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| ADAMS COUNTY DISTRICT COURT DA FIAddress: 1100 Judicial Center Dr, Brighton, CO 80601CA | TE FILED: November 26, 2017 8:30 PMING ID: C3CB0B3A4A7BF SE NUMBER: 2017CR2041▲ COURT USE ONLY ▲ |
| THE PEOPLE OF THE STATE OF COLORADOv.**Defendant(s): BRETT HARRIS** |
| Attorney for DefendantMichael D. Evans, Atty. Reg. #39407 Megan Bibliowicz, Atty. Reg. #48671 John F. Miquel, Atty. Reg. #46388 THE EVANS FIRM, LLC12605 East Euclid Drive, #209, Centennial, CO 80111 Mail: PO Box 371896, Denver, Colorado 80237P: (303) 578-8550 F: (303) 708-1612E-mail: info@theevansfirm.com | Case No.: 2017CR2041Division: E / 404 |
| **MOTION TO SUPPRESS EYEWITNESS IDENTIFICATION - SHOW UP** |

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**COMES NOW**, the defendant, by and through counsel, THE EVANS FIRM, and hereby moves this Court to suppress the eyewitness identification done through a show up. As grounds, the defendant states as follows:

# FACTS

On June 4, 2017 around 12:19 A.M., law enforcement responded to 1885 120th Ave Apt. 1300, Westminster, CO 80234 on an identified citizen’s report of a parking lot fender-bender between two (2) vehicles. A white Nissan pickup had backed out of a parking space into a much smaller blue Honda Civic parked directly behind it in a lane of traffic. Two men exited the white Nissan pickup. This event was at night, and the pickup truck was behind the driver of the blue Civic point of view. One of the two men, the defendant HARRIS, left the scene and was arrested by law enforcement in a nearby field. Law enforcement conducted a “show up” ID with the driver of the blue Civic. The defendant HARRIS was in handcuffs, bleeding from K-9 bites, surrounded by uniformed police, with no one else was around. The driver of the blue Civic claims to make a

positive identification of the defendant as the driver of the white Nissan pickup. It is unknown whether the driver made any type of identification of the other man in the truck.

# LEGAL AUTHORITY

As the Supreme Court noted in *United States v. Wade*, 388 U.S. 218 (U.S. 1967), "identification evidence is peculiarly riddled with innumerable dangers and variable factors which might seriously, even crucially, derogate from a fair trial." *Wade*, supra, at 228. There are dangers inherent in eyewitness identification such as unreliable memory or perception. Id. at 228. The factors to be considered in determining whether the identification was reliable are: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. *Bernal v. People*, 44 P.3d 184, 192 (Colo. 2002). One-on-one show- ups are viewed with disfavor because of the strong potential for improper suggestiveness of identification. See *People v. Mascarenas*, 666 P.2d 101, 109 (Colo. 1983); *People v. Hardiway*, 874 P.2d 425, 429 (Colo. App. 1993).

Pursuant to C.R.S. § 16-1-109, law enforcement agencies must follow policies and procedures relating to show ups. Protocols for a show up include, whenever practicable, the suspect should not be handcuffed or in a patrol vehicle at the time of the show up.

**WHEREFORE**, the defendant moves the Court to suppress the eyewitness identification done through a show up.

Dated this day: November 26, 2017

Reg. #39407 ,

Attorney: Michael D. Evans, Atty.



Attorney: Megan Bibliowicz, Atty. Reg. #48671

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| **CERTIFICATE OF SERVICE Case #:** 2017CR2041**Parties:** People v. Harris |
| I HEREBY CERTIFY that on this 26 day of November 2017, a true and correct copy of the foregoing **MOTION TO SUPPRESS EYEWITNESS IDENTIFICATION - SHOW UP** wasserved upon all counsel of record. VIA ICCESAdams County District Attorney1000 Judicial Center Dr, Brighton, CO 80601 (303) 659-7720Clerk of the Adams County District Court Division E / 404 |
| Signature |



Signature