IN THE TENTH JUDICIAL DISTRICT
DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CRIMINAL DEPARTMENT

STATE OF KANSAS,

Plaintiff,

vs. Case No. 13CR00XXX

JOHN DOE,

Defendant.

MOTION TO SUPPRESS

COMES NOW Defendant, John E. Doe, by and through his attorney, Paul D. Cramm, and moves this Court for its order pursuant to K.S.A. 22-3216 suppressing evidence illegally obtained during the course of the police investigation of the above-referenced matter. In support of his motion, the Defendant states and alleges as follows:

FACTUAL BACKGROUND

1. On November 19, 2012 at approximately 5:30 p.m., Lenexa Police Detectives Grisell and Giles conducted a 'knock and talk' at 8852 Woodland in Lenexa, KS in reference to possible narcotics activity. Law enforcement had not requested and the District Court had not issued a warrant authorizing evidentiary search of the residence. Grisell reports that he "had received information from an ***anonymous*** source that there were subjects living at this residence involved with the use and sales of marijuana." (Emphasis added). Upon arrival, Defendant John Doe was standing in front of the open garage door to the attached garage of the residence.

2. Detective Giles was wearing audio/video recording equipment during the course of the encounter and documented the events at issue. Grisell is heard introducing himself to Mr. Doe and asks at 00:20 of the encounter: "Can I come in and chat with you, my man?" Doe replies: "We can step in my garage here, my roommate's sleeping." Giles then explains to Doe

that he would like to “chat” with Doe and Doe’s roommate about reports of some “activity” associated with the residence.

3. In his narrative report, Grisell writes: “In the garage, I informed Doe I was simply wanting to speak with him and his roommates in regards to the information I had received regarding the illegal drugs and to remove any illegal drugs and illegal items from the residence with their permission.” However, this statement is false. As documented by the audio/video recording of the encounter, at no time prior to entry does Grisell ever mention searching the residence for contraband, seizing any items of contraband, or removing any items from the home. Moreover, at no time prior to entry does Grisell request permission to search the residence. The extent of Grisell’s contact with Mr. Doe prior to entering the residence is limited to a request to “chat” with Mr. Doe and his roommate.

4. At 01:00 of the recorded contact, Grisell states: “I ain’t gonna’ take no one to jail tonight. I ain’t lookin’ to put no handcuffs on no one.” At 01:08, Grisell continues: “Unless you got a dead body inside, or a serious, major crime, that’s pretty much all I’m worried about, all right?” Of note, although Grisell tells Doe that he can smell the odor of marijuana while standing in the garage, no drugs and no illegal items of any kind were discovered in the garage, in Mr. Doe’s vehicle, or on Mr. Doe’s person. Grisell concludes his initial contact with Doe at 01:27 by stating: “I wouldn’t be doin’ my job if I didn’t come back here and at least chat with you all about it, you feel me? So, can I come on inside and talk with you and John, wake him up, just kind of have a little heart-to-heart convo about what’s going’ on?”

5. In his narrative report, Grisell writes: “Doe took us up stairs to the main living room area.” However, this statement is also false. At 01:50 of the audio/video recording of the encounter, Mr. Doe leads Detectives Grisell and Giles into the residence and opens two metal

folding chairs for the officers, placing them in the middle of the kitchen. At 02:18 of the audio/video recording, Doe walks up the stairs of the residence and calls out to his roommate. *Without invitation*, Grisell follows Doe up the stairs at 02:26, stating: "Hey, you mind if I come up here man? I wanna' try and be sure there ain't no weapons, ya' know."

6. In his narrative report, Grisell writes: "As soon as we made it to the living room area (upstairs) I could smell a strong odor of burnt marijuana." Grisell's report continues: "On the glass table in plain view was a clear plastic bag with green leafy vegetation inside of it. From my training and experience I recognized this substance as marijuana." These items were located in the upstairs living room such that Grisell observed said items only after following Mr. Doe upstairs to confirm that there were no weapons in the residence.

