

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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DANIEL DAVID GARZA,  
*Petitioners,*

v.  
UNITED STATES OF AMERICA,  
*Respondents.*

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT*

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**APPENDIX TO THE PETITION FOR  
WRIT OF CERTIORARI  
FILED BY DANIEL DAVID GARZA**

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United States Attorney's Office  
Western District of Louisiana



U.S. v. Daniel D. Garza, et al  
Criminal No. 16-CR-00297-01-03

Copied  
05/03/2017  
Data CD

N-7 Traffic Stop 11/17/16  
Exhibit 1

## APPENDICES

1. Video from CPSO Sgt. Chris Bane's patrol unit
2. Transcript of May 30, 2017 Evidentiary Hearing
3. June 27, 2017 Order denying the Motion to Suppress
4. July 11, 2018 Judgment and Opinion of the United States Court of Appeal for the Fifth Circuit

Respectfully submitted,

Nichole M. Buckle

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# **Exhibit 1**

# **Exhibit 2**

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF LOUISIANA  
3 SHREVEPORT DIVISION

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1 30 MAY 2017

2 (Court called to order, defendant present)

3 THE COURT: Thank you. Be seated, please.

4 The matter on the docket this afternoon is hearing on a  
5 motion to suppress in the *United States versus Daniel David*  
6 *Garza*, 16-cr-297.

7 Mr. Garza is present with his counsel, Nikki Buckle. And  
8 the Government is represented by Tiffany Fields and Jim Cowles.

9 The Court has reviewed the videotape of the traffic stop  
10 in question. I have my own notes and time markings on the  
11 matters that I deem significant in it. I say that only to say  
12 that it's not required that you play the video in the  
13 courtroom. I know it's going to be marked and introduced as an  
14 exhibit here in just a second. But you are welcome and free to  
15 show any part of the video that you wish to emphasize to any  
16 witness on direct or cross-examination to call particular  
17 things to the Court's attention, if that's appropriate.

18 Ms. Buckle, are you ready to proceed on Mr. Garza's motion  
19 to suppress?

20 MS. BUCKLE: Yes, Your Honor.

21 THE COURT: And Ms. Fields?

22 MS. FIELDS: Yes, Your Honor.

23 THE COURT: And, Ms. Fields, how many witnesses do  
24 you have?

25 MS. FIELDS: Your Honor, the Government has one

1 witness to present: Sergeant Christopher Bane.

2 THE COURT: And Ms. Buckle, do you anticipate any  
3 witnesses on your side?

4 MS. BUCKLE: We will not be calling any witnesses,  
5 Your Honor. Just cross-examination.

6 THE COURT: Okay. Very good.

7 All right. Well, everyone is ready so, Ms. Fields, would  
8 you start by introducing the videotape so that we'll have that  
9 done. And you can call your witness.

10 MS. FIELDS: Yes, Your Honor.

11 At this time the Government would move to admit the  
12 videotape or the dash cam video that was attached to the  
13 response. And we would introduce that as Government's  
14 Exhibit 2.

15 THE COURT: All right. Any objection, Ms. Buckle?

16 MS. BUCKLE: No, Your Honor.

17 THE COURT: All right. It's admitted.

18 MS. FIELDS: Thank you, Your Honor. And we would  
19 seek to call our sole witness: Sergeant Christopher Bane.

20 THE COURT: All right. Sergeant Bane, if you would  
21 come up and be sworn, please.

22 GOVERNMENT'S WITNESS, SERGEANT CHRISTOPHER BANE, SWORN

23 DIRECT EXAMINATION

24 BY MS. FIELDS:

25 Q Sergeant Bane, would you mind, just spell your last name



1 for the court reporter.

2 A Yes, ma'am. It's B-A-N-E.

3 Q Sergeant Bane, how are you employed?

4 A Excuse me?

5 Q How are you employed?

6 A I have been with the Caddo Sheriff's Office for 21 years.

7 Q And what are your duties there at the Sheriff's Office?

8 A My duties at the present time is I'm the supervisor over  
9 the Caddo Sheriff's K-9 section.

10 Q And as supervisor over the K-9 units, does that job  
11 require you to do traffic stops, be out on the road?

12 A Yes, ma'am. All the K-9 handlers assist narcotics, the  
13 DEA, and patrol units. Basically we're there for their backup  
14 anytime they need us.

