

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

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

**GOVERNMENT’S RESPONSE TO
DEFENDANT MARCO MURSIA’S MOTION IN
LIMINE TO EXCLUDE ALL EXTRAJUDICIAL STATEMENTS**

The United States of America, by Beth Phillips, United States Attorney, and the undersigned Assistant United States Attorney, both for the Western District of Missouri, respectfully submits this response to defendant’s Motion in Limine to Exclude All Extrajudicial Statements. Defendant Marco Mursia seeks to exclude recorded telephone conversations made between Mursia and co-defendant Juan Marron. Mursia claims that the recorded conversations should be excluded because the government does not have independent corroborating evidence to show that a crime has been committed. 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

Mursia has been indicted for: (1) conspiracy to distribute five kilograms or more of cocaine and 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 DEA and Kansas City Missouri Police Department investigation beginning in 2008. From November 30, 2009 until June 14, 2010 DEA Agents intercepted numerous calls between Mursia and co-defendant Juan Marron discussing cocaine and marijuana deals. On November 19, 2010 agents interviewed Mursia after reading him his Miranda rights. During this post arrest interview, Mursia made several inculpatory statements concerning his involvement in drug trafficking and identified his voice on the recordings. In addition to the recorded telephone calls and post arrest statements, a co-defendant verified Mursia's involvement as a supplier in the drug conspiracy.

II. ARGUMENT AND AUTHORITIES

Mursia 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).

Mursia alleges that “the only evidence the government possesses...are the phone calls between Mursia and co-defendant Juan Marron,” and therefore the phone conversations should be excluded since they are uncorroborated by additional evidence. (Mot. ¶ 8.) However, Mursia does not cite applicable case law to support his argument. The telephone conversations were made prior to his arrest, and before the conclusion of the charged conspiracy. In the Supreme Court decisions referenced by Mursia, the Court addressed only those statements and confessions made by defendants “subsequent to the crime.” *Opper v. United States*, 348 U.S. 84, 90 (1954); see also *Wilson v. United States*, 162 U.S. 613 (1896); *Smith v. United States*, 348 U.S. 147, 153 (1954); *Wong Sun v. United States*, 371 U.S. 471, 488 (1963); *Warszower v. United States*, 312 U.S. 342, 347 (1941) (explaining that where the “statement was made prior to the crime this danger [of coercion] does not exist. Therefore we are of the view that such admissions do not need to be corroborated.”). Mursia is attempting to exclude statements he made prior to the conclusion of the crime by using inapplicable case law. Therefore his claim is without merit, and should be denied.

Not only does Mursia misuse case law, but his argument also ignores the additional evidence of his participation in the crimes charged. In addition to the numerous recorded phone conversations, the United States has Mursia’s own post-arrest confession specifying specific instances where Mursia was involved in drug transactions and identifying himself as a party speaking in the recorded phone calls. The United States also has the testimony of a co-defendant identifying Mursia as a source for purchasing marijuana. Based on the evidence acquired, 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 Mursia’s involvement in the conspiracy, corroborating Mursia’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).

V. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny the 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 14th day of April, 2011, 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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