7. In his narrative report, Grisell writes: "I reminded Doe several times that he could tell us to stop searching his residence at any time. Doe said he wanted to give us consent because he wanted to cooperate." These statements are also false. As documented by the audio/video recording of the encounter, Grisell at no times tells Mr. Doe that he is free to request that officers not search or stop searching the residence. Instead, Grisell makes the following statements to Mr. Doe regarding cooperation at 08:01 of the recording:

> "This weed right here my man, I ain't taking you to jail tonight. What I'm about to do right now is just, I'm doin' a report sayin' - 'hey, I spoke with so and so okay, and he was cool, you know, gave us permission to do all this, you know, he wasn't arrested' - and we'll see how it is from there on out.

At 08:30 of the recording, Grisell continues:

> "And your cooperation that you've given us so far is why, you know, you're not … if you were being a complete dick, you know - 'fuck you' - then that's a whole different route we go down. But your cooperation so far in this matter is why, you know, as long as you're cool with everything, you know, then I have no problem showing you respect and doing the same thing."

8. at 09:34 of the recording, Grisell elaborates on Mr. Doe's 'cooperation' as follows: "Part of this cooperation stuff is, *I'm not gonna' leave this house without making sure that everything illegal is out*, does that make sense? I mean, *I'm a police officer, I have to do that regardless*, you know what I'm sayin? So, is it O.K. if we search the rest of the place and get everything out of here that we need to get out?" Doe responds: "Uh, yeah, can I see if my roommate came in?" Grisell then states: "In a minute just because I don't want you runnin' all over the house without us. Basically 'cause I want to go home tonight, you know what I mean? Crazier things have happened than people runnin' off and comin' out with weapons and stuff." During the course of the ensuing search, law enforcement discovered and seized the drugs and paraphernalia at issue herein.

ARGUMENTS AND AUTHORITIES

9. Under the Fourth and Fourteenth Amendments to the United States Constitution, a search conducted without a warrant is "*per se* unreasonable... subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514 (1967). Upon the hearing of a motion to suppress evidence, the State bears the burden of proving to the trial court the lawfulness of the search and seizure. *Mincey v. Arizona*, 437, U.S. 385, 390-91, 98 S.Ct. 2408, 2412-13 (1978); *State v. Schur*, 217 Kan. 741, 743, 538 P.2d 689 (1975). See also: K.S.A. §22-3216(2); *State v. Houze*, 23 Kan.App. 2d 336, 337, 930 P.2d 620, rev. denied 261 Kan. 1088 (1997).

10. The foregoing well-established principles of law are codified by K.S.A. §22-3216 which provides:

> "(1) Prior to the trial a defendant aggrieved by an unlawful search and seizure may move for the return of property and to suppress as evidence anything so obtained.

(2) The motion shall be in writing and state facts showing wherein the search and seizure were unlawful. The judge shall receive evidence on any issue of fact necessary to determine the motion and the burden of proving that the search and seizure were lawful shall be on the prosecution. If the motion is granted then at the final conclusion of the case, the court shall order the suppressed evidence restored to the party entitled thereto, unless it is otherwise subject to lawful detention.

(3) The motion shall be made before trial, in the court having jurisdiction to try the case, unless opportunity therefore did not exist or the defendant was not aware of the ground for the motion, but the court in its discretion may entertain the motion at the trial.

(4) A motion to suppress illegally seized evidence may be made before or during a preliminary examination. If the motion is granted the suppressed evidence shall be held subject to further order of the magistrate. If the defendant is bound over for trial, the suppressed evidence shall thereupon become subject to the orders of the district court. If the defendant is not bound over and if no further proceedings are instituted on the particular charge or involving the particular suppressed evidence within ninety (90) days after the granting of the order, then the magistrate shall order the suppressed evidence restored to the party entitled thereto, unless it is otherwise subject to lawful detention."

