IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA

Case No.: 05-2007-CF-049458

STATE OF FLORIDA,

Plaintiff,

v.

CHRISTOPHER J. WOOD,

Defendant.

AMENDED MOTION FOR RETURN OF PROPERTY

COMES NOW, the Defendant, CHRISTOPHER J. WOOD, in proper person, moves this Honorable Court for an order directing the return of the below listed personal property obtained pursuant to unlawful search and seizures and is therefore being unlawfully detained.

In support of this motion, the following is presented:

MOTION'S HISTORY

On February 24th, 2011, I filed a Motion For Return Of Property And/Or Petition For Writ Of Replevin in this court. This court made several derogatory statement about the motion, though it never issued an order on it.[1] Subsequently, on May 2nd, 2011, I filed a Motion To Rule citing the applicable case law for ruling on a Motion For Return Of Property. On May 19th, 2011, this Court issued an order denying the motion finally giving me an appealable order. Within this order this court stated that, since I was asking for the return of "monetarily meaningless items [such] as a spool of wire and a pair of pliers … a can of bug repellant and four

[1] At the time of the filing and ruling on the first motion, Staff Attorney Susan Bausch was working on this case. However, she has since removed herself due to conflicts of interest.

AA batteries," as well as, and "quite offensively the very clothes the victim was wearing at the time of the crimes, including her bra and panties", the motion would be a "waste of the court's time to have to respond to such [a] motion." Therefore, the motion was dismissed. *Id.* at 2.

On June 8th, 2011, I filed a motion for rehearing asking the court to refer to the case law cited in the Motion To Rule filed on May 2nd, 2011, wherein I first cited *Almeda v. State*, 959 So.2d 806 (Fla. 2d DCA 2007) which stated that, [d]espite their limited economic value, Mr. Almeda is generally entitled to the return of [his black address book, a Christmas card, a login sheet, and various folders with paper]." I concluded this argument with the fact that, even though I was asking for items with limited economic value I was also asking for the return of over $200,000 worth of my property that was wrongfully taken.

I then cited the applicable case law showing that the court must either hold an evidentiary hearing on the issue or attach portions of the record showing that I was not entitled to the return of my property. I then showed that regardless of my conviction, all of my property must be returned to me because it was taken in violation of the Fourth Amendment. This includes my wife's clothing or any other items which the court deemed "monetarily meaningless."

Nevertheless, this court still denied the issue on August 15th, 2011, and I timely filed a notice of appeal on September 14th, 2011.

On December 7th, 2011, I filed my initial brief arguing that this court erred in dismissing the Motion For Return Of Property solely because of the "offensive" and "monetarily meaningless items" which I was requesting to be returned to me. The State filed an answer brief and on January 31st, 2012, the Fifth District affirmed per curiam, this court's order pursuant to Fla. R. App. P. 9.315(a) before I could ever file a response brief.

Therefore, I now file this Amended Motion For Return Of Property, excluding those items which this court found to be so "offensive," that is, my wife's clothing including her bra and panties. As well, I have excluded those items this court found to be "monetarily meaningless," that is, the spool of wire, pair of pliers, can of bug repellant and four AA batteries. All of which this court claimed made my first motion abusive and a waste of time to rule on. I have also separated the original motion / petition and may file, if necessary, the complaint for Writ Of Replevin or other action, in the civil court asking for the return of my property and to be compensated for my loses.

***RES JUDICATA* AND LAW OF THE CASE**

Res Judicata is a principle of law that precludes new litigation on an issue finally decided on the merits in any judicial forum in previous litigation between the same parties. See, *Florida Department of Transportation v. Juliano*, 801 So.2d 101 (Fla. 2001). Since the previous motion was not decided on the merits and was dismissed because it appeared to be "offensive," *res judicata* would not apply. See for example: *Miami Super Cold Co. v. Giffin Ind. Inc.*, 178 So.2d 604, 605 (Fla. 3d DCA 1969) (holding "the dismissal of a complaint ... is not an adjudication on the merits..., it is proper to designate such a dismissal as being with prejudice in order to preclude it from being refiled in that cause where there is a want of jurisdiction.") In the instant case, the original motion was not dismissed with prejudice and therefore refiling is proper. See also *J.B. Intern Inc. v. Mega Flight, Inc.*, 840 So.2d 1147, 1150 (Fla. 5th DCA 2003) (holding that "where an action is dismissed without a final adjudication on the merits, the parties are left as if the suit had never been filed.").

The law of the case doctrine is when an appellate court has decided a question of law raised on appeal. However, this doctrine only applies to those issues actually presented and

considered in a previous appeal. See *Juliano*, supra, and *U.S. Concrete Pipe Co. v. Bould*, 437 So.2d 1061 (Fla. 1983). In the instant case, the issue raised in the previous appeal on the order denying the first motion was whether the trial court erred in dismissing the motion on the basis that I was requesting "offensive" and "monetarily meaningless items". Apparently the appellate court found the trial court did not error and affirmed the order. See *Miami Super Cold Co.*, 178 So.2d at 605 (holding the dismissal of the actions affirmed on appeal does not become law of the case because the dismissal is not a denial on the merits.)

