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| District Court, Criminal Matters Adams County, State of Colorado **Court Address**:1100 Judicial Center Drive Brighton, Colorado 80601 | DATE FILED: February 23, 2017 FILING ID: E1F3CE56D9F23 CASE NUMBER: 2016CR2658COURT USE ONLY  |
| THE PEOPLE OF THE STATE OF COLORADO,Plaintiffv.JAMES WALKER,Defendant |
| **Attorney:**Danielle M. McCarthy, #34573**DANIELLE M. MCCARTHY P.C.**1175 Osage Street, Suite 200Denver, Colorado 80204Phone: (303) 350-1550Facsimile: (303) 350-1555E-mail: daniellemccarthy11@gmail.com | Case Number: 16CR2658 Division: GCourtroom: 406 |
| **MOTION TO ORDER THE PROSECUTION TO PRODUCE VICTIM ADVOCATE REPORTS** |

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Mr. James Walker, by and through undersigned counsel, requests that this Court order the prosecution to produce to defense counsel the victim advocate notes and reports pertaining to this case. As grounds, Mr. Walker states as follows:

1. Colorado Rules of Criminal Procedure 16(a)(1) states the following information is discoverable and should be provided to defense counsel: “Police, arrest, crime or offense reports, including statements of all witnesses.” This guideline by Criminal Procedure Rule 16 is all- inclusive; if there is a statement in the possession of the District Attorney, by a witness, it should be disclosed. Criminal Procedure Rule 16(a)(1) makes no reference to whether or not the statement needs to be exculpatory or not; it makes no reference to who the statement was made. The only requirement for it to fall under discoverable information is that it is a statement by a witness. Criminal Procedure Rule 16 is self-executing. These statements should have been provided to defense counsel no later than twenty days after the accused’s appearance or at the time of filing of charges.
2. In addition, Rule 16(a)(2) states that the “prosecuting attorney shall disclose to defense counsel any material or information within his possession or control which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefor.” This duty is then extended in Rule 16(a)(3) by stating “the prosecuting attorney’s obligations under this section (a) extend to material and information in the possession or control of members of his staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case, have reported to his office.”
3. The Deputy District Attorney has the victim advocate interview the victim/witness. Notes and any reports from these interviews are then given to the prosecuting attorney. The notes are discoverable under Rule 16. The Colorado Court of Appeals has already addressed this issue and has stated clearly that these notes are not work product. A report of an interview of a witness by a lay investigator is not prosecutor’s work product, and hence, is automatically discoverable under subsection (I)(a)(1)(I). ***People v. Alberico****,* 817 P.2d 573 (Colo.App. 1991).
4. Whether the information in these notes and/or reports is exculpatory is for defense counsel to decide. Determination of relevance and usefulness of statements is the defense function, not the prosecution function. Only the defense can determine what will be material and helpful to its case. ***People v. Smith****,* 185 Colo 369, 524 P.2d 607 (1974); ***People v. Gallegos****,* 644 P.2d 920 (Colo.App. 1981).
5. If the prosecution claims that portions of these notes are non-discoverable for these or other reasons, the prosecution must notify the defense counsel in writing that this information has not been disclosed. Defense counsel will then request an *in camera hearing* to determine the status of this information. The prosecution should not be determining “work product” and “exculpatory” issues on its own while leaving the Court and the Accused in the dark concerning this information. The authority of this request is Colorado Rules of Criminal Procedure Rule 16(b)(1).

WHEREFORE, Mr. Walker requests this Court order the prosecution to produce all victim advocate notes and reports.

Dated: February 23, 2017. Respectfully Submitted: DANIELLE M. MCCARTHY, P.C.

*Danielle M. McCarthy*

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| Danielle M. McCarthy, #34573 | **Certificate of Service**I hereby certify that on 2/23/17, copies of the foregoing document were served on all opposing counsel of record via ICCES.By: \_DMM  |