I. The Subject Search was Conducted Without a Warrant and Fails to Meet the Narrow Exceptions to the Warrant Requirement.

11. The Fourth Amendment to the United States Constitution and §15 of the Kansas Constitution Bill of Rights prohibit unreasonable searches and seizures, and a warrantless search is per se unreasonable unless it falls within one of the recognized exceptions. *State v. Ramirez*, 278 Kan. 402, 404–05, 100 P.3d 94 (2004). Consequently, a warrantless search of a house is *per se* unreasonable. *Payton v. New York*, 445 U.S. 573, 586, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). Absent exigency or consent, warrantless entry into the home is constitutionally impermissible. *Steagald v. United States*, 451 U.S. 204, 211, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981). Evidence recovered following an illegal entry of the home is inadmissible and must be suppressed. *Wong Sun v. United States*, 371 U.S. 471, 484–87, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *State v. Reno*,

260 Kan. 117, 129, 918 P.2d 1235 (1996); see also *Mapp v. Ohio*, 367 U.S. 643, 660, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) (courts must follow the exclusionary rule).

12. In the case at bar, Detectives Grisell and Giles conducted a 'knock and talk' at 8852 Woodland in Lenexa, KS in reference to 'possible' narcotics activity. Law enforcement had not requested and the District Court had not issued a warrant authorizing evidentiary search of the residence. Because law enforcement conducted the subject search without a warrant, said search must be supported by either exigency or consent. The facts and circumstances of said search fail to satisfy the requirements of either exception to the warrant requirement.

II. The Circumstances of the Subject Search Fail to Satisfy the Requirements of the "Exigency" Exception to the Warrant Requirement.

13. One exception to the warrant requirement involves situations wherein there is both probable cause to believe that a crime has been or is being committed and exigent circumstances justify an immediate search. *State v. Weas*, 26 Kan.App.2d 598, 600, 992 P.2d 221 (1999), rev. denied 268 Kan. 895 (2000). Probable cause alone is insufficient to justify a warrantless entry into a private residence; it is also necessary for the officer to show exigent circumstances which make an immediate warrantless search imperative. *Monroe v. Darr*, 221 Kan. 281, 287, 559 P.2d 322 (1977).

14. Courts often use a nonexclusive list of factors to determine whether exigent circumstances exist to make a warrantless search: (1) the gravity or violent nature of the offense to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause; (4) strong reasons to believe the suspect is in the premises; (5) a likelihood that the suspect will escape if not swiftly apprehended; (6) the peaceful circumstances of the entry; and (7) the possible loss or destruction of evidence. *State v. Platten*, 225 Kan. 764, 770, 594 P.2d 201 (1979). Exigent circumstances exist when the officer reasonably believes there is a

threat of imminent loss, destruction, removal, or concealment of evidence or contraband. *State v. Houze*, 23 Kan.App.2d 336, 337, 930 P.2d 620, rev. denied 261 Kan. 1088 (1997). Exigent circumstances do not include situations where only a mere possibility exists that evidence could be destroyed or concealed. *State v. Hardyway*, 264 Kan. 451, 465, 958 P.2d 618 (1998).

15. In *Platten*, supra., the Court held that exigent circumstances did not exist when officers knew the suspect was located within his home in possession of drugs and could have easily destroyed that evidence, ruling that a warrant was nevertheless necessary. 225 Kan. at 769–71, 594 P.2d 201. Similarly, in *State v. Schur*, 217 Kan. 741, 745–46, 538 P.2d 689 (1975), the Court held that absent a showing of circumstances indicating the *likely* destruction of evidence (as opposed to the mere 'possibility' that evidence could be destroyed) the observation of a rolled cigarette in plain view and the detection of the odor of burning marijuana would not authorize a search of the premises under the 'exigency' exception to the warrant requirement. Moreover, in *State v. Huff*, 278 Kan. 214, 219, 92 P.3d 604 (2004) the Kansas Supreme Court held that exigent circumstances did not exist when the suspected crime was nonviolent (the officer only detected the smell of marijuana) and there was no indication any of the occupants of the home were armed or likely to escape. 278 Kan. at 220–21, 92 P.3d 604.