Therefore, law of the case may, if anything, preclude me from asking for the return of ***those*** items which the court used as a basis for dismissing my first motion, not the other items requested. Thus, this motion which excludes the above mentioned items is not barred by law of the case, or *res judicata*.

AMENDED MOTION

This Amended Motion is an amendment to the original filed on February 24th, 2011. Therefore, the relation back doctrine applies. *Holley v. Innovative Technology of Destin, Inc.*, 803 So.2d 749 (Fla. 1st DCA 2001)(holding that when an amendment to a complaint merely makes more specific what has already been alleged, or which changes the legal theory of action, the amendment will relate back to the original filing even though the statute of limitation has run in the interim.) Additionally, amendment of a motion is appropriate when a motion is dismissed and amendment can be made in good faith. *McKelvey v. Kismet*, 430 So.2d 919 (Fla. 3d DCA 1983); see also *Nev. Intrusive Props Corp. v. City of West Palm Beach*, 747 So.2d 447, 448 (Fla. 4th DCA 1999) (holding that it is an abuse of discretion to dismiss a complaint "without giving the party offering the defective pleading an opportunity to amend unless it appears that the

pleading cannot be amended so as to state a cause of action."). Therefore, this amendment to the original motion is proper.

For reference: **(TT = Trial Transcript; VR = Venera Rodger's Deposition; WR = William Rodger's deposition; AW = Amy Wood's Deposition)**

STATEMENT OF THE FACTS

The basis for this motion is that I am entitled to the return of my property because it was obtained in violation of the Fourth Amendment through an illegal search and seizure and the subsequently obtained property is fruits of that illegal search and seizure. Therefore, the necessary portions of the facts of this case are as follows:

On January 13th, 2007, my wife[2] and I made a pornographic movie in the woods with a Sony Video Camera. After we were finished for the day, the camera containing the video was [illegible] My wife drove us to her parents house so we could pick-up our children, however, prior to arriving at her parents driveway[3] she claims the car stalled. (TT 140). She told me to get the car started and drive it up to the house so we could get our children and go home. (AW 67).

My wife then ran up her parents driveway and upon arriving at her parents front door she [illegible] I drove the car up to her parents house from the street and waited outside while she was calling the police. When the police arrived, they questioned both of us where she told them that I tied her up in the woods and raped her. (TT 82-83). Then several officers arrived including a detective to

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[2] My wife and I have since divorced, however, for the purpose of clarity and convenience, I will refer to her as Amy or my wife in this motion.

[3] The driveway is several hundred feet long and winds through the front yard. (VR 229, TT 140)

investigate a possible crime. After sometime, my wife told them that I had a video camera and [redacted] The detective asked where the video was and [redacted]

The battery to the camera was dead so my wife called her friend who brought her a Sony Video Camera battery. (TT 84). My wife then viewed the video (TT 174) and gave it to the detective who also viewed the video. (TT 179). [redacted]

[redacted] (AW 53). Additionally, approximately one week later, my wife turned our computer over to the Brevard County Sherriff's office after being asked to do so by the detective. (AW 8).

I am now requesting the return of my property because [redacted]

REQUESTED PROPERTY

The following is a list of my personal property which I am requesting to be returned to me because it was unlawfully obtained. The record in this case, attached to this motion, clearly shows these items are within the possession of the Office of the State Attorney, the Brevard County Sherriff, and/or the Clerk of the Court. These items are as follows:

(d) One brown / gray bag, collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 8 A (See attached Exhibit A1).

(e) One brown camo bag, collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 14 (See attached Exhibit A5).

(f) One epoxy stick, collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 10K (See attached Exhibit A2).

(g) One brown rope, collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 9B (See attached Exhibit A1).

(h) One blue / orange rope, collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 10 M (See attached Exhibit A2).

(i) White insulated irrigation wire, collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 2C (See attached Exhibit A1).

(j) One knife, collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 1D (See attached Exhibit A1).

(k) One set of golf balls tied to a string, collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 3E (See attached Exhibit A1).

(l) One roll of tape, collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 10H (See attached Exhibit A1).

(m) One pair of needle nose pliers (different then the regular pliers the court deemed monetarily meaningless in the first motion), collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 10 I (See attached Exhibit A1).

(n) One Gray Kodak Camera with memory chip, collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 7 F (See attached Exhibit A1).

(o) All photographs from Gray Kodak Camera and memory chip, which was collected from the scene by the Office of the Brevard County Sheriff and all other pictures listed as State's exhibits 4P, 4Q, 5R, 5S, 5T, 5U, 11V, 11W, 11X, 11Y, 11Z, 11 Aa, 11Ab, 11Ac, 11Ad, 11Ae,

11Af, 11Ag, 11Ah, 11Ai, 11Aj, 11Ak, 11Al, 11Am, 11An, 14Aq, 14Ar, 14As, 14At, 14Au, 14Av, 14Aw, 14Ay, (sic) 14Ay, 14Az, 14Ba, 14Bb, 14Bc. (See attached Exhibits A2 – A6)

(p) "Porn Pictures," collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 14Bb, (See attached Exhibit A6).

