

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED

2012 MAY 22 AM 10:42

CLARA J. US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Cause Number: EP-10-CR-3155-DB
DEPUTY

UNITED STATES OF AMERICA,

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Plaintiff,

v.

RICARDO MAGALLANES,

Defendant.

**MOTION FOR JUDGEMENT OF ACQUITTAL, PURSUANT TO FEDERAL RULES
OF CRIMINAL PROCEDURE, RULE 29(c), AND MOTION TO DISMISS THE
INDICTMENT AND THE SUPERSEDING INDICTMENT**

Comes now the United States of America, by and through its United States Attorney for the Western District of Texas, and files this Motion for Judgement of Acquittal, Pursuant to Federal Rules of Criminal Procedure, Rule 29(c), and Motion to Dismiss the Indictment and the Superseding Indictment, in the above entitled and numbered cause, and in support thereof the Government will show the following:

On November 17, 2010, Ricardo Magallanes was arrested and charged by a criminal complaint with Possession of a Controlled Substance with Intent to Distribute and Importation of a Controlled Substance.

On December 15, 2010, a federal grand jury sitting in El Paso, in the Western District of Texas, returned a true bill on a two count indictment charging Ricardo Magallanes with one count of Importation of a Controlled Substance, namely: 50 kilograms or more of marijuana, and one count of Possession of a Controlled Substance, namely: 50 kilograms or more of marijuana, with Intent to Distribute, which was filed in the above entitled and numbered cause. On February 23, 2011, a federal grand jury sitting in El Paso, in the Western District of Texas returned a true bill on a two

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count superseding indictment charging Ricardo Magallanes with one count of Importation of a Controlled Substance, namely: a quantity of marijuana, and one count of Possession of a Controlled Substance, namely: a quantity of marijuana, with Intent to Distribute, which was filed in the above entitled and numbered cause.

Beginning on May 9, 2011, a jury trial was held for Ricardo Magallanes in El Paso, in the Western District of Texas. On May 10, 2011, the jury returned a guilty verdict on both counts of the superseding indictment, which was pending in the above entitled and numbered cause. On May 13, 2011, Ricardo Magallanes, through his attorney, filed a Motion for Acquittal.

On or about June 23, 2011, based on an investigation which was conducted by the Federal Bureau of Investigation (FBI), the United States Attorney's Office for the Western District of Texas, El Paso Division, received sufficient reliable evidence which indicated that Ricardo Magallanes was the victim of a drug trafficking organization's scheme to import marijuana from the Republic of Mexico into the United States. As part of this drug trafficking organization's scheme, members of the scheme used individuals, including Ricardo Magallanes, who had access to the dedicated commuter lane. In furtherance of the scheme, the organization members would place duffle bags, which contained bundles of marijuana in the individuals' vehicle's trunk, while the vehicle was still located in Ciudad Juarez, Chihuahua, Mexico. In most of these instances, the drug trafficking organization members had previously obtained copies of the key to access the individuals' vehicle's trunk. Then, the individual would cross the drug laden vehicle into and park the vehicle in the United States. Subsequently, the organization members would remove the marijuana from the individuals' vehicle's trunk. Most importantly, the investigation revealed that these individuals,

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including Ricardo Magallanes, had no knowledge that they were being used by the organization and that marijuana was being placed in their vehicles. Therefore, based on this investigation, the Government believes that Ricardo Magallanes was and is innocent.

On June 27, 2011, the Government filed a Motion to Dismiss the Indictment, and on the same date the Court granted the Motion and dismissed the superseding indictment, which indictments were pending in the above entitled and numbered cause. At the time, the Government should have moved to dismiss both the indictment and the superseding indictment.

When an inquiry is made on the ECF system, in regard to the above entitled and numbered cause, it reflects that the Ricardo Magallanes was convicted and the verdict form, Document number 52, is still accessible to the public.

Based on the foregoing, and since on May 10, 2011, the jury returned a guilty verdict against Ricardo Magallanes on both counts of the superseding indictment, filed in the above entitled and numbered cause, the Government hereby moves this Court, pursuant to the Federal Rules of Criminal Procedure, Rule 29(c)¹, to set aside the verdict and enter a judgement of acquittal; and the Government moves that the Court find that Ricardo Magallanes is "not guilty" and "innocent" of the charges alleged in the indictment and superseding indictment, filed on December 15, 2010, and on February 23, 2011, respectively, in the above entitled and numbered cause.

¹ Federal Rules of Criminal Procedure, Rule 29(c)(1) requires the defendant to file a motion for judgement of acquittal within 14 days after a guilty verdict. On May 13, 2011, Ricardo Magallanes, through his attorney, filed a Motion for Acquittal. The guilty verdict was entered on May 10, 2011.

