IN THE COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA, **CASE NO.: 18004017CF10A**

Plaintiff, **JUDGE: JOHN J MURPHY III**

vs.

DEMETRIUS DENMARK

Defendant.
_____/

AMENDED MOTION TO SUPPRESS PHYSICAL EVIDENCE AND STATEMENT

COMES NOW the Defendant, DEMETRIUS DENMARK, by and through undersigned counsel and pursuant to Rule 3.190(g) and Rule 3.190(h), of the Florida Rules of Criminal Procedure, moves this Honorable Court to suppress as evidence in this cause the following items seized as the result of an unlawful detention and/or warrantless exploratory search conducted on or about 2/14/18, whereupon law enforcement officer(s) of the Miramar Police Department seized from the defendant and/or his vehicle, including but not limited to: 1) the Defendant's phone and extraction of data, 2) the Defendant's statement providing his cell phone number, 3) the Defendant's historical cell site data, 4) the vehicle in the Defendant's possession at the time of the initial stop, 5) the gun(s) found during the subsequent search of the vehicle, including any DNA and fingerprints swabbed or lifted from the gun(s).

FACTS IN SUPPORT OF MOTION

On February 9, 2018, Luis Rios was shot and pronounced dead in the City of Miramar. Police interviewed witness Sheldon Bland who was across the street in his house at the time of the shooting. Mr. Bland observed shots being fired from the backseat of a white 4-door vehicle with dark window tints. He did not see the actual shooter. A sworn statement was taken from

witness Nakisha Thompson, who was outside her house nearby at the time of the shooting and heard shots being fired from a gray-tanish car speeding into the roadway. Later, she was shown a picture of a possible suspect vehicle and she said the model shown in the photograph (a *white* 4 door vehicle) was the same vehicle she saw. She also stated that she saw a black male with shoulder short length dreads in the passenger seat of the vehicle.

Police canvassed the neighborhood, and they located surveillance video from neighboring residences. From the surveillance video, police determined that a white Chevrolet malibu had been driving in the area at the time of the murder and was the suspect vehicle. Then, police tracked the vehicle from the location of the shooting to State Road 7, and to the City of Miami Gardens through video surveillance supplied by multiple businesses. Police noted that the video surveillance showed the vehicle to have a darker front passenger rim.

On February 11, 2018, Officer Isenberg observed a Chevrolet Malibu with dark tints, that matched the description of the vehicle that was put out to police as the suspected vehicle to have been used for the shooting in Miramar. Officer Isenberg stated that the description that he relied upon, while attempting to stop this vehicle was the color, make and approximate year of the car. He had seen a picture of the suspect vehicle but did not note anything unique to the vehicle other than dark tints. He attempted to effectuate a traffic stop but was unsuccessful. This traffic stop happened at night, and Officer Isenberg was unable to determine if this vehicle had any distinct marks on it. However, he did note the license plate number of the white Chevrolet Malibu he attempted to stop as tag number EPSW12.

Miramar Detective Zeller was advised Officer Isenberg tried to stop a white Chevrolet Malibu and was given the plate number of that vehicle. Then, he used that plate number and searched for it in the Miami Gardens Police Department license plate reader system. The tag reader system from Miami Gardens Police Department yielded three captured images of the

white Chevrolet vehicle with that plate number from February 7, 2018, 2 days prior to the murder in Miramar. According to Detective Zeller, he also noticed a darker front passenger rim on that vehicle in the February 7 photos.

On February 14, 2018, Miramar detectives conducted surveillance of address 3531 NW 169th Terrace, Miami Gardens, FL, where the white Chevrolet with tag number EPSW12 was located. Miramar detectives saw the Defendant in the driver seat of the vehicle, while co-defendant Barnes was seen in the passenger seat. A third individual, Raymond Smith was seen in the back of the car, attempting to load an ATV in the vehicle.

Miramar detectives did not have a warrant to search, a warrant for seizure of any items, or an arrest warrant for any of the individuals. Miramar Detectives contacted Miami Gardens police department in order to attempt to get a search warrant issued for the vehicle. Before they had a warrant signed, Miramar Detectives moved in, detained the individuals near the car, thereby preventing the individuals from leaving in the vehicle.

When Detectives moved in, they had their guns drawn. They placed the three individuals in handcuffs and placed them on the ground near the vehicle. They also took the individuals' cell phones from them, claiming safety concerns because the victim of the shooting in Miramar had gang affiliations. Each of the three individuals was interviewed in the back of a police vehicle. Mr. Denmark's handcuffs were removed as he was placed in the back of a police vehicle, thereby being restrained further. Prior to being read Miranda, Mr. Denmark was asked for his contact information and to provide a phone number which he did. Miramar Detectives called the phone number to check if the phone seized from his person rang. The phones were sitting on top of the seized vehicle, and none of them rang when he called the number the Defendant provided. At this point, Miramar Detectives read Mr. Denmark Miranda, and then confronted him with the information he provided prior to the reading of Miranda, and how the cell phone seized did not

ring. Mr. Denmark provided Miramar Detectives with the phone number of the cell phone seized.

