

including utilizing every forensic technology available towards eliminating persons of interest and identifying the perpetrator(s) of this crime. The clothing items seized from the Defendant, continue to be needed as evidence in the investigation. To return those items now would materially interfere with the ongoing investigation into the death of Josue Flores.

Texas law has no specific statutory remedy for the return of personal property seized as evidence in conjunction with a lawful arrest. Thus, Movant turns to federal law and jurisprudence for constitutional guidance. Federal Rule of Criminal Procedure 41(g) sets forth a specific remedy as follows:

MOTION TO RETURN PROPERTY. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion the court must return the property to the movant but may impose reasonable conditions to protect access to the property and its use in later proceedings.

The People maintain a right to be free from unreasonable seizure. U.S. Const. amend. IV; Tex. Const. art. I § 9. However, retention of seized property is justified when the property is contraband or **when “a specific nexus [exists] between the property and a continuing criminal investigation.”** *Interstate Cigar Co. v. United States*, 928 F.2d 221, 224 (7th Cir. 1991). In the instant case, retention is justified because certain items are vital to a homicide investigation and their return at this time would impede further investigation.

For each of the foregoing reasons, Movant respectfully requests that the Court modify its Order for Return of Property.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was provided on June 4, 2019 to the following:

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