(q) "Diagram," collected at the scene by the Office of the Brevard County Sheriff and listed as State's Exhibit 12, (See attached Exhibit A6).

(r) All other property collected by the Office of the Brevard County Sherriff or the Office of the State Attorney which belongs to me and/or is related to this case.

Property listed above is not the fruit of criminal activity, is not being held as evidence, and is my personal property.

ARGUMENT

Motion For Return Of Property

"Once a trial court assumes jurisdiction over criminal charges it has inherent authority to assist the true owner in recovering property held in *custodia legis*." *Helmy v. Swigert*, 662 So.2d 395, 395 (Fla. 5th DCA 1995). Moreover, once a defendant files a facially sufficient Motion For Return Of Property, "the trial court is ***obligated*** to exercise its jurisdiction and resolve the question of whether there exist a valid basis to return the property." *Id.* at 397. The trial court "must ***expeditiously*** fulfill its responsibility. [It] must determine expeditiously where the property is and whether it should be ***immediately*** returned to [the defendant]." *Pondella Hall For Hire, Inc. v. Craft*, 844 So.2d 696, 697 (Fla. 5th DCA 2003).

Commonly, a facially sufficient Motion For Return Of Property is one that alleges "the property was exclusively [the defendant's], that it was not contraband or the fruit of criminal activity, and that it was not being held as evidence or by similar lawful justification." *Brown v. State*, 613 So.2d 569, 570 (Fla. 2d DCA 1993)". However, where the claimant raises a Fourth Amendment Challenge to the [unlawful seizure of the property] that issue must be addressed first and independently of the question of whether there is a nexus between the seized [property] and unlawful ... activity." *Alvarez v. City of Hialeah*, 900 So.2d 761, 765 (Fla. 3d DCA 2005). See also *Plaisted v. State*, 46 So.3d 148, 149 (Fla. 5th DCA 2010) (based on Judge Burger's ruling in this court).

Regardless of the issue raised for the return of property, implicit to the above standard "is the requirement that a defendant must specifically identify the property at issue ... though a defendant need not establish proof of ownership in order to allege a facially sufficient claim for the return of property." *Stone v. State*, 630 So.2d 660, 660-61 (Fla. 2d DCA 1994). Therefore, in regards to these standards the instant motion is facially sufficient.

Once presented with a facially sufficient Motion For Return Of Property, the court is required to attach portions of the record which conclusively refute defendant's entitlement to relief, order the State to respond, or hold an evidentiary hearing. *Harkless v. State*, 975 So.2d 437 (Fla. 2d DCA 2007). However, since there are no records which conclusively refute that I am entitled to no relief, the court should either order the State to respond or hold an evidentiary hearing with me present. *Shade v. State*, 55 So.3d 722, 723 (Fla. 5th DCA 2011) (holding that incarcerated defendant has a right to attend a hearing held on the issue of seized property: he "has the right to notice and an opportunity to be heard before he is deprived of his possessions.") (citations omitted).

In this case, at the evidentiary hearing, the "court must first ascertain whether the property was confiscated by a law enforcement agency and is still in the agency's possession." *Id.* at 440. As well the court must determine whether the "seizure was unlawful." *Mosley v. State ex rel Brevard County*, 363 So.2d 172, 172 (Fla. 5th DCA 1978). However, since the attached records clearly show the property was confiscated by the office of the Brevard County Sherriff, that it is still in the State's possession and that the search was entirely unlawful, an evidentiary hearing to ascertain these facts would be a waste of judicial resources. Therefore, this court may simply wish to order the State to respond, and thereafter, order the return of my property.

It should also be noted that my conviction in this case cannot be used as a justification to deny me my right to the return of property which has been unlawfully taken from me without due process of law. *City of Miami v. Barelay*, 563 So.2d 203 (Fla. 3d DCA 1990). See also *Kern v. State*, 706 So.2d 1366 (Fla. 5th DCA 1998) (holding "forfeiture proceeding is civil in rem action that is independent of any factually related criminal action."); *In re Alcoholic Beverages Seized from Saul's Club on June 30th 1982*, 440 So.2d 65 (Fla. 1st DCA 1983) (holding that "forfeiture proceedings are civil in nature and neither conviction nor acquittal in companion criminal case is relevant to civil forfeiture proceedings."). Additionally, "due process mandates that the provision of the forfeiture act be strictly interpreted in favor of the person being deprived of their property." *Town of Oakland v. Mercer*, 851 So.2d 266 (Fla. 5th DCA 2003).

A "defendant asserting the State is unlawfully holding his property, would be deprived due process of law if he was not afforded a prompt hearing on the matter." *Coon v. State*, 585 So.2d 1079 (Fla. 1st DCA 1991). To determine whether delay in a forfeiture hearing constitutes

a denial of due process, the court must "consider length of delay, reason for delay, claimant's assertion of right, and prejudice to claimant." *Cochran v. Harris*, 654 So.2d 969 (Fla. 4th DCA 1995).

