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

CAUSE NUMBERED 75-10539

STATE OF FLORIDA)
vs)
RAMON DONESTEVEZ)
)

ORDER TO RETURN PRISONER FOR TRIAL

Recd.
FILED FOR RECORD
'75 DEC 30 AM 9 22
RICHARD P. BRINKER
CLERK CIRCUIT & COUNTY CTS.
DADE COUNTY, FLA.
03

It having been represented unto this Court that the defendant, RAMON DONESTEVEZ

charged in the above entitled cause or causes with the following crime or crimes: UNLAWFUL POSSESSION OF FIREARM BY CONVICTED FELON

is presently incarcerated as a prisoner of the State of Florida under the custody of the Division of Corrections, and this Court having entertained the motion of the State Attorney of the Eleventh Judicial Circuit of Florida to return the said prisoner to this jurisdiction for the purpose of standing trial in the above entitled cause or causes, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Sheriff of Dade County, Florida, be and he is hereby directed to take custody of the said prisoner and to safely return him to this Court for trial in the above entitled cause or causes on or before the 19th day of January, 1976; and the Director of the Division of Corrections of the State of Florida be and he is hereby directed to deliver up the person of the said prisoner to the custody of the Sheriff of Dade County, Florida, taking proper receipt therefor, in order to effectuate the provisions hereof.

DONE AND ORDERED at Miami, Dade County, Florida, this the 29 day of December, 1975.

JUDGE, CIRCUIT COURT
IN AND FOR DADE COUNTY, FLORIDA
DIVISION _____

M O T I O N

The undersigned Assistant State Attorney moves for entry of the above and foregoing order.

Assistant State Attorney
JAMES H. WOODARD

201.01-63 REV. 1/73

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

CASE NO: 75-10539

STATE OF FLORIDA :

Plaintiff, :

-vs- : MOTION FOR CONTINUANCE.

RAMON DONESTEVEZ :

Defendant. :

_____:

COMES NOW the Defendant, RAMON DONESTEVEZ, by and through his undersigned attorney and respectfully requests this Honorable Court to grant a continuance of Mr. Donestevez's trial date which is presently set for Monday, January 19, 1976 and as grounds therefore would state:

1. This is the first time this case has been scheduled for trial.

2. The Defendant is out on bond and not confined at the present time.

3. In order to adequately prepare the Defense in this case, additional time is needed in that our firm has been retained only a week ago and no discovery has been obtained as of this date.

4. This motion is requested in good faith and not interposed for reasons of delay.

Respectfully submitted,

STEPHEN MECHANIC,
Attorney for Defendant

STEPHEN GOLDSTEIN,
Attorney for Defendant

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Continuance was delivered to the office of RICHARD E. GERSTEIN, State Attorney, at 1351 N.W. 12th Street; Miami, Dade County, Florida, on this the 14 day of January, 1976.

STEPHEN MECHANIC
Attorney for Defendant

STEPHEN GOLDSTEIN,
Attorney for Defendant

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

CASE NO: 75-10539

STATE OF FLORIDA :

Plaintiff, :

-vs- :

RAMON DONESTEVEZ :

Defendant. :

:

MOTION FOR CONTINUANCE.

COMES NOW the Defendant, RAMON DONESTEVEZ, by and through his undersigned attorney and respectfully requests this Honorable Court to grant a continuance of Mr. Donestevez's trial date which is presently set for Monday, January 19, 1976 and as grounds therefore would state:

1. This is the first time this case has been scheduled for trial.

2. The Defendant is out on bond and not confined at the present time.

3. In order to adequately prepare the Defense in this case, additional time is needed in that our firm has been retained only a week ago and no discovery has been obtained as of this date.

4. This motion is requested in good faith and not interposed for reasons of delay.

Respectfully submitted,

STEPHEN MECHANIC,
Attorney for Defendant

STEPHEN GOLDSTEIN,
Attorney for Defendant

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Continuance was delivered to the office of RICHARD E. GERSTEIN, State Attorney, at 1351 N.W. 12th Street; Miami, Dade County, Florida, on this the 14 day of January, 1976.

STEPHEN MECHANIC
Attorney for Defendant

STEPHEN GOLDSTEIN,
Attorney for Defendant

Set 1-15-76
by Cindy

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY CRIMINAL DIVISION

CASE NO. 75-10539

STATE OF FLORIDA,
Plaintiff,
vs.
RAMON DONESTEVEZ
Defendant

DISCOVERY UNDER FLORIDA CRIMINAL PROCEDURE RULE 3.220 AS INVOKED BY LOCAL RULE

DEMAND FOR NOTICE OF ALIBI UNDER FLORIDA CRIMINAL PROCEDURE RULE 3.200

FILED FOR RECORD '76 JAN 26 AM 8 05 RICHARD P. BRINKER CLERK CIRCUIT & COUNTY CTS. DADE COUNTY, FLA. by O.K.

COMES NOW RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and files this Discovery and Demand for Notice of Alibi under Florida Criminal Procedure Rules 3.220 as Invoked by Local Rule 4 and 3.200, as follows:

1. The persons, known to the State at this time, that have information which may be relevant to the offense charged, and to any defense with respect thereto, are as follows:

1. **Keller, Dewey**
   Fla. Parole and Prob.
   1350 N.W. 12 St,
   Miami, Fla.
2. **Vetterick, A. (Off.)**
   #1709-PSD Sta. 4
3. **Havens, G.R. (Off.)**
   PSD Airport-Seaport
4. **Custodian of record**
   Clerk of Circuit Court
5. **Zahn, Mel (Off.)**
   Firearm Lab
6. **Vasquez, I. (Off.)**
   #1322-PSD OCB
7. **Benitez, Joe (Det.)**
   #1176-PSD OCB
8. **Benitez, Danny (Det.)**
   PSD OCB
9. **Gonzalez, Bobby (Off.)**
   PSD
10. **Rapado, Humberto (Off.)**
    PSD OCB

NOTE: Paragraphs designated by the asterisk * apply to the reciprocal provisions of Local Rule 4 only.

2. Pursuant to Rule 3.220 (a)(1) of the Florida Rules of Criminal Procedure as Invoked by Local Rule 4, the State will disclose to defense counsel and permit him to inspect, copy, test and photograph the material and information, if any, requested under paragraphs (ii) through (xi), Florida Rules of Criminal Procedure by appointment, within five days of receipt of this Discovery at a time and place mutually convenient. .

