but did not by itself justify the "intrusion attending a full field-type search." (*Knowles*, at p. 117.) In contrast, both *Arturo D.* and this case involve a much more limited type of search that is carefully tailored to meet the specific governmental justification—and this case involved more than theoretical officer-safety concerns because Lopez had already resisted detention. *Knowles* also reasoned that by the time a citation has issued the officer already has "all the evidence necessary to prosecute that offense." (*Id.* at p. 118.) The situation is different in a pre-citation context where specific documents are needed to confirm an offender's identity. Here, the officer could not cite and release Lopez until confirming her identity through satisfactory documentation and verifying which specific offense she had committed.

Lopez also asserts that *Arturo D.* has been undercut by this Court's recent decision in *People v. Macabeo, supra*, 1 Cal.5th 1206. (OB 20-22.) But *Macabeo* does not undermine *Arturo D.* and does not support Lopez's position. (OB 20-22.) In *Macabeo*, officers saw a bicyclist pass through an intersection without stopping at a stop sign. (*Macabeo*, at p. 1210.) The officers detained the bicyclist, questioned him, and received consent to search his pockets where his cell phone was found. (*Id.* at p. 1211.) Without asking permission, the officers activated the phone and searched its text messages and picture folder, where they found child pornography. (*Id.* at pp. 1211-1212.) This Court held that the search violated the Fourth Amendment, both because cell phones could not be routinely searched

incident to arrest under the intervening authority of *Riley v. California*, *supra*, 134 S.Ct. 2473, and, more generally, because searches incident to arrest must be premised on something more than just the hypothetical ability to make an arrest. (*Macabeo,* at p. 1216.)

Lopez, who relies on the latter point in making her argument, substantially misunderstands what this Court actually said. *Macabeo* does not hold that a warrantless search may never occur where "there has been no arrest." (OB 21.) Rather, *Macabeo* acknowledged that "when an arrest is supported by probable cause, after-acquired evidence need not be suppressed because an otherwise properly supported arrest was subsequently made formal." (*Macabeo, supra*, 1 Cal.5th at p. 1217.) Similarly, *Macabeo* did not announce an overarching rule that "it makes no constitutional difference whether [a] search ... involved an extensive search or a more targeted one." (OB 21.) After all, *Macabeo* could not have overruled the United States Supreme Court's decision in *Class*, which did involve a precisely targeted search. (See *Class*, *supra*, 475 U.S. at pp. 112-113.) Nor does *Macabeo* mean that there is "no authority to search" as part of a detention unless there is "an arrest [or] particularized suspicion." (OB 21.) Rather, *Macabeo* holds simply that, regardless of timing, a search incident to arrest cannot take place once it becomes "clear that an arrest was not going to take place." (*Macabeo*, at p. 1219.) That is why it mattered, in *Macabeo*, that the Vehicle Code effectively "*precluded* officers from arresting Mr. Macabeo under these circumstances." (*Ibid.*, original italics.) Here, in contrast, the officers were complying with the Vehicle Code, which authorizes a traffic offender's arrest if satisfactory identification cannot be produced. (Veh. Code, § 40302.)

In any event, *Macabeo* concerned a more invasive search into a domain where reasonable expectations of privacy are higher than in the vehicle context. (*Macabeo, supra*, 1 Cal.5th at p. 1215.) By contrast, the

expectation of privacy for the documents that must be maintained in order to drive an automobile is very low following a Vehicle Code violation. (See pp. 18, 27-30, *ante*.)[9]

D. Lopez's Additional Arguments Are Incorrect

Lopez raises a variety of other arguments, many of which diverge from the issue presented in her petition for review or require second-guessing of the trial court's fact-finding. All of these arguments are without merit.

Lopez contends that the search at issue here did not comply with *Arturo D.* because there was not a valid traffic stop in her case, in that the officer did not observe her commit a traffic violation. (OB 28-29.) But Lopez stopped her car and exited without any direction from Officer Moe. (IRT 32-33, 36-38.) Officer Moe's subsequent detention of her, which occurred only after she admitted she did not have a license, was justified because, as the trial court found, Officer Moe had just seen her driving. (IRT 33-34; see *People v. Maury* (2003) 30 Cal.4th 342, 384 [although an appellate court reviewing a suppression issue makes independent applications of law, it must defer to the trial court's express or implied factual findings when supported by substantial evidence].)