It should also be noted that due process has been violated in this case when chapter 932.703(d) was not complied with when my property was used against me without perfecting the Florida Contraband Forfeiture Act which states: "The seizing agency may not use the seized property for any purpose until the right to, interest in, and title to the seized property are perfected in accordance with the Florida Contraband Forfeiture Act." This coupled with the fact that when one considers the length of delay of 5½ years in this case, where my property was unlawfully taken from me and is being unlawfully detained; and when this unlawfully seized evidence was unlawfully used against me to convict me and sentence me to 51.75 years imprisonment without due process of law; one can clearly see that the denial of due process in this case raises to a level so great it should require, not only the return of my property, but the dismissal of all criminal charges. See *Rogers v. State*, 788 So.2d 331 (Fla. 1st DCA 2001) (holding "that government misconduct which violates the constitutional due process rights of a defendant, regardless of predisposition, requires the dismissal of criminal charges.").

Additionally, the filing of this motion requesting the return of my property is proper and timely. Florida Statute, § 932.703(3) provides that a Replevin action or any other action "may be maintained if forfeiture proceedings are not initiated [by the seizing agency] within 45 days after the date of seizure." See also *DeGregoria v. Balkwill*, 853 So.2d 371 (Fla. 3d DCA 1996). Florida Statute § 95.11 provides a four year statute of limitation for the recovery of personal property unless fraud is alleged. This statute of limitation "begins to run from the time one is on notice or should be on notice of the conversion, and it is thus irrelevant whether there was

fraudulent concealment. It is not necessary for the victim of the conversion to demonstrate a fraudulent concealment to the part of the converter; it is only necessary to demonstrate a lack of discovery or constructive discovery on his or her part in order to avoid the running of the statute of limitation." 12 Fla.Jur.2d Conversions and Replevin § 40. See also *Poux v. State*, 985 So.2d 1191 (Fla. 4th DCA 2008) (holding that the 4 year statute of limitation applies to a property owner's Motion For Return Of Property that is seized in connection with his criminal prosecution.) My discovery of the unlawful searches and seizures, which are the basis for the return of my property, was not discovered until [redacted] testimony was given during trial on July 7-10, 2007. Therefore, this motion is proper and timely.

Lastly, in the even that an agreement cannot be reached between myself and the Respondent in this case and I have to take further action regarding this matter, I am required to state within this forfeiture proceeding my rights to damages or I will waive this right. The court in *Cox v. Department of Highway Safety and Motor Vehicles*, 881 So.2d 641, 645 (Fla. 5th DCA 2004) stated that it "has previously held that an action for damages under this statute must be brought within the original forfeiture proceedings or the claim is waived." Therefore, to preserve this issue for possible subsequent filings, I am requesting to be compensated in an amount of 20.6 million dollars in damages for the unlawful taking and detention of my property and the loss of additional personal property; loss of real property; loss of work; loss of liberty; loss of reputation and social standing within this country and others, as well as being humiliated and mortified; and suffering from physical and emotional distress, all as a result of the unlawful searches and seizures of my property. Of course, I have a plethora of case law which support the reasons for damages and the amount thereof. For example, the claimant who prevails in the return of property "is also entitled to damages sustained as a result of the wrongful taking or

detention." *Brown v. Reynolds*, 872 So.2d 290, 294 (Fla. 2d DCA 2004); see also *Mitchell v. W.T. Grant*, 416 U.S. 600, 94 S.Ct. 1845, 40 L.Ed.2d 406 (1974) (noting that damages were not restricted to the deprivation of the use of the property but could also "encompass injury to social standing or reputation as well as humiliation and mortification" suffered by the victim of an unlawful taking and detention of his property. 416 U.S. at 606, n.8, 94 S.Ct. at 1899, n.8 (citation omitted)).

Search And Seizure

The issue in this motion is that my property was unlawfully taken through several illegal searches and seizures and, as a result, my property should be returned to me. The following record citings and case law prove beyond any doubt that my property was unlawfully obtained by warrantless search, by:

1. [redacted]
2. [redacted]
3. [redacted]
4. [redacted]
5. [redacted]
6. [redacted].

[redacted]

[redacted]

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be inspected to justify a warrantless search. This common authority is decided on the basis of the following criteria: (1) the individual's reasonable expectation of privacy in the area; (2) whether others generally had access to the area; and/or (3) whether the objects searched were the personal effects of the individual unavailable to consent. The court pointed out that "third party consent does not rest upon the law of property … but rests rather on mutual use of property by persons generally having joint access or control for most purposes." *Id.* Thus, if a husband and wife occupy a house or other property jointly, it is that common access to those premises that would allow one to consent for the other. *Ferguson v. State*, 417 So.2d 631 (Fla. 1982).

However, "it has been held that one who has an equal right of control or possession of premises generally does not thereby have authority to consent to a search of an area on the premises which is set aside for the exclusive use of the other. *Silva v. State*, 344 So.2d 559, 563 (Fla. 1977). Our Supreme Court in *Silva* cited the following factors as having been used to determine a defendant's exclusivity of possession: The defendant's legitimate expectation of privacy in the area; whether others generally had access to the area; and whether the objects search were the personal effects of the individual unable to consent.