15 Q And how long have you done patrol?

16 A I've been on patrol for the Caddo Sheriff's Office since  
17 2001.

18 Q Through your employment, have you become familiar with the  
19 defendant, Mr. Daniel Garza?

20 A I couldn't understand you.

21 Q During the course of your employment, have you become  
22 familiar with the defendant, Mr. Daniel Garza?

23 A Yes, ma'am, I was.

24 Q And how did you become familiar with him?

25 A I was -- on the 17th of November, 2016, I was asked to

1 assist the Drug Enforcement Administration. And we were  
2 looking a vehicle that would be traveling I-20 somewhere around  
3 Monkhouse Drive. It was a Red Ford Focus. It had a Texas tag  
4 of Hotel Romeo Bravo -- excuse me, Hotel Romeo Papa 9307. And  
5 I was trying to locate this vehicle because supposedly it was  
6 carrying illegal narcotics.

7 Q And did you see this vehicle?

8 A Yes, ma'am. I was able to find the vehicle around the  
9 Fairgrounds on I-20. It was heading eastbound towards Bossier  
10 Parish. When I saw the vehicle, it was in the far right-hand  
11 lane, and I noticed it was traveling on the fog line going  
12 towards the shoulder of the road. This vehicle did this  
13 several times.

14 And basically what I did is I got in position because the  
15 traffic was very heavy. And when the vehicle had to move to  
16 the left lane because we're in the area of Linwood Avenue and  
17 I-49 where the right lane is an exit only. So they went  
18 basically to the center lane, which I was able to get behind  
19 the vehicle and activate my dash cam, and I was able to capture  
20 the vehicle still not being centered in the lane of traffic.

21 And therefore, when I got to a clear area where the  
22 interchanges were no longer going to the right, I was able to  
23 execute a traffic stop, which stopped us underneath I-49.

24 Q So when you activate your lights, did your dash cam  
25 automatically begin recording or how does that recording work?

1 A Ma'am, what it does is it actually backs up 30 seconds and  
2 records the previous 30 seconds before you turn the lights on.

3 Q And so the part where the vehicle was actually around the  
4 Linwood exit, was that prior to the videotape beginning the  
5 recording?

6 A Yes, ma'am. Because I wasn't in the right position to be  
7 able to record at that time.

8 Q Now, why not just turn the lights and pull the vehicle  
9 over the moment that you see the violation?

10 A Ma'am, I was looking for a safe environment to make the  
11 traffic stop for the folks in the car and also myself.

12 Q And why was the proportion or the place they were in, why  
13 was that area deemed unsafe?

14 A I couldn't understand.

15 Q Where the vehicle was when you noticed the traffic  
16 violation, why was that area deemed unsafe in that moment?

17 A Well, at that time, because there was so much traffic in  
18 the area and I had to get through the traffic, if I would have  
19 turned on my lights, I would have had people trying to stop in  
20 front of me and versus the other vehicle that I was trying to  
21 stop.

22 Q And is that near an interchange for another interstate?

23 A Yes, ma'am. That's the junction of I-20 and also I-49.

24 Q So you stop the vehicle. And were you the only officer  
25 there at that moment?

1 A Yes, ma'am, I was.

2 Q And did you approach the driver?

3 A I approached on the driver's side of the vehicle and  
4 basically asked the driver to step back so I could talk to her.  
5 I didn't want to be out there on the edge of that road with all  
6 the traffic going by me at 70 miles an hour.

7 Q And your exchange with the driver, how did that go? Did  
8 you ask her who she was?

9 A Well, I asked her if she was okay, because she was very  
10 unsteady on the roadway. And she told me that she was on the  
11 phone and that she wasn't really paying attention to her lane  
12 of traffic.