3. Puruant to Rule 3.220 (b) (3) of the Florida Rules of Criminal Procedure as Invoked by Local Rule 4, the State demands that within seven (7) days after receipt of this Discovery the defense counsel shall furnish to the prosecuting attorney a written list of all witnesses whom the defense counsel expects to call as witnesses at any trial or hearing.

4. *Pursuant to Rule 3.220 (b) (4) of the Florida Rules of Criminal Procedure as made applicable by Invocation of Local Rule 4, the State demands that within fifteen (15) days after receipt of this Discovery that the defense disclose to the prosecuting attorney and permit him to inspect, copy, test and photograph the following information and material which corresponds to that which the defense sought and which is in the defendant's actual or constructive possession or control:

(i) The statements of any person whom the defense expects to call as a trial witness other than that of the defendant;

(ii) reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons;

(iii) any tangible papers or objects which the defense counsel intends to use in any hearing or trial.

5. Comes now RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and files this Demand for Notice of Intention to Relay upon Alibi Defense pursuant to Rule 3.200 of the Florida Rules of Criminal Procedure, demanding that the defendant furnish the prosecuting attorney with a Notice of Alibi, not less than ten (10) days prior to trial, stating the place the defendant claims to have been on the 21 day of October, 1975, and the names and addresses of the witnesses by whom he proposes to establish such an alibi, if such a defense will be relied upon at time of trial.

RICHARD E. GERSTEIN
State Attorney

By: _____
Assistant State Attorney
JAMES H. WOODARD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above and foregoing was mailed to Steve Goldstein 1125 N.E. 125 St. N. Miami, Fla. on this 22 day of January, 1976

_____
Assistant State Attorney
JAMES H. WOODARD

IN THE CIRCUIT/COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR DADE COUNTY, CRIMINAL/CRIMES DIVISION

Judge Morphonios.

THE STATE OF FLORIDA,	)	CASE NO. 75-10539
Plaintiff,	)	
vs.	)	
RAMON DONESTEVEZ	)	NOTICE OF TAKING DEPOSITION
	)	
Defendant(s).	)	

TO: RICHARD E. GERSTEIN
State Attorney
Metropolitan Justice Building
1351 NW 12th Street
Miami, Florida 33125

YOU ARE HEREBY notified that the undersigned attorney of record for defendant, RAMON DONESTEVEZ herein is taking the deposition of Off. A. Vetterick, Det. Joe Benitez, Off. Danny Benitez and I. Vasquez.

at 2:30 P. M., on Friday the 6th day of February 1976, at the Public Defender's Office, Room 800 Metropolitan Justice Building, 1351 N.W. 12th Street, Miami, Florida 33125.

Respectfully submitted,

STEPHEN MECHANIC,
Attorney for Defendant.

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Taking Deposition was hand delivered to the address herein, this the 3rd day of February, 1976.

STEPHEN MECHANIC,
Attorney for Defendant

PRAECIPE FOR
WITNESS SUBPOENA

THE CLERK of the above-styled Court will please issue the attached witness subpoena(s) and oblige.

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

CRIMINAL DIVISION

CASE NO: 75-10539

THE STATE OF FLORIDA,

Plaintiff,

vs.

RAMON DONESTEVEZ,

Defendant.

DEFENSE WITNESS LIST

COMES NOW the Defendant, RAMON DONESTEVEZ, by and through the undersigned attorneys, pursuant to 3.220(b)(3) Rules of Criminal Procedure and files this list of witnesses whom defense counsel expects to call as witnesses in the above-captioned case:

1. ALBERTO MARIN
1050 W. 27th St., Apt. 1
Hialeah, Florida 33010

2. ARMANDO BOBILLO
2738 N.W. 27th St.
Miami, Florida

3. TONY ESTRADA
11272 S.W. 203rd Terrace
Miami, Florida 33157

4. CALIXTO IZQVIERDO
4360 S. W. 2nd Terrace
Miami, Florida 33134

5. PEDRO DONESTEVEZ
3000 South Federal Highway
Miami, Florida 33112

6. DAISY DONESTEVEZ
9290 S.W. 99th Street
Miami, Florida 33176

7. RAMON DONESTEVEZ, JR.
9290 S.W. 99th Street
Miami, Florida 33176

8. JOSE CARBALLEDA
1452 S.W. 5th Street, Apt. 1
Miami, Florida

9. RAFAEL CONTRERAS
213 Palm Avenue
Hialeah, Florida

10. ARACELY LORENZO
(address to follow)

11. MARIA VAN BUREN
11830 S.W. 205th Street
Miami, Florida 33157

Respectfully submitted,

MECHANIC & GOLDSTEIN
Attorneys for Defendant
1125 N.E. 125th Street
North Miami, Florida 33161
Phone: 893-0455

By: Stephen J. Goldstein
STEPHEN J. GOLDSTEIN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defense Witness List was delivered by hand to the State Attorney's Office, 1351 N.W. 12th Street, Miami, Florida 33125, this 10 day of February, 1976.

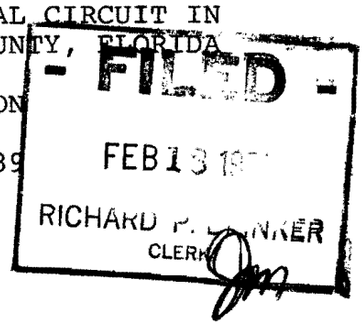
Stephen J. Goldstein

STEPHEN J. GOLDSTEIN

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

CRIMINAL DIVISION

CASE NO: 75-10539



THE STATE OF FLORIDA,

Plaintiff,

vs.

RAMON DONESTEVEZ,

Defendant.

MOTION TO RECUSE

COMES NOW the Defendant, RAMON DONESTEVEZ, by and through the undersigned attorneys, and respectfully moves this Honorable Court to disqualify itself from hearing this cause, and as grounds therefor would show:

That this Court and this Court's family know on a personal basis the Defendant's son, RAMON DONESTEVEZ, JR.

That there was/is friendship between these parties.

That RAMON DONESTEVEZ, JR., made an attempt to correspond and speak with this Court through the relationship aforementioned.