Second, the most common type of invalid third party consent is one dealing with a motive from the consenting party towards the defendant. This motive was taken seriously in *State v. Gonzalez-Valle*, 385 So.2d 681 (Fla. 3d DCA 1980) where the court stated that "the search would still be invalid because the motive of the defendant's wife in consenting to the search was clearly one our of spite ... under such circumstances the wife had no right to waive her husband's protection against unconstitutional search and seizure..." *Id.* at 682.

In *Silva v. State*, 344 So.2d 559 (Fla. 1997), a case where defendant hit his live-in girlfriend who called the police, and once they arrived she gave consent for them to search a closet for guns which belonged to the defendant who was a convicted felon. The court, citing *United States ex. rel. Cabey v. Mazurkiewicz*, 431 F.2d 839 (3rd Cir. 1970), stated:

> This element is the consenting party's agreement to the search out of motives of hostility to the other, made with the intent to harm him by an antagonistic consent, where it is spent when it reaches this point of deliberate antagonistic intrusion on the rights of the other who has an equal right to possession or control. Thus would be especially true where a wife intentionally acts against her husband's interest, since she would not be acting in harmony with the marital relationship from which her joint right of ownership or control is derived, but in antagonism to it." *Id.* at 843.

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Exigent circumstances are those characterized by "grave emergency" imperativeness for "safety and compelling need for action, as judged by the totality of the circumstances." *Reed v. State*, 949 So. 2d 1054 (Fla. 4th DCA 2006). A key ingredient of the exigency requirement is that the police's lack of time to secure a search warrant before the evidence is removed or destroyed. *Riggs v. State*, 918 So.2d 79 (Fla. 2005).

As stated above in *Walter*, regardless of whether the police believed they had probable cause that the video contained evidence of a crime, all they were basing this on was inferences, and absent exigent circumstances, the police were required to obtain a warrant for the searches and seizures. Therefore, "even given full credit to the genuineness of the officer's suspicion, suspicion is an insufficient predicate for the search." *Conner v. State*, 349 So.2d 709, 709 (Fla. 1st DCA 1977).

In *Walter*, supra, the court pointed out that regardless of whether the agents had a legitimate basis for probable cause to believe the films were obscene, they were still unjustified to search the films without a warrant or exigent circumstance. The court further stated:

> Prior to the government screening the films one could only draw inferences about what was on the films. The projection of the films was a significant expansion of the search that had been conducted previously by a private party and therefore must be characterized as a separate search. The separate search was not supported by any exigency, as by a warrant even though one could have easily been obtained." *Id.* 100 S.Ct. at 2401-02.

Inevitable Discovery

The evidence and information obtained by the police and its agents would also be inadmissible despite the inevitable discovery doctrine.

The inevitable discovery doctrine allows evidence obtained as the result of unconstitutional police procedure to be admitted only where the prosecution can prove

compliance with two requirements. See *U.S. v. Vivden*, 488 F.3d 1317, 1322-1323 (11th Cir. 2007); *Moody v. State*, 847 So.2d 754, 759 (Fla. 2003).

First, the State must show the evidence would ultimately have been discovered by legal means, independent of the improper police conduct through "normal investigative measures that inevitably would have set in motion as a matter of routine police procedure." *Craig v. State*, 510 So.2d 857, 863 (Fla. 1987) citing *United States v. Satterfield*, 743 F.2d 827 (11th Cir. 1984). In other words, the case must be in such a posture that facts already in police possession would have led to the evidence notwithstanding the police misconduct. See *Moody*, 842 So.2d at 759.

Second, the State must show the lawful means which made discovery inevitable were being "actively pursued prior to the occurrence" of any illegal conduct. *Satterfield*, 743 F.2d at 846. See also *Vivden,* 488 F.3d at 1322-1323. "The government cannot later initiate a lawful avenue of obtaining the evidence and then claim it should be admitted because its discovery was inevitable." *Satterfield*, 743 F.2d at 846.

These two requirements are necessary to preserve the rationale of the exclusionary rule: "that the State not benefit from illegal activity, and is therefore deterred from illegal activity." *McDonnell*, 981 So.2d 581, 594 (Fla. 1st DCA 2008). Caselaw provides examples of what is necessary for the State to establish compliance with the second requirement, which mandates the lawful means which makes discovery inevitable were being "actively pursued prior" to any illegal police conduct. "Because a valid search warrant nearly always can be obtained after the search has occurred, a contrary ruling would practically destroy the requirement that a warrant for the search … be obtained before the search takes place." *Satterfield*, 743 F.2d at 846. See also *U.S. v. Reilly*, 224 F.3d 986, 995 (9th Cir. 2000) (holding that the inevitable discovery

doctrine does not apply just because the police could have obtained a warrant, "to excuse the failure to obtain a warrant merely because the officer had probable cause and could have inevitable obtained a warrant would completely obviate the warrant requirement of the Fourth Amendment."