16. In the case at bar, Detectives Grisell and Giles were unquestionably investigating a non-violent crime. Moreover, by Officer Grisell's own recorded statements to Mr. Doe, the offense was not serious. At 01:18 of the audio/video recording of the encounter, Grisell states during his dialogue with Mr. Doe: "I can smell a little bit of weed out here even. You guys probably do smoke. Smokin' weed ain't the end of the world – it is what it is." These factors are directly analogous to those of *State v. Huff* supra, wherein the Supreme Court held that in an

investigation of a non-violent crime based on the odor of marijuana, exigent circumstances did not exist to support warrantless search of the premises.

17. Moreover, few jurisdictions have held that the odor of marijuana emanating from a private residence alone is sufficient to establish probable cause to support a search warrant. See *State v. Beeken*, 7 Neb.App. 438, 444–49, 585 N.W.2d 865 (1998); *State v. Rein*, 324 Or. 178, 182, 923 P.2d 639 (1996). Generally something more than "plain smell" is required to justify warrantless entry into and search of a residence. See *United States v. Kerr*, 876 F.2d 1440, 1442–45 (9th Cir.1989); *United States v. Carr*, 92 F.Supp.2d 1137, 1140–42 (D.Kan.2000); *Lustig v. State*, 36 P.3d 731, 731–33 (Alaska App.2001); State v. Caldwell, 20 Ariz.App. 331, 332–35, 512 P.2d 863 (1973); *Barocio v. State*, 117 S.W.3d 19, 21–24 (Tex.Crim.App.2003). Thus, Detective Grisell's statement that he smelled burnt marijuana while standing in the open garage of Doe's residence does not provide sufficient 'probable cause' to justify search regardless of the issue of exigent circumstances.

III. Grisell Discovered the Evidence Herein During an Unlawful "Safety Sweep."

18. As set forth in *Maryland v. Buie*, 494 U.S. 325, 327, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990), a protective sweep is "a quick and limited search of premises, *incident to an arrest* and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding." The Kansas Supreme Court adopted the *Buie* definition of protective sweep in *State v. Johnson*, 253 Kan. 356, 370, 856 P.2d 134 (1993).

19. In *State v. Lemons*, 37 Kan.App.2d 641 (2007) the defendant was charged with possession and manufacture of methamphetamine after police conducted a protective sweep and evidentiary search of his residence during the course of a "knock and talk" encounter. But for

the initial and unlawful 'sweep' of the home, law enforcement would not have observed evidence of crime. The trial court granted Lemons' motion to suppress all evidence obtained as a result of the protective sweep and resulting evidentiary search. The State filed an interlocutory appeal, contending that the protective sweep was done 'to protect police from harm.' The Court of Appeals affirmed the trial court's suppression of evidence because the protective sweep was *not* made "incident to a lawful arrest" and because the evidence failed to show a likelihood of harm to police or to others.

20. The *Lemons* Court initially observed that when officers *have an arrest warrant* and probable cause that defendant is in the house, officers are entitled to enter and look anywhere where defendant might be found. However, The *Lemons* Court also acknowledged its duty to follow Supreme Court precedent, absent some indication that the court is departing from its previous position. See: *State v. Beck*, 32 Kan.App.2d 784, 788, 88 P.3d 1233, rev. denied 278 Kan. 847 (2004). The *Lemons* Court noted that the *Buie* definition of protective sweep includes the language "incident to an arrest." 494 U.S. at 327, 110 S.Ct. 1093. Because the 'protective sweep' at issue in *Lemons* developed during the course of a consensual "knock and talk" encounter and occurred before law enforcement made the decision to place defendant Lemons under arrest, said search necessarily did not occur "incident to an arrest" as required by *Buie* and *Johnson*, supra. Moreover, but for the unlawful safety sweep, law enforcement would not have observed the evidence that ultimately led to defendant Lemons' under arrest. In summary, the Court held that law enforcement cannot conduct a 'safety sweep' during the course of a consensual encounter, and then make the decision to arrest based upon observations made during said 'safety sweep.'