That because of the forementioned, this Court may be prejudiced either against the movant or in favor of the adverse party, and to avoid any possible inferences of partiality one way or the other, the undersigned respectfully requests this Court disqualify itself and assign its alternate to hear the case.

The undersigned attorney certifies that this Motion is made in good faith.

Respectfully submitted,

MECHANIC & GOLDSTEIN
Attorneys for Defendant
1125 N. E. 125th Street
North Miami, Florida 33161
Phone: 893-0455

By: STEPHEN T. MECHANIC

FEB 13 1976
J Woodard
S Mechanic
M Gesse
grant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Recuse was hand delivered to the STATE ATTORNEY'S OFFICE, 1351 N. W. 12th Street, Miami, Florida 33125, this 13 day of February, 1976.

STEPHEN I. MECHANIC

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

CASE NO: 75-10539

CRIMINAL DIVISION

THE STATE OF FLORIDA,

Plaintiff,

vs.

RAMON DONESTEVEZ,

Defendant.

MOTION FOR CONTINUANCE

COMES NOW the Defendant, RAMON DONESTEVEZ, by and through the undersigned attorney and requests this Honorable Court grant his Motion for Continuance and states as follows:

1. Due to the lengthy witness list provided by the State and the vacation schedule of the Prosecutor, the Defendant has been unable to complete necessary depositions.

2. As a result of the foregoing, the Defendant has been unable to properly and adequately prepare this case.

3. This Motion is made in good faith.

WHEREFORE, the Defendant prays this Honorable Court will grant the above and foregoing Motion for Continuance.

Respectfully submitted,

MECHANIC & GOLDSTEIN
Attorneys for Defendant
1125 N. E. 125th Street
North Miami, Florida 33161
Phone: 893-0455

STEPHEN J. GOLDSTEIN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Continuance was hand-delivered to the OFFICE OF THE STATE ATTORNEY, 1351 N. W. 12th Street, Miami, Florida 33125, this 25 day of February, 1976.

STEPHEN J. GOLDSTEIN

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

STATE OF FLORIDA :

Plaintiff, :

-vs- :

RAMON DONESTEVEZ :

Defendant. :

CASE NO: 75-10539 Judge Dubitsky.

MOTION TO SUPPRESS EVIDENCE OBTAINED THROUGH AN UNREASONABLE SEARCH AND SEIZURE

COMES NOW the Defendant, by and through his undersigned attorney, and respectfully moves this Honorable Court, pursuant to Rule 3.190(h) of the Florida Rules of Criminal Procedure, to suppress as evidence in this cause any and all physical evidence seized by the police from the Defendant's personal possession, house, building or room on the ground that said evidence was obtained through an unreasonable search and seizure in violation of the Defendant's rights guaranteed by the Fourth Amendment and Due Process Clause of the Fourteenth Amendment to the United States Constitution and by Article I, Section 12 of the Florida Constitution (1968) and as grounds therefore would state:

1. On October 12, 1975, Officer Vetterick stopped and searched one, ARMANDO BARBILLO, and employed security guard for the Pirrahana-Diesel Corp.

2. Officer Vetterick then proceeded into the premises to further conduct an additional search.

3. Said search was conducted without a search warrant and was therefore per se unreasonable.

4. Items allegedly found during this October 12, 1975, search, were made the basis of a sole police report which resulted in the subsequent, October 21, 1975 arrest search and seizure of Mr. Donestevez at the same location.

WHEREFORE, the Defendant respectfully moves this Honorable Court to suppress any and all alleged contraband discovered as being not only illegally obtained, but also the direct result of this initial illegality, and therefore, constituting the "Fruits of the Poisonous Tree" Doctrine as announced in Wong Sun v. United States, 371 U.S. 471, 88 S.Ct. 407, 9 L.Ed. 2d 441 (1963).

Respectfully submitted,

STEPHEN MECHANIC,
Attorney for the Defendant

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion was delivered to the office of the Honorable RICHARD E. GERSTEIN, State Attorney, at 1351 N.W. 12th Street; Miami, Dade County, Florida, on this the 5 day of March, 1976.

STEPHEN MECHANIC,
Attorney for the Defendant

DATE OF HEARING MAR 11 1976
STATE James Woodard
DEFT Steve Mechanic
and
REPORTER Sylvia Isbell
All witnesses – sworn
① Alan Vetterick – testified
② Armando Bobillo – testified
STATE'S EXHIBIT #1 – Semi-Automatic Rifle (Serial # 91011033)
STATE'S EXHIBIT #2 – (see Exhibit List)
STATE'S EXHIBIT #3 – (see Exhibit List)
granted

75-10539

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO SUPPRESS

The Fourth Amendment to the United States Constitution and Article 1, Section 12 of the Florida Constitution impose the general constitutional requirement that searches and seizures by police officers should be conducted pursuant to a search warrant issued by a neutral and detached magistrate. A search and seizure conducted without a search warrant is per se unreasonable under these provisions of the Federal and State Constitutionssubject to a few limited exceptions. "Searches conducted without warrants have been held unlawful 'notwithstanding facts unquestionably showing probable cause' ... for the constitution requires ' that the deliberate, impartial judgment of a judicial office be interposed between the citizen and the police ***'... 'Over and again the United States Supreme Court has emphasized that the mandate of the Fourth Amendment requires adherence to judicial processes, '...and 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 established and well delineated exceptions."[1] "The point of the Fourth Amendment, which often is not grasped by zelaous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant will justify the officers in making a search without a warrant would reduce the amendment to a nullity and leave the people's homes secure onlyin the discretion of police officers."[2]

1- Katz v. United States, 389 U.S. 347, 88 S. Ct. 507,514

2- Johnson v. United States, 333 U.S. 10, 13-14 68 S. Ct. 367,369

Florida Courts have announced a preference for search warrants as the usual method by which searches and seizures should be conducted.[3]

In accordance with the general rule requiring search warrants, both the United States Supreme Court and the Florida Courts have condemned warrantless searches of private dwellings based solely on probable cause.[4]

A search and seizure is per se unreasonable when conducted without a search warrant where it was practical for the police to have to obtain a search warrant.[5] The Supreme Court has held that "where (a)... search is made by an officer without a warrant, the State must be prepared to show, not only the factual existence at such time of probable cause, but also that the officer or officers had no reasonable opportunity to previously apply for and be issued a search warrant; otherwise the evidence as to the fruits of the search goes out."[6]