Therefore, the law is clear that the inevitable discovery doctrine will not be applied to cases where the police had probable cause for a search warrant, but failed to get one. The law focuses on whether the police made an effort to get a warrant prior to the illegal search <u>and</u> whether strong probable cause existed for the search and seizure. *McDonnell*, 981 So.2d at 592.

[redacted]. Regardless of the inference the police drew to believe they had probable cause to obtain a warrant, they never obtained one nor tried to obtain one. Therefore, the inevitable discovery doctrine does not apply.

<u>Fruit of the Poisonous Tree</u>

The "fruit of the poisonous tree" is the descriptive phrase for that concept defining the reach of the exclusionary rule. It determines what contraband or evidence obtained after an unreasonable Fourth Amendment search and seizure, by state agents, will be reached by the proscription terms of that rule: if contraband or evidence comes within that reach - if it is a fruit of an illegal state action – it will be suppressed. The reach of the exclusionary rule is quite long;

all potential evidence can be a fruit of a poisonous search, including physical evidence, confession, or third party testimony, etc. In question of how far the exclusionary rule extends is determined in two ways: first, by the relationship of that evidence to the illegal search itself, that is whether the evidence in question was obtained as a direct result of the search or indirectly; second, by the nature of the evidence involved. To answer the first question, in *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), the court found that all evidence obtained during an unreasonable warrantless search or as a direct consequence of it is within the reach of the exclusionary rule.

The second question arises when the evidence sought to be suppressed is secondary to the search or seizure: This "exclusionary rule reaches not only primary evidence obtained as a direct result of an illegal search or seizure, but also evidence later discussed and found to be derivative of an illegality or 'fruit of the poisonous tree.' " *Segura v. United States*, 468 U.S. 796, 804, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984) "It extends as well to the indirect as the direct products' of unconstitutional conduct." *Id.* Therefore, the question to be resolved when it is claimed that evidence subsequently obtained is "tainted" or is "fruit" of a prior illegal search is whether the challenged evidence was "come at by exploitation of [the initial] illegality or instead by means sufficiently distinguishable to purged of the primary taint.'" *Id.* at 804-805, 104 S.Ct. at 3385 (internal citation omitted).

CONCLUSION

In conclusion, all of my property that was seized was done so illegally for the reasons stated above. Whether it was seized by agents of the State on the night of my arrest, by the deputy and detectives and agent of the State after my arrest at the film scene, [redacted] Therefore, all of my property should be returned to me because it was seized in violation of my Fourth Amendment rights.

Wherefore, I respectfully request this court to issue an order directing the return of my property, and /or issue any further or other orders this court deems fit and proper.

Respectfully submitted on this 11th day of July 2012.

CHRISTOPHER J. WOOD, pro se

UNNOTARIZED OATH

UNDER THE PENALTY OF PERJURY, I declare that I have read the foregoing Amended Motion For Return Of Property, and the facts as set forth and alleged therein are true and correct.

CHRISTOPHER J. WOOD, pro se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I placed an original and true and correct copies of this document in the hands of Mailroom Personnel, at Franklin Correctional Institution on this 11th day of July 2012 for mailing via prepaid first class United States mail to: **(1)** The Clerk of Court, 400 South St., 2nd Floor, P. O. Box 999, Titusville, Florida 32781; **(2)** The Office of the State's Attorney, 400 South St., Titusville, Florida 32780; **(3)** The Honorable Charles M. Holcomb, the Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, Florida 32940; and **(4)** The Honorable Charles M. Holcomb, P.O. Box 236564, Cocoa, Florida 32923.

CHRISTOPHER J. WOOD
Defendant, *pro se*
DC # 990846
Franklin Correctional Institution
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Carrabelle, FL 32322-2157

EXHIBIT
A

A1

Event Code 6101

☒ IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT, BREVARD COUNTY, FLORIDA
☐ IN THE COUNTY COURT, BREVARD COUNTY, FLORIDA

DIVISION		CASE NUMBER
☐ CIVIL ☒ CRIMINAL ☐ JUVENILE ☐ TRAFFIC ☐ CR ☐ CV	EVIDENCE/EXHIBIT LOG Jury Trial	05 2007 CF 49456 A XXX-XX

☐ PETITIONER ☒ PLAINTIFF	☐ RESPONDENT ☒ DEFENDANT	FILED IN OPEN COURT
State of Florida	Christopher J Wood	This 10 day of July, 2007 at [illegible] M
☒ STATE ATTORNEY	☒ DEFENSE COUNSEL	CLERK OF COURTS
[illegible] / Samantha Barrett	Jeff Ness / Scott Sautelle	BY [illegible] DC
LOCATION Titusville	JUDGE Holcomb	SHELF / BIN

EX	ID	☒ PLAINTIFF ☐ PETITIONER ☐ STATE ATTORNEY	EX	ID	☐ RESPONDENT ☐ DEFENDANT
8	A	Evidence Bag w/ Brown/Grey Bag			
9	B	Evidence Bag - Brown Rope			
2	C	Evidence Bag - White Wire			
1	D	Evidence Bag - Knife			
3	E	Evidence Bag - Golf Balls			
7	F	Evidence Bag - Gray Kodak camera w/ memory chip			
10	G	Evidence Bag - Photos (3) Wire			
10	H	Tape From Bag G			Composite 10 items
10	I	Needle nose pliers From Bag G			
10	J	pliers From Bag G			

