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U.S. COURTS
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CAMERON S. BURKE,
CLERK. IDAHO

Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
PEDRO DUENAS-RIVERA, a.k.a.)
JOSE DIAZ,)
)
Defendant.)
_____)

Case No. CR-04-0085 E BLW

MOTION TO SUPPRESS

COMES NOW, the Defendant, by and through his attorney, DAVID N. PARMENTER, and moves the Court to Suppress the search by Idaho State Police officers and anything found as a result.

STATEMENT OF ANTICIPATED FACTS

On October 22, 2003, at approximately 7:00 a.m., three Idaho State Police officers knocked on Defendant's door, which was answered by Defendant, conducting what they refer to as a knock-and-talk. The address was 350 E. Street Apartment #303, Idaho Falls, Idaho. Officer Cox conducted the questioning. When Defendant was asked if he spoke English, he

5

shook his head in the negative. The officer identified Defendant as "Jose" and further identified himself. He asked Defendant about possessing and selling drugs, and further asked if they could come in the residence. Officer Cox then asked Defendant for identification, which Defendant offered by way of California driver's license. He also gave Defendant a "Voluntary Permission to Search" form which has a Spanish translation on the opposite side, which in Spanish is translated "Permiso Judicial."

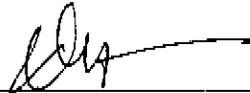
Defendant who did not have his glasses, was unable initially to read anything, but the top line. Officer Cox basically told him that the documents contained his rights, but that he didn't really need to read it. Defendant asked Officer Cox about a search warrant, but Officer Cox indicated they really didn't need one. Further, the actual Spanish translation of the document not only implies, but indicates that there is already judicial permission to conduct a search. At the very least, the document itself in the translated form is sufficiently ambiguous to raise substantial questions in a Spanish speaker's mind about the actual authority of officers present to search.

The officers, without direct invitation, and before any consent was signed entered in Defendant's apartment, entered the apartment brushing Defendant aside and there looked for his glasses so Defendant could read the rest of the document. Defendant ultimately signed the consent form, but under the mistaken belief the officers already had judicial authority to search. The officers also looked for other indicia of drug use and sales, and continued searching the premises as Officer Cox spoke with Defendant. Ultimately, the officers found various quantities of drugs and indicia of drug sales.

Defendant asserts that in this case, under a totality of the circumstances, that the search was involuntary and anything found as a result should be suppressed. Schneckloth v. Bustamonte,

412 U.S. 218 (1973); U.S. v. Drayton, 536 U.S. 194 (2002). It is clear from being awakened in the early morning hours, three state police officers at the door, one of whom has a form which indicates it gives judicial permission to search, is more than sufficient to establish that Defendant's consent was invalid, and not the product of free and unconstrained choice. As such the search, and anything seized therefrom, should be suppressed.

DATED this 19th day of July, 2004.



DAVID N. PARMENTER
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 19th day of July, 2004 upon the following:

Mail
 Fax
 Hand Delivery

Michael J. Fica
Assistant United States Attorney
District of Idaho
801 E. Sherman, Suite 192
Pocatello, ID 83201



DAVID N. PARMENTER