21. The 10th Circuit Court of Appeals reached a similar result in the unreported case *U.S. v. Garza*, No. 04-4046, (2005). Although not favored for citation pursuant to Kansas Supreme Court Rule 7.04(f), unpublished opinions ***may*** be cited as persuasive authority on a material issue not addressed by a published Kansas Appellate Court opinion. Attached hereto is a copy of the written opinion in *U.S. v. Garza*, supra. There, members of the Ogden City Police department conducted a "knock and talk" investigation at the Motel 6 in Ogden, Utah. Officers had relied upon such generalized indicators as excessive foot traffic, a high volume of phone calls, guests with local addresses, lack of a room reservation, and cash payment, as indicative of possible narcotics activity.

22. When the officers knocked on the door, a male voice asked who was there, and the officers announced themselves. Shortly thereafter, a female answered the door and backed up so that the officers might enter. Upon entering, the officers heard the bathroom door slam shut. When asked if anyone else was present, the female stated that her boyfriend, defendant Garza, was in the bathroom. When the officers asked Mr. Garza to speak with them, he refused to respond. One of the officers then pushed the bathroom door open, revealing Mr. Garza holding a firearm. When taken into custody, Mr. Garza was in possession of methamphetamine. After the arrest, the female consented to a search of the motel room, during which the officers found a small amount of marijuana. The district court denied defendant Garza's Motion to Suppress Evidence and Garza appealed.

23. On appeal, the government asked the Court to uphold denial of the motion to suppress based upon on the 'protective sweep' rationale set forth in *Maryland v. Buie*, supra. Just as in *Lemons*, the Court of Appeals held that the government could not rely on the 'protective sweep' exception to the warrant requirement since a 'protective sweep' may only be

performed incident to an arrest. See: *Buie*, 494 U.S. at 327; *United States v. Davis*, 290 F.3d 1239, 1242 n. 4 (10th Cir.2002); *United States v. Smith*, 131 F.3d 1392, 1396 (10th Cir.1997). The Court noted that neither defendant Garza nor his female companion were under arrest at the time of the 'protective sweep' and the decision to arrest was based upon evidence observed during the sweep.

24. As a second basis for reversal, the Court stated "Even assuming that *Buie's* protective sweep doctrine encompasses circumstances other than an officer's presence for purposes of making an arrest, no objectively reasonable belief existed that the bathroom contained a person posing a danger to either the officers or others." *Buie*, 494 U.S. at 327. (Emphasis added) The Court emphasized that "a protective sweep is a brief search of a premises *during an arrest* to ensure officer safety if the officers have a reasonable belief of danger." *Id*. The Court determined that a protective sweep (incident to lawful arrest) is "appropriate only where officers reasonably perceive an immediate danger to their safety." *United States v. Owens*, 782 F.2d 146, 151 (10th Cir.1986). Thus, mere presence of another person in the residence alone is insufficient to support a 'safety sweep.' In addition to belief that another person is in the premises, law enforcement must also be able to articulate specific factors supporting a reasonable belief that said individual poses danger or risk of harm to the officers. The Garza Court determined that the officers' protective sweep of the hotel room, including forcing the bathroom door open, failed to comply with these standards.

25. Additionally, the Garza Court noted that – as in the case at bar – the officers were conducting a warrantless "knock and talk" investigation. As opposed to situations where officers perform a protective sweep after an arrest, the subjects had voluntarily consented to the officers' entry. After defendant Garza's companion had consented to the officers' entry, the officers

heard the bathroom door shut and knew that Garza was in the bathroom and refused to communicate with them. Citing *Buie*, the Garza Court concluded that there were not specific, articulable facts to support a "reasonable belief" that the bathroom "harbored an individual posing a danger to the officers or others."

