

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE ONE HORSE TRAILER)	MISCELLANEOUS ACTION NO.
BELONGING TO ABELINO)	
MEDINA XXXX)	_____
_____)	

MOTION FOR RETURN OF PROPERTY PURSUANT TO FED. R. CRIM. P. 41(g)

I. BACKGROUND

On or about February 16, 2011, federal agents arrested XXXX XXXX at his property located at YYYY Road, Dallas, Texas in the Northern District of Texas in connection with an indictment returned in the United States District Court for the Eastern District of Texas in Case Number 4:11-cr-0003. In connection with the arrest, Mr. XXXX allegedly gave agents permission to search his property, however, the government has never claimed that Mr. XXXX gave permission to seize any of his property.¹

Nevertheless, on the day of his arrest, the government agents seized a horse trailer owned by Mr. XXXX and used to transport race horses to various race tracks. At a detention hearing held in Mr. XXXX' criminal case on February 22, 2011, a government agent testified that the horse trailer contained an "aftermarket compartment" and a drug dog allegedly alerted on the compartment. *See* Attachment A. As it turns out, this basis for seizing the trailer was absolutely false. On March 24,

¹A consent to search is not the equivalent of a consent to seize property. *See, e.g., United States v. Andracek*, 2007 WL 1575355, *6 (E.D. Wis. 2007) ("There is no legal support for the government's position that Andracek's signed consent to the search of his computer also authorized the ICE agents to remove the computer from the residence and take it to the ICE officer in order to complete their search."). *See also Zap v. United States*, 328 U.S. 624 (1946) (Assuming that a consent to search did not imply a consent to seize.); *United States v. Hunt*, 366 F.Supp. 172 (N.D. Tex. Nov. 14, 1973), *overruled on other grounds*, 505 F.2d 931 (5th Cir. 1974); 4 Wayne R. LaFave, *Search and Seizure* (West 2004) § 8.1(c) at 36. ("[O]bjects lawfully discovered in the consent search may not be carried off and subjected to further scrutiny.").

2011, undersigned counsel and one of the government's case agents, Kory Casler, viewed the trailer and the alleged "aftermarket" drug compartment. As the government now admits, there was nothing "aftermarket" in the trailer except rubber padding that is universally used to prevent horses from injuring themselves when kicking the wall. The padding is adhesively attached to lay completely flat against the inside metal wall and there is approximately ½ inch of space between the inside metal wall and the outside metal wall that could never secrete a significant amount of drugs. *See* Attachments B 1-3.²

Although Mr. XXXX remains incarcerated, his family continues to race his horses and is in desperate need of the trailer in order to be able to transport the horses to races.

II. DISCUSSION

Fed. R. Crim. P. 41(g) provides:

A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

The text of the rule is significant for two reasons. First, it provides that this motion "must be filed in the district where the property was seized." Thus, although Mr. XXXX' criminal case is pending in the United States District Court for the Eastern District of Texas, the District Court for the Northern District of Texas is the appropriate venue for this motion. Second, the rule provides that, the "court *must* receive evidence on any factual issue necessary to decide the motion."

²For example, Attachment B-2 is a picture of the black rubber being peeled away revealing the trailer wall. Counsel was originally told that this was the alleged "aftermarket compartment." Again, the rubber is used to protect the horses and there is no space that would have held a significant amount of drugs.

Moreover, it is important to recognize the distinction between a Motion for Return of Property under Fed. R. Crim. P. 41(g) and a motion to suppress in a criminal action. *United States v. Comprehensive Drug Testing, Inc.*, 579 F.3d 989, 1002-03 (*en banc*) (“The return of seized property under Rule 41(g) and the exclusionary rule serve fundamentally different purposes. Suppression helps ensure that law enforcement personnel adhere to constitutional norms by denying them, and the government they serve, the benefit of property that is unlawfully seized. Rule 41(g) is concerned with those whose property or privacy interests are impaired by the seizure”).

A return of the horse trailer should be ordered in this case. First, the alleged basis for the seizure of the horse trailer- that is contained an “aftermarket” drug compartment- has now been established to be absolutely false. Second, and in any event, the government has no need to hold and store the trailer at taxpayer expense. Indeed, to the extent it believed it necessary, the government could introduce photographs of the horse trailer in the event that Mr. XXXX’s criminal case proceeded to trial. Third, although Mr. XXXX is not required to show a “need” for the property to prevail on a claim made under Fed. R. Crim. P. 41(g), his family is in desperate need of the trailer so that it can transport its race horses to various races in order to generate income.

III. CONCLUSION

XXXX XXXX respectfully requests this court order the government to immediately return the horse trailer it seized from him on or about February 16, 2011 in the Northern District of Texas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, F. Clinton Broden, certify that, on May 2, 2011, I caused a copy of the above document to be served on opposing counsel, Heather Rattan, by email and first class mail, postage prepaid, at:

U.S. Attorney's Office
Eastern District of Texas
101 E. Park Boulevard
Plano, TX 75074-0000.

F. Clinton Broden