

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

AFFIDAVIT

07- CR- 986 (WHP)

-v-

RAUL BARBON and
JOHANS SANTATA,

Defendants.

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STATE OF NEW YORK)
COUNTY OF WESTCHESTER).ss:

I, RAUL BORBON, a defendant in the above captioned matter, submit this affidavit in support of my pretrial motions.

1. I respectfully request that the Court grant my motions to suppress and/or dismiss based upon the facts of this case.
2. I have read the Indictment and Sealed Complaint herein.
3. I lived at 2244 Creston Avenue, Bronx New York, Apartment 6B, from about May 2006 until my arrest on May 18, 2007. Notwithstanding the fact that the apartment is leased to Johans Santana and Miriam Santana, I lived in the apartment by myself during the above stated period. Each month I paid the rent by money order and the electric utility by cash. During my tenancy I had exclusive use and occupancy of the apartment without interference from third parties.
4. On May 18, 2007, I was inside my apartment watching television with all the lights off. At approximately 10:40 pm I heard on a knock on the door, I went to the door and looked through the peep-hole and saw a police officer standing there. With the door-chain attached I opened the door at which time the officer asked me if someone came up to visit me. I told the officer that Johns Santana was here, we spoke in the hallway, and he just left. The officer said "ok" and then left and I shut the door.
5. Before returning to the television, I called Johans and asked him what was going on and why a police officer was asking me if he was at my apartment. Johans told me that the police stopped him coming out of the building and searched him and the girl that was with him.
6. After talking to Johans I returned to watching television. Approximately twenty minutes later I heard kicking and pounding on my door and people who stated they were the police, commanding in a very loud voice that I

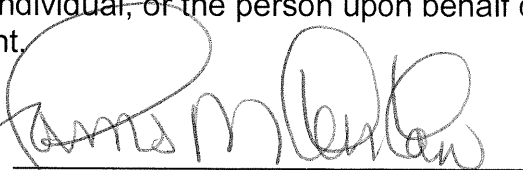
open the door immediately. In response I yelled to the police that I was putting on my pants and would step outside and talk with them in the hallway.

7. In response the police commands, I went to the door, with the lights still off I opened the door just enough in an attempt to slide out into the hallway. However, as I was attempting to leave the apartment the police pushed me back inside the apartment and handcuffed me.
8. At no time did I consent to the police entering my apartment. It is impossible for the police to have smelled marijuana or to have seen anything inside my apartment prior to forcibly entering the apartment.
9. I went to the door and opened it only after I was commanded to do so by the police; however, at no time did I consent to their entry into my apartment.
10. Because the ventilation system inside my apartment was set up to expel any odor to outside of the apartment building in the room furthest from the front door, Officer-1 could not have smelled "a distinct and strong odor commonly associated with marijuana" when I cracked my door open.
11. Since I had the lights off inside the apartment both times that I answered the door, the police could not have seen inside the apartment.
12. At no time were any items as claimed by the police in the Sealed Complaint visible from the outside of my apartment when the door was opened. Any items placed inside my foyer that I used for growing marijuana were placed inside black plastic garbage bags.

Dated: White Plains, NY
May 5, 2008


RAUL BORBON

On the 5th day of May in the year 2008 before me, the undersigned, personally appeared RAUL BORBON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

JAMES M. LENIHAN
Notary Public, State of New York
No. 02LE5089181
Qualified in Westchester County
Commission Expires December 8, 2008