13 Q Did you write a ticket to the driver?

14 A Yes, ma'am, I did.

15 Q Who was the driver of that vehicle?

16 A Her name is Ann Fothergill -- Rachel Ann Fothergill.

17 MS. FIELDS: Your Honor, may I approach?

18 THE COURT: Yes.

19 Q (Hands document to the witness.)

20 Sergeant Bane, I've handed you what's been pre-marked as  
21 Government's Exhibit 1. Can you tell us what that document is?

22 A Yes, ma'am. It's a traffic ticket from the Caddo  
23 Sheriff's Office.

24 Q And is this the citation that you wrote?

25 A Yes, ma'am. Absolutely.

1 Q And what statute did you cite Ms. Fothergill for  
2 violating?

3 A I did Louisiana Revised Statute 32:79, which is basically  
4 you're supposed to drive in the roadway that's laned for  
5 traffic.

6 Q And did you sign this ticket?

7 A I have my signature -- it's not a signature block but we  
8 put our name in there, and I put Sergeant C. Bane and my  
9 commission number, 859, next to it.

10 MS. FIELDS: Your Honor, we would move to admit  
11 Government's Exhibit Number 1.

12 MS. BUCKLE: No objection, Your Honor.

13 THE COURT: It's admitted.

14 MS. FIELDS: At this time I don't believe I have any  
15 other questions.

16 THE COURT: All right.

17 CROSS-EXAMINATION

18 BY MS. BUCKLE:

19 Q Good afternoon, Sergeant Bane. I am Nichole Buckle; I  
20 represent Daniel Garza.

21 How did you first, or when did you first learn about the  
22 vehicle that you were searching for?

23 A I was called earlier that day, probably around 10:30.

24 Q Okay. Were you searching for the vehicle up until you  
25 observed the vehicle, from 10:30 until I believe it was

1 approximately 11:42 a.m.?

2 A Well, ma'am, I was actually supporting DEA. So I didn't  
3 have my eyes on the vehicle, but my understanding is that the  
4 DEA did. And when the vehicle actually started moving, they  
5 told me: Hey, it's moving on I-20 now, leaving Monkhouse  
6 Drive.

7 Q Where were you when you were told that the vehicle was  
8 moving?

9 A I was over by the airport.

10 Q So had you stayed in that area waiting for this vehicle to  
11 move?

12 A Yes, ma'am, I was.

13 Q You said you first observed the vehicle or caught up to  
14 the vehicle around the fairgrounds?

15 A Yes, ma'am.

16 Q Now, if you will explain to me again, because I was having  
17 trouble following you, the vehicle was in the right-hand lane?

18 A Yes, ma'am.

19 Q Did the car -- was the car speeding?

20 A Was the car speeding?

21 Q Yes.

22 A No, ma'am, it was doing the speed limit.

23 Q Did the driver cross into the center lane and back into  
24 the right lane?

25 A Ma'am, the driver had actually moved to the right onto the

1 fog line, which is the solid white line on the right side of  
2 the road. And that's where the shoulder is. And the person  
3 was not driving in her lane of traffic. She's supposed to be  
4 centered.

5 Q Did she cross the fog line or just --

6 A She drove on it.

7 Q She drove on it. For how long?

8 A She hit it about three different times that I could see.

9 Q Sergeant Bane, why didn't you activate your camera at that  
10 point?

11 A Because of other vehicles that were in the way. I would  
12 have people that would have been trying to stop in front of me  
13 to my right and left. That would have been a very unsafe thing  
14 to do for me.

15 Q To activate your camera?

16 A To activate my emergency equipment.

17 Q Right. But you did activate your camera before you  
18 activated your emergency equipment?

19 A Ma'am, I can't actually remember what chain of events was  
20 there, because I just know that I was trying to position myself  
21 because I was not behind the car; I was in the center.

22 MS. BUCKLE: Your Honor, I think it would be  
23 appropriate, if we can, to replay the first 45 seconds of the  
24 video to refresh Sergeant Bane's memory.

25 THE COURT: All right.

1 (The DVD was attempted to be queued up to the requested point.)