Warrantless search carries with it a strong presumption of invalidity.[7] The United States Supreme Court in numerous cases has held that the prosecution has the burden to establish that a warrantless search and seizure is reasonable, and this is indeed a heavy burden.[8]

As previously noted, there are a few clearly delineated exceptions when a search can be conducted without a warrant. These

3- Collins v. State, 65 So. 2d 61, 64-65 (Fla. 1953); Beck v. State, 181 So. 2d 659, 660 (2d D.C.A. Fla.1966); Herring v. State, 121 So. 2d 807, 808 (3d D.C.A. Fla. 1960); Talavera v. State, 186 So. 2d 811,814 (2d D.C.A. Fla. 1966); Carter v. State, 199 So. 2d 324, 334 (2d D.C.A. Fla. 1967); Falcon v. State, 226 So. 2d 399 (Fla. 1969); Tollett v. State, Case #40,993, Fla. Sup. Ct., Opinion filed 5/24/72 reversing Tollett v. State, 244 So. 2d 458 (1st D.C.A. 1971); Perez v. State, 267 So. 2d 34 (4th D.C.A. 1972).

4- Agnello v. U.S., 269 U.S. 20, 46 S. Ct. 4, 145, 149 (1925); Jone v. U.S. , 493, 78 S. Ct. 1253, 1514, 1518 (1958); Houston v. State, 113 So. 2d 582 (1st D.C.A. Fla. 1959); Thurman v. State, 116 Fla. 426, 156 So. 484 (1934); Vale v. Louisiano, 399 U.S. 30, 26 L. ed 2d 409, 90 S. Ct. 1969 (1970)

5- Trupiano v. U.S., 334 U.S. 669 ,68 S. Ct.; Chimel v. California, 395 U.S. 752 ,89 S. Ct. 2034

6- Carter v. State, 199 So. 2d 324, 334 (2d D.C.A. Fla. 1967)

7- Ferrera v. State 319 So. 2d 629 citing Collidge v. N.H., 403 U.S. 443, 91 S. Ct. 2022

8- Mc Donald v. U.S., 335 U.S. 451, 69 S. Ct.; U.S. v. Jeffers, 342 U.S. 48, 72 S. Ct.; Beck v. Ohio, 379 U.S. 89,85 S. Ct.; U.S. v. Ventresca, 380 U.S. 102, 85 S. Ct.; Urso v. State, 134 So. 2d 810, 813 (2d D.C.A. Fla. 1961); Miller v. State, 137 So.2d 21, 23 25 (2d D.C.A. Fla. 1962); Collins v. State, 65 So. 2d 252, 254 (Fla. 1956).

exceptions are few in number and it is clearly the State's burden to prove such a waiver of ones constitutional rights by "clear and convincing" evidence. Each exception will be examined, yet many are clearly inapplicable to the facts of our case.

The first exception is: a search without a search warrant may be conducted by the police Incidental to a lawful Arrent of a person based on probable cause. The Leading Federal case is Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 2040, 24 L. Ed 2d 685 (1969). The Leading Florida Supreme Court case is, Haile v. Gardner, 82 Fla. 355, 91 So. 376. Clearly this exception does not apply to the facts of our case. As stated in Chimel, .. " to search that area 'within his immediate control', meaning that area from within which he might gain possession of a weapon or destruction of evidence. There is no comparable justification however for routinely searching any room other than that place in which the arrest occurred."[9] Police officers may not make a valid search by entering private premises ostensibly for the purpose of making an arrest but in reality for the purpose of conducting a general exploratory search for evidence of crime. Such a search is unreasonable even though the arrest is supported by probable cause or a valid arrest warrant.[10]

The second exception is: Stop and Frisk. The Leading Federal case is, Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, Fla. Statute 901.151, wherein it was stated "We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous; where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries; and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in

9- Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 2040 24 L. Ed. 2d 685 (1969).

10- Stanley v. STate, 189 So. 2d 898 (1st D.C.A. Fla. 1966); Prather v. State, 182 So. 2d 273 (2nd D.C.A. Fla. 1966); O'Neil v. STate, 194 So. 2d 40 (3d D.C.A. 1967)

the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken". This exception is wholly inapplicable in that we are not concerned with the initial police action with regard to Armando Barbillo on the outside of the Piranha Diesel Corporation. We are concerned with what occurred after this initial encounter and the stop and frisk exception deals solely with the officer's right to protect himself and others by conducting a carefully limited search of the outer garments of such a person in an attempt to discover weapons which might be used to assault him. Once this initial stop is made and the officer in fact satisfies himself (for his protection) this exception is no longer applicable.

The Third Exception to when a warrantless seizure is not per se invalid is the "Carroll Doctrine" or Moving Vehicle Search. Again, this exception is wholly inapplicable upon the facts of this case wherein no vehicle is even remotely involved.

The Fourth Exception, Inventory Searches of Impounded or Forfeited Vehicles, is likewise inapplicable to this case for the aforementioned reasons.

The Fifth Exception is "Plain View"Seizures of Property, and states that "It has long been settled that objects falling in plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introducted in evidence."[11] "It is well-settled that when an officer, while engaged in performing his official duties, observes contraband items of goods that he has probable cause to believe are stolen, such goods may be seized without a search warrant and are admissable in evidence."[12]

11- Harris v. U.S., 390 U.S. 234, 88 S. Ct. 992
12- State v. Parnell, 221 So. 2d 129, 131 (Fla. 1969)

This exception has limited application to the facts with regard to the officers' actions upon observing the weapons in the actual possession of Armando Barbillo and as to those actions we make no argument. However, it is those actions that followed that we deem unlawful in the absence of a search warrant as prescribed by the Fourth Amendment. Once the officer made his observations and acted as he did with regard to it, the application of this exception would have then ceased, as the "visible" items were seized from Armando Barbillo.

The subsequent, October 21, 1975 seizure would, standing alone constitute an unlawful search and seizure under the authority of O'Neil, supra., wherein the states position was that since the evidence seized in the room was lying in plain sight on the dresser, a search was not necessary and no search was made. The Court in rejecting this position held, inter alia, that regardless of the fact that the evidence was not hidden, it was necessary to gain access to the room to find it. Discovery of evidence by looking around in a room or dwelling constitutes a search. There is no rule which permits an officer to enter a persons dwelling without a search warrant and seize evidence which can be found there unconcealed. Items of evidence which are easily found are as much the fruit of a search as those which can be found only by ransacking the premises.

