|  |  |
| --- | --- |
| District Court  Alamosa County, Colorado  Court Address: 702 4th St., Alamosa, CO 81101 PEOPLE OF THE STATE OF COLORADO,  Plaintiff, DATE FILED:  v. FILING ID: 64  CASE NUMB  RICKY MANZANARES,  **Defendant** | October 28, 2016 11:04 AM 5A49129B30E  R: 2016CR361  **COURT USE ONLY** |
| Attorney:  Peter Comar 224 San Juan  Alamosa, CO 81101  Phone Number: (719) 589-3663 E-mail: [comar@amigo.net](mailto:comar@amigo.net)  FAX Number: (719) 589-3664 Atty. Reg. #: 12213 | Case Number: 2016CR361  Division Courtroom |
| **MOTION TO SUPPRESS OUT-OF-COURT IDENTIFICATION D-5** | |

E

COMES NOW the Defendant Ricky Manzanares by and through Counsel Peter L. Comar, moves the Court for an order excluding from the trial all testimony by prosecution witnesses relating to any identification made at a postarrest “photo lineup” and to suppress all testimonial evidence at trial which relates to any identification of the defendant at that showing, and as grounds therefore states as follows:

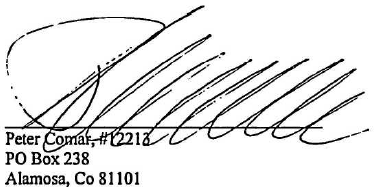
1. All trial identification testimony is the result of this “photo lineup” that was unreasonable and conducted without exigent necessity when less suggestive measures could have been used. *People v. Madonna*, 651 P.2d 378 (Colo.1982). Further, the identification was made using procedures which were so impermissibly suggestive as to give rise to a very substantial likelihood of misidentification. The “photo lineup” was conducted without any safeguards to prevent misidentification. Further, the “photo lineup” was so unnecessarily and impermissibly suggestive that it violated the defendant’s right to due process under the Fifth Amendment to the United States Constitution and Colorado Constitution Article II, 25, and therefore requires exclusion of any identification evidence obtained as a result of the “photo lineup” and the anticipated in-court identification by witnesses who viewed and identified the defendant at the “photo lineup”. *United States v. Wade*, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967).
2. This identification procedure violated the defendant’s right to counsel under the Sixth Amendment to the United States Constitution and Colorado Constitution Article II, 16.
3. The identification obtained as a result of the “photo lineup” is the fruit of a prior unlawful detention, arrest and search of the defendant in violation of the Fourth Amendment to the United States Constitution as well as Colorado Constitution Article II, 7, and is the fruit of a statement obtained from the defendant in violation of the Fifth and Sixth Amendments to the United States Constitution, and Colorado Constitution Article II, 16 and 18.
4. There is no adequate basis for any trial identification of the defendant by testimony independent of the unlawful, suggestive, and unreliable “photo lineup” procedure employed. Any trial identification will be the product of those unlawful, suggestive, and

unreliable procedures and other violations of the defendant’s constitutional rights. *United States v. Owens*, 484 U.S. 554, 108 S.Ct. 838, 98 L.Ed.2d 951 (1988).

1. Defendant requests a hearing on this motion before trial and outside the presence of the jury before the court permits any witness to identify the defendant in front of the jury. *People v Bowen*, 176 Colo. 302, 490 P.2d 295 (1971).

WHEREFORE the out-of-court and in-court identification of the defendant by the witnesses to whom the defendant was exhibited at the “photo lineup” in this case must be suppressed.

RESPECTFULLY SUBMITTED this day 25th of October, 2016.



CERTIFICATION OF SERVICE

I hereby certify that I have serve the foregoing MOTION TO SUPPRESS IN-COURT IDENTIFICATION by placing a true and correct copy of the same in the U.S. Mail, first class, postage pre-paid or filed Lexis Nexus on this 25th day of October, 2016 addresses to the following:

District Attorney’s Office 426 San Juan

Alamosa, Co 81101