2 THE CLERK: This may be one of the DVDs that won't  
3 play except on a laptop.

4 (Off the record to set up DVD to play.)

5 MS. BUCKLE: Your Honor, I can ask a few more  
6 questions --

7 THE COURT: Okay. All right. Let's see if we can  
8 get through it.

9 BY MS. BUCKLE:

10 Q Sergeant Bane, what do you have to do in order to activate  
11 your camera?

12 A You can turn on the emergency equipment, which is the  
13 light bar. Okay? Or you can adjust the mic pack.

14 THE COURT: The what?

15 THE WITNESS: The mic pack, sir.

16 THE COURT: What is that?

17 THE WITNESS: It's a mic pack that's in your pocket.

18 BY MS. BUCKLE:

19 Q And what do you have to do to turn that on?

20 A You have to hit a switch on it to turn it on. It's much  
21 easier to go ahead and use the actual controller that turns on  
22 the light bar system, which turns on the lights, all the  
23 emergency equipment on the vehicle. And then it also activates  
24 the camera and the recording back so that we get audio.

25 Q But in this case, do you recall how you activated the



1 camera?

2 A If I remember, I hit the light bar to turn it on when I  
3 knew that I had a good place to stop the vehicle.

4 Q Okay. If I indicate to you that the video shows  
5 approximately 40 seconds of travel before the emergency lights  
6 and sirens are activated, would that refresh your memory?

7 A It backed up the 30 seconds.

8 Q It's 40 seconds.

9 A It's 40 seconds? Well, I'm talking about the camera  
10 itself, is my understanding is mine is set for 30 seconds'  
11 backup.

12 Q So how would you explain the additional 10 seconds?

13 A I couldn't explain that. That's one of those glitches  
14 that's probably in the system.

15 Q Was it possible that you activated the camera through the  
16 mic pack?

17 A I don't believe I did that, ma'am. I believe I hit the  
18 light, because I was waiting for the right location to be able  
19 to turn on the emergency equipment.

20 THE COURT: What's involved in turning it on from the  
21 mic pack? How does one do that?

22 THE WITNESS: To turn it on, sir?

23 THE COURT: How does one do that? It's in your  
24 pocket?

25 THE WITNESS: Yes, sir. It's in the pocket here, and

1 you can actually do like a thumb jab on it to make it activate.  
2 But it's actually better to use the equipment on the light bar  
3 system because that way you know that it's actually active.

4 THE COURT: What's the purpose of having that ability  
5 in your pocket?

6 THE WITNESS: In case you're outside the vehicle,  
7 Your Honor. Like, say, you pull up on something and your  
8 equipment is not active and all of a sudden you need to record  
9 that; you could reach up and hit it and you hope that it's  
10 actually going to record.

11 BY MS. BUCKLE:

12 Q Sergeant Bane, don't you think it would be important if  
13 you were asked to follow a vehicle and then serve for a traffic  
14 violation, that you have your camera on in order to record the  
15 traffic violation?

16 A Ma'am, we try to do the best that we can, and sometimes  
17 it's not appropriate to have the camera on. Sometimes it --  
18 these cameras do come with a speed trigger that when you reach  
19 a certain speed, it would automatically come on. Okay? But on  
20 something that I'm sure that I'm going to have, I will activate  
21 the camera. I didn't know if I had this vehicle or not.

22 Q What do you mean you didn't know if you had this vehicle?

23 A I didn't know if I was going to be able to catch the  
24 vehicle.

25 Q Right. But you did catch the vehicle.

1 A Yes, I did.

2 Q And you did not activate your camera immediately?

3 A No, ma'am, because I wasn't capable of doing it at that  
4 point.

5 Q But then you said you then observed her travel on the fog  
6 line at least three times?

7 A Two to three times, yes, ma'am.

8 Q And you still did not activate your camera at that point?

9 A No, ma'am. I was operating a motor vehicle, trying to get  
10 through traffic. I know I got a couple of phone calls during  
11 this that I had to say "hold on," put the phone down, and get  
12 positioned to try to stop this vehicle.