The Sixth Exception of "Hot Pursuit" is also clearly inapplicable to the facts of this case in that no crime or pursuit for said crime is even alleged.

The Seventh Exception is "Consent Searches". A police officer may make a warrantless search and seizure if the person searched consents to the search.[13]

13- Longo v. State, 26 So. 2d 818 (Fla. 1946); Garcia v. State, 186 So. 2nd 556, 558 3d D.C.A. Fla. 1966; Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019; Sagonias v. STate, 89 So. 2d 252, 254 (Fla. 1956); Talavera v. STate, 186 So. 2d 811, 814 (2d D.C.A. Fla. 1966); Watson v. U.S., 249 F. 2d 106, 108 (D.C. Cir. 1957)

> "'A distinction is recognized *** between submission to apparent authority of an officer and unqualified consent. Mere acquiescence in a search is not necessarily a waiver of a valid search warrant. Rather, for an occupant to waive his rights, it must clearly appear that he voluntarily permitted or expressly agreed to the search, being cognizant of his rights in the premises***'"

It cannot be said that the police officer obtained the consent of Armando Barbillo to search the premises of the Piranha Diesel Corporation. It is well settled law, and the facts clearly show that Armando Barbillo did not "knowingly, intelligently, freely and voluntarily" consent to anything other than his acquiescence to police authority, i.e., the officer was in uniform, with his gun drawn and aimed at Armando Barbillo, there existed an acute language barrier and there were several questions directed to Mr. Barbillo that, at best, he did not comprehend and was merely trying to satisfy the officer's stated desires. In Channel v. U.S., 286 F. 2d 217 (9th CCA-1960) it was held that testimony of two federal agents to the effect that in answer to a question directed to the defendant as to whether he had more "stuff" at his apartment and that agents were welcome to go search the place, even if taken at full value, did not warrant a finding the defendant truly and intelligently gave his unequivocal and specific consent to a search of his apartment, and therefore, the search of defendant's apartment made without a search warrant, while the defendant was in custody, was unlawful, and any evidence allegedly obtained as the result of such a search should have been suppressed on defendant's motion, and failure to do so was prejudicial error. Additionally, in Channel the police officers made no attempt to obtain written consent, nor did they inform the accused that they intended to search the residence, thus not even providing him with the opportunity to object.

In the case of Higgins v. U.S., 209 F. 2d 819 (D.C.C.A.), it was shown that the officers searched the accused's room prior to his arrest and the officers testified that the defendant gave them permission when they asked if they could look around the room. It was held that even assuming the officers' testimony to be true and defendant's false,

the record would not support a finding of consent: "Words or acts that would show consent in some circumstances to not show it in others *** But no sane man who denies his guilt would actually be willing that policemen search his room for contraband which is certain to be discovered. It follows that *** words or signs of acquiescence in the search, accompanied by denial of guilt, do not show consent; at least in the absence of some extraordinary circumstance, such as ignorance that contraband is present."

It was held in Williams v. U.S., 263 F. 2d 487, that when police officers went to defendant's apartment without a search warrant, and without arresting the Defendant and were admitted by Defendant's sister when police officers stated they wanted to come in and talk to her, such admittance to the apartment did not carry with it consent to search therein. This "admittance" simply is not in fact or in law a consent to search the apartment. "Thus, 'invitations' to enter one's house, extended to armed officers of the law are usually to be considered as invitations secured by force." U.S. v. Marquette, 271 F. 120.

A like view has been taken where an officer displays his badge and indicates that he is there to search , even where the householder replies "all right". U.S. v. Slusser, 270 F. 818; U.S. v. Marra, 40 F. 2d 271.

In Massachusetts v. Painten, 368 F. 2d 142 (5th Cir.), it was held that property seized by the police in the petitioner's apartment could not be used against him where it was apparent that the officer's intention was to make an arrest and search the man in the hopes that evidence would develop. In Painten the police knocked on the door and identified themselves as police officers and displayed their badges, wherein the defendant said "will you wait a moment" closing the door. The police indicated they heard a "suspicious" sound and were permitted to enter a few seconds later. A search ensued, wherein petitioner was arrested. The Court found that the officer's purpose was to arrest petitioner, although they had no warrant. If the police action of knocking on the door

identifying themselves and showing their badges was a request to make a search, such "acquiescence" is not to be construed as true consent to search.

In Whitley v. U.S., 237 F. 2d 787, it was held that a defendant who asked where her money was located, did not, by indicating that it was in her purse, consent to a search of the purse.

Defendant, who did not actively resist a search for contraband whiskey and , in fact, voluntarily unlocked the trunk of his vehicle, could nevertheless not be held to have consented to search without warrant which resulted in discovery of lottery tickets in vehicle, Sagonias v. State , 89 So. 2d 252 (Fla. Sup. Ct.)[14]

The presumption is against waiver of constitutional rights and the burden is clearly upon the state to prove by "clear and convincing" evidence that the accused consented to the search. Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019 and Sagonias v. State, 89 So. 2d 252 (Fla. Sup. Ct. 1956). [15]

The exceptions are limited in scope and the burden is on those who seek the exception to show the need for it. Jeffers v. U.S., 342 U.S. 48, "We cannot ... excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative." McDonald v. U.S., 335 U.S. 451.

"The fact that exceptions to the requirement that searches and seizures be undertaken only after obtaining a warrant are limited underscores the preference accorded police action taken under a warrant as against searches and seizures without one." U.S. v. Ventresca, 380 U.S. 102.

"When constitutional safeguards are involved, if a doubt exists as to whether the officer was reasonable that a search was justified such a doubt must be resolved in favor of the defendant whose property was searched." Miller v. State, 137 So. 2d 21,25 .

14- Sagonias v. State, 89 So. 2d 252 (Fla. Sup. Ct.
15- Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019

Where there exists a language or communication barrier between the officer and the alleged consentor, the state's burden of showing a "valid, voluntary, knowing" waiver is markedly increased". Kovach v. U.S. 53 F. 2d 639.