After interviewing the individuals, Detective Moretti moved the cell phones from the hood of the car and placed them inside the seized vehicle and left the scene. The warrant that was applied for contained as 'Grounds for Issuance" that the "[e]vidence relevant to proving a felony had been committed is contained therein." The individuals were told they were free to leave without the car and the phones, and individuals left the scene.

The car and said phones were transported to the Miramar Police Department, where a search warrant obtained by the Miramar Police Department, subsequent to the seizure of the vehicle, was executed. Detective Zeller utilized the phone number provided by Mr. Denmark to get a warrant to obtain the historical cell cite data, as well as do a phone dump. During the search of the vehicle, two guns were located under the driver seat, and they were swabbed for DNA and the vehicle was dusted for fingerprints.

LAW IN SUPPORT OF MOTION

I. THE INITIAL DETENTION OF DEFENDANT WAS UNLAWFUL

The Constitution of the United States guarantees Defendant's rights against unlawful search and seizures within the Fourth and Fourteenth Amendment. The same guarantees are contained in the Florida Constitution, Article I, Section 12. Mr. Denmark's stop was illegal, since the police did not observe any criminal activity and were unable to articulate any reasonable suspicion that Mr. Denmark had been, was, or would become involved in any criminal activity. State v. Gustafson, 258 So.2d 1 (Fla. 1972); Bailey v. State, 319 So.2d 2 (Fla. 1975); Watson v. State, 636 So.2d 581 (Fla. 2nd DCA 1994); Popple v. State, 626 So.2d 185 (Fla. 1993). Otherwise, Mr. Denmark would have been issued a citation or been arrested on the

spot. Instead, he was told he was free to leave without the vehicle and cell phone that had been seized.

In reviewing the lawful parameters of an investigatory stop, the question is whether the action was reasonable under the circumstances. *Gross v. State*, 744 So.2d (Fla. 2nd DCA 1999). This requires a two-fold inquiry, whether the action was justified at its inception and whether it was reasonably related in scope to the circumstances which justified the interference in the first place. *Id.* Furthermore, the State has the burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigatory seizure. *Id.* In this case, Miramar Detectives surveilled the residence where the vehicle was parked. They effectuated a stop of Mr. Denmark along with two other individuals. The car did not move from the driveway. Mr. Denmark was placed in handcuffs; his cell phone was seized. He was asked questions while he was in cuffs, he was asked questions while he was placed inside a police vehicle, and during all this time, and at no point was a warrant for arrest applied for. All of the interaction between Mr. Denmark and Miramar Detectives was involuntary, and it was in no way shape or form related in scope to the circumstances which justified the interference in the first place.

II. THE SEIZURE OF THE CAR WAS WITHOUT A WARRANT AND WAS UNLAWWFUL

The Constitution of the United States guarantees Defendant's rights against unlawful search and seizures within the Fourth and Fourteenth Amendment. The same guarantees are contained in the Florida Constitution, Article I, Section 12. Generally, there is a warrant requirement in order to search or seize an item. The rule that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the

Fourth Amendment—subject only to a few specifically established and well-delineated exceptions, is not so frail that its continuing vitality depends on the fate of a supposed doctrine of warrantless arrest. The warrant requirement has been a valued part of our constitutional law for decades, and it has determined the result in scores and scores of cases in courts all over this country. *Coolidge v. New Hampshire*, 403 U.S. 443, 481 (1971). In this case, the police were determining probable cause that there was a vehicle involved in a murder case, and they wanted to search the vehicle for this determination. The murder had occurred 5 days prior to the illegal stop, in a different city, and the police did not have any knowledge or information, prior to looking inside the vehicle without consent, that evidence of such a murder would be inside. Since the police weren't able to ascertain that there was any such evidence in plain sight, that eviscerates any argument that there were exigent circumstances necessitating the prolonged stop of the vehicle while they applied for a search warrant. Knowledge of evidence obtained from an unlawful search cannot serve as a basis for issuance of a search warrant. *Friedson v. State,* 207 So.3d (Fla. 5th DCA 2016*)*. Certainly, the information Miramar Detectives relayed to the Miami Gardens detectives and what they relied upon in their affidavit for the search warrant is suspect, since they stated that the evidence of the murder would be found inside the vehicle. They would not have known this information but for a search of the vehicle that was conducted prior to the warrant being issued. Therefore, the search and seizure of the vehicle was illegal, and the firearms found therein would not have been the subject of inevitable discovery since the police did not have a search warrant when the seizure happened, and the guns are movable objects.

