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May 23, 2022

Via Email and ECF

The Honorable Lois Bloom
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Percell Ross, 21-CR-571 (BMC) (LB)

Dear Judge Bloom,

We write in reply to the government's opposition (ECF No. 11) to Ross's motion to suppress physical evidence and to preclude non-noticed statements.¹ ECF No. 10. Principally, the government argues that Ross has not asserted standing, because he allegedly abandoned the firearm recovered absent "any illegal activity by law enforcement." ECF No. 11 at 2. But Ross alleged the opposite: that his conduct was a direct result of the officers' unlawful stop and seizure of him. *See* ECF No. 10 at ¶¶ 14-15. As the government impliedly concedes, resolution of Ross's motion depends on whether he or the officers acted first. *Compare* ECF No. 10 at ¶ 6; Ex. A at ¶ 4 (as Ross walked, officers chased and, he believed, shot at him) *with* ECF No. 11 at 2 (alleging that Ross first fired on law enforcement, and then they pursued him). This is a dispute over a material fact that can only be resolved at an evidentiary hearing. *United States v. Caming*, 968 F.2d 232, 236 (2d Cir. 1992).

Therefore, we respectfully request that the Court hold an evidentiary hearing on Ross's motion to suppress physical evidence, observations, statements, and other evidence obtained in violation of the Fourth and Fifth Amendments to the United States Constitution.

Respectfully Submitted,

_____/s/
Michelle Gelernt
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cc: AUSA Jack Dennehy (by ECF and email)

¹ The government has consented to a hearing on whether officers lawfully obtained Ross's post-arrest statements. ECF No. 11 at 5. Accordingly, we respectfully request that the Court grant such a hearing. The government provided footage of the post-arrest interview today, May 23, 2022. Following our review of the statements, we will provide additional briefing if necessary.