In U.S. v. Wai Lau, 329 F. 2d 310, it was held that defendant could not give legal consent to the search of his apartment where he spoke and understood English poorly. The police officer indicated that the defendant said he had nothing to hide and permitted them to enter and search his apartment. The Court stated that the Government's burden of proving consent as being freely and intelligently given is heavier especially where Defendant is illiterate, a foreigner, or one who does not readily speak and understand the English language.

In the case of Oyarzo v. State, 257 So. 2d 108 (D.C.A. 2nd, 1972) Mr. Oyarzo, who spoke no English, was arrested and charged with the sale of cocaine to undercover police officers. He was advised of his constitutional rights and questioned in Spanish. After this and during the questioning the police indicated that he had nothing to fear, they would take care of him, wherein Mr. Oyarzo confessed. The District Court reversed and excluded this statement citing, inter alia, that the officer's subsequent comments may have mislead the Defendant even though all interrogations and warnings were given to him in Spanish. In the case in Chief no attempt was ever made, at any time, prior to searching the premises to communicate with Armando Barbillo in Spanish in order to attempt to obtain a "knowing , voluntary, intelligent" waiver of his civil rights, and it becomes quite clear that all Armando Barbillo was doing was acquiescence to the implied police authority.

Additionally, in People v. Rodrigues, 262 N.Y. Supp. 2d 859, it was found that an accused was taken to a police station and questioned through an interpreter since he spoke little English, wherein he signed a written form authorizing a search. The interpreter, a Spanish officer, attempted to translate and explain the document to him. Still it was held that the government failed to sustain its burden of proving consent to have been granted "intelligently, willingly and knowingly" because the accused spoke little English and was not given a clear explanation of the contents of the consent form or of his rights being waived.

In the Florida Supreme Court case of Bailey v. State, 319 So. 2d 22 (1975) it was held that the conclusions of the searching officer are insufficient to establish consent to a warrantless search. It held further, that consent is a exception to the constitutional requirements for search and seizure as an exception and as a waiver it must be shown by the State that strong circumstances are present in the case for it to qualify as an acceptable alternative to the preservations of constitutional rights of citizens.

In the case of O'Neil v. State, supra, the facts revealed that the detectives, after initially observing Mr. O'Neil in the public hallway of the hotel, waited until he was in his room before attempting to effectuate his arrest. Said intention was an attempt to obtain additional evidence that might be within his room. Not being able to justify this as a constitutional exception requiring a search warrant (i.e., search incidential to a lawful arrest) the detective further asserts that they were "invited" into Mr. O'Neil's room (under color of authority) when Mr. O'Neil replied to "come in". While in the room certain narcotic paraphenellia was observed allegedly in "plain view" on Mr. O'Neil's dresser. This was seized and Mr. O'Neil's conviction followed. Mr. O'Neil's Motion to Suppress was denied and he appealed. The Third District Court of Appeals reversed, stating several grounds. To begin with, citing Chapman v. State, supra, the Court held this was not an "incidental search" but rather an exploratory search wherein the search was primary and the arrest secondary. In the United States Circuit Court case of Henderson v. U.S., 12 F. 2d 528, 51 A.L.R. 420, (4th Cir.1926); Jones v. United States, 357 U.S. 493, 78bS. Ct. 1253; McKnight v. United States, 87 U.S. App. D.C. 151, 183 F. 2d 977 (1950); Worthington v. United States, 166 F. 2d 557 (6th Cir. 1948); United States v. Chodak, 68 F. Supp. 455; United States v. Mc Cunn, 40 F. 2d 295 the court stated: 'It is admitted that the government officers had no warrant either for the arrest of the defendant or for the search of his premises. There is no showing or contention that it was necessary to arrest defendant without a warrant to prevent his escape, and a careful consideration of the

evidence leads irresistibly to the conclusion that the search of his dwelling was made, not as an incident of the arrest, but as the chief object which the officers had in view in entering upon his premises. Instead of the search being incidental to the arrest, therefore, the arrest was incidental to if not a mere pretext for the search. The question is whether a search made under such circumstances violates the constitutional rights of the defendant. We think that it does.' In addition, the Court held that Mr. O'Neil's reply to the officers to "come in" was not a true "intelligent, voluntary, knowing" waiver of his rights and hence not a consent to search without a warrant.

Clearly, in the case sub judice, it was Officer Vettericks prime intention to gain entry into the Piranha Diesel Corporation to look for more, what he thought to be illegal weapons, and if so discovered, to effectuate the arrest of Mr. Armando Barbillo. As in O'Neil, supra, although Officer Vettericks could have effectuated Armando Barbillo's arrest initially, he was desirous to look for more " illegal weapons" inside the premises. With this intent in mind, Officer Vettericks futilly attempted to question Armando Barbillo regarding the possible existence and whereabouts of other weapons. Though admittedly there was a serious language and communication problem as between Officer Vetterick and Armando Barbillo, the officer inidicated that he was "reluctently invited" (see Officer's police report) into the premises, wherein a search ensued and it was determined that everything discovered therein was either not contraband, or was lawfully purchased, owned and registered.

In applying the facts of this case to the foregoing authorities, it becomes apparent that:

1. The search Pirrahana Diesel Corporation premises was without a search warrant and was therefore per se unreasonable.

2. The search was clearly not incidential to any lawful arrest.

3. The search was not based upon a valid consent:

   a. Armando Barbillo speaks and understands little or no English.

   b. Officer Vetterick speaks no Spanish .

   c. Officer Vetterick was in uniform in a marked police car.

d. His gun was drawn and pointed at Armando Barbillo.

e. Armando Barbillo has had no prior experiences involving the police or arrest procedures.

Based upon the preceeding facts and enumerated cases, there can be no "valid""voluntary", "knowing" "intelligent" waiver of one's rights and therefore no valid consent exception to the warrant requirement would be applicable.

At best, we have either an "invitation" to enter (under color of authority) clearly not be deemed a consent to search, or "acquiscence" to police authority likewise not a valid consent to search.

According to all of the police officers connected with the October 21, 1975 seizure their actions were based solely upon Officer Vettericks report of October 12th, 1975, describing what was discovered within the premises of the Pirrahana Diesel Corporation , that this second seizure took place on October 21, 1975. It was clearly this initial unlawful entry and search, without a warrant, that directly lead to the now contested second seizure , and clearly, this cannot be allowed or condoned under the Wong Sun, "Fruit of the Poisonous Tree Doctrine".[16]

16- Wong Sun v. U.S., 371 U.S. 471; Mills v. Wainwright, 415 F. 2d 787 (5th Cir. C.A) ; French v. State, 198 So. 2d 668 (Evidence which is located by the police as a result of information and leads obtained from illegally seized evidence, constitutes "the fruit of the poisonous tree" and is equally inadmissible.)