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VERDICT ☐ GUILTY ☐ NOT GUILTY ☐ PLEA ☐ MISTRIAL ☐ CONTINUED

I, ______________________, do hereby acknowledge receipt of the above items of evidence from ______________________ this ______ day of ______________, 20___

LAW 158
(REV 08/2003)

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Event Code 6101

☑ IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT, BREVARD COUNTY, FLORIDA
☐ IN THE COUNTY COURT, BREVARD COUNTY, FLORIDA

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DIVISION		CASE NUMBER
☐ CIVIL ☒ CRIMINAL ☐ JUVENILE ☐ TRAFFIC ☐ CR ☐ CV	**EVIDENCE/EXHIBIT LOG** Jury Trial	05 2007 CF 49458 A XXX-XX

☐ PETITIONER ☑ PLAINTIFF	☐ RESPONDENT ☑ DEFENDANT	FILED IN OPEN COURT
State of Florida	Christopher J. Wood	This ______ day of ______, 20___ at ______ M
☑ STATE ATTORNEY	☑ DEFENSE COUNSEL	CLERK OF COURTS
Anna Hixon / Samantha Bullt	Jeff Ness / Scott Sawtelle	BY ______ DC
LOCATION Titusville	JUDGE Holcomb	SHELF BIN

EX	ID	☑ PLAINTIFF ☐ PETITIONER ☐ STATE ATTORNEY	EX	ID	☐ RESPONDENT ☐ DEFENDANT
✓ 10	K	epoxy stick From Bag 6			
✓ 10	L	Repel Can From Bag 6.			
✓ 10	M	Rope Blue + orange From Bag 6			
✓ 6	N	Evidence Bag - White Bra, Blue Jean shorts, white Tennis shoes, pink top, White/Pink Panties			
✓ 13	O	maxell - Video Tape			
✓ 4	P	Photo - Full Frontal } Composite (2)			
✓ 4	Q	Photo - Close up Breasts.			
✓ 5	R	photo - Full Fully Dressed } Composite (4)			
✓ 5	S	photo - Lace Bra.			
✓ 5	T	photo - Lace Bra Pulled Down			

VERDICT ☐ GUILTY ☐ NOT GUILTY ☐ PLEA ☐ MISTRIAL ☐ CONTINUED

I ______________________, do hereby acknowledge receipt of the above items of evidence from ______________________ this ______ day of ______________, 20___

LAW 158
(REV 08/2003)

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Event Code 6101

☑ IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT, BREVARD COUNTY, FLORIDA
☐ IN THE COUNTY COURT, BREVARD COUNTY, FLORIDA

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DIVISION		CASE NUMBER
☐ CIVIL ☑ CRIMINAL ☐ JUVENILE ☐ TRAFFIC ☐ CR ☐ CV	EVIDENCE/EXHIBIT LOG Jury Trial	05-2007CF49458A-XXX XX

☐ PETITIONER ☑ PLAINTIFF	☐ RESPONDENT ☑ DEFENDANT	FILED IN OPEN COURT
State of Florida	Christopher J. Wood	This ____ day of ____, 20__ at ____ M
☑ STATE ATTORNEY	☑ DEFENSE COUNSEL	CLERK OF COURTS
Jenna Hixon/Samantha Barrett	Jeff Nuss/Scott Sautelle	BY ______ DC
LOCATION Titusville	JUDGE Holcomb	SHELF BIN

EX	ID	☐ PLAINTIFF ☐ PETITIONER ☐ STATE ATTORNEY	EX	ID	☐ RESPONDENT ☐ DEFENDANT
5	U	Photo - Left side stomach - composite 5			
11	V	photo - Victim - Full Blue shirt			
11	W	photo - Right Hand (thumb)			
11	X	photo - Right wrist Inside			
11	Y	photo - Left Arm Bruised.			
11	Z	photo - Left wrist (outer)			
11	Aa	photo - Left wrist (Inside)			
11	Ab	photo - Left Arm Bruise close up			
11	Ac	photo - Back			
11	Ad	photo - Right Side Bruises			

composite 9 items

VERDICT ☐ GUILTY ☐ NOT GUILTY ☐ PLEA ☐ MISTRIAL ☐ CONTINUED

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LAW 158
(REV 08/2003)

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Event Code 6101

☒ IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT, BREVARD COUNTY, FLORIDA
☐ IN THE COUNTY COURT, BREVARD COUNTY, FLORIDA

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DIVISION
☐ CIVIL
☒ CRIMINAL
☐ JUVENILE
☐ TRAFFIC
☐ CR ☐ CV

EVIDENCE/EXHIBIT LOG

Jury Trial

CASE NUMBER
05 2007 CF 49455 A XXX-XX

☐ PETITIONER ☒ PLAINTIFF
State of Florida

☐ RESPONDENT ☒ DEFENDANT
Christopher J. Wood

FILED IN OPEN COURT
This ______ day of ______, 20___
at ______ M
CLERK OF COURTS
BY ______ DC