---

[9] Lopez argues the officer should have stayed away from her purse because purses are especially private. (OB 15.) But purses (in contrast to cell phones) are treated like other containers within the car for purposes of a vehicle search. (See *Wyoming v. Houghton*, *supra*, 526 U.S. 295.) Where the entire purpose of a search is to find specific documents, it serves Fourth Amendment purposes to begin the search in the place the documents will most likely be found. Here, beginning with the purse (which indeed contained Lopez's identification card) made it unnecessary to search elsewhere in the car. (Cf. *Safford Unified Sch. Dist. No. 1 v. Redding*, *supra*, 557 U.S. at p. 388 [a search is reasonable when it is limited to a place capable of hiding the searched-for item].)

Lopez also argues that she never failed to produce identification documentation because she was never asked for it. (OB 29-30.) But Lopez was asked if she had a driver's license, and she said she did not. (IRT 33, 38.) Her later statement that identification might be in the car was equivocal—and by that point she had resisted detention and it would not have been reasonable to require the officer to allow her access to the car. In any event, Lopez's petition for review asked whether, in light of *Gant*, a police officer may "search inside a suspect's vehicle for identification when the suspect fails to provide it upon request." (Petition for Review (Pet. for Rev.) 7.) Lopez may not now request that this Court provide relief upon a different factual theory, namely, that she did not fail to provide her identification. (Cal. Rules of Court, rule 8.516(a)(1); *People v. Estrada* (1995) 11 Cal.4th 568, 580.)

Lopez argues that instead of searching for Lopez's identification the officer should simply have taken her word as to who she was. (OB 23.) But it is common for peace officers to encounter aliases and false identifications during traffic stops. (*Hill v. California* (1971) 401 U.S. 797, 803, fn. 7; see, e.g., *Davis v. United States* (2011) 564 U.S. 229, 235 (*Davis*) [false name given during traffic stop]; *People v. Mai* (2013) 57 Cal.4th 986, 1039 [during traffic stop, driver gave officer false name then killed him]; *People v. Redd* (2010) 48 Cal.4th 691, 712-713 [driver gave police his brother's name].) Indeed, Officer Moe testified that suspects commonly provide false names. (IRT 43.) Contrary to Lopez's suggestion (OB 24), the problem could not have been solved by asking for her name and date of birth then checking that information against Department of Motor Vehicle records. The fact that a driver gives a name and date of birth for someone does not mean that the driver is that person. It is common for people to misidentify themselves using another person's personal details. (*People v. Redd, supra*, 48 Cal.4th at pp. 712-713 [driver

refused to provide photographic identification and gave police his brother's name and birth certificate]; *People v. Cole* (1994) 23 Cal.App.4th 1672, 1676 [defendant provided a false middle name and birth date to the arresting officer]; *People v. Robertson* (1990) 223 Cal.App.3d 1277, 1279 abrogated on another ground in *People v. Rathert* (2000) 24 Cal.4th 200, 205-208 [defendant falsely impersonated his brother upon being arrested for stealing a truck and continued to do so at arraignment by signing his brother's name on the booking and release forms]; *People v. Chardon* (1999) 77 Cal.App.4th 205, 212 [defendant signed her sister's name on a traffic citation].) When that happens during a police investigation, it does not simply frustrate the police: it could also cause potential harm to the person whose name was used to deceive the officer—an innocent person who will not appear for (or perhaps even know about) the citation and could find herself the subject of an undeserved license revocation proceeding or legal action.[10]

Lopez also argues that the officers should have allowed her to retrieve her identification from the car rather than searching for it themselves. (OB 23-24.) But settled law permits officers to keep the occupants out of their car during a lawful traffic stop. When a car has been stopped to investigate a traffic violation, "'officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures.'" (*Ohio v. Robinette*, *supra*, 519 U.S. at pp. 38-39, quoting *Pennsylvania v. Mimms* (1977) 434 U.S. 106, 111, fn. 6.)

---

[10] The reverse side of the TR-130 Notice to Appear/Citation indicates that a traffic offender who does not take one of the listed actions—pay the fine, appear in court, contest the violation, correct the violation, request traffic school, or request trial—will be charged with "failure to appear" and the offender's driver's license may be withheld, suspended, or revoked. A failure to appear, as indicated, may result in an arrest or trial in absentia. (*TR-Inst, Notice to Appear and Related Forms, supra*, Appendix F.)