26. In the case at bar, there is absolutely no evidence of any kind to suggest that Detective Grisell and Giles 'reasonably perceived an immediate danger to their safety' as required by *Owens*, *Buie*, *Garza*, and *Lemon*, supra. Knowledge of the presence of another individual in the residence alone is insufficient to support a 'safety sweep' of the premises. Thus, the fact that Mr. Doe believed that his roommate was present in the residence and informed Grisell and Giles of that belief does not support Grisell's uninvited entry to the upstairs area of the residence under the guise of a 'safety sweep.' Grisell lacked any reasonable basis to believe that Doe's roommate presented an immediate danger to the officers. Moreover, the officers admittedly had not made an arrest at the time of the non-consensual search of the upstairs of the residence. Thus, in the case at bar, officers lacked both lawful arrest and a reasonable perception of immediate danger at the time of the subject search.

IV. Defendant Doe did Not Consent to the Search

27. For a consent to search to be valid, two conditions must be met: (1) There must be clear and positive testimony that consent was unequivocal, ***specific***, and freely given and (2) the consent must have been given without duress or coercion, express or implied. See *United States v. Guerrero*, 472 F.3d 784, 789–90 (10th Cir.2007); *State v. Moore*, 283 Kan. 344, 360, 154 P.3d 1 (2007). Consent must be given voluntarily, intelligently, and knowingly, and proved by a preponderance of the evidence. "'[I]t must be clear that the search was permitted or invited by the individual whose rights are in question without duress or coercion.'" *State v. Kriegh*, 23

Kan.App.2d 935, 938, 937 P.2d 453 (1997) (quoting *State v. Crowder*, 20 Kan.App.2d 117, 120, 887 P.2d 698 [1994]).

28. As documented by the audio/video recording of the encounter, the extent of Grisell's contact with Mr. Doe prior to entering the residence is limited to a request to "chat" with Mr. Doe and his roommate. Grisell is heard introducing himself to Mr. Doe and asks: "*Can I come in and chat with you*, my man?" Grisell concludes his initial contact with Doe by stating: "I wouldn't be doin' my job if I didn't come back here and at least *chat with you* all about it, you feel me? So, *can I come on inside and talk with you and John*, wake him up, just kind of *have a little heart-to-heart convo about what's going' on*?"

29. At no time prior to entering Mr. Doe's residence does Grisell ever mention searching the residence for contraband, seizing any items of contraband, or removing any items from the home. Moreover, at no time prior to entry does Grisell request permission to search the residence. As documented by the audio/video recording of the encounter (1:50), Mr. Doe leads Detectives Grisell and Giles into the residence and opens two metal folding chairs for the officers, placing them in the middle of the kitchen. Doe then walks up the stairs of the residence and calls out to his roommate (2:18). *Without invitation*, Grisell follows Doe up the stairs under the guise of an unlawful 'protective sweep' (see: infra.) The fact that Doe provided tacit consent to Grisell's initial entry to the residence for the expressed and limited purpose of "chatting" and having "a little heart-to-heart convo about what's going on" does not constitute 'voluntary, knowing and *specific*' consent to evidentiary search of the premises as required by *U.S. v. Guerrero* and *State v. Moore*, supra.

30. The only request for consent to search the premises and seize property occurred after Grisell's unlawful 'protective sweep' of the upstairs portion of the residence. It is well-

established that "[w]hen a consent to search is preceded by a Fourth Amendment violation, the State, in addition to proving the voluntariness of the consent, must also establish a break in the causal connection between the illegality and the evidence thereby obtained." *State v. Schmitter*, 23 Kan.App.2d 547, Syl. ¶ 8, 933 P.2d 762 (1997); see *Wilson*, 30 Kan.App.2d at 106, 39 P.3d 668**.** As set forth supra., the request for 'consent' to search occurred *only after* observation of contraband in 'plain view' during the course of the unlawful 'protective sweep' of the residence. Law enforcement could not have made this 'plain view' observation but for the unlawful protective sweep of the residence. Thus, there is no break in the causal connection between the 4th Amendment violation (unlawful safety sweep) and evidence obtained following the request for 'consent' to continue the search.

