|  |  |
| --- | --- |
| DISTRICT COURT, Adams County, Colorado Court Address: 1100 Judicial Center DriveBrighton, CO 80601 DATE FIL | ED: November 27, 2017 9:37 AM D: 3A2E3A30AE2D9UMBER: 2017CR2407 COURT USE ONLY  |
| THE PEOPLE OF THE STATE OF COLORADO, FILING IPlaintiff CASE Nv.MONIKA FIRMAN,Defendant |
| Douglas K. Wilson, Colorado State Public Defender Lindsey Watson, No. 44043Brighton Regional Public Defenders4710 East Bromley Lane, Brighton CO 80601Phone: (303) 659-4274 Fax: (303) 659-6935E-mail: lindsey.watson@coloradodefenders.us | Case No. 17CR2407Division No. F |
| **DEMAND PURSUANT TO C.R.E. 404(b) FOR NOTICE OF ANY EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS THE PROSECUTION INTENDS TO INTRODUCE AT TRIAL** |

Monika Firman, through counsel, demands notice from the prosecution of any allegations of other misconduct it intends to introduce at trial. As grounds, Ms. Firman states:

1. Upon request of the accused, “the prosecution in a criminal case shall provide reasonable notice in advance of trial . . . of the general nature of the evidence it intends to introduce at trial” of other misconduct. C.R.E. 404(b).
2. Ms. Firman asks this Court to order the prosecution to provide a precise description of each allegation of other misconduct, including the date and place it is alleged to have occurred and the name(s) of the witness(es) who will testify to it, as well as the current addresses and telephone numbers of each witness.
3. Ms. Firman also asks this Court to order the prosecution to identify the specific purpose, as contemplated in C.R.E. 404(b), for which it intends to introduce this evidence.
4. As the proponent of the evidence, the prosecution must “**identify the specific purpose** for which the evidence will be used and **explain how the proffered evidence establishes that purpose *independent of the inference forbidden*** by

C.R.E. 404(b).” *Yusem v. People,* 210 P.3d 458, 464 (Colo. 2009).

1. When the prosecution offers prior act evidence for purposes that are “carelessly grouped together” without submitting a separate, precisely articulated analysis for each proposed purpose, it fails to meet its burden. *Id.; see also People v. Garner,*

806 P.2d 366, 373-374 (Colo. 1991); *Spoto v. People,* 795 P.2d 1314 (Colo.

1990).

1. If the state has alternative theories of admissibility for any evidence of other misconduct, Ms. Firman asks this Court to require the state to provide those theories in writing, as well.
2. The primary issue in a criminal case is the defendant’s guilt or innocence based on the alleged criminal conduct, not past conduct. *Kostal v. People*, 357 P.2d 70, 73 (Colo. 1960). It is fundamental to a criminal defendant’s constitutional right to a fair and impartial trial that a defendant can only be convicted of the offenses that are charged and cannot be convicted on the basis of past crimes or prior uncharged acts. *Gill v. People*, 339 P.2d 1000, 1007-08 (Colo. 1959). Therefore, only conduct which occurs “contemporaneously with or is part and parcel” of the criminal transaction for which the defendant is being tried is considered part of the res gestae of that offense and is admissible at trial. *People v. Czemerynski*, 786 P.2d 1100, 1109 (Colo. 1990). Evidence of prior acts creates a prejudice in the minds of the jury against the accused, and the rule should, therefore, be strictly enforced in all cases. *Kostal*, 357 P.2d at 73 (Colo. 1960).
3. Ms. Firman has the constitutional right to notice of what she must defend against at trial. “The notice given must be sufficient to advise the accused of the charges, to give him a fair and adequate opportunity to prepare his defense, and to ensure that he is not taken by surprise because of evidence offered at the time of trial.” *People v. Cooke,* 525 P.2d 426, 428 (Colo. 1974); *see also* U.S. Const. amends. VI; XIV; Colo. Const. art II, section 16. Requiring the prosecution to provide this information is fundamental to protecting Ms. Firman against trial by ambush. *See generally, Lanari v. People,* 827 P.2d 495, 499 (Colo. 1992).
4. “[T]he right to present relevant testimony is not without limitation. The right may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.” *Rock v. Arkansas,* 483 U.S. 44, 55-56 (1987) (internal citation and footnote omitted). Thus, evidentiary rules and their administration can impose upon constitutional rights to a limited extent, but this impact may not be “arbitrary or disproportionate.” *Id.*
5. “A fair trial in a fair tribunal is a basic requirement of due process.” *In re Murchison,* 349 U.S. 133, 136 (1955); *see also People v. Rhodus,* 870 P.2d 470, 473 (Colo. 1994); U.S. Const. amends. VI, XIV; Colo. Const. art. II, section 16.
6. In order to file any objection to allegations of other misconduct the state seeks to admit, Ms. Firman must have adequate notice of the allegations and the state’s

theories of admissibility sufficiently in advance of this court’s deadline for the filing of motions.

Wherefore, for the foregoing reasons and authorities, Ms. Firman respectfully requests that this Court order the prosecution to provide the information specified in this motion.

DOUGLAS K. WILSON

COLORADO STATE PUBLIC DEFENDER

/s/ Lindsey Watson

|  |  |
| --- | --- |
| Lindsey Watson, No. 444043 Deputy State Public Defender 4710 East Bromley Lane Brighton, CO 80601(303) 659-4274 | **Certificate of Service**I hereby certify that on November 27, 2017, one copy of the foregoing document was served on all opposing counsel of record./s/ Lindsey Watson |

Dated: November 27, 2017