Correspondingly, drivers who voluntarily get out of their cars may be maintained outside of their vehicles. (*Michigan v. Summers* (1981) 452 U.S. 692, 702-703.)

Gant did not change this rule; to the contrary, *Gant* assumes that an arrestee cannot safely be permitted access to the interior of his car. (*Gant, supra*, 556 U.S. at p. 343 & fn. 4.) The reason for these rules is not hard to grasp: traffic stops entail severe risks to the police. (See *Maryland v. Wilson* (1997) 519 U.S. 408, 414; *Michigan v. Long, supra*, 463 U.S. at p. 1047; *Michigan v. Summers*, at pp. 702-703; *Arturo D., supra*, 27 Cal.4th at p. 85, fn. 23.) The United States Supreme Court has never suggested that officers must subject themselves to such risks in order to have access to the papers and documents that they are legally entitled to see regarding cars driven on public roads. (See pp. 35-36, *ante*.)

Lopez suggests that she should have been allowed to go into her car because she is 57 years old and weighs under 145 pounds. (OB 25.) But in applying the Fourth Amendment, the Supreme Court has "noted the virtue of providing '"clear and unequivocal' guidelines to the law enforcement profession."' (*California v. Acevedo* (1991) 500 U.S. 565, 577.) Lopez's proposal for an age- and physique-based standard notably fails that test. It is the need for satisfactory identification to complete a citation that is the critical inquiry here and not the size and shape of the driver.

In any event, the circumstances of Lopez's case do not suggest that it was unreasonable for the officers to look for her identification themselves instead of allowing her to access whatever was in her car or attempt to escape. As Officer Moe testified and the trial court found, Lopez had physically resisted detention. To conclude that Officer Moe should have then permitted her access to unknown and potentially dangerous objects that could have been in her car would be to treat officer safety concerns more cavalierly than common sense or Supreme Court precedent permits.

(See *Robinette, supra*, 519 U.S. at pp. 38-39; *Michigan v. Summers, supra*, 452 U.S. at pp. 702-703.)

Lopez argues that the search was unreasonable because the officer had the alternative of arresting her if her identity could not be proven. (OB 22-27.) But it was not unreasonable for this Court, in *Arturo D.*, to reason that a full custodial arrest would be "considerably more intrusive" than a limited vehicle search for identification documents. (*Arturo D., supra*, 27 Cal.4th at p. 76, fn 17.) A custodial arrest by its nature involves physical seizure, the use of restraints, and transportation to a magistrate. Usually it also includes a search of the arrestee and the arrestee's personal effects, the setting of bail, the impoundment and inventory search of a car, and confinement in a holding cell with strangers who have been arrested for other crimes. It seems unlikely that most people would prefer a custodial arrest to a limited search of a vehicle for identification. At the very least, it is not unreasonable for officers to engage in a limited search that could obviate the need for those more intrusive measures. (See generally *United States v. Sharpe, supra*, 470 U.S. at pp. 686-687 [constitutionality depends not on whether an alternative course was available to the officer, but rather on whether the officer's decision not to pursue the alternative was reasonable].)

Lopez cites a variety of cases, which she claims support her argument. (OB 17 [citing *Newell v. Cnty. of San Diego* (S.D. Cal. May 28, 2014, 3:12-cv-1696-GPC-BLM) 2014 WL 2212136; *Torrez v. Commonwealth of Kentucky* (Apr. 8, 2011, 2009-CA-000410-MR) 2011 WL 1327129; *Crock v. City of Mt. Lebanon* (Dec. 3, 2010, 2:09-426) 2010 WL 5437266; *Arizona v. Rider* (Aug. 14, 2008, 1 CA-CR 07-0352) 2008 WL 3846312].) None of Lopez's cases is controlling authority in California. (See *People v. Troyer* (2011) 51 Cal.4th 599, 610.) Nor, on closer inspection, do they support her case.

