

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

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

**RAFAEL ZAMORA’S OBJECTIONS  
TO THE MAGISTRATE JUDGE’S RECOMMENDATION  
TO DENY DEFENDANT’S MOTION TO SUPPRESS  
OR  
IN THE ALTERNATIVE, MOTION FOR THE DISTRICT JUDGE  
TO RECEIVE FURTHER EVIDENCE  
WITH SUPPORTING SUGGESTIONS**

**Objections**

Let’s say you are a well-to-do businessman in Mission Hills, USA, or a doctor, or a mayor, or a representative, or a senator, or some other such person, and you are standing on your front porch on a cool early November morning. Being somewhat eccentric, you are attired in a T-shirt and shorts. Out of the peace and tranquility surrounding your home intrudes a law enforcement officer who announces it is too cold for you to be outside and unlawfully forcibly escorts you back to the inside of your home. Without a warrant and without any exigent circumstances whatsoever, this inappropriately intruding law enforcement officer has violated your constitutional right to be protected from unreasonable searches and seizures and any incriminating evidence recovered and any incriminating statements made would of course be subject to suppression in any subsequent

criminal proceedings. For instance, if the officer found and seized contraband in plain view, that evidence would be suppressible.

Mr. Zamora, in this proceeding, under an identical fact scenario, has thus far not fared so well. At Mr. Zamora's July 27, 2011, suppression hearing, the government called one witness, DEA agent Christopher Kline, who testified that he and three other agents, pursuant to an "arrest" warrant, went to Mr. Zamora's home on a cool early November morning and arrested him on his front porch without incident. (T. at 8) Agent Kline specifically testified that, "We handcuffed him and then walked him back inside because it was November and it was cold." (T. at 8)

Mr. Zamora submits that without his permission, the agents unlawfully entered his home and all the events that followed should be suppressed. Therefore, Mr. Zamora objects to the Magistrate Judge's recommendation to the contrary.

### **Motion to receive further evidence**

In the alternative, pursuant to Fed. R. Crim. P. 59(b)(3), Mr. Zamora hereby respectfully moves this Court to receive further evidence in the form of Mr. Zamora's testimony as outlined in his June 14, 2011, motion to suppress at pp. 6-9 (doc. 251)

### **Supporting Suggestions**

At the suppression hearing, when I heard agent Kline testify that he and the three other agents forcefully and without permission entered Mr. Zamora's home, I was of the opinion that they had done so illegally and for various strategy reasons, I advised my client that in my opinion he did not need to testify as to his recollection of the events that occurred on the morning of his arrest as had already been outlined in his motion to suppress. Mr. Zamora agreed to follow my advice. Now, for the sake of discussion, assuming my advice was incorrect and to curatively provide him with effective assistance of counsel, Mr. Zamora should be

given his “day in court” by reopening the record and allowing him to testify in the manner and form as outlined as follows:

**The arrest and coercive in-home interrogation**

Early in the morning of November 19, 2010 (the government’s investigative report (Bates # 000047-50) says approximately 6 AM, which would be very dark that time of year), Rafael heard loud noises coming from in front of his house. There was banging on the front door and on the front windows. Rafael was on one of the two couches in the front living room getting ready to go to work. When he first looked out the window, he saw several armed men with flashlights and guns pointed together at him. One of the men had what looked like a battering ram, or maybe it could have been a rifle. They were shouting very loudly and demanding loudly enough that Rafael’s wife and three kids (ages 16, 7, and 3) came running down the stairs. Rafael’s wife asked him who it was and what do they want, and Rafael said it was police officers.

The investigative report discloses that the reporting officer was SA Christopher M. Kline. The six other officers were SA Tim McCue, Det. Jim Swoboda, KCMOPD, Det. Vern Huth, KCMOPD, PO Dave Barbour, KCMOPD, PO Curtis Copinger, KCMOPD, and Deputy Brian Cutler, USMS.

