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| District CourtAlamosa County, ColoradoCourt Address: 702 4th St., Alamosa, CO 81101 PEOPLE OF THE STATE OF COLORADO,Plaintiff, DATE FILED:v. FILING ID: 64CASE NUMBRICKY MANZANARES,**Defendant** | October 28, 2016 11:04 AM 5A49129B30ER: 2016CR361**COURT USE ONLY** |
| Attorney:Peter Comar 224 San JuanAlamosa, CO 81101Phone Number: (719) 589-3663 E-mail: comar@amigo.netFAX Number: (719) 589-3664 Atty. Reg. #: 12213 | Case Number: 2016CR361Division Courtroom |
| **MOTION TO DISMISS – DESTRUCTION OF EVIDENCE D- 4** |

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COMES NOW the Defendant Ricky Manzanares by and through Counsel Peter L. Comar and respectfully moves this Court for an Order directing that the charges in this action be dismissed because the prosecution has failed to preserve material evidence. Grounds for this motion are as follows:

1. During the month of July 2016 certain physical evidence was taken from the victim in this matter, to wit: blood and urine samples.
2. This evidence was lost, destroyed, thrown away or otherwise disposed of as indicated by a letter to Detective Jason Russell from Mary Rice, Director of Laboratory Services for the San Luis Valley Regional Medical Center a copy of said letter attached herto as Exhibit A and incorporated by reference.
3. This case is largely based on identification. The victim has given, to the undersigned’s knowledge, at least three conflicting statements regarding the assault in which he claims to be the victim. The victim is a self-proclaimed, avid user of methamphetamine. It is common knowledge that methamphetamine affects ones perception and recall. As such the level of this drug in his system would prove an immense importance in evaluating his perception and recall and ultimately the credibility of his statement and/or testimony.
4. The evidence so lost, destroyed, thrown away or otherwise disposed of was constitutionally material to the presentation of a defense by defendant, and would have been, upon information and belief, exculpatory evidence. Further, its exculpatory nature was apparent before the evidence was suppressed, and the defendant is not able to obtain comparable evidence by other reasonable means available.
5. The duty to preserve evidence known to be material is part of the duty of the prosecution and the prosecution has a duty to preserve and to disclose to defendant all exculpatory evidence. Defendant had on 9/16/16 filed a Motion to Preserve Evidence hoping to prevent this result.
6. The effect of the loss of said evidence is irreversible. It denies the defendant due process of law, the right to confront and cross-examine his accuser at trial, and the right to effective assistance of counsel as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article II, Sections 16 and 25 of the Colorado Constitution.
7. Factors pertinent to a sanction of excluding evidence include the reason for a degree of culpability associated with the failure to timely respond to the Defendants request for discovery, whether and to what extent nondisclosure prejudiced the Defendants opportunity to effectively to prepare for trial, whether events occurring subsequent to noncompliance mitigate prejudice to the Defendant, and whether there is a reasonable and less drastic alternative to preclusion of evidence, and any other relevant factors arising out of circumstances of the case. People v. Reger 731 P.2d 752 (Colo.App. 1986).

WHEREFORE, defendant respectfully moves this Court for an Order directing that the charges against defendant in this action be dismissed with prejudice because of the failure of the prosecution to preserve material evidence.

RESPECTFULLY SUBMITTED this day 25th of October, 2016.



CERTIFICATION OF SERVICE

I hereby certify that I have serve the foregoing MOTION TO DISMISS DESTRUCTION OF EVIDENCE by placing a true and correct copy of the same in the U.S. Mail, first class, postage pre-paid or filed Lexis Nexus on this 25th day of October, 2016 addresses to the following:

District Attorney’s Office 426 San Juan

Alamosa, Co 81101