13 Q So are you saying that it took really more than 40 seconds  
14 to find a safe place to pull over to initiate the traffic stop?

15 A Yes, ma'am.

16 Q When was the last time you viewed the video, Sergeant  
17 Bane?

18 A Couple of days ago.

19 Q Do you recall seeing other traffic in the area?

20 A I got in front of that traffic, ma'am.

21 Q Okay. But the traffic -- was there any traffic around  
22 vehicle that you were following?

23 A I was able to get through the traffic and get behind this  
24 vehicle when she had moved to that center lane. I think the  
25 people realized that were around me that I was trying to get to

1 that vehicle, so they sort of backed off and let me have that  
2 opportunity.

3 Q So you would agree that there was no traffic around the  
4 vehicle at least during the point that your camera was on?

5 A I got into position and that's when my camera did the  
6 backup on it and showed the vehicle.

7 Q So you positioned yourself behind the vehicle and traveled  
8 for 40 seconds with no traffic around the red vehicle that you  
9 were following, and it's your testimony that it took 40 seconds  
10 to find a safe place to initiate, even though there was no  
11 traffic next to the vehicle?

12 A Yes, ma'am. I'm going to make a safe area for me; that's  
13 officer safety. If I would have stopped that vehicle when we  
14 were coming up on that ramp, that's a bridge. That's not a  
15 safe place for to stop anybody.

16 Q But you have -- there were plenty of places to stop prior  
17 to that?

18 A No, ma'am. That's -- I'm the one who determines where I  
19 want to stop that vehicle, because it's my safety. Okay? And  
20 my concern is, is also for the people I'm stopping. Every day  
21 in this country we have people that are being run over simply  
22 being on the side of the interstate. So I chose the best place  
23 that I thought had a wide shoulder, which was underneath the  
24 bridge up there, and it was a perfect place to stop them,  
25 because that way we didn't have a small shoulder and we were

1 able to have people come up and help us take care of the  
2 situation.

3 Q I'm still confused on why there was 40 seconds of video if  
4 the system only records back 30 seconds. Have you ever had  
5 that happen before?

6 A Ma'am, I don't control that system. I don't even have  
7 access to the system. The only thing that I can do to that  
8 system is that sometimes when you have a glitch such as like  
9 replacing a battery in a vehicle, that takes the whole system  
10 down. And what happens when they put a new battery in it, you  
11 have to take your key and put that in there and that key's  
12 purpose is to put your name information, the vehicle number  
13 back on that camera. That's the only purpose we have for it.

14 But that is a locked system. I have no way of adjusting  
15 anything in that system without going to Sgt. Mike Vicus, who  
16 is the administrator of the L3 system that's in my car.

17 Q Does that system have the capability to operate only the  
18 camera without the lights and sirens?

19 A The camera can run without the lights, yes.

20 Q And you can initiate the camera without initiating the  
21 lights?

22 A Right.

23 Q Okay. Again, why did you not initiate the camera when you  
24 observed Ms. Fothergill making the traffic violations?

25 A Ma'am, I was operating a motor vehicle, trying to do the

1 best that I could for officer safety. There are so many  
2 different things that are going on at the same time, I did  
3 not -- when I saw the traffic violation and I realized I got  
4 behind the vehicle, I went ahead and activated the lights.

5 Q Sergeant Bane, wasn't your intention in following the  
6 vehicle to observe the traffic violation?

7 A Yes, ma'am.

8 Q Yet you didn't think it was necessary to activate the  
9 camera?

10 A No, ma'am. Not at that point.

11 MS. BUCKLE: No further questions, Your Honor.

12 THE COURT: All right. Redirect?

13 MS. FIELDS: Briefly.

14 REDIRECT EXAMINATION

15 BY MS. FIELDS:

16 Q Sergeant Bane, you don't have access to how far back your  
17 camera records?

18 A No, ma'am, I don't.

19 Q So when your lights come on, it automatically pulls some  
20 period of time prior?

21 A Yes, ma'am.

22 Q When you stopped Ms. Fothergill, you asked her if she was  
23 okay?

24 A Yes, ma'am, I did.

25 Q Why did you ask her that question?

1 A The way she was driving.

2 Q And what was her response?

3 A She said she was on the phone and she wasn't really paying  
4 attention to her lane of traffic.

5 Q And did she apologize for that as well?

6 A I believe she did.

7 MS. FIELDS: Thank you, Your Honor.

8 THE COURT: Thank you, sir; you can step down.

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. We've got the video admitted  
11 as Government Exhibit 2. We have the citation for improper  
12 lane usage as Government Exhibit 1.

