



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JD
F. #2021R0084

*271 Cadman Plaza East
Brooklyn, New York 11201*

May 13, 2022

By ECF and Courtesy Copy by Interoffice Mail

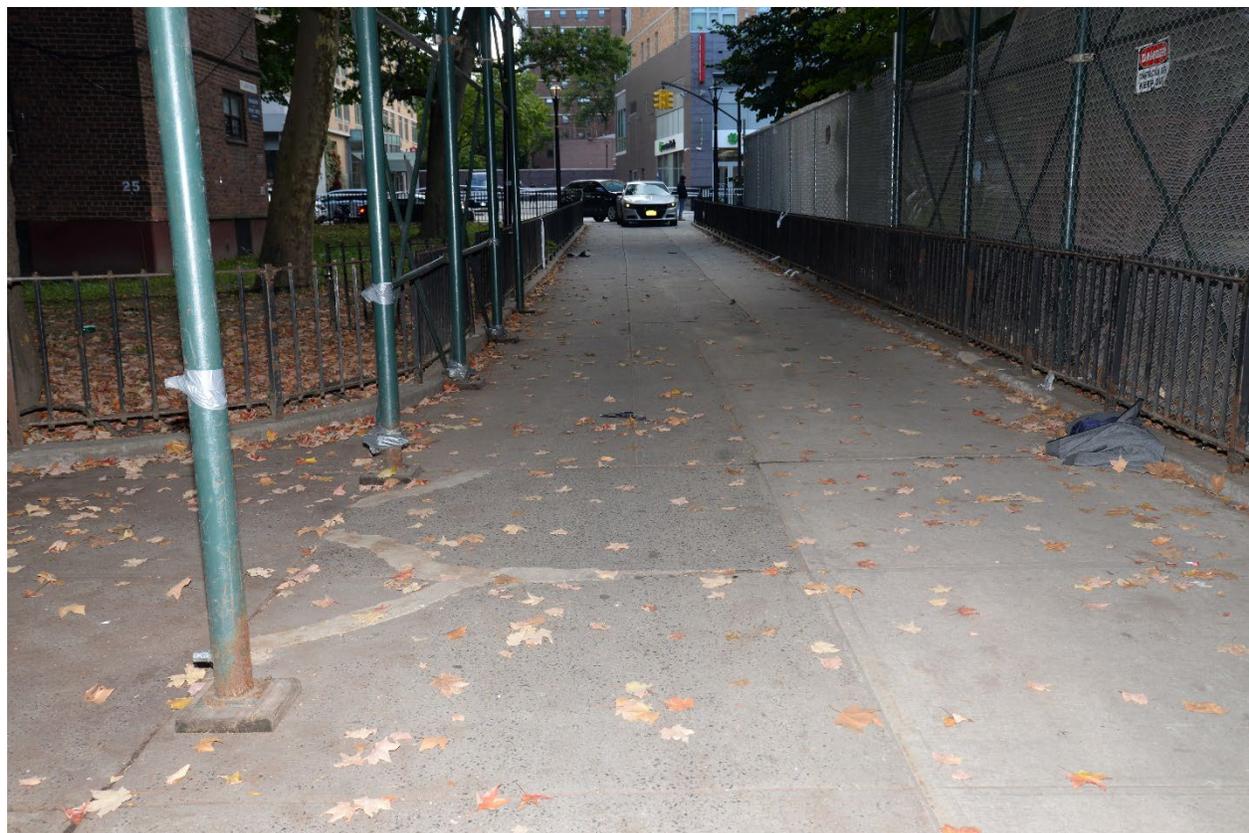
Hon. Lois Bloom
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, N.Y. 11201

