

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

UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.) Criminal Action No.
) 10-00320-19-CR-W-DGK
MUHAMMAD IBRAHIM ROLLIE,)
Defendant.)

**Defendant Rollie's Reply to Government's
Response to Defendant's Motion to Suppress**

Defendant Rollie (Defendant) respectfully submits the following Reply to the Government's Response to Defendant's Motion to Suppress.

As set forth in Defendant's Motion to Suppress, the Government did not have probable cause to seize or arrest him. Moreover, pursuant to *Terry* the government did not have reasonable suspicion to believe Defendant was in danger of committing a crime or that he was armed and dangerous. *Terry v. Ohio*, 392 U.S. 1 (1968). Therefore the government did not have a legitimate basis to initiate a pat down of Defendant for weapons or contraband. *U.S. v. Clay* 640 F.2d 157 (1981). As such, evidence obtained from Defendant, including alleged contraband and any statements given to police, were illegally obtained and must be suppressed. *Brown v. Illinois*, 422 U.S. 590 (1975).

In its response, the government does not deny Defendant was seized when the officers ordered Defendant at gunpoint to come from behind his porch screen door and told him to lay down on the porch. Moreover, the government does not dispute the issue that officers did not have probable cause to seize the Defendant. Rather, the government argues the officers feared for officer safety and had a right to seize and search the

Defendant because they had a reasonable suspicion Defendant could have been armed and dangerous. In determining whether an officer has reasonable suspicion the court must objectively assess if there are specific articulable facts available to the officers at the time of seizure that would cause an officer to reasonably believe that the defendant was not only armed and dangerous, but that their actions were necessary to protect themselves. *Clay* at 159. *Terry* also requires that “under usual circumstances an officer is **obligated** to conduct some form of cursory investigation prior to frisking, perhaps so that the suspects may readily explain their actions before being subjected to the additional intrusion.” *Id* at 161 (emphasis added)

In its response, the government acknowledges that prior to Defendant’s seizure, the focus was on Defendant’s brother, Deshaun Ceruti (Ceruti) and his activities. The government also discusses the alleged conspiracy in this case and sets forth facts regarding the relationship between the alleged primary conspirator, Marron, and Ceruti. The government also focuses on the fact that officers and DEA agents followed Ceruti to Marron’s residence because they believed Ceruti was going to secure narcotics. They then followed Ceruti to his mother’s house on 308 Spruce in Kansas City because he walked out of Marron’s residence with suspicious looking plastic bags. The officers then arrested Ceruti after he backed his truck into a closed garage door at his mother’s house where Defendant was also present.

In listing their facts, the government does not allege that previous to Defendant’s seizure he was: a suspect in drug activity; he was identified on any of the government’s phone taps talking or texting anyone related to the alleged conspiracy; that any co-defendant had identified him; that he was under surveillance for any criminal activity;

that officers had information that Defendant had committed any crimes or was going to commit any crimes; that he tried to run; that he was known to be armed and dangerous or that he matched the description of anyone who was known to be armed and dangerous; that his mother's house on 308 Spruce was the subject of surveillance or known to be a location where illegal activity took place; or that he was identified as being part of any criminal activity by any of the government's many confidential informants, co-defendants or multiple law enforcement agencies.

In addition to Ceruti's activities, the government relies on the following facts to support their claim that the arresting officer had a reasonable suspicion that Defendant was armed and dangerous:

- a. They were apprehending Ceruti when Defendant appeared and began shouting;
- b. Officer Crump was "dealing" with Ceruti and could not see what was happening **within the house** (emphasis added)
- c. Defendant continued to raise his voice, becoming loud and belligerent and keeping his hands hidden behind the door.

The government fails to mention that his mother's house had just been hit by a truck and that Defendant came out after the accident; he was on a screened porch and not in the house; it was daylight; and that there were men (officers) in his mother's front yard pointing guns at his brother when Defendant came to the porch to find out what was happening.

The government's claim that Defendant was shouting at them or was loud and belligerent, which Defendant denies, are merely general statements and not specific

articulable facts. The government also claims he was keeping his hands hidden behind the door. However, the Defendant was behind a screen door on the porch in the middle of the day and not in the house hiding behind a solid door. Further, the government does not explain how his hands were hidden. Additionally, there are no references in the government's discovery or in their response that the officers made any kind of inquiries to Defendant to find out who he was, that he was asked to be calm, or that he was asked to show his hands or ask him to explain his presence. Moreover, pursuant to *Ybarra v. Illinois* 444 U.S. 85 (1979) and *U.S. v. Clay* at 160, the officer's suspicions about Ceruti were insufficient to form a reasonable suspicion that Defendant Rollie was also armed and dangerous or that he was about to commit a crime.

In *U.S. v. Clay*, the police executed a search warrant on a residence occupied by the defendant's cousin and found guns, ammunition and narcotics. *Id* at 158. During the search defendant Clay, who was neither a subject of the investigation nor an anticipated subject of the investigation, happened to stop by and knock on the screen door leading into the residence. According to the police, the search occurred at night; the defendant acted suspiciously by hesitating and backing away when the officer opened the door and pointed a gun at him; the defendant's cousin was known to be armed and dangerous; and they had found guns, ammunition and narcotics in the residence prior to defendant's arrival. *U.S. v. Clay* at 158, 159. Based on the foregoing information the officer ordered the defendant into the house at gunpoint and asked a fellow officer to pat him down. The pat down resulted in the officers finding contraband. *Id*

The court reversed the district court, granted the defendant's motion to suppress, and found that the facts available to the officers at the time of seizure failed to justify the

government's actions in frisking and searching the defendant. The court stated that the individual acts of the defendant were not enough to cause reasonable suspicion. *Id* at 160. The officers had "no factual data about appellant that would have given rise to a probability of illegal activity". *Id*. Additionally, mere association or closeness to another suspect or someone acting illegally did not give the officers the right to search the defendant. *Id* at 161.

The facts in this case are very similar. There are no specific articulable facts that would cause a reasonable officer to believe Defendant was armed and dangerous. Defendant Rollie was not a suspect nor anticipated to be a suspect of the alleged narcotics conspiracy; he made no attempt to run; he was ordered at gunpoint to move to a different spot so that he could be searched by another officer; he was in the vicinity of a relative who allegedly committed a crime; and officers had no previous information that Defendant was armed and dangerous. Moreover, unlike *U.S. v. Clay*, Defendant Rollie's arrest took place during the day and officers had no reason to suspect the house where he was present contained guns, ammunition or contraband.

At the very least, the officers in this case should have asked Defendant Rollie to calm down if indeed he was loud and belligerent; ask him to identify himself; ask him to "better" show his hands from behind the screened porch and/or explain to Defendant what was happening. Rather, the officers ordered him at gunpoint to exit from behind the screen, lie on the porch and handcuffed him before making any kind of inquiry.

Finally, Defendant disputes the government's claim that anything was "gapping open" out of his pocket. It begs the question as to how officers did not see something "gapping open" when they had him walk out from behind the screen door and lay down

on the porch, but did see something “gapping open” when they pulled him off the ground to handcuff him.

It is clear the officers illegally seized and searched the Defendant. As such, Defendant respectfully renews his motion to suppress all evidence found on his person as well as any and all statements taken from Defendant subsequent to his arrest. In the event Defendant’s motion is granted, Defendant further moves this Court dismiss this case against the Defendant.

Respectfully submitted,

/s/ Michael L. Barrera (40998)

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion was served on AUSA Bruce Rhoades, AUSA Beth Phillips and all defense attorneys of record by CM/ECF this 15th day of July 2011.