Newell was a civil rights suit alleging violations of the plaintiff's Fourth Amendment rights. (*Newell v. Cnty. of San Diego*, *supra*, 2014 WL 2212136, *7.) In denying Newell relief, the federal district court affirmed the existence of authority permitting "non-consensual vehicle searches to ascertain vehicle ownership" but distinguished those cases from the facts because the plaintiff was not shown to be under arrest, in possession of contraband, or otherwise evasive. (*Id.* at p. *8.) *Crock* likewise assumed the vitality of precedent permitting document searches of vehicles but distinguished those cases as not applying because, for instance, there was no genuine uncertainty about the owner of the vehicle at issue. (*Crock v. City of Mt. Lebanon*, *supra*, 2010 WL 5437266, *6-*7.)

In *Torrez v. Commonwealth of Kentucky*, *supra*, 2011 WL 1327129, *1, Torrez's car was searched for identification only after he had been arrested for driving under the influence and had been placed in the police car. The court ruled the search violated *Gant* since Torrez was under arrest and secured outside his vehicle and because the search for identification would not produce evidence of the crime of drunk driving. (*Id.* at p. *3.) *Rider* likewise concerned a search that occurred after an arrest. (*Arizona v. Rider*, *supra*, 2008 WL 3846312, at pp. *1, *3.) Neither *Torrez* nor *Rider* considered whether it is proper to search for identification so that a citation may be issued.

In contrast, the People have cited numerous cases, and an influential treatise, that directly addressed the propriety of warrantless document searches of automobiles under the Fourth Amendment, upholding their permissibility after *Gant*. (See pp. 28-29, *ante*.) Those cases' and commentator's conclusions align with the United States Supreme Court's precedent for the reasons explained elsewhere in this brief, and they are far more persuasive than Lopez's distinguishable authorities.

II. SUPPRESSION WOULD BE IMPROPER UNDER THE GOOD-FAITH RULE

Even if this Court were to overrule or limit *Arturo D.* and hold the search here unconstitutional, Lopez would not be entitled to suppression.

A. Good-Faith Reliance upon Binding Precedent Precludes Suppression

The United States Supreme Court has made clear that suppression of evidence should be a court's "last resort, not our first impulse,' [citation]." (*Herring v. United States* (2009) 555 U.S. 135, 140 (*Herring*); accord, *Davis, supra*, 564 U.S. at p. 237; *Hudson v. Michigan* (2006) 547 U.S. 586, 591.) The Constitution does not entitle defendants to suppression of evidence as redress for an unconstitutional search. (*Davis*, at p. 236, citing *United States v. Janis* (1976) 428 U.S. 433, 454, fn. 29 (*Janis*).) Rather, the exclusionary rule is a sanction that the United States Supreme Court has created (*Davis*, at pp. 231-232) "to deter future Fourth Amendment violations" (*id.* at pp. 236-237).

But "[e]xclusion exacts a heavy toll on both the judicial system and society at large." (*Davis, supra,* 564 U.S. at p. 237.) "The principal cost of applying the [exclusionary] rule is, of course, letting guilty and possibly dangerous defendants go free—something that offends basic concepts of the criminal justice system." (*Herring, supra*, 555 U.S. at pp. 141-142, internal quotation marks and citations omitted). As a result, the exclusionary rule applies only when it will "'result in appreciable deterrence'" (*id.* at p. 141, quoting *Janis, supra,* 428 U.S. at p. 454; accord, *Davis*, at p. 237) and where "the benefits of deterrence [will] outweigh the costs." (*Herring*, at p. 141; *id.* at p. 147 ["the deterrent effect of suppression must be substantial and outweigh any harm to the justice system"]; accord, *Davis*, at p. 237.) As a result, suppression is not proper

where officers acted in objectively reasonable reliance upon binding appellate authority. (*Davis*, at pp. 232, 240-241.)

Thus, suppression is unwarranted here regardless of whether this Court alters the rule from *Arturo D.* A decision by this Court binds all courts and law enforcement officers in California unless and until the decision is overruled by this Court itself or by the United States Supreme Court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) The United States Supreme Court's decision in *Gant* did not overrule *Arturo D.* because *Gant* involved an entirely different search exception and supporting rationale. (See pp. 18-19, *ante*.) Nor has this Court overruled *Arturo D.*

More importantly, any marginal deterrence from suppressing evidence under the circumstances presented in this case would be outweighed by the social costs. When officers act deliberately, recklessly, or with grossly negligent disregard for the Fourth Amendment, "the deterrent value of exclusion is strong and tends to outweigh the resulting costs." (*Davis, supra*, 564 U.S. at p. 238.) But "when the police act with an objectively reasonable good-faith belief that their conduct is lawful, . . . the deterrence rationale loses much of its force, and exclusion cannot pay its way." (*Ibid.*, internal quotation marks and citations omitted.) In light of *Arturo D.* and the differences between that case and *Gant*, it cannot be said that Officer Moe knew or should have known that the search he conducted was in violation of the Fourth Amendment. As a result, suppression would be improper. (*Herring, supra*, 555 U.S. at p. 143.)

