

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 10-00320-14-CR-W-DGK
)	
v.)	
)	
RAFAEL ZAMORA,)	
)	
Defendant.)	

**GOVERNMENT’S RESPONSE TO
DEFENDANT RAFAEL ZAMORA’S MOTION IN
LIMINE TO EXCLUDE ALL EXTRAJUDICIAL STATEMENTS**

The United States of America, by Acting United States Attorney David Ketchmark and Assistant United States Attorney Bruce Rhoades, both for the Western District of Missouri, respectfully submits this response to defendant’s Motion in Limine to Exclude All Extrajudicial Statements. Defendant Rafael Zamora seeks to exclude any and all testimony offered by the government which in any way pertains to the statement Zamora gave to Kansas City Missouri Police Department Detective Jim Svoboda and Drug Enforcement Administration Special Agent Christopher Kline at approximately 8:00 a.m on November 19, 2010. Zamora claims that the statement should be excluded because it lacks relevance, corroboration, and/or reliability or trustworthiness. These contentions are without merit under the applicable law and the facts of this case. The government strongly opposes defendant’s motion and offers the following suggestions:

I. FACTUAL BACKGROUND

Zamora has been indicted for: (1) conspiracy to distribute five kilograms or more of cocaine, fifty grams of more of cocaine base (“crack”) and one hundred kilograms or more of marijuana, in violation of 21 U.S.C. §§ 841 (a)(1), (b)(1)(A), and (B) and 846; and (2) knowingly conducting or attempting to conduct financial transactions for the purpose of promoting unlawful activity, specifically drug sales in violation of 18 U.S.C. §§ 1956(a)(A)(i) and (h).

The indictment arose from a Drug Enforcement Administration (DEA) and Kansas City Missouri Police Department (KCMOPD) investigation beginning in 2008. From November 30, 2009, until June 14, 2010, DEA Agents intercepted numerous calls between Zamora and co-defendant Juan Marron using coded language indicative of controlled substance distribution. On November 19, 2010, Zamora was interviewed following his arrest on the indictment. After reading him his Miranda rights, agents conducted an in-custody interview. During this interview, Zamora made several inculpatory statements concerning his involvement in drug trafficking. Other than Zamora’s statement, marijuana recovered from his home following his arrest and the intercepted telephone calls, the Government’s case consists of statements of co-defendants and co-conspirators indicating Zamora’s involvement in the drug conspiracy charged herein.

II. ARGUMENT AND AUTHORITIES

Zamora argues that his extrajudicial statements should be excluded based on a lack of relevance. Zamora misstates Federal Rule of Evidence 402, which reads:

Relevant evidence is admissible unless any of the following provides otherwise: the United States Constitution; a federal statute; these rules; or other rules prescribed by the Supreme Court. Irrelevant evidence is not admissible.

In support of his argument Zamora offers nothing more than his general denial of the allegations in the indictment. “Relevance of evidence is established by any showing, however slight, that [the evidence] makes it more or less likely that the defendant committed the crime in question. *United States v. Mora*, 81 F.3d 781, 783 (8th Cir. 1996) (citing *United States v. Casares–Cardenas*, 14 F.3d 1283, 1287 (8th Cir.) (construing Federal Rule of Evidence 401), *cert. denied*, 513 U.S. 849 (1994)). Zamora also argues that his statements do not “prove any of the essential elements in the charge against him; that he joined and/or engaged in acts in furtherance of the Marron conspiracy” (Doc. 399 at 1). Regardless of the validity of that statement, evidence need not be conclusive of a material issue in order to be admitted. *United States v. Madera*, 574 F.2d 1320, 1322 (5th Cir. 1978).

Zamora also argues that his extrajudicial statements should be excluded based on the corroboration rule. This rule is a common-law principle developed in order to prevent the government from heavily relying on confessions, which were once thought to be unreliable because they were coerced or induced. *Smith v. United States*, 348 U.S. 147, 154 (1954); *United States v. Dalhouse*, 534 F.3d 803, 805 (7th Cir. 2008). When the crime involves no tangible corpus delicti, or proof that a criminal act took place, corroborative evidence must implicate the accused in order to show that a crime has been committed. *Wong Sun v. United States*, 371 U.S. 471, 489-490 (1963); *United States v. Delay*, 500 F.2d 1360, 1362 (1974). The corroboration rule applies in situations where the government is solely relying on the defendant’s confession or statement obtained subsequent to the completion of the criminal act to prove an essential element of the crime. *Gay v. United States*, 408 F.2d 923, 929 (8th Cir.1969); *United States v. Delay*, 500 F.2d 1360, 1363 (8th Cir. 1974). Obviously, that isn’t the case here.

Not only does Zamora misuse the case law he cites in his motion, but his argument ignores the additional evidence of his participation in the crimes charged. In addition to the numerous recorded phone conversations using coded language indicative of drug trafficking, the United States intends to offer evidence of the marijuana recovered from Zamora's home, other aspects of his statement, a May 2010 telephone interception in which Marron coordinates the delivery of three (3) pounds of marijuana to Zamora, and co-defendant and witness testimony of drug trafficking by Zamora. The United States also has the testimony of a co-defendant identifying Zamora as an intended recipient of marijuana from Marron. Based on this anticipated evidence, it is evident that the United States is not relying solely on a single extrajudicial statement in order to obtain a conviction, *Smith*, 348 U.S. at 153, and that law enforcement conducted an investigation well "beyond the words of the accused." *United States v. Stabler*, 490 F.2d 345, 349 (8th Cir. 1974). The additional evidence clearly implicates Zamora's involvement in the conspiracy, corroborating Zamora's statements made in custody following the completion of the crime. *United States v. Delay*, 500 F.2d 1360, 1362 (8th Cir. 1974) (citing *Wong Sun*, 371 U.S. at 489).

Zamora finally claims that the custodial interrogation lacks reliability or trustworthiness as it "was not recorded or video-taped" or reduced to writing for review and signature (Doc. 399 at 3). Zamora cites no applicable case law for this proposition and given the previously described corroborating evidence this argument is without merit, and should be denied.

V. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny defendant's Motion to Exclude All Extrajudicial Statements.

Respectfully submitted,

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By */s/ Bruce Rhoades*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on this 15th day of October, 2012, to the Electronic Filing System (CM/ECF) of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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/s/ Bruce Rhoades

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