III. THE TAKING OF DEFENDANTS PHONE WAS WITHOUT CONSENT AND UNLAWFUL

The United States Constitution forbids not all searches and seizures but unreasonable searches and seizures. *Terry v. Ohio*, 392 U.S. 1 (1968). Searches and seizures under the community caretaking doctrine focus on "concern for the safety of the general public." *Castella v. State*, 959 So.2d 1285 (Fla. 4th DCA 2007). Such a seizure is reasonable if it is based on specific articulable facts and a reviewing court determines that the balance between law enforcement's interest in protecting public safety and the individual's interest in being free from arbitrary governmental interference favors seizure. *Id.* Overall, under the community caretaking doctrine, law enforcement "may make warrantless searches and seizures in circumstances in which they reasonably believe that their action is required to deal with a life-threatening emergency." *Russoli v. Salisbury Township*, 126 F.Supp.2d 821, 846 (E.D.Pa.2000). In this case, Miramar Detectives claim that they had to seize the phones from the three stopped individuals because they were in fear that the individuals would call their gang member friends to come rescue them. Furthermore, they state that they were investigating a murder. However, this excuse falls short since Miramar Detectives were unaware that there was any gang affiliation for any of the three individuals, and more conclusively, these individuals were in handcuffs, thereby rendering them unable to make calls or send text messages.

An abandonment which is the product of an illegal stop is involuntary, and the abandoned property bust be suppressed. *Gross* at 1168, *citing State v. Anderson,* 591 So.2d 611 (Fla. 1992). In this case, police officers claimed that they placed the phones inside the seized vehicle and the individuals walked away without asking for their property back. However, this argument is not valid with relation to these set of facts because the stops exceeded the legal parameters. Mr.

Denmark experience is what is considered a de facto arrest. The cases recognizing a de facto arrest usually involve transportation, unless the seizure was unreasonable and not limited in scope and duration to satisfy the conditions of an investigative seizure. *Id.* Officers told the individuals that they were free to leave, but the individuals were not able to get in the car and drive away. In addition, they were not free to touch or retrieve any of their belongings from said vehicle, which would have included their phones.

IV. THE STATEMENT THE DEFENDANT GAVE WAS INVOLUNTARY

Today's cell phones are much more than hand-held devices used to make calls; they are portable high-powered computers that routinely store an extraordinary amount of deeply personal information. Cell phones can and do track every aspect of a person's existence. They can pinpoint every location a person was at any particular day, and for how long. The phones track every website the owner visited and every online purchase the visitor made. They contain credit card bills and medical records and online dating profiles. They contain a verbatim record of every text the owner has exchanged – between spouses, between children, between friends and between lovers. The phones store intimate photographs and videos that the owner has taken. Indeed, "[t]he sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions." *Riley v. California*, 134 S.Ct. 2473, 2489 (2014); *see also Smallwood v. State (Smallwood II)*, 113 So.3d 724 (Fla. 2013). In today's day and age, asking for a cell phone number in order to get a warrant for a phone is considered asking the defendant to provide evidence against himself and this falls under the umbrella of statements which is protected by the Constitution. *Miranda v. Arizona*, 384 U.S. 43 (1966).

Any and all statements obtained from the Defendant were in violation of the Defendant's privilege against self-incrimination and the Defendant's right to counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments. Before a statement can be introduced against an accused, the prosecution must demonstrate that the Defendant was advised of his right against self-incrimination and to have legal representation. *Miranda v. Arizona*, 384 U.S. 43 (1966). Statements made to police in the absence of *Miranda* must be suppressed where the statements are made (1) in a custodial circumstance and (2) in response to police questioning. *Bucknor v. State*, 965 So. 2d 1200, 1202 (Fla. 4th DCA 2007). For Miranda purposes, a suspect is "in custody" when he or she is under formal arrest or has his or her freedom of movement restrained to an extent associated with formal arrest. *Traylor v. State*, 596 So. 2d 957, 966 (Fla. 1992).

Officer statements, which are made with the intent to illicit an incriminating response, prior to the administration of *Miranda,* necessitate suppression where the police engage in a deliberate two-step process or strategy of "interrogate first and warn later." *State v. Lebron,* 979 So.2d 1093 (Fla. 3d DCA 2008). In this case, Miramar Detectives asked Mr. Denmark to give his cell phone number in order to be able to get a warrant for said number and establish evidence against him. This question was asked without the benefit of Miranda warnings to Mr. Denmark. The Detectives called the phone number he had provided after they had seized his phone under a pretext. When the phone did not ring, they then read Miranda and confronted him with the fact that he had given a different number for a phone he had.