This Court's decision in *Macabeo* does not require a different result. In *Macabeo*, the prosecution argued that it would be improper to suppress the contents of a cell phone that had been searched incident to arrest, given that this Court's precedent had previously allowed such searches and that *Riley v. California*, which barred cell phone searches incident to arrest, was

issued after the search in question. *Macabeo* did not reject the prosecution's argument that suppression would have been improper if the police had searched the phone incident to arrest in reliance on this Court's pre-*Riley* case law. Instead, *Macabeo* held that good-faith reliance was beside the point because the search was improper under pre-*Riley* precedent too. Pre-*Riley* precedent in California had permitted a cell phone search only incident to arrest, whereas the defendant in *Macabeo* had not been arrested and would not have been arrested absent the evidence found during the search. (*Macabeo*, *supra*, 1 Cal.5th at 1216 ["Even before *Riley*, ... the search here would not have qualified as a proper search incident to arrest" because "Macabeo was not under arrest when officers searched his phone."].) That reasoning does not apply here, since the binding precedent on which Officer Moe relied, *Arturo D.*, does not require arrest but instead applies where citation is a possibility.

B. The People Did Not Forfeit This Argument

Lopez argues that the People have forfeited their argument about good-faith reliance on *Arturo D.* because the People did not raise this argument in the trial court. (OB 31-33). But the issue has not been forfeited. Lopez did not so much as cite *Gant* in her written motion (ICT 11-14), and her oral *Gant*-related arguments during the trial court's hearing were based entirely on the supposition that Lopez had been arrested before the search and that this was effectively a search "incident to arrest." (IRT 48; see *ibid.* [arguing that Officer Moe, in grabbing Lopez's arm after she admitted being unlicensed, was "arresting her for driving without a license" and that *Gant*'s limits therefore applied].) Lopez did not argue that *Gant*'s rule applied to non-arrested detainees and therefore raised no claim that *Gant* superseded *Arturo D.* Because Lopez had not argued in the trial court

that *Arturo D.* had been or should be overruled, she raised nothing to which a good-faith argument would have been relevant.[11]

In any event, this Court's precedent makes clear that there is no reason to bar the People from now raising good faith in this case. A reviewing court may affirm the judgment on the basis urged in the trial court or some other alternative ground. (*Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1242.) True, "appellate courts should not consider a Fourth Amendment theory for the first time on appeal when 'the People's new theory was not supported by the record made at the first hearing and would have necessitated the taking of considerably more evidence.'" (*Id.* at p. 1242, quoting *Green v. Superior Court* (1985) 40 Cal.3d 126, 137-138.) When "the factual basis for the [new] theory is fully set forth in the record," however, a party's failure to present the theory to the trial court does not bar review. (*People v. Robles* (2000) 23 Cal.4th 789, 801, fn. 7; see *Green,* at pp. 137-138.) The good-faith rule does not require extensive factual development; it represents only a pure question of law, making the strict application of forfeiture rules inappropriate. (*Higgason v. Superior Court* (1985) 170 Cal.App.3d 929, 942.) Here, for instance, the application of the good-faith rule depends simply on the degree to which *Gant* either directly

---

[11] The judge later asked whether *Gant* had superseded prior state law. (IRT 50-51.) But the prosecution's decision to distinguish *Gant* rather than raise good faith at that point could not have unfairly disadvantaged Lopez because the judge's question went beyond anything that Lopez herself argued or relied on. The trial judge's written ruling made the good-faith defense potentially relevant—but by that time the suppression hearing evidence was closed. Lopez was not deprived of any opportunity to make a record when the People successfully convinced the Court of Appeal to reverse the trial court's underlying Fourth Amendment ruling rather than raising a good-faith defense at that point.

overrules *Arturo D.* or places *Arturo D.*'s rule entirely beyond the realm of plausibility.[12]

