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7 Attorney for Defendant
8 ERIC MCDAVID

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,)
13 Plaintiff,)

14 v.)

15 ERIC MCDAVID,)
16 Defendant.)

Case No. CR.S-06-0035-MCE

MOTION TO SUPPRESS EVIDENCE

DEFENDANT'S NOTICE OF MOTION
AND MOTION TO SUPPRESS ALL
EVIDENCE OBTAINED AS PART OF
A WARRANTLESS **SEARCH OF
MCDAVID'S HOME IN NOVEMBER
OF 2005** AS VIOLATIVE OF THE
FOURTH AMENDMENT'S
PROTECTION OF THE **HOME'S
CURTILAGE**; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF; REQUEST FOR
EVIDENTIARY HEARING.

Date: February 6, 2007
Time: 8:30 A.m.
Judge: Hon. Morrison C.
England

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23 To: **McGregor W. Scott, R. Steven Lapham**, attorneys for
24 plaintiff: PLEASE TAKE NOTICE that on the above date in the
25 above entitled action, defendant, through counsel MARK J.
26 REICHEL, will move this Honorable Court to issue an order

27
28 Mot.Suppres. Search of Home
in Nov. 05 curtilage violation

1 suppressing as evidence by the plaintiff in this trial the
2 following evidence: Any and all evidence, derived directly or
3 indirectly, and all fruits thereof, obtained pursuant to the
4 unlawful search of defendant's residence in November 2005 on
5 the basis that the search of the premises and inside the
6 curtilage was without a warrant, and therefore violative of
7 the Fourth Amendment.

8 This motion is based on the United States Constitution,
9 the Federal Rules of Criminal Procedure, the Points and
10 Authorities submitted in support, and such argument and
11 evidence of counsel at the hearing on the motion.

12 Respectfully submitted

13 DATED: December 19, 2006.

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15 MARK J. REICHEL
16 ATTORNEY AT LAW
17 Attorney for defendant

18 /S/ Mark Reichel
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Supporting Facts¹: Defendant was residing at his home on
3 the dates of November 15-18 2005 located in Forest Hill,
4 California. At that time, he was in the presence of
5 codefendants Lauren Weiner and Zachary Jenson and the
6 undercover officer named "Anna."

7 While the defendant allowed Jenson, Weiner and
8 undercover officer Anna on the premises to stay for 3-4 days,
9 he was not aware that she was law enforcement, nor that she
10 was wearing a body microphone and was tape recording his
11 conversations throughout the 3 days. Defendant also was not
12 aware that numerous members of the FBI, local and state law
13 enforcement, were present on his property conducting a search
14 of the property, inside the curtilage of the property and
15 home. The officers did not have a warrant, as required by the
16 Fourth Amendment.

17 Legal authority.

18 A. The Fourth Amendment "Exclusionary" Rule.

19 The Fourth Amendment provides that, "The right of the
20 people to be secure in their persons, houses, papers, and
21 effects, against unreasonable searches and seizures, shall
22 not be violated, and no Warrants shall issue, but upon
23 probable cause, supported by Oath or affirmation, and
24 particularly describing the place to be searched, and the
25 person or things to be seized." U.S. Const., Amend. IV.

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27 ¹ Familiarity with the operative facts of this charge are assumed. As with all of the defendant's
28 pretrial motions, the factual background comes from the discovery provided by the government, defense
investigation, and the anticipated testimony and evidence to be submitted at the hearing of the motion.
Further, the criminal complaint on file sets forth the government's version of the facts.

1 Evidence obtained in violation of the Fourth Amendment must
2 be excluded from a federal criminal prosecution. Weeks v.
3 United States, 232 U.S. 383, 398 (1914). "The exclusionary
4 rule reaches not only primary evidence obtained as a direct
5 result of an illegal search or seizure, but also evidence
6 later discovered and found to be derivative of an illegality
7 or 'fruit of the poisonous tree.'" Segura v. United States,
8 468 U.S. 796, 804, 104 S. Ct. 3380 (1984) (citations
9 omitted). "It 'extends as well to the indirect as the direct
10 products' of unconstitutional conduct." Id., quoting Wong Sun
11 v. United States, 371 U.S. 471, 484, 83 S. Ct. 407 (1963).

12 B. Warrantless Search.

13 The United States must prove that the warrantless entry
14 and search of defendant's residence was legal under the
15 Fourth Amendment. A search or seizure *not* accompanied by a
16 warrant is presumed to be unreasonable. United States v.
17 Carbajal, 956 F.2d 924, 930 (9th Cir. 1992), *citing* Katz v.
18 United States, 389 U.S. 347 (1967). The burden is on the
19 United States to justify the warrantless search of
20 defendant's property as a recognized exception to the rule
21 requiring the prior obtaining of a judicially authorized
22 search warrant. Carbajal, 956 F.2d at 930.

23 C. Search within the curtilage.

24 "Nowhere is the protective force of the fourth amendment
25 more powerful than it is when the sanctity of the home is
26 involved." United States v. Hammett, 236 F.3d 1054, 1059
27 (9th Cir.), cert. denied, 534 U.S. 866 (2001). Accordingly,
28 "[t]he Supreme Court has extended the protections afforded by

1 the Fourth Amendment to the curtilage of a house, which is
2 defined as the area to which extends the intimate activity
3 associated with the sanctity of a man's home and the
4 privacies of life." Id. The property in this case involved
5 a house which is well set off of the main road, down a
6 lengthy driveway, and the property is fenced off to protect
7 the resident's privacy. Entry off of the main road is a
8 trespass and the property is surrounded by a fence.

9 The law requires that, to the extent that any officer
10 made observations or obtained any evidence by violating the
11 curtilage of the home, testimony about those observations and
12 all evidence obtained thereby must be suppressed, as must any
13 evidence seized as a result of those observations.

14 Again, the Fourth Amendment forbids search and seizure
15 of a person's property absent a warrant unless there is a
16 judicially recognized basis to dispense with the warrant
17 requirement prior to the search. The government bears the
18 burden as to this issue.

19 Conclusion.

20 For the reasons stated above, defendant respectfully
21 asks that the Court grant his motion to suppress evidence.
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Respectfully submitted

DATED: December 19, 2006.

MARK J. REICHEL
ATTORNEY AT LAW
Attorney for defendant

/S/ Mark Reichel