

CAUSE # 2012-2235-C1

STATE OF TEXAS,	§	IN THE 19th JUDICIAL
	§	
Plaintiff,	§	DISTRICT COURT OF
	§	
-against-	§	MCLENNAN COUNTY
	§	
JUAN FRANCISCO MEDINA ORTIZ	§	
	§	
Defendant.	§	

MOTION TO SUPPRESS STATEMENT AND PHYSICAL EVIDENCE

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes JUAN FRANCISCO MEDINA ORTIZ, Defendant, by and through undersigned counsel, and files this motion to suppress statement evidence, and shows the following:

1. On August 27, 2012, Defendant brought his infant son to McLane Hospital with his son's mother. The child was suspected of being a victim of child abuse after X-rays revealed fractures in the child's body, and the matter was referred to police.

2. Defendant does not speak the English language. He is fluent only in Spanish, and has a limited understanding of English.

3. On August 30, 2012, Defendant was ordered by police to go to the West Police Department in West, Texas, and be interrogated by police in connection with an allegation of child abuse as indicated above.

4. Upon his arrival at the West Police Department, he was taken into a room by police, the door was closed, and Defendant was ordered to remain seated while law enforcement agents began to interrogate him in English. On several occasions, Defendant requested an interpreter because he could not understand what the police officers were saying, and requested an attorney. These

requests were denied. Defendant was then ordered to write a statement in Spanish concerning the allegations of abuse and made to understand that he was not free to leave until he complete a statement.

5. Defendant completed a written statement at the command of the police officers.

6. The Defendant was later ordered to sign a typewritten statement written in English, which was not translated to him. Defendant did not understand what was written on the English statement, and was simply ordered to sign the document.

7. On August 31, 2013, Defendant was again interrogated while in police custody. Again, he requested an interpreter and an attorney, and again his requests were denied. Defendant was ordered by police to write a statement in Spanish.

8. Defendant was not administered Miranda warnings in the Spanish language prior to giving the statements on August 30, 2012 or August 31, 2012.

9. According to the police reports provided by the District Attorney, upon his arrest, police officers recovered numerous pieces of identification from the Defendant, which were vouchered as evidence.

10. The Defendant has maintained his innocence of the crimes charged and has repeatedly stated that he did not intentionally cause any injuries to his child. He flatly denies he committed any assaultive or illegal acts.

11. Moreover, any contrary information was not communicated to the police by a reliable source with personal knowledge. The Defendant specifically challenges the reliability and basis of knowledge of any informant who may have transmitted information to the police. Therefore, his warrantless seizure and arrest by the police was unjustified, in that it was not based on reasonable suspicion or probable cause.

12. The statements made by the Defendant after he was in custody were involuntarily made pursuant to the law as set forth in Miranda vs. Arizona. From the point that the Defendant's freedom of movement was restrained any statements made by her in response to any questions were made without the benefit of appropriate warnings under Miranda, its progeny, and C.C.P article 38.22 and 38.23.

13. The actions of the West Police Department and the Department of Child Protective Services violated the constitutional and statutory rights of the Defendant under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article I, Section 9 of the Texas Constitution, and under Article 38.23 of the Texas Code of Criminal Procedure. Defendant was arrested without a lawful warrant, probable cause or other lawful authority in violation his rights pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article I, Sections 9, 10 and 19 of the Constitution of the State of Texas. Any physical evidence recovered as a result of this arrest must be suppressed. Mapp v. Ohio, 367 U.S. 643 (1961); Dunaway v. New York, 442 U.S. 200 (1979); Wong Sun v. United States, 371 U.S. 471 (1963).

14. Any statements obtained from Defendant were obtained in violation of Article 38.22 of the Texas Code of Criminal Procedure and in violation of his rights pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article I, Sections 9, 10 and 19 of the Constitution of the State of Texas. As a result, any statements made by the Defendant must be suppressed. Miranda v. Arizona, 384 U.S. 435 (1966), Moran v. Burbine, 475 U.S. 412 (1990) Harris v. New York, 401 U.S. 222 (1971); Wong Sun v. United States, 371 U.S. 471, 485 (1963); Brown v. Illinois, 422 U.S. 590 (1975); Dunaway v. New York, 442 U.S. 200 (1979)

15. Therefore, Defendant requests that the following matters be suppressed at trial of this cause:

a. All statements made by Defendant to law enforcement on August 30, 2012, and August 31, 2012

b. The arrest of Defendant at the time and place in question and any and all evidence which relates to the arrest, and any testimony by the West Police Department and the Department of Child Protective Services or any other law enforcement officers or others concerning any action of Defendant while in detention or under arrest in connection with this case.

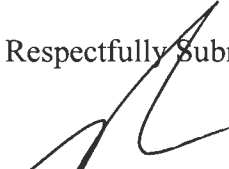
c. Any and all tangible evidence seized by law enforcement officers or others in connection with the detention and arrest of Defendant in this case or in connection with the investigation of this case, including but not limited to the identification cards, personal property, video images, and photographs, and any testimony by the West Police Department and the Department of Child Protective Services or any other law enforcement officers or others concerning such evidence.

d. Any other matters that the Court finds should be suppressed upon hearing of this motion.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court suppress such matters at trial of this cause, and for such other and further relief in connection therewith that is proper.

Dated: Winter Park, Florida
December 12, 2013

Respectfully Submitted,



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CERTIFICATE OF SERVICE

This is to certify that on December 13, 2013, a true and correct copy of the above and foregoing document was served by United States Mail upon:

Assistant District Attorney Hillary Laborde, Esq.
McClennan County District Attorney's Office
219 N. 6th Street, Suite 200
Waco, Texas 76701



Patrick Michael Megaro, Esq.

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STATE OF TEXAS,

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-against-

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Defendant.

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IN THE 19th JUDICIAL

DISTRICT COURT OF

MCCLENNAN COUNTY

ORDER

On _____, 201__, came on to be considered JUAN FRANCISCO MEDINA ORTIZ' Motion to Suppress, and said motion is hereby

(Granted) (Denied)

JUDGE PRESIDING