Even though Rafael was surprised, shocked, and scared, he opened the front door and flashlights were

shined into his face and someone asked him his name and when he told them “Rafael Zamora,” they immediately grabbed him and pulled him out onto the front porch, surrounded him, and placed plastic cuffs on his wrists behind his back. The plastic cuffs broke and one of them said, “Those don’t work well on big boys.” Then, someone placed steel cuffs on Rafael’s wrists behind his back, told him they had a federal warrant for his arrest, and arrested him.

From that time on, it was very clear that Rafael would not be free to leave; that is, Rafael was clearly “in custody.” Once Rafael was placed under arrest, surrounded by the police on Rafael’s front porch, the police had no reason to go back into Rafael’s home. The police should have taken Rafael away. Instead, without Rafael’s consent, one of the officers said, “Its cold outside so take him inside.”

Once inside, they were going to put Rafael on one of the living room couches facing the other living room couch where Rafael’s wife and three kids were. Rafael said please could he stand in the hallway so his kids, who were crying, wouldn’t see him. The officers did allow this.

In the hallway, one of the officers had a folder and showed Rafael a picture of Rafael in the folder and then asked Rafael, “Do you know what this is about?” When Rafael said, “No,” the officer explained it was a federal

warrant for conspiracy and then the officer started asking Rafael about names on a list and if Rafael knew them. Rafael said, “No” to each of three names read to him.

Rafael could hear his kids crying and Rafael started crying a little bit because his kids were crying. In response, one of the officers said to Rafael, “Do you see what you are doing to your family? Do you want to cooperate? Everything will go easier for you if you cooperate.”

The whole time Rafael and the officers were in the hallway, the officers repeatedly told Rafael that they knew what he had been doing and repeatedly told Rafael that he needed to think about his kids. The agents also told Rafael that if he would be cooperative, he could get off the hook. Rafael interpreted all of this to mean that if he didn't cooperate, the agents were going to take his kids away from him and his wife. Never did any of the officers tell Rafael that he did not have to consent, nor was Rafael ever given *Miranda* warnings. The officers never told Rafael anything in these regards.

So, when the officers asked Rafael if he had anything in the house, Rafael said he had a little marijuana or weed and he showed them where it was under the basement stairs. One of the officers brought the plastic tub containing the marijuana upstairs, pulled the marijuana out of the tub, and asked, “Is this it?” When Rafael said yes, one of the agents (perhaps

Swoboda) said, "We don't want that little bullshit, where are the pounds?"

Rafael responded that he didn't know anything about pounds, that what the officers had seized was all that Rafael buys to smoke. The officers asked Rafael if the seized marijuana was all that he had and Rafael told them that it was. The officers continued to ask Rafael if he would cooperate and help them find the pounds. Rafael agreed so the officers would get Rafael out of his home so his kids wouldn't see him hand cuffed.

Rafael remembers that while he was surrounded in the hallway, the officers did a swab test kit on him and maybe fingerprints. The whole time Rafael was surrounded in the hallway during all the questioning, the officers did not let Rafael put his clothes on. Rafael had to stand in the hallway in his tank top, undershirt, and undershorts.

While in the hallway, Rafael could hear the conversation in the living room. An officer was talking to Rafael's wife trying to calm her and the kids. The officer said that Rafael wasn't in any real trouble, he was just wanted for questioning -- they were going all over the city -- this was one of the nicer houses they had been in. Rafael's wife responded that their home was not a drug house; it was a family home.

### **The police station interview**

Rafael was transported to the police station and at approximately 8 A.M. the same morning, Rafael waived his *Miranda* rights and submitted to an unrecorded interview by SA Kline and Det. Swoboda. Rafael's recollection of the contents and substance of the interview are substantially different from that reported by SA Kline. Also of note is the fact that the lion's share of the reported interview does not have anything to do with Rafael's alleged participation in the "Marron" conspiracy.

