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| DISTRICT COURTJEFFERSON COUNTY, COLORADO 100 JEFFERSON COUNTY PARKWAY GOLDEN, COLORADO 80401 | DATE FILED: July 20, 2017 5:21 PM FILING ID: 5DBBF67C36E06CASE NUMBER: 2016CR1463COURT USE ONLY |
| **THE PEOPLE OF THE STATE OF COLORADO**Plaintiff, v.**GARY NICKAL**,Accused. |
| MULLIGAN BRIET, LLCPatrick Mulligan, #169811801 Broadway, Suite 1203Denver, CO 80202PH. 303-295-1500 FAX:EMAIL: Patrick@MulliganBriet.comTHE LAW OFFICE OF JENNIFER E. LONGTIN, LLCJennifer E. Longtin, #43509 2401 S. Downing St.Denver, CO 80201Ph. 303.747.6898Fax. 800.243.2691Jen@jlongtinlaw.com | Case No. 16CR001463Division: 12 |
| **OBJECTION TO NON-CLINICAL USE OF TERM “SUBSTANCE****ABUSE” AND ITS’ SYNONYMS** |

Gary Nickal, by and through counsel, moves this Honorable Court to order the prosecution, and their witnesses, to refrain from using the terms and phrases: substance abuse, Adderall abuse, drug abuse, substance use disorder, abusing drugs, and any of their synonyms. The defense believes that any witness, not qualified as an

expert in substance use disorders as defined in the Diagnostic and Statistical Manual of Mental Disorders, Firth Edition (DSM-V), and having personally evaluated Mr. Nickal, can opine as to these conditions; furthermore, any opinion given on these conditions must first be found to have a foundation in the evidence presented. As grounds, Mr. Nickal states the following:

# LAW

1. A defendant is prejudiced in his defense when the statements or evidence objected to, have a tendency to suggest “considerations extraneous to the merits of the [case].” People v. Dist. Court of El Paso Cty., 869 P.2d 1281, 1286

(Colo. 1994).

1. Courts have found that the use of language that may be confusing or suggestive to a fact finder should be excluded from the trial portion of a matter. *See Jackson v. State*, 600 A.2d 21, 24 (Del. 1991) (“We agree with the defendant that the word ‘victim’ should not be used in a case where the commission of a crime is in dispute.”); *see also Veteto v. State*, 8 S.W.3d 805, 816 (Tex. Ct. App. 2000) (“The sole issue of Veteto’s case was whether he committed the various assaults on A.L. Referring to A.L. as the victim instead of the alleged victim lends credence to her testimony that the assaults occurred and that she was, indeed, a victim.”).

# ARGUMENT

1. Police reports indicate that several lay witnesses associated with the prosecution made statements to officers suggesting that Mr. Nickal “abused” drugs. None of these witnesses have training in identifying or treating substance use.
2. Under the DSM, what is colloquially known as “drug abuse” is referred to as a “substance use disorder.” A substance use disorder is diagnosed based upon a specific set of criteria, often specific to the type of substance alleged to be used in a non-prescribed manner. According to the DSM-V, an important characteristic of a substance use disorder is an “underlying change in brain circuits that may persists beyond detoxification…,” and diagnosis is based on a “…pathological pattern of behaviors related to use of the substance.” AMERICAN PSYCHIATRIC ASSOCIATION, DSM-V, 483 (2013).
3. Unless a witness has personally examined Mr. Nickal, and has expertise in diagnosing substance use disorders, their lay commentary about believed or suspected substance use by Mr. Nickal is unhelpful and misleading to the jury.
4. This kind of misleading and confusing testimony is the exact type of harm sought to be avoided by C.R.E. 403. As such, it should be excluded from trial due to its tendency to suggest “considerations extraneous to the merits of the [case].” *El Paso Cty*., 869 P.2d at 1286.

WHEREFORE, Mr. Nickal objects to the use of the terms substance abuse, Adderall abuse, drug abuse, substance use disorder, abusing drugs, and any of their

synonyms by any witness not qualified as an expert in substance use disorders as defined in the DSM-, who has personally evaluated Mr. Nickal.

Dated: July 20, 2017

Respectfully Submitted,

/s/

Patrick Mulligan Registration # 16981



Jennifer Longtin, #43509

The Law Office of Jennifer E. Longtin, LLC

# Certificate of Service

The undersigned does hereby certify that on July 20, 2017, s/he served the foregoing OBJECTION to all opposing counsel of record via ICCES:



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| COUNTY COURTJEFFERSON COUNTY, COLORADO 100 JEFFERSON COUNTY PARKWAY GOLDEN, COLORADO 80401 | COURT USE ONLY |
| **THE PEOPLE OF THE STATE OF COLORADO**Plaintiff, v.**GARY NICKAL**,Accused. |
|  | Case No. 16CR001463Division: 12 |
| **ORDER RE: OBJECTION TO NON-CLINICAL USE OF TERM****“SUBSTANCE ABUSE” AND ITS SYNONYMS** |

This Honorable Court hereby:

 Grants

 Denies

The above captioned motion.

Ordered this day of , 2017.

Honorable District Court Judge