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| District Court, Arapahoe County, Colorado Arapahoe County Courthouse  7325 S. Potomac St., Englewood, CO 80112 DATE | FILED: October 3, 2017 3:46 PM NG ID: 29C91C6351460  NUMBER: 2017CR988   * COURT USE ONLY  |
| THE PEOPLE OF THE STATE OF COLORADO, FILI  Plaintiff CASE  v.  **ANGELA INGA**,  Defendant |
| Douglas K. Wilson, Colorado State Public Defender Katie Telfer, #41720  Deputy State Public Defender Arapahoe County Public Defenders  12350 E. Arapahoe Road, Centennial, CO 80112  Phone (303) 799-9001 Fax (303) 792-0822  E-[mail: arapahoe.pubdef@coloradodefenders.us](mailto:arapahoe.pubdef@coloradodefenders.us) | Case No. **2017CR988**  Division **309** |
| **DEFENSE MOTION #3:**  **MOTION FOR DISCOVERY OF IMPEACHING, EXCULPATORY AND MATERIAL INFORMATION** | |

Angela Inga, moves this Court to order the production of any impeaching and exculpatory evidence and to order the prosecution to make an inquiry with the witnesses and police agencies involved in this case, as well as other sources available to the prosecution, to discover and disclose this information. AS GROUNDS for this motion, Ms. Inga states as follows.

1. Counsel files this motion based upon actions by the District Attorney’s office at District Court trials in various divisions over the last several years. Over the last approximately two years, defense counsel is aware and has observed various Senior Deputy District Attorneys take a position that is contrary to the United States Supreme Court and Colorado Supreme Court precedent with regards to their obligations to disclose information obtained from witnesses and about witnesses prior to trial.
2. The District Attorney’s Office in these cases has taken the position that information learned from witness in pre-trial preparation does not have to be to discovered to the defense unless it is inconsistent with something the witness has said before. The District Attorney’s Office has even taken the position that new statements never previously made do not have to be discovered to the defense because such statements are not inconsistent and therefore do not have to be disclosed to the defense.
3. Counsel is aware that in these cases, multiple Arapahoe County District Court Judges have disagreed with the District Attorney’s position, and ordered the District Attorney’s office to comply with their discovery

obligations and disclose this material to the defense. Unfortunately, at the time these discovery violations were uncovered it was during trial, but obviously the defense was deprived of this material until after the trial had already begun.

1. If the Court does not become aware of such a discovery violation until the trial has already started, just as occurred in the prior cases, Ms. Inga will obviously have been deprived of material his counsel should have in order to prepare for trial. This type of discovery violation would violate Ms. Inga’s right to a fair trial. U.S. Const. Amend. VI, XIV, Colo. Const. Art. II, § 16.
2. Therefore Ms. Inga is asking that the Court order the District Attorney’s Office to comply with its discovery obligations on this issue prior to trial.
3. The use of discovery material for a defendant's impeachment purposes at trial implicates the due process and confrontation rights of the accused. *People v. Thatcher*, 638 P.2d 760, 768 (Colo. 1981); *People v. District Court of El Paso County,* 790 P.2d 332 (Colo. 1990); *Goodwin v. District Court*, 197 Colo. 6, 588 P.2d 874 (1979); *U.S. Const.,* amends. V, VI, XIV; *Colo. Const*., art II, § 16, 25.
4. The prosecution also has a duty to provide discovery of any material that may be meaningful to the defense, regardless of whether it is exculpatory or will relate to testimony the prosecution intends to present at trial. *Thatcher*, 638 P.2d at 768 (Colo. 1981); *People v. District Court of El Paso County,* 790 P.2d 332 (Colo. 1990); *People v. Smith*, 185 Colo. 369, 524 P.2d 607 (1974).
5. If the prosecution refuses to provide Ms. Inga with material evidence which is favorable to the accused and relates to either the guilt or punishment of the accused, the prosecutor violates his or her ethical duty and due process is denied. *See Brady v. Maryland*, 373 U.S. 83 (1963); *People v. Greathouse*, 742 P.2d 334 (Colo. 1987); *People v. Braunthal,* 31 P.3d 167, 173 (Colo. 2001); *U.S. Const*., amends. V, XIV; *Colo. Const.*, art. II, § 25; *Crim. P*. 16(I)(a)(2); C.R.P.C. 3.8(d). It is irrelevant whether or not the prosecution acted in good faith in suppressing evidence that is material or favorable. *People v. Sheppard*, 701 P.2d 49 51 (Colo. 1985).
6. Crim. P. 16(I)(a) imposes duties that must be automatically performed by the prosecution in a timely manner. *See People v. District Court*, 790 P.2d 332, 337 (Colo. 1990); *People v. Alberico*, 817 P.2d 573 (Colo. App. 1991).
7. This Court may require the prosecution to provide other relevant material not covered in Crim. P. 16(I)(a), (b), and (c). *Crim. P*. 16(I)(d)(1). *People v. District Court*, 790 P.2d 332, 338 (Colo. 1990).
8. The material that the prosecution must provide to the accused includes, but is not limited to:

a.) disclosure of the **prior convictions** and adjudications of the witnesses the prosecution will call *People v. Lafferty,* 9 P.3d 1132 (Colo. App. 1990);