13 Other than those two exhibits and the testimony of  
14 Sergeant Bane, Ms. Fields, is there anything else that the  
15 Government wishes to provide in opposition to the motion to  
16 suppress?

17 MS. FIELDS: Your Honor, we'll rely on the written  
18 response.

19 THE COURT: All right.

20 And Ms. Buckle, anything that you wish to submit with  
21 regard to evidence for the hearing?

22 MS. BUCKLE: No evidence, Your Honor.

23 THE COURT: All right. The following remarks will  
24 constitute my oral Report & Recommendation to Judge Walter.

25 It is my recommendation that the Motion to Suppress, which

1 is Document No. 36, filed on behalf of Mr. Garza, be denied.

2 The sole issue on this motion is whether there was a

3 justification for the traffic stop in question. Sergeant Bane

4 has testified very credibly and very clearly that he observed

5 Ms. Fothergill's car travel on the fog line two or three times.

6 And when he got into a position where he could make the traffic  
7 stop safely, he did so.

8 Ms. Buckle points out that the video does not capture the

9 actual traffic violations, but the video only goes back 30

10 seconds before the emergency lights are cut on and Sergeant

11 Bane has no control over how far back the video will capture

12 before he turns on the, as soon as he turns on his emergency

13 lights. I don't see any significance between the 40 seconds

14 and the 30 seconds that Sergeant Bane says his camera is

15 supposed to go back when he turns his lights on.

16 There was, in fact, probable cause to believe that

17 Ms. Fothergill had committed a violation of Louisiana law by

18 driving outside the lanes marked for traffic. Sergeant Bane

19 was within his authorization to pull over that vehicle and

20 initiate the traffic stop.

21 The fact that Sergeant Bane had been notified by DEA to be

22 on the lookout for this particular vehicle because it was

23 suspected of carrying illegal drugs, is really of no moment.

24 There was probable cause to stop the car and the subjective

25 intentions of the officers is irrelevant. There is abundant



1 case law on that point.

2 So the stop was proper. Mr. Garza is not challenging  
3 consent and so forth, probably because of the standing issue  
4 with regards to the search of the car, but he does have  
5 standing because he was in the car to challenge the stop. And  
6 the Court finds that the stop is proper, supported by probable  
7 cause, and the motion to suppress should be denied.

8 Any objections to this oral Report & Recommendation should  
9 be submitted to Judge Walter within -- what would be a  
10 reasonable time for you, Ms. Buckle? Fourteen days?

11 MS. BUCKLE: Your Honor, only because I have a trial  
12 scheduled before Judge Foote beginning the 12th, I would ask  
13 for 21 days.

14 THE COURT: Okay. Well, that would probably be ideal  
15 anyway because you're going to need to ask the court reporter  
16 for a copy of the transcript so that he'll have the evidence as  
17 well as my oral Report & Recommendation.

18 MS. BUCKLE: (Nods head up and down.)

19 THE COURT: So 21 days would be fine. Why don't we  
20 just do this. You make arrangements with the court reporter  
21 immediately following this and you have -- you are directed to  
22 file your objections, if any, within seven calendar days of  
23 your receipt of it because it may take her two or three weeks  
24 to get it to you. It's been very short but this is not her  
25 only case, just like you and me.

1           So seven days upon your receipt of the transcript, please  
2 provide your objections and a copy of the transcript to Judge  
3 Walter.

4           And if you any objections, Ms. Fields, the same deadline  
5 would apply to you.

6           Is there anything else, Ms. Buckle, that we need to put on  
7 the record for Mr. Garza's motion to suppress?