The analysis of the admissibility of statements made following a custodial interrogation and after the delayed administration of Miranda warnings is based on the totality of the

circumstances, with the following being factors important in making this determination: (1) whether the police used improper and deliberate tactics in delaying the administration of the warnings in order to obtain the initial statement; (2) whether the police minimized and downplayed the significance of the Miranda rights once they were given; and (3) the circumstances surrounding the warned and unwarned statements including the completeness and detail of the questions and answers in the first round of interrogation, the overlapping content of the two statements, the timing and setting of the interrogations, the continuity of police personnel, and the degree to which the interrogator's questions treated the second round as continuous with the first. *Ross v. State*, 45 So.3d 403 (Fla. 2010). If a deliberate two-step strategy is employed in order to obtain incriminating statements from a defendant prior to administration of Miranda warnings, then the post warning statements must be excluded unless curative measures are taken that will ensure that a reasonable person in the suspect's situation would understand the import and effect of the Miranda warning and of the Miranda waiver. *Id.* When Miranda warnings are inserted in the midst of coordinated and continuing interrogation, they are likely to mislead and deprive a suspect of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them. *Id.*

In this case, the questioning of Mr. Denmark began when Miramar Detectives asked him for his contact information, when they were really seeking a phone number to be able to plug into their affidavit seeking a search warrant for the phone and cell cite data. Since the officer then realized the phone number provided was not assigned to the devised seized, they then asked him for a specific number for the cell phone that they had taken from him. This portion was asked after Miranda was administered, but Mr. Denmark was being confronted with the

information he provided without the benefit of Miranda. Detectives told him he had given a wrong number, and this rendered Miranda meaningless since the conversation about his phone number began before Miranda being read. Furthermore, Mr. Denmark was forced to explain that the phone number he had provided had been his mother's number, not necessarily the phone number assigned to his phone, and if the officers were just seeking biographical information, that number would have been sufficient.

In conclusion, the detention of the Defendant was unlawful and therefore all evidence obtained during the unlawful detention and subsequent search and seizure, including the vehicle, the fingerprints, the cell phone, the cell phone extraction data, the historical cell site data, the guns, the DNA swabs from the guns, must be suppressed as it represents the "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L.Ed.2d 441 (1963).

V. THE POLICE TAMPERED WITH EVIDEENCE

Relevant evidence is admissible unless there is an indication of probable tampering. After the cell phones were illegally seized, the police placed the phones in the car that was being seized and held pending a warrant. In seeking to exclude certain evidence, the defendant bears the initial burden of demonstrating the probability of tampering; once this burden has been met, the burden shifts to the state to submit evidence that tampering did not occur. *Murray v. State*, 838 So.2d 1073 (Fla. 2002).

In this case, the police acknowledge they did go into the vehicle to place the phones inside the vehicle. That means that prior to the warrant being approved, and prior to the vehicle being moved to the Miramar Police Department, a Detective opened the door of the vehicle and placed multiple items inside the vehicle that had not been there prior to the detention of Mr.

Denmark and the other individuals. These items are now being submitted as evidence of a crime. In the *Murray* case, there was a discrepancy with a bottle of lotion missing from a sealed evidence bag; a discrepancy which was never explained. This is not the case here. The Detective did place multiple items in a vehicle which did not belong in the vehicle when it was illegally seized, therefore tampering with evidence.

Other and further grounds may be argued *ORE TENUS.*

WHEREFORE, the defendant respectfully requests this Honorable Court to enter an order granting the above-styled and foregoing Motion to Suppress Physical Evidence and Statement.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion was furnished by U.S. Mail to the Office of the State Attorney, Broward County Courthouse, Fort Lauderdale, Florida, on: 03/17/2023.

OFFICE OF CRIMINAL CONFLICT AND
CIVIL REGIONAL COUNSEL
ANTONY P. RYAN, DIRECTOR,
DISTRICT 4
550 S. Andrews Avenue, Suite #200
Fort Lauderdale, FL, 33301
954-713-1220

s/ LIEN LAFARGUE

LIEN LAFARGUE, ESQ.
Florida Bar Number: 123584
Assistant Regional Counsel
Attorney for the Defendant

OFFICE OF CRIMINAL CONFLICT AND
CIVIL REGIONAL COUNSEL
ANTONY P. RYAN, DIRECTOR,
DISTRICT 4
550 S. Andrews Avenue, Suite #200
Fort Lauderdale, FL, 33301
954-713-1220

s/ KRISTA RICHMAN

KRISTA RICHMAN, ESQ.
Florida Bar Number: 90894
Assistant Regional Counsel
Attorney for the Defendant