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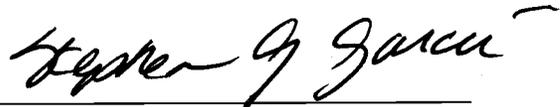
Furthermore, based on the foregoing, the Government hereby, pursuant to the Federal Rules of Criminal Procedure, Rule 48, moves to dismiss the indictment and superseding indictment filed, on December 15, 2010, and on February 23, 2011, respectively, in the above entitled and numbered cause.

WHEREFORE, the Government respectfully requests that the Court grant this Motion.

Respectfully submitted,

ROBERT PITMAN
UNITED STATES ATTORNEY

BY:



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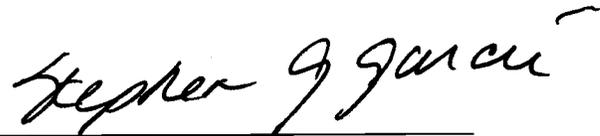
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CERTIFICATE OF SERVICE

I hereby certify that on the 22th day of May 2012, a true and correct copy of the foregoing
instrument was sent to:

Louis Lopez, Attorney for Ricardo Magallanes
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STEPHEN G. GARCÍA
Assistant U.S. Attorney

RECEIVED
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**ORDER GRANTING GOVERNMENT'S
MOTION FOR JUDGEMENT OF ACQUITTAL AND MOTION TO DISMISS**

On this date came to be considered the Government's Motion for Judgment of Acquittal, Pursuant to Federal Rules of Criminal Procedure, Rule 29(c), and Motion to Dismiss the Indictment and the Superseding Indictment, in the above entitled and numbered cause.

THE COURT FINDS that, the Government's Motion should be GRANTED.

THE COURT FINDS that, on December 15, 2010, a federal grand jury sitting in El Paso, in the Western District of Texas, returned a true bill on a two count indictment charging Ricardo Magallanes with one count of Importation of a Controlled Substance, namely: 50 kilograms or more of marijuana, and one count of Possession of a Controlled Substance, namely: 50 kilograms or more of marijuana, with Intent to Distribute, which was filed in the above entitled and numbered cause.

THE COURT FINDS that, on February 23, 2011, a federal grand jury sitting in El Paso, in the Western District of Texas returned a true bill on a two count superseding indictment charging Ricardo Magallanes with one count of Importation of a Controlled Substance, namely: a quantity of marijuana, and one count of Possession of a Controlled Substance, namely: a quantity of marijuana, with Intent to Distribute, which was filed in the above entitled and numbered cause.

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The COURT FINDS that, beginning on May 9, 2011, a jury trial was held for Ricardo Magallanes in El Paso, in the Western District of Texas and on May 10, 2011, the jury returned a guilty verdict on both counts of the Superseding Indictment, pending in the above entitled and numbered cause.

The COURT FINDS the following:

On or about June 23, 2011, based on an investigation which was conducted by the Federal Bureau of Investigation (FBI), the United States Attorney's Office for the Western District of Texas, El Paso Division, received sufficient reliable evidence which indicated that Ricardo Magallanes was the victim of a drug trafficking organization's scheme to import marijuana from the Republic of Mexico into the United States. As part of this drug trafficking organization's scheme, members of the scheme used individuals, including Ricardo Magallanes, who had access to the dedicated commuter lane. In furtherance of the scheme, the organization members would place duffle bags, which contained bundles of marijuana in the individuals' vehicle's trunk, while the vehicle was still located in Ciudad Juarez, Chihuahua, Mexico. In most of these instances, the drug trafficking organization members had previously obtained copies of the key to access the individuals' vehicle's trunk. Then, the individual would cross the drug laden vehicle into and park the vehicle in the United States. Subsequently, the organization members would remove the marijuana from the individuals' vehicle's trunk. Most importantly, the investigation revealed that these individuals, including Ricardo Magallanes, had no knowledge that they were being used by the organization and that marijuana was being placed in their vehicles.

THE COURT FINDS that, Ricardo Magallanes is "not guilty" and is innocent of the charges with which he was charged in the indictment and superseding indictment, filed on December 15, 2010, and on February 23, 2011, respectively, in the above entitled and numbered cause.

THE COURTS ORDERS that, since Ricardo Magallanes is innocent, the following:

THE COURT ORDERS that, pursuant to the Federal Rules of Criminal Procedure, Rule 29(c), the guilty verdict entered by the jury on May 10, 2010, on both counts of the Superseding

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Indictment, which was filed in the above entitled and numbered cause, is, hereby, SET ASIDE and Ricardo Magallanes is, hereby, ACQUITTED OF THESE CHARGES; and

THE COURT ORDERS that, pursuant to the Federal Rules of Criminal Procedure, Rule 48, the indictment and superseding indictment filed, on December 15, 2010, and on February 23, 2011, respectively, in the above entitled and numbered cause, are hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED this _____ day of _____, 2012.

DAVID BRIONES
UNITED STATES SENIOR DISTRICT JUDGE