IN THE CIRCUIT COURT CRIMINAL DIVISION

IN AND FOR DADE COUNTY, FLORIDA

CASE NO. 75-10539

THE STATE OF FLORIDA :

VS :

RAMON DONESTEVEZ : MOTION TO DISMISS

:

:

:

COMES NOW the Defendant, Ramon Donestevez, and respectively moves this Honorable Court to dismiss the charges filed against him on the grounds that Florida Statute 790.23 as applied to him, upon the facts of this case, constitutes and unconstitutional application and amounts to a violation of the Due Process Clause of the Fourteenth Admendment of the United States Constitution and ARt. I Sec. 9 of the Florida Constitution.

The Florida Supreme Court has upheld the constitutionality of Chapter 790 as a constitutional classifaction protecting the public from the bearing of firearms by the lawless. Nelson v. State, 195 So 2d 853 and Davis v. State, 146 So2d 892 . However, application of Section 790.23 and punishment for conduct which does not harm, or conduct which as in this case, constitutes being in close proximity to a firearm or passive conduct surely would be an unconstitutional construction of the Statute as being vague and overbroad in that ones actions or lack therof under certain circumstances would not alert "the doer to the consequences of his deed".

The Florida Supreme Court test to determine the validity of statutes was enunciated in Brock V. Hardie, 154 So. 690, wherein the Court Held:

> "Whether the words of the Florida Statute are sufficently explicit to inform those who are subject to its provisions what conduct on their part will render them liable to its penalties is the test by which the statute must stand or fall, because ... a statute which either forbids or requires the doing of an act in terms so vague that

men of the common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

Statutes creating crimes must be definite in describing the conduct denounced in order that the ordinary person may know exactly how to comply with their provisions. McCall v. State, 23 So.2d 492.

In the case of State v. Buchanan, 191 So.2d 33 and Lanzetta v. New Jersey, 306 U. S. 451 the Court reaffirmed the aforementioned test and added the following:

"Statutes criminal in character must be strictly construed... In its application to penal and criminal statutes the due process requirement of definiteness is of special importance. If such statutes in defining criminal offenses, omit certain necessary and essential provisions which serve to impress the acts committed as being wrongful and criminal, the Courts are not at liberty to supply the deficiencies or undertake to make the statutes definite and certain."

Surely, at best, the governments contention would be that Ramon Donestevez was in violation of Section 790.23 under the theory of "constructive possession"of the alleged firearms.

There being no actual possession of anything or active conduct on the part of Ramon Donestevez, the Court must look at the legislative intent with regard to the creation of Chapter 790. Section 790.25 states the policy and intentions of the legislature with respect to gun control and regulations. Subsection (3) of Section 790.25 by excepting certain conduct from specified sections of Chapter 790 makes intent, motive or purpose relevent. By rendering certain conduct innocent the Legislature has, in effect, made section 790.23 a crime of specific intent. See Weapons and Firearms, 79 Am, Jur 2d Sec 15.

For example, Section 790.25 (3)(m) excepts the carrying of a pistol from the place of purchase or repair from the penalty provisions of Section 790.05 nad 790.06, F. S. In other jurisdictions, such conduct is without the criminal possession of firearm statutes through judicial ifndings of lack of "criminal intent." Pressler v State, 19 Tex. App. 52 Thus, the Florida Legislature has specified what conduct is to be

criminal, and what conduct is innocent.

The question, of course, is whether Section 790.25, F. S. is applicable to determine the intent of the Legislature, where it specifically excludes Section 790.23, F. S., in enacting Section 790.23, F. S. The State of Florida, through the Attorney General, has answered this question in the affirmative in Attorney General Opinion 073-229, of June 22, 1973. That opinion concluded that the apparently conflicting provisions of Ch. 790, F. S. were to be read in pari materia, so as to allow convicted felons to be exempted from the prohibition of Section 790123, F. S. when acting pursuant to Section 790.25 (3)(d) and other provisions of Ch. 790, F. S.

The Courts of this State have also answered the question in the affirmative. In State v. Hanigan, 312 So.2d 785 (Fla. 2d D. C. A. 1975), the Court exempted conduct from the provisions of Section 790101, F. S., which section was expressly excluded from Section 790.25, F. S., by construing legislative intent stated in Section 790.25, F. S. Citing Peoples v. State, 287 So.2d 63 (Fla. 1973)(exempting conduct from Section 790101, F. S. by construction of Section 790.25, F. S.), the Second District Court of Appeals held that the statutes are to be read in pari materia. Thus, Section 790.25, F. S. states the policy and intent of the legislature in regard to firearms control and regulation.

Pursuant to Section 790.25, F. S., the State of Florida has stated, through the Attorney General, that a person openly carrying a firearm at his place of business is not protected by Section 790.25(3)(n) from violation of Section 790.05, F. S. However, it is permissible to keep a weapon at one's place of business, without a permit or license, for the purpose of protection of person or property. In a place of business, the weapon could be properly kept, for example, in a desk drawer, under a counter, in the cash register or in another similar location. Attorney General's Opinion, 073-391, October 16, 1973.

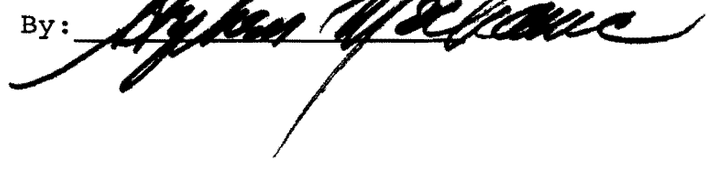
As the Attorney General's opinion and Ch. 790, F. S. make clear, nothing in the Florida Statutes is meant to infringe upon the right of law-abiding citizens to protect their person or property at their place of business, with firearms. Thus, the mere presence of a felon on the premises cannot, of itself, interfere with the right of employees to be armed. As the Attorney General's opinion makes eminently clear, weapons kept upon the premises of one's place of business should be stored with some concept of safety in mind. To hold that Florida Legislature requires employees possessing firearms at a place of business wherein a felon also is employed, to store their weapons either in an open area or outside (Donestevez' office being the only office and the safest area to store the firearms), requires one to overlook the intent of the Legislature in enacting Sections 790.23, F. S. and 790.25, F. S. to ensure the public's safety in the handling and possession of firearms. See Attorney General's Opinion, 073-229 at 376, June 22, 1973, citing Singleton v. Larson, 45 So.2d 186 (Fla. 1950) (produce a harmonious system of law).

