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| District Court, Adams County, Colorado  Court Address: 1100 Judicial Center Drive DATE FIL  Brighton, CO 80601 FILING I | ED: November 8, 2017 10:46 PM  : 56196C26FBE6B UMBER: 2017CR2565   * COURT USE ONLY  |
| CASE N  THE PEOPLE OF THE STATE OF COLORADO,  Plaintiff, v.  EARL WILLIAMS,  Defendant. |
| Douglas K. Wilson, Colorado State Public Defender Reid Rowe #43612  Deputy Public Defender  Brighton Regional Public Defenders  4710 East Bromley Lane, Brighton CO 80601  Phone: (303) 659-4274 Fax: (303) 659-6935  E-m[ail: brighton.defenders@state.co.us](mailto:brighton.defenders@state.co.us) | Case No. 17CR2565  Division Q |
| **MOTION FOR IMPEACHING INFORMATION** | |

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EARL WILLIAMS, by and through counsel, respectfully requests the Court order the prosecution to immediately produce the following information and material:

All information and material in the actual or constructive possession or control of the prosecution, its agents, and any other governmental agencies or persons which have been involved in the state’s investigation or preparation of the case, pertaining to any person who is or might become a witness for the prosecution, or whose name is mentioned in the discovery provided to Earl Williams. As grounds, he asserts:

1. Crim. P. 16(I)(a)(2) expressly requires that the prosecution provide to the accused all potentially exculpatory information and material in its possession. This includes all such information and material that potentially pertains to sentencing and to the impeachment of the state’s witnesses and evidence. *See People v. Thatcher*, 638 P.2d 760 (Colo. 1981). The information and material requested herein falls within the scope of these minimum due process requirements.
2. There is no requirement that such information or material be written or in report form before it must be disclosed, but it still must be disclosed to the Defense.
3. The state cannot legitimately make judgments about what might or might not be material or relevant to the issues in the case or to the defense. *See People v. Gallegos*, 644 P.2d 920 (Colo. 1982). In particular this includes information and material that might be pertinent to the potential impeachment of state witnesses. All doubts are resolved in favor of disclosure, since the state has neither the knowledge nor the inclination to judge the potential value of the information and material.
4. Juvenile records, pending charges, arrest records, reports of suspected criminal activity, reports of prior assistance given to law enforcement authorities, dismissed charges, and the like, are all potential sources of impeachment of witnesses and, more importantly in this context, are potentially fruitful sources of investigative information for the accused. Thus, the state has no reason to censor the information it has regarding all witnesses and parties involved in this case.
5. These minimum disclosure requirements under the Federal and Colorado Constitutions and Crim. P. 16 extend beyond the confines of the prosecutor’s office; they expressly apply to all agencies and persons who have reported to the prosecutor concerning the case, and to all agencies and persons who have participated in the investigation or evaluation of the case. Crim. P. 16(I)(a)(3). Under the rule the state is responsible for obtaining and producing to Mr. Williams whatever materials are in the possession or control of those persons or organizations. *See Kyles v. Whitley*, 514

U.S. 419 (1995) (requires prosecutors personally review pertinent information, and makes prosecutors personally responsible to ensure their agents provide relevant information).

1. At a minimum Rule 16 requires the prosecution provide Williams with any potentially exculpatory, impeaching, or mitigating information or materials, and any information concerning possible or suspected criminal activities of witnesses, which is in the possession or control of any person or agency connected with the prosecution in this case.
2. Further, Crim. P. 16(I)(c)(1) *mandates* that, upon "request and designation of material or information which would be discoverable if in the possession or control of the prosecuting attorney and which is in the possession or control of other governmental personnel," the Prosecution must make good faith efforts to obtain the information or material for defense counsel. Thus, even if the particular law enforcement organization is not automatically covered by Rule 16 because of its involvement with the Prosecution or police in this case, the rule makes it the obligation of the prosecution to make efforts to obtain the information and materials requested from such agencies. This provision is consistent with the search for truth and the important goal of achieving equality of resources between the state and the accused.
3. Earl Williams, pursuant to Crim. P. 16(I)(c)(1), demands that the Prosecution make all possible good faith efforts to obtain the information from all of the agencies involved, even though Mr. Williams may not yet be presently aware that those agencies have been involved in the investigation of this case. This provision of Rule

16 is intended to enable persons such as Earl Williams to avoid potential difficulties in obtaining materials and information that the state has access to because of the normal cooperation that state prosecutorial and police agencies show each other. This provision puts the parties on a more equal footing, and it enables Mr. Williams to have access to material information that probably would not be available through other means, without the greatest of difficulty and delay and does not unduly burden the State.

1. Material in the possession of *all* law enforcement agencies that have participated in the investigation or provided reports concerning the case, is constructively in the "possession or control" of the prosecuting attorney under Crim. P. 16 (I)(a)(1). *See Chambers v. People*, 682 P.2d 1173, 1180 n.13 (Colo. 1984); *Ortega v. People*, 162 Colo. 358, 426 P.2d 180 (1967); *People v. Lucero*, 623 P.2d 424 (Colo. App. 1980); Crim. P. 16(I)(c). Therefore, the Prosecution must make sufficient efforts to locate and deliver copies of this material to the defense. *See* Crim. P. 16(I)(b)(4).
2. Even if Mr. Williams not entitled to written recordings of witness statements, he requests that he be orally provided with the substance of the oral statements of witnesses that are known to police or the Prosecution.
3. If the substance of oral statements of witnesses is not revealed to the defense, the law enforcement officials will be allowed to circumvent the requirements of Crim. P. 16 and due process by deliberately or negligently failing to reduce to writing important statements of witnesses.
4. Beyond the provisions of Crim.P. 16(I)(a), (b) and (c), the rule expressly empowers this Court to order additional discovery whenever a reasonable request is made. The request made here is reasonable considering a) the nature of the charges against Williams, b) the ready accessibility of the requested information to the prosecution, c) the high possibility that the state would request the same information which Mr. Williams here requests of the other law enforcement agencies noted herein, and d) the high potential importance and relevance of the information requested.
5. An order from this Court is necessary to both ensure that full compliance with the rule is provided in a timely manner and to provide Earl Williams with all of the information essential for his adequate defense and investigation.
6. Earl Williams makes these arguments and motions, and all motions and objections in this case, whether or not expressly stated at the time of the motion or objection, under the Due Process, Trial by Jury, Right to Counsel, Confrontation, Compulsory Process, Equal Protection, Cruel and Unusual Punishment and Privilege Against Self Incrimination Clauses of the United States and Colorado Constitutions, the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution, and Art. II,

§§ 3, 6, 7, 8, 16, 18, 20, 23 and 25 of Colorado’s Constitution.

DOUGLAS K. WILSONCOLORADO STATE PUBLIC DEFENDER

/s/Reid Rowe

Reid Rowe #43612

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(303) 659-4274

Dated: November 8, 2017

**Certificate of Service**

I hereby certify that on \_11/8/17, I served the foregoing document via ICCES on opposing counsel.

/s/Reid Rowe