CAUSE 1512446

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STATE OF TEXAS

IN THE 263RD DISTRICT COURT

v.

ANDRE JACKSON

HARRIS COUNTY, TEXAS

CITY OF HOUSTON POLICE DEPARTMENT'S

The Houston Police Department, a department of the City of Houston (hereinafter "Movant"), moves this Court for reconsideration of its Order Granting Return of Property dated May 5, 2019, and would show:

On or about June 3, 2016, Mr. Andre Jackson (hereinafter "Defendant") was arrested and charged with the murder of Josue Flores. Upon the Defendant's arrest, items of personal property in Defendant's possession were seized incident to Defendant's lawful arrest as evidence in the investigation of the crime. On or about July 18, 2017, the criminal case was dismissed without prejudice for "lack of sufficient evidence at this time."

On May 5, 2019, the Court signed an order granting Defendant's Motion for Return of Property and directing the Movant to return the property seized from the Defendant. Movant was not noticed of the Motion nor the time or date of the hearing giving rise to the Court's Order and thereby not afforded an opportunity to apprise the Court of the property's integral function in the ongoing investigation. As a party adversely affected by the Court's Order granting Defendant's Motion for Return of Property, Movant respectfully requests that the Court reconsider its Order.

Recognizing Defendant's reasonable interest in regaining possession of property no longer integral to its investigation, Movant is prepared to return the following items of property:

- 1. Samsung cellphone with charger and battery: ser. #R58M34MSB4M
- 2. UMX cellphone with charger and battery: ser. #S1006122009734
- 3. Purple spray paint

Movant files this Motion for Reconsideration to affirm that it continues to actively investigate this crime. Movant will continue to pursue every lead and avenue of inquiry, 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 tune 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,

RONALD C. LEWIS City Attorney

By: <u>Ursula N. Williams</u> Ursula N. Williams Staff Attorney State Bar No. 24034744 Ursula.williams@houstonpolice.org Tel. (713) 308-1660 Houston, Texas 77002-0368

ATTORNEYS FOR MOVANT

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:

Jerome Godinich, Jr. Attorney of Record for Andre Jackson 917 Franklin, Suite 310 Houston, Texas 77002 Fax (713) 224-2889

Harris County District Attorney's Office 500 Jefferson Street Houston, Texas 77002

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By: