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Attorney for Armando Rico-Herrera

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

ARMANDO RICO-HERRERA,

Defendant

CR. No. 99-60040-01-HO

MOTION TO SUPPRESS STATEMENTS
(Evidentiary Hearing and Oral Argument
Requested).

Defendant, through his attorney Terri Wood, hereby moves the court to suppress all statements by Defendant to law enforcement officers on or about April 2, 1999, on the grounds that any such statements were made in the course of custodial interrogation, and were not preceded by proper warnings under *Miranda v. Arizona*, 384 US 486 (1966), or, alternatively, that there was no knowing and voluntary waiver of *Miranda* warnings; or, alternatively, that any such statements constituting admissions or confessions were not voluntarily made, all in violation of Defendant's rights under the Fifth and Fourteenth Amendments of the United States Constitution, and Article I, Sections 11 and 12 of the Oregon Constitution.

Defendant specifically reserves the right to assert additional grounds in support of this motion to suppress statements at or before time of hearing.

POINTS AND AUTHORITIES

On April 2, 1999, members of the Salem Police Department, and perhaps some other law enforcement agency currently unknown to the defense, stopped the vehicle Defendant was driving and arrested him without warrant in connection with an undercover methamphetamine purchasing operation. Upon taking Defendant into custody, officers began an interrogation and obtained an alleged confession. Defendant is Hispanic but speaks some English. An unsigned report by an unidentified person and unidentified but presumed law enforcement agency states that Defendant was his *Miranda* rights prior to questioning, and that he "acknowledged" that, but the report does not indicate Defendant understood his rights nor waived his rights. This same report states Defendant "spoke English fluently," but that assertion is not supported by surveillance audiotapes or other evidence in the case.

Miranda places a heavy burden on the Government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. 384 US at 475; *Moran v. Burbine*, 475 US 412, 421 (1986)(relinquishment of the right must have been voluntary and also made with a "full awareness, both of the nature of the right to be abandoned and consequences of the decision to abandon it"). The validity of the *Miranda* waiver must be determined in each case through an examination of the particular facts and circumstances, including the background, experience, and conduct of the accused. *North Carolina v. Butler*, 441 US 369, 374-75 (1979).

The Defendant has a right to have the Court make a determination of the voluntariness of any admissions or confessions. See *Jackson v. Denno*, 378 US 368

(1964); 18 USC 3501. The determination of voluntariness requires consideration of the "totality of circumstances." "Circumstances" include past history, education, and physical condition, in addition to the circumstances surrounding the actual statement. *Crane v. Kentucky*, 476 US 683 (1986); see also 18 USC 3501(b) (listing other factors). The defense herein asserts that the cultural background of the Defendant as well as his comprehension of the English language requires consideration under this analysis. See *United States v. Garibay*, 143 F3d 534 (9th Cir. 1998).

The police reports do not provide adequate information concerning the circumstances surrounding the statements obtained from Defendant to allow counsel to make more specific objections.

For the reasons stated herein and such other grounds as may later develop as discovery progresses and at hearing on this motion, Defendant's statements to law enforcement officers should be suppressed.

RESPECTFULLY SUBMITTED this ____ day of March, 2000.

Terri Wood, OSB 88332
Attorney for Defendant Armando Rico-Herrera