Robey does not require a different result. (OB 32.) In *Robey*, this Court held that the prosecution had forfeited its appellate arguments for creating a "plain smell" doctrine by not raising the arguments in the trial court. (*Robey v. Superior Court*, *supra*, 56 Cal.4th at p. 1241.) Adjudication of the newly raised theory in *Robey* would have required evidence about the olfactory characteristics of marijuana and its containers—something that was not adequately developed at the hearing. (*Id.* at p. 1242.) Here, in contrast, all parties had the opportunity to develop evidence about compliance with *Arturo D.* at Lopez's suppression hearing, and the additional question that the People ask the Court to consider here is a purely legal one about the state of the law between *Gant* and the time of Lopez's search. Foreclosing the government from good-faith reliance on existing precedent under such circumstances would serve neither justice nor efficiency. (See *People v. Robles*, *supra*, 23 Cal.4th at p. 801, fn. 7.)

Moreover, the argument that the government belatedly raised in *Robey* was novel to that case and would have required the Court to adopt the plain smell doctrine. Enforcing the forfeiture rule therefore allowed the Court to "tread carefully" in an "emerging area of the law" by "deciding novel issues only when the circumstances require." (*Robey v. Superior*

---

[12] Lopez argues that she has been deprived of an opportunity to cross examine Officer Moe about his familiarity with *Gant* and *Arturo D.* (OB 32-33.) But such questioning would have been irrelevant: the *Davis* test is objective and asks only whether it was reasonable for the officer to believe his conduct was permitted. (*People v. Harris* (2015) 234 Cal.App.4th 671, 701-704; *People v. Jimenez* (2015) 242 Cal.App.4th 1337, 1364-1365.) Officer Moe's subjective awareness of particular cases is not at issue. (*People v. Woods* (1999) 21 Cal.4th 668, 680, citing *Whren v. United States* (1996) 517 U.S. 806, 813.)

Court, *supra*, 56 Cal.4th at p. 1243.) The good-faith rule, in contrast, is established law. It is inappropriate under the Fourth Amendment to grant Lopez a windfall by precluding application of good-faith reliance here.[13]

///

///

///

[13] A ruling on the remedy of suppression is required in every Fourth Amendment case. Thus, it is proper to consider the application of the good-faith rule given the issue presented here. The issue presented in the petition for review did not ask this Court to reconsider *Arturo D.* but questioned whether *Gant* prohibits the limited search conducted in this case. (Pet. for Rev. 7 ["After the United States Supreme Court's decision in [*Gant*], which substantially narrowed the scope of the vehicle search doctrine, may a police officer still search inside a suspect's vehicle for identification when the suspect fails to provide it upon request?"].) If *Gant* does not prohibit such a search, then Officer Moe's reliance on *Arturo D.* was reasonable whether or not this Court now were to overrule *Arturo D.* In any event, Lopez has anticipated this issue and discusses the good-faith rule at length in her opening brief on the merits. (OB 31-36.)

CONCLUSION

For the foregoing reasons, this Court should affirm the Court of Appeal's decision and reinstate the proceedings against Lopez.

Dated: August 3, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
JOSHUA A. KLEIN
Deputy Solicitor General
CATHERINE CHATMAN
Supervising Deputy Attorney General
RACHELLE A. NEWCOMB
Deputy Attorney General

R. Todd Marshall

R. TODD MARSHALL
Deputy Attorney General
Attorneys for Plaintiff and Appellant

SA2017303133
32989108.doc

CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWERING BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 9,706 words.

Dated: August 3, 2017

XAVIER BECERRA
Attorney General of California

R Todd Marshall

R. TODD MARSHALL
Deputy Attorney General
Attorneys for Plaintiff and Appellant

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Lopez** No.: **S238627**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On August 3, 2017, I served the attached **ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Solomon R. Wollack
Attorney at Law
P. O. Box 23933
Pleasant Hill, CA 94523
(Attorney for Defendant)
(2 copies)

The Honorable Jeff Reisig
Yolo County District Attorney
301 Second Street
Woodland, CA 95695

Clerk of the Superior Court
Yolo County
1000 Main Street
Woodland, CA 95695

Court of Appeal
Third Appellate District
914 Capitol Mall,
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 3, 2017, at Sacramento, California.

_____
Declarant

SA2017303133
32912787.doc