b.) evidence that a prosecution witness has a motive or bias because he or she has entered into an agreement with the prosecution, received leniency from the state, or has outstanding litigation or cases with a prosecutorial agency, including juvenile cases, or parole or probation proceedings. *See Davis v. Alaska*, 415 U.S. 308 (1974); *People v. Bow*man, 669 P.2d 1369 (Colo. 1983); *People v. Pate*, 625 P.2d 369 (Colo. 1981);

c.) evidence of the misdemeanor convictions of a prosecution witness that are probative of untruthfulness or dishonesty. *See People v. Armstrong,* 704 P.2d 877 (Colo. App. 1985) (cross-examination of witness concerning her prior conviction for the misdemeanor offense of making a false police report is permissible);

d.) any deferred judgment or sentence pleas entered into by any witness that are not yet finished at the time the witness has made statements or appeared at a court proceeding*. See People v. Vollentine,* 643 P.2d 800, 802-803 (Colo. App. 1982);

e.) any grants of immunity to prosecution witnesses. *Giglio v. United States*, 405

U.S. 150, 154-55 (1972) (due process is violated where the prosecution fails to disclose the grant of immunity to a prosecution witness);

f.) any payments made to a prosecution witness for his services to the police or prosecutorial authority. *See United States v. Shaffer*, 789 F.2d 682, 687-89 (9th Cir. 1986);

g.) any evidence or records that relate to the untruthful reputation of the prosecution witnesses, or evidence of specific instances of untruthfulness of the witnesses. *See CRE* 608;

h.) any other evidence relevant to the motive, bias, or interest of the witnesses. *See Merritt v. People*, 842 P.2d 162, 166 (Colo. 1992) (a defendant is allowed broad cross- examination of the bias and motive of prosecution witnesses); *People v. Pate, supra*;

i.) any and all records of and information concerning the prior psychiatric or psychological treatment, evaluation, or hospitalization of all prosecution witnesses since evidence of the mental condition of a witnesses is admissible as bearing on the credibility of the witness. *People v. Schuemann*, 190 Colo. 474, 548 P.2d 911, 913 (1976); *People v. Borrelli*, 624

P.2d 900, 904 (Colo. App. 1980);

j.) any and all information concerning drug and alcohol use, evaluation, or treatment of prosecution witnesses since the use or abuse of alcohol or drugs could have impaired the prosecution witness's ability to perceive or recollect. *See People v. Roberts*, 37 Colo. App. 490, 553 P.2d 93 (1976).

k.) other cases in which the complaining witnesses have been identified as victims or witnesses.

1. Material in the possession of all law enforcement agencies that have participated in the investigation or provided reports concerning the case, is constructively in the "possession or control" of the prosecuting attorney under Crim. P. 16(I)(a)(1). *People v. District Court*, 793 P.2d 163 (Colo. 1990) (the prosecuting attorney's obligations extend to material and information in the possession or control of his staff or others that have participated in the investigation*); Chambers v. People*, 682 P.2d 1173, 1180 n.13 (Colo. 1984); *People v. District Court*, 664 P.2d 247, 252 (Colo. 1983); *Ortega v. People*, 162 Colo. 358, 426 P.2d 180 (1967); *People v. Lucero*, 623 P.2d 424 (Colo. App. 1980); *Crim. P*. 16(I)(c). The prosecution must make efforts to locate and deliver copies of this material to the defense and "[i]t is incumbent upon the prosecutor to promulgate and enforce rigorous and systematic procedures designed to preserve all discoverable evidence gathered in the course of the criminal investigation." *People v. District Court*, 793 P.2d 163 (Colo. 1990); *Crim. P.* 16(I)(b)(4).
2. The notes of investigators must be preserved and disclosed to the defense if they contain the substance of recitals of oral statements made by witnesses. *See People v. Shaw*, 646 P.2d 375, 381 (Colo. 1982); *People v. Thatcher*, 638 P.2d 760, 767 (Colo. 1981). Although the work product of a prosecuting attorney is not discoverable, *see Crim. P.* 16(I)(e)(1), non-discoverable material may be excised and the remainder provided to the accused. *People v. District Court of El Paso County,* 790 P.2d 332, 336 (Colo. 1990); *People v. District Court*, 790 P.2d 332, 336 (Colo. 1990).
3. The prosecution has a duty to timely comply with its discovery obligations, Crim. P. 16(I)(b); *see People v. Terry*, 720 P.2d 125, 130-31 (Colo. 1986). The constitutional right to counsel includes a guarantee that defense counsel shall have sufficient time to prepare effectively in order to protect his or her client's constitutional rights. *See Reece v. Georgia*, 350 U.S. 85, 89-91 (1955); *People v. Meyers*, 617 P.2d 808, 813 (Colo. 1980); *U.S. Const*., amend. VI, *Colo. Const*., art. II, § 16.
4. In addition, the prosecution is under a continuing duty to disclose additional information as it is discovered. *Crim. P.* 16(III)(b); *see Mooney v. Holohan*, 294 U.S. 103, 108 (1935) (due process violated where the prosecutor learned that a witness committed perjury during the trial, but did not disclose this fact to defense counsel).

Ms. Inga requests this Court to order the prosecution to timely and completely comply with its discovery obligations under Crim. P. 16 and the United States and Colorado Constitutions.

DOUGLAS K. WILSON

COLORADO STATE PUBLIC DEFENDER

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| /s/ Katie Telfer Katie Telfer, #41720  Deputy State Public Defenders Dated: October 3, 2017 | **Certificate of Service**  I hereby certify that on October 3, 2017, I served the foregoing document through ICCES to opposing counsel of record.  /s/ Katie Telfer |