8           MS. BUCKLE: No, Your Honor.

9           THE COURT: All right. Ms. Fields?

10          MS. FIELDS: No, Your Honor.

11          THE COURT: All right. Thank you all very much.

12 Court is adjourned.

13                       (Court adjourned at 2:34 p.m.)

14

15                               CERTIFICATE

16           I, Barbara A. Simpson, RPR, CRR, Federal Official  
17 Court Reporter, do hereby certify this 19th day of June, 2017,  
18 that the foregoing is, to the best of my ability and  
understanding, a true and correct transcript of proceedings had  
in the above-entitled matter.

19           \_\_\_\_\_/s/ Barbara A. Simpson

20

21

22

23

24

25

# **Exhibit 3**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

UNITED STATES OF AMERICA

CRIMINAL NO. 16-cr-00297(01)

versus

JUDGE WALTER

DANIEL DAVID GARZA

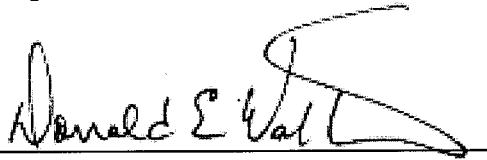
MAGISTRATE JUDGE HORNSBY

**ORDER**

For the reasons assigned in the oral Report and Recommendation of the Magistrate Judge (Doc. 64), and having thoroughly reviewed the record, including the written objections filed (Doc. 69), and concurring with the findings of the Magistrate Judge under the applicable law;

**IT IS ORDERED** that the **Motion to Suppress (Doc. 36)** is **DENIED**.

THUS DONE AND SIGNED at Shreveport, Louisiana, this 29th day of June, 2017.

  
\_\_\_\_\_  
DONALD E. WALTER  
UNITED STATES DISTRICT JUDGE

# **Exhibit 4**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 17-30851  
Summary Calendar

---

United States Court of Appeals  
Fifth Circuit

**FILED**

July 11, 2018

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DANIEL DAVID GARZA,

Defendant-Appellant

---

Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 5:16-CR-297-1

---

Before REAVLEY, GRAVES, and HO, Circuit Judges.

PER CURIAM:\*

Daniel David Garza appeals his conviction for conspiracy to distribute and to possess with intent to distribute five grams or more of methamphetamine actual and possession of a firearm in furtherance of a drug trafficking offense. He argues that the district court erred in denying his motion to suppress because the officer initiating the traffic stop did not have an objectively reasonable suspicion that a traffic violation occurred. He

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 17-30851

contends that the video from the patrol unit did not show a traffic violation prior to the officer initiating the stop. Garza argues that the officer's testimony that he did not activate the patrol unit's lights and video recorder immediately upon observing the traffic violation due to safety concerns was not credible.

Having reviewed the record, we conclude that the officer's testimony is not "so unbelievable on its face that it defies physical laws." *See United States v. Casteneda*, 951 F.2d 44, 48 (5th Cir. 1992) (internal quotation marks and citation omitted). Likewise, Garza's arguments do not suffice to permit a "definite and firm conviction" that the magistrate judge and the district court erred in finding the officer's testimony credible. *United States v. Hearn*, 563 F.3d 95, 101 (5th Cir. 2009) (internal quotation marks and citation omitted). Viewing the evidence in the requisite light most favorable to the Government, we conclude that the officer's decision to conduct a traffic stop was justified at its inception because the officer had reasonable suspicion that the driver committed a traffic violation. *See United States v. Pack*, 612 F.3d 341, 347 (5th Cir. 2010); *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005).

Accordingly, the judgment of the district court is AFFIRMED.

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

July 11, 2018

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

No. 17-30851 USA v. Daniel Garza  
USDC No. 5:16-CR-297-1

-----  
Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5<sup>TH</sup> CIR. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5<sup>TH</sup> CIR. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5<sup>TH</sup> CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5<sup>TH</sup> CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.



Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Nancy F. Dolly".

By: \_\_\_\_\_  
Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Mrs. Nichole Marie Buckle  
Ms. Camille Ann Domingue