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| County Court  District Court Juvenile Court Adams County, State of Colorado  1100 Judicial Center Drive D  Brighton, CO 80601 FI  ~~C~~  **PEOPLE OF THE STATE OF COLORADO**  **v.**  **PABLO GUTIEREZ**  **Defendant. DOB: 02/14/1961** | ATE FILED: September 6, 2016 11:48 LING ID: 3491D41D90E38  ASE NUMBER: 2014CR2365  **COURT USE ONLY** |
| Dave Young  District Attorney, 17th Judicial District 1000 Judicial Center Drive, Suite 100  Brighton, CO 80601  Phone Number: 303-659-7720  FAX Number: 303-835-5522  Attorney Registration # 21118 | **Case Number**: 14CR2365 Division: Q  Courtroom: 405 |
| **PEOPLE’S OBJECTION TO THE DEFENDANT’S MOTION FOR RETURN OF PERSONAL PROPERY** | |

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COMES NOW, Dave Young, District Attorney for the Seventeenth Judicial District and County of Adams, State of Colorado, by and through Luke Volker, Deputy District Attorney, respectfully object to the Defendant’s Motion for Return of Personal Property. As grounds for this motion, the People state as follows:

FACTS OF THE CASE

1. On August 9, 2014, PABLO GUTIEREZ (“Defendant”) was observed passed out behind the wheel of a running vehicle that was stopped in the right lane of northbound I-25. Defendant’s foot was on the brakes and the engine was running. The vehicle displayed fictitious temporary license plates. The fictitious plates were registered to a Nissan sedan. Defendant was driving a black Mercedes-Benz.
2. Trooper Hostetter reached into the vehicle, turned off the ignition, and shook Defendant’s arm to wake him up. Trooper Hostetter observed that the floor boards on the vehicle were missing and an air freshener was attached to the vehicle’s blinker.
3. Defendant displayed multiple signs of intoxication. In addition, Defendant admitted to consuming “a couple of beers two hours ago.” When asked for identification, Defendant handed Trooper Hostetter a Colorado Driver’s License identifying himself as “Luis Javier Rodriguez-Matos DOB 9/23/78.”
4. Defendant consented to voluntary roadside maneuvers. Defendant failed to perform them as a sober person would. Defendant was arrested under suspicion of driving under the influence.
5. During a pat down check for weapons and contraband, Trooper Hostetter found a stack of hundred dollar bills from defendant’s pants pocket. Defendant offered Trooper Hostetter all of that money to be let go. This money was later counted to be over $12,000.
6. Trooper Hostetter moved Defendant’s vehicle from the right hand lane of the highway to the shoulder. While moving the vehicle, Trooper Hostetter observed the following: (1) the gear shifter paneling was loose; (2) both floor boards were removed; and (3) a cell phone was hanging out of the center console even though Defendant had a separate cell phone in his front shirt pocket.
7. A tow truck was called to the scene to take the vehicle to the impound lot. The tow truck driver told Trooper Hostetter that they needed to access an “I Bolt,” located in the trunk, to tow the vehicle. Trooper Hostetter opened the trunk and observed a black paper shopping bag lying on its side with the opening towards the trunk opening. Inside the bag was a large quantity of currency. Trooper Hostetter immediately closed the trunk and instead had the vehicle driven onto the tow truck. Defendant and Defendant’s vehicle were brought directly to the Colorado State Patrol Office.
8. When they arrived, Trooper Hostetter removed Defendant from the back of the Trooper’s vehicle. Trooper Hostetter observed that Defendant has removed two credit cards and a California Driver’s License from of his pants pocket. The California Driver’s License identified defendant as “Angel Alvarado-Cotte DOB 10-9-79.” The picture on the driver’s license matched Defendant.
9. Defendant was advised of his Miranda rights in Spanish on a written form. Defendant signed that form as Luis Javier.
10. A K-9 unit was brought to the Colorado State Patrol Office. The K-9 is trained to be able to identify the narcotic odors of Heroin, Cocaine, Marijuana and Methamphetamine. The K-9 gave an alert to the presence of narcotic odors on the currency. Additionally, the K-9 alerted to the presence of narcotic odors within the trunk of Defendant’s vehicle.

PROCEDURAL POSTURE

1. Defendant was charged with F3 Bribery, F4 Attempt to Influence a Public Official, F5 Forgery, F6 Criminal Impersonation, and [M] Driving Under the Influence. Defendant pled guilty to F4 Attempt to Influence a Public Official and [M] Driving Under the Influence. On August 17, 2016, Defendant was sentenced to 4 years in the Department of Corrections.
2. On August 25, 2016, Defendant, through counsel, filed a motion seeking return of property seized in this case (“Motion”). Specifically, Defendant seeks the return of “all of the currency seized by the police in this case.” *See* Motion ¶ 9.
3. The People interpret this motion to mean that Defendant requests the return of the money found in Defendant’s pocket AS WELL AS the money found in Defendant’s trunk
4. The People object to the return of the money found both in Defendant’s pocket as well as the money found in Defendant’s trunk.

LEGAL STANDARD

1. The People concede that the Defendant has made a showing of ownership of the seized property; therefore the People must show that the property was the fruit of illegal activity or show a connection between the seized property and the criminal activity. *People v. Ward*, 685 P.2d 238, 239-40 (Colo. App. 1984). Additionally, if property seized is fruit of illegal activity, the court cannot return the property to the defendant. *People v. Stewart*, 38 Colo. App. 6, 8, 553 P.2d 74, 76 (1976).

APPLICATION

1. The money that Defendant requests are easily separated into two individual groups: (1) the money in Defendant’s pocket and (2) the money in Defendant’s trunk.
2. The money in Defendant’s pocket (the cash in excess of $12,000) was Defendant offered to Trooper Hostetter, making it connected to criminal activity. Specifically, it was used as part of an attempt to influence a public official. Defendant pled guilty to committing this crime. Therefore, this court cannot order the return this money.
3. The money recovered from Defendant’s trunk is also associated with criminal activity. It is currency connected to criminal activity and the fruit of illegal activities. This criminal connection is demonstrated by the following facts:
   1. the money was recovered from Defendant, a man who uses multiple

AKA’s; (2) Defendant, under the name of Pablo Gutierrez, has a criminal history that includes Possession of Marijuana For Sale; (3) Defendant has been repeatedly deported; (4) Defendant was in possession of multiple IDs and credit cards; (5) Defendant was in possession additional forged documents; (6) Defendant gave a fictitious name to police; (7) Defendant was driving a vehicle with fictitious plates; (8) Defendant offered a bribe to be let go; (9) Defendant operated a car with apparent voids in the vehicle where currency or drugs could be hidden; (10) Defendant possessed large amounts

$100 bills on his person, (11) Defendant possessed a further significant amount of money in a black paper bag- requiring it to be listed as a “classified amount of currency, (12) the currency expelled narcotic odors; and (13) the vehicle’s trunk expelled narcotic odors. *See Exhibit 1- Defendant’s Criminal History and list of AKAs; Exhibit 2 – List of Deportations and Further AKAs; and Exhibit 3- Police Reports.* These facts are indicative of drug distribution.

1. These facts lead to only one logical conclusion: a connection between the currency in the trunk and illegal activity. Accordingly, the People object to Defendant’s Motion and request this Court deny the Motion without a hearing.

WHEREFORE, for the reasons set forth above, the People respectfully request this Court deny the Defendant’s Motion for Return of Personal Property.

September 6, 2016

Respectfully submitted,

DAVE YOUNG DISTRICT ATTORNEY

BY: \_*/s/*

Luke Volker, #43677 Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on this 9th day of September**,** 2016, I Electronically served through ICCES, a true and complete copy of the foregoing PEOPLE’S OBJECTION TO THE DEFENDANT’S MOTION FOR RETURN OF PERSONAL PROPERY to:

Montana Fay, counsel for Defendant By: /s/ Luke Volker # 43677.

Deputy District Attorney