

**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.)	

**MR. ZAMORA’S MOTION IN LIMINE
AND REQUEST FOR A HEARING
WITH SUPPORTING SUGGESTIONS**

The defendant, Rafael Zamora, by counsel, hereby respectfully moves this Court to exclude any and all testimony offered by the government which in any way pertains to the statement Mr. Zamora gave to Detective Jim Swoboda and Special Agent (SA) Christopher Kline at approximately 8 A.M. on November 19, 2010.

Further, Mr. Zamora requests a pretrial hearing on the motion.

SUPPORTING SUGGESTIONS

Lack of relevance

Mr. Zamora is charged with conspiring with Juan Marron and numerous others (the Marron conspiracy) to distribute cocaine, crack, and marijuana. There is nothing in Mr. Zamora’s statement that goes to 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. Moreover, when asked about Juan Marron

and some of Juan's associates, Mr. Zamora expressly stated that he "did not do business with Marron."

With Fed. R. Evid. 402 allowing only "relevant" evidence to be introduced at trial, Mr. Zamora's statement is inadmissible in this case.

Lack of corroboration

There is a healthy skepticism of the accuracy of confessions. *United States v. Kirk*, 528 F.3d 1102, 1111 (8th Cir. 2008).

A long history of judicial experience has shown that, under the "strain of suspicion," individual self-interest, enmity, or personal frailty "may tinge or warp" the substance of a confession. *United States v. Stabler*, 490 F.2d 345, 350 (8th Cir. 1974) (quoting *Wong Sun v. United States*, 371 U.S. 471, 489, (1963)). Thus, out-of-court confessions are always suspect, to some degree, because they — like hearsay — possess "neither the compulsion of the oath nor the test of cross-examination." *Id.*

Id.

Thus, "an accused may not be convicted on his own uncorroborated confession." *United States v. Eagle*, 515 F.3d 794, 807 (8th Cir. 2008) (citing *Smith v. United States*, 348 U.S. 147, 152 (1954)). Instead, "all elements of an offense 'must be established by independent evidence or corroborated admissions.'" *Kirk*, 528 F.3d at 1110 (quoting *Eagle*, 515 F.3d at 807). Further, the government's independent evidence used to corroborate the confession will be sufficient only if it "tends to establish the reliability or trustworthiness of the confession." *Rachlin v. United States*, 723 F.2d 1373, 1379 (8th Cir. 1983) (citations omitted).

SA Kline claims in his report that Mr. Zamora admitted to selling pounds of marijuana with his supplier being an individual going by the name of "Chano." This is an "open file" discovery case. A careful review of the government's

evidence does not reveal any corroboration whatsoever for the claim being made by SA Kline.

Therefore, Mr. Zamora's statement is again inadmissible in this case.

Lack of reliability or trustworthiness

The custodial interrogation of Mr. Zamora was not recorded or video-taped. Nor did the agents reduce Mr. Zamora's purported admissions of dealing pounds of marijuana, to writing for review and signature by Mr. Zamora.

Mr. Zamora denies making any admissions that he has sold pounds of marijuana. Instead, at the requested hearing, Mr. Zamora will testify that he has previously been a user of small amounts of marijuana. In the four months leading up to his arrest, Mr. Zamora purchased up to a quarter-pound of marijuana from an individual going by the name of "Chano," approximately every two weeks for \$150. The marijuana seized upon Mr. Zamora's arrest, was from one of those purchases. The agents in the interrogation, ran the math of a quarter-pound every two weeks for four months and came up with a total of two pounds and when asked, Mr. Zamora responded, "Yes, that total would be about right." The agents also multiplied the \$150 per quarter-pound times four and came up with a total of \$600 a pound; a number that is reflected in paragraph 10 of the report.

The accuracy of the report is thrown into further doubt when one ponders the whole statement of paragraph 10 that Mr. Zamora would allegedly buy a pound of marijuana from Chano for \$600 and then turn around and sell it for \$625.

As for the "ten pounds" mentioned in the report, again, Mr. Zamora never said anything about selling pounds of marijuana or buying pounds of marijuana. Mr. Zamora does recall the agents asking him what was the most marijuana he saw in Chano's possession and Mr. Zamora responded that the most he had "seen" was ten pounds.

At the hearing, Mr. Zamora will introduce evidence corroborating the fact that in the past he has been a user of small amounts of marijuana, not a dealer in pounds of marijuana.

Therefore, Mr. Zamora's statement is again inadmissible in this case.

WHEREFORE, Mr. Zamora respectfully requests that a hearing be held on this matter and further prays that this motion be granted.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which electronically served all parties.

/s/

E. Eugene Harrison