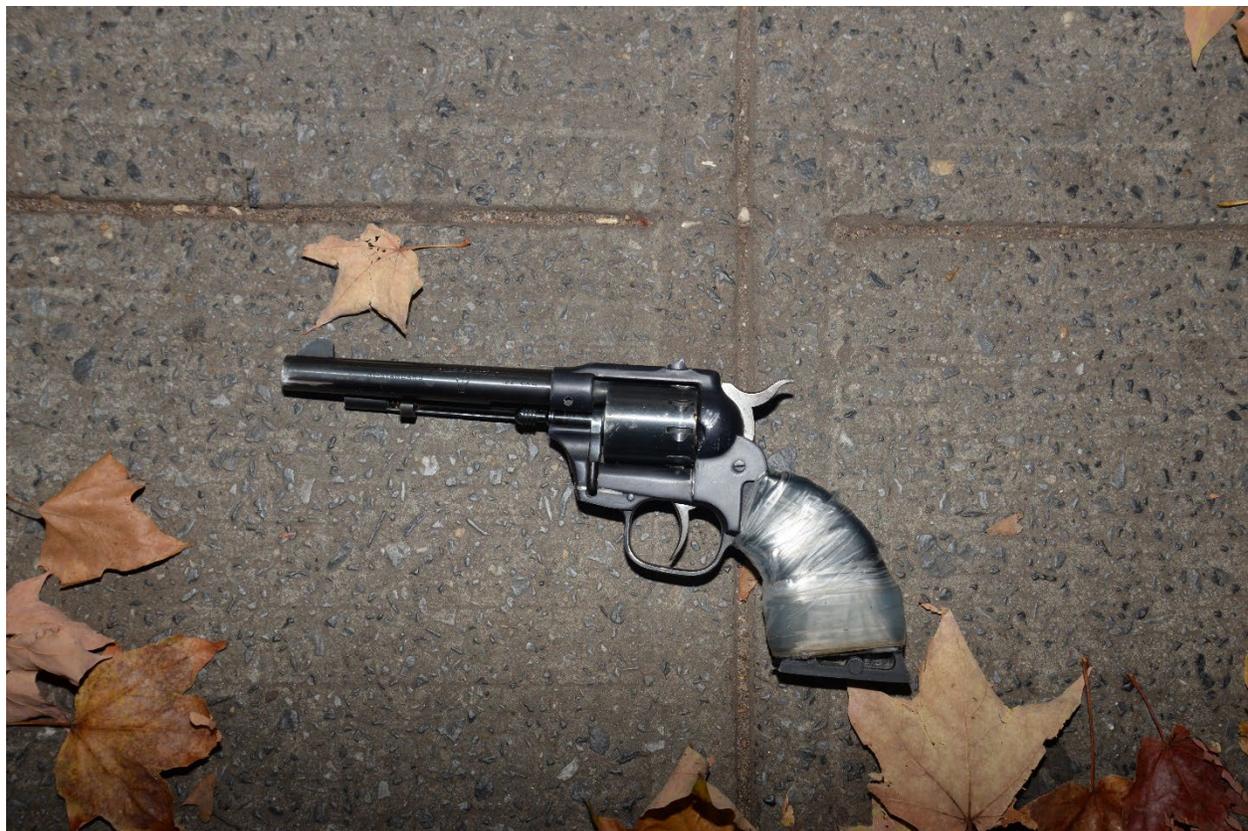
Re: United States v. Percell Ross
Crim. Dkt. No. 21-571 (BMC)(LB)

Dear Judge Bloom:

1. The government respectfully writes in response to the defendant's omnibus motions dated April 17, 2022 (DE 10). With respect to the relief sought, specifically Suppressing physical evidence and "observations by law enforcement" to be offered at trial pursuant to Fed. R. Crim. P. 12(b)(3)(C) or, in the alternative, directing that a hearing be held outside of the presence of the jury before trial as to the admissibility of such evidence; and
2. Suppressing physical evidence and statements to be offered at trial, specifically, pursuant to Fed. R. Crim. P. 12(b)(3)(C) or, in the alternative, directing that a hearing be held outside of the presence of the jury before trial as to the admissibility of such evidence; and
3. Precluding: 1) any non-noticed statements from Mr. Ross; 2) any non-noticed identifications by other witnesses; and 3) any documents or materials obtained through the use of search warrants the government has yet to disclose discovery (including, but not limited to, cell site data, pen trap and trace devices, license plate reader data, social media data, among other discovery.)

As an initial matter, the government submits that the defendant has failed to allege standing to suppress the firearm and ammunition at issue in the Indictment. As depicted in the attached crime scene photographs, the firearm at issue was recovered on a walkway where members of law enforcement observed the defendant discard it, having emptied all 9 rounds of the weapon in their direction. There is no evidence before the Court that the defendant's conscious decision to abandon the empty weapon was the product of any illegal activity by law enforcement, nor did it constitute a "coerced abandonment" by the actions of law enforcement officers. The Officers were seeking out the defendant based upon NCIC warrants for his arrest (previously disclosed to the defense and to be submitted to chambers), and seeking a vehicle with a specific Virginia license plate registered to the defendant, and the evidence at a hearing, if ordered by the Court, will demonstrate that the defendant fired upon the law enforcement officers first, thus justifying their pursuit and apprehension of him and the recovery of the abandoned firearm.









The government will seek to introduce on its direct case post arrest statements made by the defendant to members of law enforcement following his arrest, and in the presence of a Deputy US Marshal which was not the product of any questioning. The government consents to a hearing on these two post arrest statements, and the DVD of the post arrest interview will be provided to the Court and the defense in advance of a hearing.

The government will seek to introduce at trial the jail calls and toll records obtained by law enforcement by calling a Special Agent of the FBI at any future hearing. The government is presently investigating the existence or non-existence of cell site data for the date of the crime charged but does not presently have that evidence to disclose.

Respectfully submitted,

BREON PEACE
United States Attorney

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Cc: Defense Counsel (By ECF)