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| DISTRICT Court, ADAMS County, Colorado  Court Address: 1100 Judicial Center Drive DATE F  Brighton, CO 80601 FILING | ILED: November 27, 2017 9:37 AM ID: 3A2E3A30AE2D9  UMBER: 2017CR2407   COURT USE ONLY  |
| PEOPLE OF THE STATE OF COLORADO, CASE N  Plaintiff v.  MONIKA FIRMAN,  Defendant |
| Douglas K. Wilson, Colorado State Public Defender Lindsey Watson #44043  Deputy Public Defender  Brighton Regional Public Defenders  4710 East Bromley Lane, Brighton CO 80601  Phone: (303) 659-4274 Fax: (303) 659-6935  E-mail: [brighton.defenders@state.co.us](mailto:brighton.defenders@state.co.us) | Case No. 17CR2407  Div. F |
| **MOTION FOR DISCOVERY OF IMPEACHMENT INFORMATION** | |

Pursuant to C.R.Crim.P. 16, the Fifth, Sixth and Fourteenth amendments to the United States Constitution and Article II, §§16 and 25 of the Colorado Constitution and *Brady v. Maryland*, 373 U.S. 83 (1963), Ms. Firman moves this Court for an Order directing the state to make inquiry into and disclose all of the following within its possession, custody or control, the existence of which is known or by the exercise of due diligence could become known to the state:

1. Any and all records, police reports and information regarding prior criminal convictions, guilty verdicts, juvenile adjudications or pending criminal or juvenile cases of all prosecution witnesses, including but not limited to relevant rap sheets. As grounds for this paragraph, defendant states as follows:
   1. C.R.Crim.P. 16(I)(a)(1)(I) requires production of “prior criminal convictions” of all prosecution witnesses. This rule is not by its terms limited to felony convictions.
   2. Felony convictions may be used for impeachment purposes. C.R.S. §13-90-101.
   3. Juvenile adjudications may be used for impeachment purposes, particularly if they are adjudications that reflect upon a witness’ credibility. *People v. Pate*, 625 P.2d 369 (Colo. 1981).
   4. Misdemeanor convictions probative of untruthfulness or dishonesty may be used for impeachment purposes. C.R.S. 608; *People v. Armstrong*, 704 P.2d 877 (Colo. App. 1985).
   5. The fact of a witness’ status on probation or parole at any time during the pendency of this case is probative of bias or motive, and is admissible regardless of the nature of the underlying conviction. *Davis v. Alaska*, 415 U.S. 308 (1974); *Pate*, supra; *People v. Bowman*, 669 P.2d 1369 (Colo. 1983).
   6. The existence of cases pending at any time during the investigation or pendency of this case is admissible as to bias or motive. *People*

*v. Jones*, 675 P.2d 9 (Colo. 1984); *People v. King*, 179 Colo. 94, 498 P.2d 1142 (1972).

1. Any and all records or information and law enforcement reports regarding both filed and unfiled cases against all prosecution witnesses which reveal prior misconduct or bad acts attributed to any prosecution witness, evidence of witness motive, dishonest conduct or lying to the police. Such misconduct may be admissible under C.R.E. 608(b) even though no conviction resulted, or may lead to the discovery of character evidence admissible under C.R.E. 608(a). Information is discoverable pursuant to the mandate of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963) not only when it directly negates guilt, but also when it tends to impeach the credibility of a key witness for the prosecution. *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985); Love *v. Johnson*, 57 F.3rd 1305 (4th Cir. 1995); *United States v. Jennings*, 960 F.2d 1488 (9th Cir. 1992).

Police reports of filed and unfiled cases are also discoverable as *Brady* material, at least to the extent they reveal evidence of the witnesses’ motive, bias, dishonest conduct, lying to the police or a tendency to

“overcompensate” for actual or perceived problems. *See United States v. Strifer*, 851 F.2d 1197,1202 (9th Cir. 1988); *United States v. Boffa*, 513 F.

Supp. 444 (D. Del. 1980).

1. Any promise, benefit, plea bargain, financial consideration or other inducement made to any prosecution witness by the government at any time during the investigation or pendency of this case, up to and including the time of trial, whether or not the government is willing to admit that such inducements were in the form of an exchange for testimony or aid in this case. Any such evidence is admissible as to motive or bias. *Van Arsdall v. Delaware*, 475 U.S. 673, 89 L.Ed.2d 874 (1986); *Davis*, supra; *Pate*, supra. Based upon this legal authority, Ms. Firman asks that this Court allow her to receive copies of the entire file maintained by the victim/witness arm of the Office of the District Attorney for the Seventeenth Judicial District, including but not limited to any monies or other benefits received by any witness or family member of a witness in

this case. Ms. Firman asks that this Court order the Office of the District Attorney for the Seventeenth Judicial District, through its victim/witness office, to provide copies of all documents generated in this regard to him automatically, through the established discovery process.

1. Any and all records and information in the possession of the District Attorney or law enforcement concerning prior psychiatric or psychological treatment, evaluation or hospitalization of all prosecution witnesses. The mental condition of witnesses is admissible for impeachment. *People v. Shuemann*, 548 P.2d 911 (Colo. 1976); *People v. Borelli*, 624 P.2d 900 (Colo. App. 1980). In addition, such records may contain information bearing upon the witness’ character for truthfulness or specific instances of untruthfulness. C.R.E. 608.
2. Any and all records or information in the possession of the District Attorney concerning drug and alcohol use, evaluations, or treatment or prosecution witnesses. The use of drugs or alcohol is admissible to the extent that it affects a witness’ ability to perceive, remember or testify. *People v. Roberts*, 533 P.2d 93 (Colo. App. 1976). In addition, such records may contain information bearing upon the witness’ character for truthfulness or specific instances of untruthfulness. C.R.E. 608..

Therefore, Ms. Firman moves for an Order directing the state to make inquiry and disclose all of the above-listed evidence within its possession, custody or control, the existence of which is known or by the exercise of due diligence could become known to the state. Failure to mandate disclosure of this information will deprive Ms. Firman of her rights to a fair trial, to due process, effective assistance of counsel and confrontation as guaranteed by the Fifth, Sixth and Fourteenth amendments to the United States Constitution and Article II, sections 16 and 25 Colorado Constitution.

/s/\_Lindsey Watson

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| Lindsey Watson, #44043 Deputy State Public Defender  Dated: November 27, 2017 | **Certificate of Service**  I certify that on  11/27/17 , I served the foregoing document by delivering\_x mailing faxing same to all opposing counsel.  /s/ Lindsey Watson |