31. Moreover, the request for consent itself fails under independent analysis. As set forth supra, in order to be valid, consent must be given "without duress or coercion, express or implied." At 8:15 of the audio/video recording of the encounter, Giles states as follows:

> "What I'm about to do right now is just, I'm doin' a report sayin' - 'hey, I spoke with so and so okay, and he was cool, you know, *gave us permission to do all this*, you know, *he wasn't arrested*' - and we'll see how it is from there on out."

At 8:33, Grisell continues:

> "*And your cooperation that you've given us so far is why*, you know, you're not … *if you were being a complete dick*, you know - 'fuck you' - *then that's a whole different route we go down*."

The clear and unequivocal implication to Mr. Doe is that by consenting to the requested search, he would not be arrested and would not go to jail. However, if Doe did *not* grant 'consent' to the search, he would be arrested and taken to jail.

32. Additionally, Grisell states that he will search the residence regardless of Mr. Doe's consent. At 9:34 of the audio/video recording, Grisell states: "Part of this cooperation

stuff is, *I'm not gonna' leave this house without making sure that everything illegal is out*, does that make sense? I mean, *I'm a police officer, I have to do that* ***regardless***, *you know what I'm sayin*?" The suggestion by Grisell that he would search the residence "regardless" of Doe's position on the issue of consent vitiates the 'voluntary' nature of the consent and renders Doe's 'consent' and the ensuing search unconstitutional and invalid.

CONCLUSION

33. In the case at bar, law enforcement had not requested and the District Court had not issued a warrant authorizing search of the subject residence. Officers conducted a 'knock and talk' at the subject residence. During the initial contact prior to entry, law enforcement only requested permission to enter the residence for the limited purpose of speaking with the occupants. Law enforcement made no mention whatsoever of conducting an evidentiary search of the residence or seizing any items within the residence prior to entry for the limited purpose of speaking with the occupants.

34. Upon entry, law enforcement followed the Defendant upstairs for the specific and articulated purpose of conducting a 'safety sweep' of the residence. Thus 'safety sweep' is entirely unsupported and unlawful as law enforcement were not effecting an arrest at the time of the sweep and further had no reasonable or articulable basis for safety concerns. Law enforcement observed the contraband in plain view during the course of the unlawful 'safety sweep' and would not have seen said contraband but for the unlawful sweep.

35. The Defendant, John Doe did not provide 'knowing, voluntary and informed' consent to the search of the residence after discover of the contraband. Officers implied that by consenting to the requested search, Curly would not be subject to arrest and further implied that

failure to give consent would result in arrest. Finally, officers directly informed Doe that they would search the residence 'regardless' of his position as to consent.

WHEREFORE, for the above and foregoing reasons, the Defendant respectfully requests that this Court issue an order suppressing all illegally obtained evidence from these proceedings.

Respectfully submitted,

BY _____
Paul D. Cramm #19543
PAUL D. CRAMM, CHARTERED
7450 W. 130th Street, Suite 305
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Telephone: 913-322-3265
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ATTORNEY FOR DEFENDANT

NOTICE OF HEARING

Take notice that the above motion will be called up for hearing before the Honorable Stephen Tatum, Division No. 5 of the District Court of JohnsonCounty, Kansas, on the 31st day of May, 2013 at 10:00 a.m. of said day.

BY _____
Paul D. Cramm
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on this 13th day of May, 2013 a copy of the above and foregoing was hand delivered to: Assistant District Attorney Sarah Hill, Johnson County District Attorney's Office, P.O. Box 728, Olathe, KS 66051, Clerk's Box #317.

BY _____
Paul D. Cramm
ATTORNEY FOR DEFENDANT