IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

THE STATE OF FLORIDA, CRIMINAL DIVISION

Plaintiff, CASE NO.: F080*****

v. JUDGE DENNIS MURPHY

JOHN DOE,

Defendant.
_____ /

MOTION TO RECONSIDER DEFENDANT'S MOTION TO SUPPRESS

COMES NOW, the defendant, by and through undersigned counsel, and moves this Honorable Court to reconsider defendant's previously argued motion to suppress evidence obtained as a result of an illegal search of the defendant's residence. As grounds therefore, defendant states the following:

1. On June 08, 2008, defendant was arrested by Miami-Dade Narcotics Detective Kevin Donnelly for alleged trafficking of marijuana.
2. Defendant argued a motion to suppress evidenced based upon the fact that defendant did not give consent for officers to enter his home and that any consent that was given after the detective's initial search was tainted, and thus, illegal.
3. During the motion to suppress the State of Florida entered into evidence various documents including a Consent to Search Form; Miranda Waiver; and Statement of Responsibility. Each of these documents were written in the Spanish language, including the defendant's personal statement. The State of Florida did not enter certified translated copies of these documents, nor did the State of Florida attempt to have said documents translated by a certified court interpreter during the proceeding.

4. Given this above listed fact, after the State of Florida and defendant rested, defense counsel argued that the State of Florida had failed to meet its burden of proof because it failed to enter evidence which the Court could rely upon and/or bestow any evidentiary weigh in its decision. Therefore, this Honorable Court should grant defendant's Motion to Suppress.

5. This Honorable Court, however, denied defendant's motion.

6. Defendant now submits the following memorandum of law in support of his argument that the State's failure to properly translate evidence into English in effect makes said evidence meaningless in the eyes of the Court and must not be given any evidentiary weight in a court's final decision. And without this evidence having been properly introduced, the State of Florida failed to meets its burden and defendant's motion should be now granted.

MEMORANDUM OF LAW

The use of an interpreter at trial is a matter within the trial court's discretion. *Watson v. State,* 190 So.2d 161, 167 (Fla.1966); *see also Gopar-Santana v. State,* 862 So.2d 54, 55 (Fla. 2d DCA 2003); *Gil v. State,* 266 So.2d 43, 45 (Fla. 3d DCA 1972). An interpreter or certified interpretation of evidence is required, however, when such evidence is in the Spanish language and is admitted into evidence by the State of Florida. *See Hernandez v. State,* 723 So.2d 857, 859 (Fla. 4th DCA 1998) (stating that the jury should have been provided with an interpreter to translate Spanish-language audio tapes); *Hutchens v. State,* 469 So.2d 924, 925 (Fla. 3d DCA 1985) (same); *Fernandez v. State*, 21 So.3d 155, 157 (Fla.App. 4 Dist.,2009).

This requirement is also true in the United States federal courts who have held time and time again that proceedings shall be conducted in English only; and that any witness who does not speak the English language well enough to understand the proceedings be given an interpreter. Or if a

witness does not understand English and/or cannot properly communicate in the English language, a certified interpreter must be employed in the proceedings. "[I]t is clear, to the point of perfect transparency, that federal court proceedings must be conducted in English." *United States v. Rivera-Rosario,* 300 F.3d 1, 5, 7 n. 4 (1st Cir.2002) (noting "well-settled rule that parties are required to translate all foreign language documents into English"); *see also Lopez-Carrasquillo v. Rubianes,* 230 F.3d 409, 413-14 (1st Cir.2000) (declining to consider as part of summary judgment record a deposition excerpt in Spanish, where party submitting excerpt failed to provide English translation); *Krasnopivtsev v. Ashcroft,* 382 F.3d 832, 838 (8th Cir.2004) (copy of passport was properly excluded from evidence where no English translation or certification was offered); *United States v. Cruz,* 765 F.2d 1020, 1023 (11th Cir.1985) (where defendant engages in "deliberate tactical decision" not to submit English translation of Spanish tape, he cannot complain on appeal that jury's function was usurped when he failed to present evidence that would have aided jury in fulfilling that function); *Heary Bros. Lightning Protection Co. v. Lightning Protection Institute,* 287 F.Supp.2d 1038, 1074 (D.Ariz.2003) (sua sponte striking as inadmissible plaintiffs' exhibits that were not in English and for which plaintiff had provided no translation).

In the instant case, the State of Florida failed to properly translate its evidence into the English language. As this evidence remained in a foreign language, this Honorable Court could not give any weight to it, and thus, this Court could not hold that the State of Florida met its burden in proving the search of Defendant's home was consensual as these documents would be the only, and the best evidence of this.

WHEREFORE, based on the foregoing the defendant respectfully moves this Honorable Court to reconsider its original decision and enter an order granting defendant's Motion to Suppress.