

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

OCT 14 2004  
Cameron S. Burke  
Clerk, Idaho

UNITED STATES OF AMERICA )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PEDRO DUENAS-RIVERA )  
 aka JOSE DIAZ, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CR-04-85-E-BLW  
**MEMORANDUM DECISION  
AND ORDER**

The Court has before it a motion to suppress filed by defendant Pedro Duenas-Rivera. (Docket No. 10). An evidentiary hearing was held on October 12, 2004. The Court has considered all of the evidence received during the hearing, as well as the parties' briefing, and now issues the following decision.

**Factual Background<sup>1</sup>**

On October 21, 2003, Detective Chris Elverud was investigating information he had received that a Hispanic male was selling methamphetamine from an apartment at 350 E Street in Idaho Falls, Idaho. That evening, he contacted Vance Cox, a trooper with the Idaho State Police, to request that Cox,

<sup>1</sup> The statement of facts will also constitute the Court's factual findings based upon the evidence presented during the trial.

who is fluent in Spanish, accompany him the next morning for a “knock and talk” at the E Street apartment.

The next morning, Cox, Elverud, and Sergeant Steve Davis approached the apartment. All three officers were in street clothes, but were wearing windbreakers with the initials “ISP” stamped prominently on their back. One of the officers knocked on the door and Mr. Duenas answered. Cox advised Duenas, in Spanish, that they were investigating information they had received that drugs were being sold out of that apartment. Cox asked Duenas if they could come in, ask some questions, and search the premises. Duenas then asked Cox if the paper he was holding in his hand was a warrant. Cox replied that it was not a warrant, but a “Consent to Search” form.

Cox presented the form to Duenas, and asked him to read it before signing. Duenas put on his glasses, sat down at a table in the apartment and took several minutes to read the form, which was written in both Spanish and English. Cox asked him if he understood the form, to which Duenas responded by indicating that he did. Duenas then signed the form, which, by its terms, constituted an unequivocal consent to search.

Duenas testified during the suppression hearing that he never read the form before signing it because he didn't have his glasses, and that he was told by the

police officers that it was a “judicial order.”<sup>2</sup> He testified that, from this, he assumed that they had authority to search and, based on that assumption, agreed to let them search the apartment.

However, Duenas’s testimony is called into question for a number of reasons. First, all three of the officers testified that Duenas put on his glasses, appeared to be reading the form, and only signed it after taking several minutes to review its text. Second, Duenas repeatedly testified during the suppression hearing that he was aware that the officers were asking for his consent to search the apartment – which is inconsistent with his testimony that the officers indicated that they already had a judicial order authorizing the search with or without his consent. Third, Duenas appeared very nervous at the hearing and his demeanor calls into question whether he was telling the truth. Fourth, Duenas clearly has a substantial interest in the Court determining that he did not consent to the search of his apartment. Fifth, Duenas’s testimony was, in some respects inconsistent in

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<sup>2</sup> The Court is concerned that the Spanish version of the form bears the heading, “Judicial Permission to Search,” while the English version’s heading reads, “Permission to Search” This is troubling to the Court given Duenas’s testimony that the police officers told him that the form was a “judicial order.” Had Duenas read the document before signing it, this would probably have been sufficient evidence to persuade the Court to find that the officers, knowingly or unwittingly, misled Duenas into believing that they had an order of the court which authorized them to search the premises. However, Duenas was emphatic that he did not read the document before he signed it. When questioned by the Court, he went further and stated that he did not even read the heading to the form before he signed it. Therefore, the heading on the form is not relevant to the resolution of the Defendant’s motion to suppress.

that he testified that the form presented to him by Trooper Cox was described by the officer as a "judicial order," but then later testified that he understood that it was a waiver of Miranda rights form. Sixth, although Duenas indicated that he did not read the form because he didn't have his glasses, some of the pictures taken of him that morning show him without glasses on, while others show him wearing his glasses. Finally, Duenas never provided an adequate explanation as to why he signed a form which he understood to be a "judicial order."

For all of these reasons, the Court accepts the officer's testimony as to what occurred at the E Street Apartment the morning of October 22, 2003. The Court finds that the officers explained to Duenas that they wanted to search the premises, that the form they presented to him constituted an unequivocal consent to search, that he read it in detail, and that he signed it knowing that he was consenting to a search of the premises.

### **Discussion**

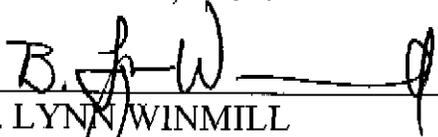
It is well settled that "a search conducted pursuant to a valid consent is constitutionally permissible." *U.S. v. Patayan Soriano*, 361 F.3d 494 (2004)(quoting *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)). Whether Mr. Duenas voluntarily consented to the search is to be determined from the "totality of the circumstances." *Id.* The government has the burden of establishing that

Duenas's consent was freely and voluntarily given. *Id.* Here, Duenas testified that he understood that the officers were asking that he consent to a search of his apartment. He was presented with, read and signed a consent form that unambiguously indicated that by signing the form he was consenting to the requested search. Under those circumstances, the Court must conclude that the government has met its burden of showing the Duenas freely and voluntarily consented to the search of his apartment.

**ORDER**

In accordance with the Memorandum Decision set forth above,  
NOW THEREFORE IT IS HEREBY ORDERED, that the Motion to Suppress Evidence (Docket No. 10) is DENIED.

DATED this 14<sup>th</sup> day of October, 2004.

  
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B. LYNN WINMILL  
Chief Judge, United States District Court

United States District Court  
for the  
District of Idaho  
October 18, 2004

\* \* CLERK'S CERTIFICATE OF MAILING \* \*

Re: 4:04-cr-00085

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

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Cameron S. Burke, Clerk

Date: 10-18-04

BY: *CSB*  
(Deputy Clerk)