

1 JAMES P. FOX, DISTRICT ATTORNEY
County of San Mateo, State of California
2 State Bar No. 45169
1050 Mission Rd
3 South San Francisco, CA 94080
By: Rebecca Baum, Deputy
4 Telephone: (650) 877-5454
Attorney for Plaintiff
5
6
7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN MATEO

10 THE PEOPLE OF THE STATE OF CALIFORNIA

11 Plaintiff,

12 v.

13 JOHN BARLOW

14 Defendant.
15
16
17

No. NM333376

PEOPLE'S OPPOSITION TO
DEFENDANT'S MOTION TO
SUPPRESS EVIDENCE PURSUANT
TO PENAL CODE §1538.5

Date: January 7, 2004
Time: 9:00 a.m.

18 The People hereby file their opposition to Defendant's Motion to Suppress Evidence pursuant
19 to Penal Code section 1538.5. The People's opposition is based on this memorandum, pleadings and
20 papers in the above-captioned case, any arguments made at the hearing, and such witness testimony,
21 evidence and documents as may be submitted.
22

INTRODUCTION

23 Defendant is charged with three misdemeanor counts of violating Health and Safety Code
24 section 11377. He is also charged with violating Business and Professions Code section 4140, as
25 well as Health and Safety Code section 11357(b). Defendant now brings a motion to suppress

1 evidence, arguing that the search was an unlawful baggage search, that his detention was
2 unreasonably long and intrusive, and that his arrest was not supported by probable cause. As will be
3 shown below, because the contraband was obtained pursuant to a lawful administrative search,
4 Defendant was lawfully detained and arrested. Thus, the motion should be denied.

5 STATEMENT OF ANTICIPATED FACTS

6 On September 15, 2003, Sandra Ramos, a Covenant Security employee who works at San
7 Francisco International Airport, screened Defendant's checked luggage by X-ray. She noticed wires
8 and batteries that appeared suspicious. She decided to check the bag to ensure there were no threats to
9 security. When she checked the bag, she discovered marijuana, as well as other drugs, including
10 what eventually were discovered to be Psilocyn, Ketamine, and MDA. As it turned out, the wires and
11 batteries were not threats. Ramos notified her supervisor, who called the police. Defendant was
12 removed from his flight and admitted to the police that the items were his.

13 ARGUMENT

14 1. The Search of Defendant's Luggage Was Lawful

15 It is not every governmental search that requires a search warrant. Administrative searches are
16 not aimed at obtaining evidence of a criminal violation, and have longed been deemed proper when
17 they are designed to insure general public security. People v. Owens (1982) 134 Cal.App.3d 144,
18 146-147. "[T]he validity of the search depends on a balancing of the personal interest in privacy . . .
19 against the gravity of the public danger sought to be prevented." Id. at 147.

20 In Owens, the defendant was a passenger on a flight from Los Angeles to Dallas-Forth Worth.
21 He checked his luggage. An airline employee was suspicious the defendant might be a hijacker, so
22 his luggage was checked by X-ray. The X-ray disclosed suspicious objects and the airline employees
23 opened the bag and discovered several bottles of pills containing illegal controlled substances. The
24 defendant there brought a motion to suppress, which was denied. He appealed, and the Court of
25 Appeal affirmed. The court, citing the principles mentioned above, held that:

1 The search mandated by the regulation here involved imposes a minimal invasion of privacy;
2 the checked baggage of an ordinary passenger will not contain, and an X-ray check will not
3 show, the kind of material or device envisaged by the regulation. However, the risk of loss
of both property and life from the checking of explosive and similar destructive material is
great. We cannot say that the kind of investigation herein involved was not permissible.

4 Ibid.

5 Here, the facts are nearly identical to those in Owens. An airline security employee screened
6 Defendant's luggage, during what can only be labeled as a routine security check, and discovered
7 contraband when she was examining the luggage for potential hazards. The court in Owens recognized
8 the need for such administrative searches, and that case was decided at a time during which the
9 awareness of risk of terrorist threats was markedly different from the current climate. Today, it is all
10 too clear why these searches must be performed. This is not to say, however, that there should not be
11 limits on searches, nor that the Fourth Amendment should be ignored. Still, in the instant case, the
12 security employee had a valid reason for opening and examining Defendant's luggage. Her goal was to
13 insure the safety of the plane, and not to discover other types of contraband. Clearly, this was a lawful
14 administrative search.¹

15 2. Defendant's Detention and Subsequent Arrest Were Lawful

16 A temporary detention requires a reasonable suspicion the person detained may be
17 involved in criminal activity. Reasonable cause demands some minimum level of objective
18 justification, but considerably less than is required for probable cause to arrest. United States
19 v. Sokolow (1989) 490 U.S. 1, 7; Terry v. Ohio (1968) 392 U.S. 1, 22.

20 Here, Defendant's detention occurred once the police examined the contents of his suitcase and
21 determined some of it was, and some of it was likely, contraband. Clearly, based upon their
22 observations and recognition of the substances within Defendant's suitcase, the police had more than
23 a reasonable suspicion that the person who owned the bag was involved in some type of criminal

24 _____
25 ¹ Here, as in Owens, "It is, of course, not contended that the accidental
discovery of illegally possessed objects in the course of a valid administrative

1 activity – they had probable cause to arrest the owner for possession of illegal narcotics. When
2 Defendant admitted the bag was his, the officers certainly had probable cause to arrest him. As such,
3 both the detention and subsequent arrest of Defendant were lawful.

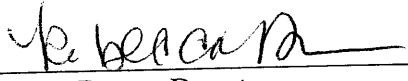
4 **CONCLUSION**

5 For the reasons set forth above, the People respectfully request Defendant's Motion to
6 Suppress be denied.

7
8 Dated: December 22, 2003

9 Respectfully submitted,

10 JAMES P. FOX, DISTRICT ATTORNEY

11 By 
12 Rebecca Baum, Deputy

PROOF OF SERVICE BY MAIL

Case No. NM333376

My name is Terri Gullo. My main business address is:

Office of the District Attorney
400 County Center, 3rd Floor
Redwood City, CA 94063

Office of the District Attorney
400 County Center, 4th Floor
Redwood City, CA 94063

Office of the District Attorney
1050 Mission Road
South San Francisco, CA 94080

Office of the District Attorney
21 Tower Road
San Mateo, CA 94402

I am over the age of eighteen (18) years and not a party to the cause. On December 22, 2003, I served the attached:

PEOPLE'S OPPOSITION TO DEFENANT'S MOTION TO SUPPRESS
EVIDENCE

on the hereinafter named, by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid and depositing it in the United States mail at South San Francisco, addressed as follows:

Omar Figueroa, Esq.
506 Broadway
San Francisco, CA 94133

Executed at South San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

Terri Gullo