To protect the public from the possession of weapons by the lawless, the Legislature enacted Section 790.23, F. S. That section, however, construed consistently with Section 790.25, F.S. does not penalize law-abiding citizens in the possession of their weapons and associations with convicted felons. Where, as in the case in chief, the felon is engaged in re-habilitative work, the Legislature did not intend to penalize the felon or his fellow employees for mere passive conduct in no way evidencing criminal intent.

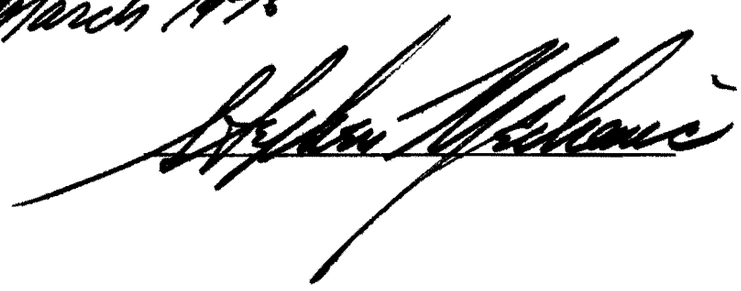
WHEREFORE, the defendant respectfully request that this Court grant his Motion to Dismiss.

Respectfully submitted,

STEPHEN MECHANIC
1125 NE 125 Street
N Miami Florida 33161

By: 

I HEREBY CERTIFY that a true and correct copy of the foregoing motion to Dismiss was delivered by hand to the Office of the State Attorney, 1351 NW 12th Street, Miami Florida, on this 10 day of March 1976



IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR DADE COUNTY
CRIMINAL DIVISION

CASE NO. 75-10539 (Judge Dubitsky)

THE STATE OF FLORIDA,)

Plaintiff,)

vs.)

)

RAMON DONESTEVEZ)

Defendant.)

NOTICE OF HEARING

TO: THE HONORABLE RICHARD E. GERSTEIN
State Attorney
1351 Northwest 12 Street
Miami, Florida 33125

PLEASE TAKE NOTICE that on Thursday, the 11th day of March, 1976, at 9:00 A. M., defendant RAMON DONESTEVEZ, will call up for hearing before the Honorable IRA DUBITSKY, Judge of the Circuit Court for the Eleventh Judicial Circuit of Florida, in and for Dade County, Criminal Division, in open court at the Metropolitan Justice Building, 1351 Northwest 12 Street, Miami, Florida, defendant's MOTION TO DISMISS.

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Hearing was delivered by hand to the above-named addressee this 10th day of March 1976

PLEASE BE GOVERNED ACCORDINGLY.

Respectfully submitted,

By _____
STEPHEN MECHANIC,
Attorney for Defendant

201.01-251

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

CASE NO. 75-10539

STATE OF FLORIDA)	CRIMINAL DIVISION
)	
VS.)	MOTION FOR ORDER EXTENDING PERIOD
)	OF TIME ESTABLISHED BY FLORIDA
RAMON DONESTEVEZ)	RULE OF CRIMINAL PROCEDURE 3.191
)	FOR TRIAL

RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, moves the Court for an Order extending the period of time established by Florida Rule of Criminal Procedure 3.191 for trial on the grounds that the following proceedings are in progress which require a reasonable and necessary delay of the trial: (See Florida Rule of Criminal Procedure Rule 3.191 (d)(2)(n)):

Appeal of an Order granting the defendant's Motion to Suppress Physical Evidence.

I HEREBY CERTIFY that a true and exact copy of the foregoing Motion for Order Extending Period of Time Established by Florida Rule of Criminal Procedure 3.191 For Trial was mailed/delivered to Steve Mechanic 1125 N.E. 125 Street N. Miami, Florida 33166 this the 5 day of April, 1976.

RICHARD E. GERSTEIN
STATE ATTORNEY

JAMES H. WOODARD
Assistant State Attorney

O R D E R

It is HEREBY ORDERED that the foregoing Motion is granted and the period of time established by Florida Rule of Criminal Procedure 3.191 for trial is tolled beginning March 11, 1976 and extending through the date of receipt by this Court of the final Mandate or other notice of final Appellate termination, provided however that the period established by

3.191 Rules of Criminal Procedure will under no circumstances expire sooner than ninety (90) days from such final Appellate terminations.

DONE AND ORDERED at Miami, Dade County, Florida, this 5th day of April, 1976.

CIRCUIT JUDGE
Criminal Division

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

CASE NO. 75-10539
JUDGE DUBITSKY

STATE OF FLORIDA)
)
VS.)
)
RAMON DONESTEVEZ)
)

O R D E R GRANTING/
DENYING DEFENDANT'S MOTION
TO SUPRESS

per 2nd to SAO #200

'75 APR -6 AM 11 58

This cause having come on before me in open Court on the 11th day of March, 1976, on the Defendant's Motion to Supress physical evidence and this Court having considered the testimony of witnesses and being otherwise fully advised in the premises, this Court names the following findings of fact:

1. That the entry of Officer Vetterick onto that portion of the premises not enclosed by the warehouse was reasonable and lawful.

2. That all weapons observed by Officer Vetterick in the area described in paragraph #1 above were observed lawfully and will not be suppressed.

3. That the State failed to show by clear and convincing evidence that the entry into the warehouse by Officer Vetterick was with the voluntary consent of Armando Bobillo.

It is therefore ORDERED AND ADJUDGED that the Motion is hereby Granted as to those weapons not having been observed by Officer Vetterick while outside of the warehouse, otherwise the Motion is hereby denied.

DONE AND ORDERED this the 6th day of April, 1976.

IRA DUBITSKY, Circuit Court
Judge

RECORDED
APR 8 1976
RICHARD P. BRINKER
CLERK

OFF REC 9286 PG 1620