A comparison of Mr. Zamora's anticipated testimony to that of the testimony already given by agent Kline shows a stark contrast to their respective recollections. If Mr. Zamora were allowed to submit his testimony, then he would argue the facts as follows:

### **Argument**

On November 19, 2010, at approximately 6 A.M., Mr. Zamora was arrested on the front porch of his home "without incident," pursuant to a federal arrest warrant. Instead of taking Mr. Zamora away, law enforcement, without a search warrant, without exigent circumstances, and without permission, took Mr. Zamora back into his home. These police actions were in violation of Mr. Zamora's Fourth Amendment constitutional rights to be secure in his home. Therefore, anything that was seized following the illegal entry should be suppressed.

Once illegally inside Mr. Zamora's home and without first giving the indicated *Miranda* warnings, the police officers interrogated Mr. Zamora about his alleged illegal drug trafficking activities in the alleged Marron drug conspiracy

stated in the indictment supporting the federal warrant for his arrest. Mr. Zamora submits that his statements were elicited in violation of *Miranda* which in turn gives rise to an irrebuttable presumption that they were compelled. Therefore, all of Mr. Zamora's statements during the interrogation in his home, must be excluded from the prosecution's case-in-chief. Further, Mr. Zamora submits that the interrogation was coercive and in the totality of the circumstances, overbearing to his will. Therefore, on this additional basis, all of Mr. Zamora's statements during the interrogation in his home, should be suppressed. And still further, Mr. Zamora's statements were deliberately elicited from him, after he had been indicted, without *Miranda* warnings, and in the absence of counsel; all in violation of Mr. Zamora's Sixth Amendment rights. Therefore, on this second additional basis, all of Mr. Zamora's statements during the interrogation in his home, should be suppressed.

During the compelled interrogation in his home, Mr. Zamora gave consent to search his home. Mr. Zamora submits that the consent given was not voluntary nor consensual and therefore, the follow on search of Mr. Zamora's home was not a voluntary nor consensual search. Further, Mr. Zamora submits that he behaved in such a manner that the officers could not have reasonably believed that the search was consensual. Therefore, all evidence seized during the search should be suppressed. Moreover, with Mr. Zamora's non-*Mirandized* statements being involuntary, caselaw demands the suppression of the derivative physical evidence seized.

At approximately 8 A.M. on the same day of November 19, 2010, after having been transported to police headquarters, Mr. Zamora was given *Miranda* warnings and made incriminating statements in the follow-on interrogation. Mr. Zamora submits that his entire statement was the fruit of the Fourth Amendment violation that he had been subjected to just moments earlier. Therefore, the

exclusionary rule should be applied to all of Mr. Zamora's statements during this interrogation as a deterrence to law enforcement's immediately prior unreasonable search and seizure. Further, Mr. Zamora submits that the interrogation was coercive in and of itself and a continuation of the coercive treatment he experienced throughout, starting at 6 A.M. that morning. In the totality of the circumstances, Mr. Zamora's statements cannot be considered "voluntary," but instead statements made after his will had been overborne. Therefore, on this additional basis, the exclusionary rule should be applied to Mr. Zamora's statements to ensure that any evidence introduced at trial will be voluntary and trustworthy. And still further, the exclusionary rule should be applied to prohibit the government from introducing uncorroborated confessions at trial.

### **Wherefore**

Mr. Zamora objects to the Magistrate Judge's Report and Recommendation in the manner and form as set out herein and in the alternative, prays that his motion to receive further evidence be granted.

Respectfully submitted,

/s/

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E. Eugene Harrison  
Missouri Bar # 26923  
Kansas Bar # 6980  
5427 Johnson Drive, Suite 153  
Mission, Kansas 66205-2912  
816 550 4289  
[eharrison@kc.rr.com](mailto:eharrison@kc.rr.com)

## CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which electronically served all parties.

*/s/*

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E. Eugene Harrison