PM

|  |  |
| --- | --- |
| DISTRICT Court, Adams County, Colorado Court Address: 1100 Judicial Center DriveBrighton, CO 80601 | DATE FILED: August 25, 2016 2:29 FILING ID: 5DB271E3FAED4 CASE NUMBER: 2014CR2365 COURT USE ONLY  |
| THE PEOPLE OF THE STATE OF COLORADO,Plaintiff v.PABLO GUTIEREZ,Defendant |
| Douglas K. Wilson, Colorado State Public Defender James Beck, No. 46027Brighton Regional Public Defenders4710 East Bromley Lane, Brighton CO 80601Phone: (303) 659-4274 Fax: (303) 659-6935E-mail: james.beck@coloradodefenders.us | Case No. 14CR2365Division Q |
| **MOTION FOR RETURN OF PERSONAL PROPERTY** |

PABLO GUTIEREZ, by and through counsel, hereby moves this court for an order returning his personal property seized in this case: unknown amount of currency. As grounds, Mr. Gutierez states the following:

1. “It is fundamental to the integrity of the criminal justice system that seized property against which the government has no claim must be returned to its lawful owner.” *People v. Buggs*, 631 P.2d 1200, 1201 (Colo. App. 1981).
2. Crim. P. 41 authorizes the seizure of property, which is designed, or intended for use or has been used as a means of committing a criminal offense, or the possession of which is illegal. In recognition of the due process requirement, Crim. P. 41(e) provides that an aggrieved person may move the district court for the return of the seized property.
3. The filing of a motion for return of seized property in the same action in which the charges were determined is a proper remedy. *People v. Angerstein*, 572 P.2d 479 (1977); *People v. Buggs*, 631 P.2d 1200 (Colo. App. 1981); *see also People v. Ward*, 685 P.2d 238 (Colo., 1984).
4. Once a defendant has made a prima facie showing of ownership of the seized property, the burden shifts to the prosecution to show that the property was the fruit of an illegal activity or to show a connection between the seized property and criminal activity. *Buggs*, 631 P.2d at 1201; *People v. Bustam*, 641 P.2d 968 (Colo. 1982). Seizure form a defendant is prima facie evidence of ownership of the property. *Buggs*, 631 P.2d at 1201.
5. Crim. P. 41 does not specifically provide for the procedure to be followed where the seizure is a legal one. However, the Colorado Supreme Court held in *People v. Angerstein*, that there is no right to the return of legally seized property that is either: (a) designed or intended for the use as a means of committing a criminal offense, or (b) the possession of which is illegal. 572 P.2d at 481.
6. In *Angerstein*, the defendants were requesting the return of tools that were used in the commission of a burglary, for which they had pled guilty. The court noted that not only were the tools used in the commission of the crime, but the possession of the tools themselves could constitute a crime in and of itself. *See* C.R.S. §18-4-205 (1973).
7. In the instant case Mr. Gutierez was charged with: bribery, attempt to influence a public servant, forgery, criminal impersonation, and driving under the influence. He was contacted in a parked car and was asked to exit the vehicle in order for the police officer to conduct a driving under the influence investigation. When the officer conducted a pat down search of Mr. Gutierez he discovered a stack of money in Mr. Gutierez’s pocket. According to the officer, Mr. Gutierez offered to give him the money in exchange for being let go.
8. Mr. Gutierez was also found to be in the possession of various identification documents. A further search of the car revealed a large amount of currency in a black paper bag located in the trunk of the car. The police never counted the money found in the trunk, but classified it as “a large amount of currency.” The money taken from Mr. Gutierez’s pocket was “over $12,000” but no specific amount was given.
9. Mr. Gutierez is not requesting the return of the identification documents, but is requesting the return of all of the currency seized by the police in this case. The currency from the trunk has never been connected to any criminal activity. Furthermore, there is nothing inherently criminal about any of the currency seized and it should all be rightfully returned to Mr. Gutierez.

WHEREFORE, Pablo Gutierez respectfully requests that the currency seized in this case be released.

Respectfully submitted, DOUGLAS K. WILSON

COLORADO STATE PUBLIC DEFENDER



MONTANA FAY, No. 46785

Deputy State Public Defender 4710 East Bromley Lane Brighton, CO 80601

(303) 659-4274

Dated: August 25, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on August 25, 2016, a true and correct copy of the foregoing document was served via ICCES on all parties who appear of record and have entered their appearances herein according to ICCES. /s/ Montana Fay