☒ STATE ATTORNEY
A. Hixon / S. Brunett

☒ DEFENSE COUNSEL
J. Moss / S. Spurtelle

LOCATION Titusville

JUDGE Holcomb

SHELF

BIN

EX	ID	☒ PLAINTIFF ☐ PETITIONER ☐ STATE ATTORNEY	EX	ID	☐ RESPONDENT ☐ DEFENDANT
✓11	Ae	photo - close up left side bruise			
✓11	Af	photo - left side - waist			
✓11	Ag	photo - Bare Bust Shot			
✓11	Ah	photo - close up right breast			
✓11	Ai	photo - close up both breasts ruler in middle			
✓11	Aj	photo - close up left side bruised breast.			
✓11	Ak	photo - close up - nipple			
✓11	AL	photo - close up - left breast - bruised			
✓11	Am	photo - left ankle bug bites			
✓11	AN	photo - left ankle bug bites close up			

Computer 19 items

VERDICT ☐ GUILTY ☐ NOT GUILTY ☐ PLEA ☐ MISTRIAL ☐ CONTINUED

I ______________________, do hereby acknowledge receipt of the above items of evidence from ______________________ this ______ day of ______________, 20___

LAW 158
(REV 08/2003)

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5/6

Event Code 6101

☑ IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT, BREVARD COUNTY, FLORIDA
☐ IN THE COUNTY COURT, BREVARD COUNTY, FLORIDA

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DIVISION	EVIDENCE/EXHIBIT LOG	CASE NUMBER
☐ CIVIL ☑ CRIMINAL ☐ JUVENILE ☐ TRAFFIC ☐ CR ☐ CV	Jury Trial,	052007CF49458A XXX XX

☐ PETITIONER ☑ PLAINTIFF	☐ RESPONDENT ☑ DEFENDANT	FILED IN OPEN COURT
State of Florida	Christopher J. Wood	This ______ day of ______, 20___ at ______ M
☑ STATE ATTORNEY	☑ DEFENSE COUNSEL	CLERK OF COURTS
J Hixon/S Bennett	J Weiss / S Sautelle	BY ______ DC
LOCATION Titusville	JUDGE Holcomb	SHELF BIN

EX	ID	☑ PLAINTIFF ☐ PETITIONER ☑ STATE ATTORNEY	EX	ID	☐ RESPONDENT ☐ DEFENDANT
✓15	AO	Clear Evidence Bag - TAbasco Bottle			
✓14	AP	photo - video camera			
✓14	AQ	photo - video tape			
✓14	AR	photo - Defendant			
✓14	AS	photo - wooded area			
✓14	AT	photo - Black Knife Butt			
✓14	AU	photo - Grey Camera			
✓14	AV	photo - Blue + Orange Rope			
✓14	AW	photo - Brown camo Bag (fanny pack)			
✓14	AY	photo - White Rope, ladder golf Balls			

VERDICT ☐ GUILTY ☐ NOT GUILTY ☐ PLEA ☐ MISTRIAL ☐ CONTINUED

I, ______________________________, do hereby acknowledge receipt of the above items of evidence from ______________________ this ______ day of ______________, 20___

LAW 158
(REV 08/2003)

A6

Event Code 6101

☒ IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT, BREVARD COUNTY, FLORIDA
☐ IN THE COUNTY COURT, BREVARD COUNTY, FLORIDA

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DIVISION		CASE NUMBER
☐ CIVIL ☒ CRIMINAL ☐ JUVENILE ☐ TRAFFIC ☐ CR ☐ CV	EVIDENCE/EXHIBIT LOG Jury Trial	05 2007 CF 49458 A XXX XX

☐ PETITIONER ☒ PLAINTIFF	☐ RESPONDENT ☒ DEFENDANT	FILED IN OPEN COURT
State of Florida	Christopher J Wood	This ______ day of ______, 20___ at ______ M
☒ STATE ATTORNEY	☒ DEFENSE COUNSEL	CLERK OF COURTS
G Hixon / S Barnett	J Moss / S Sawtelle	BY ______ DC
LOCATION Titusville	JUDGE Holcomb	SHELF BIN

EX	ID	☐ PLAINTIFF ☐ PETITIONER ☐ STATE ATTORNEY	EX	ID	☐ RESPONDENT ☐ DEFENDANT
✓ 14	Ay	photo - Close up Golf Balls			
✓ 14	Az	photo - Brown rope / Blue + orange rope on tree			
✓ 14	Ba	photo Brown rope strung between trees white rope ground			
✓ 14	Bb	photo - torn scene picture cans Repel (Blue			
✓ 14	Bc	photo close up Blue/orange rope on tree			
✓ 10	Bd	Wire on spool from Bag G composite (10)			
✓ 12		Diagram			

VERDICT ☐ GUILTY ☐ NOT GUILTY ☐ PLEA ☐ MISTRIAL ☐ CONTINUED

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LAW 158
(REV 08/2003)