

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

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	Case No. 10-00320-10-CR-W-DGK
vs.)	
)	
MARCO MURSIA)	
)	
Defendant.)	

**DEFENDANT’S MOTION IN LIMINE TO EXCLUDE ALL EXRTAJUDICIAL
STATEMENTS**

COMES NOW Defendant, Marco Mursia, by and through undersigned counsel, and hereby respectfully moves the Court to exclude his extra-judicial statement from trial. In support of this motion, the defendant states as follows:

1. The defendant and his co-defendants were indicted on November 17, 2010, with Conspiracy to Distribute Five Kilograms or More of Cocaine, Fifty Kilograms or More of Cocaine Base, and One Hundred Kilograms or More of Marijuana.
2. The government alleges that between January 1, 2006, and November 17, 2010, the defendant, along with his co-defendants, conspired to commit the above conspiracy.
3. The government alleges that Mr. Mursia engaged in various phone conversations, beginning in 2009, with Juan Marron in the attempt to assist Mr. Marron in the distribution of narcotics.
4. During the entire course of the alleged conspiracy, law enforcement officers did not observe the defendant in possession of narcotics, nor did they observe the defendant conducting any transactions with any of his co-defendants.

5. When law enforcement arrested the defendant on this matter, they did not recover narcotics or a significant amount of currency from the defendant or his property.
6. The government used the assistance of a confidential informant to conduct transactions with co-defendants. The confidential informant did not conduct a transaction with the defendant Mursia.
7. There is no tangible evidence that the defendant engaged in the sale or distribution of controlled substances.
8. The only evidence the government possesses with respect to Defendant Mursia are the phone calls between Mursia and co-defendant Juan Marron.
9. The theory of corpus delecti provides that an admission from the accused's must be corroborated by independent evidence. *Opper v. United States*, 348 U.S. 84; 75 S.Ct. 158; 99 L.Ed. 101 (1954).
10. It is a settled principle of the administration of criminal justice in the federal courts that a conviction must rest upon firmer ground than the uncorroborated admission of confession of the accused. The Court observed in *Smith v. United States*, 348 U.S. 147, 153, that the requirement of corroboration is rooted in "a long history of judicial experience with confessions and the realization that sound law enforcement requires police investigations which extend beyond the words of the accused. *Stabler v. United States*, 490 F. 2d 345, 349-350 (8th Cir. 1974).
11. Where the crime involves no tangible corpus delecti, 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, n. 15, 9 L.Ed 2d 441, 83 S.Ct. 407 (1963).

12. A conviction of conspiracy may not be sustained solely on an admission, or confession, of the accused unless such admission or confession is corroborated by independent evidence of the corpus delicti. *United States v. Di Orio*, 150 F.2d 938, 940. (3rd Cir. 1945.) “It is primarily essential to establish the existence of a confederation or agreement between two or more persons before a conviction for conspiracy to commit an offense against the United States can be sustained. This statement requires no citation of authorities.” *Tingle v. United States*, 38 F.2d 573, 575 (8th Cir. 1930)
13. In *Opper v. United States*, the Court extended the theory of corpus delicti to include extrajudicial statements. The government is required to introduce substantial independent evidence tending to establish the trustworthiness of the statements and, in addition, those elements of the offense that are not proven by the statement. *Opper v. United States* at 84, 89, 90.
14. Admissions by a defendant are admissible as a statement against interest. The need for corroboration extends beyond the complete and conscious admission of guilt. Statements of the accused out of court that show essential elements of the crime have the same possibilities for error as confessions. They, too, must be corroborated. *Wilson v. United States*, 162 U.S. 613, 621, 16 S.Ct. 895, 40 L.Ed 1090 (1896).
15. The necessity for independent corroboration of a confession is clearly recognized by the Supreme Court in *Warszower v. United States*, 312 U.S. 342, 61 S.Ct. 603, 85 L.Ed. 876. Extrajudicial confessions will not be admitted unless corroborated by other evidence. *Tabor v. United States*, 152 F.2d 254, 257-258 (4th Cir. 1945)

16. The admissions and extrajudicial statements made by Defendant Mursia are uncorroborated by the evidence. In the instant case, there is no evidence to support that there was an agreement between Defendant Mursia and co-defendant Juan Marron. There is no evidence that Defendant Mursia met with any of the co-defendants for the purposes of conducting a narcotics transaction. There is no evidence that Defendant Mursia ever had narcotics in his possession. Without evidence to corroborate the extrajudicial statements of the Defendant Mursia, such statements should be excluded from his trial.

17. This Motion is not made to vex or delay the Court, but in the interest of justice.

WHEREFORE, Defendant requests that this Honorable Court grant his Motion in Limine to Exclude his extrajudicial statements from trial, and for such further relief as the Court deems just and equitable.

Respectfully submitted,

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