|  |  |
| --- | --- |
| District Court, Criminal Matters Adams County, State of Colorado **Court Address**:1100 Judicial Center Drive Brighton, Colorado 80601 | DATE FILED: February 23, 2017 FILING ID: E1F3CE56D9F23 CASE NUMBER: 2016CR2658 COURT USE ONLY  |
| THE PEOPLE OF THE STATE OF COLORADO,Plaintiffv.JAMES WALKER,Defendant |
| **Attorney:**Danielle M. McCarthy, #34573**DANIELLE M. MCCARTHY P.C.**1175 Osage Street, Suite 200Denver, Colorado 80204Phone: (303) 350-1550Facsimile: (303) 350-1555E-mail: daniellemccarthy11@gmail.com | **Case Number**: 16CR2658 **Division**: G **Courtroom**: 406 |
| **MOTION REQUESTING NOTICE OF PROSECUTION’S INTENT TO INTRODUCE ALLEGED SIMILAR TRANSACTION EVIDENCE OR ALLEGED *RES GESTAE* EVIDENCE** |

4:13 PM

Mr. James Walker requests the Court order the prosecution to specify any instances of alleged prior crimes, wrongs, or bad acts it intends to rely on to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident or alleged *res gestae* evidence that it intends to introduce as evidence at Mr. Walker’s trial. Additionally, the defendant requests that this Court require the prosecution to prove prior to trial by the appropriate standard that evidence of these acts should be admitted at trial.

**AS GROUNDS:**

1. The admissibility of other criminal acts by the Defendant is strictly limited by the Colorado Rules of Evidence and the case law that has defined these rules.
2. The Court must determine by a preponderance of the evidence that the other crime occurred and that defendant committed the crime. *People v. Garner*, 806 P.2d 366 (Colo. 1991).
3. It is uncertain if prosecution witnesses will testify that Mr. Walker has previously charged and uncharged acts.
4. C.R.E. 404(b) does not specifically require pretrial notice, although the Court of Appeals has held that there may be circumstances in which pretrial notice is “necessary to avoid prejudicial surprise to a defendant”. *People v. Warren*, 55 P.3d 809. para. 13 (Colo.App. 2002). Should the prosecution seek to introduce alleged similar transaction evidence from uncharged

and previously undisclosed incidents, it would be necessary to preserve Mr. Walker’s rights to due process and a fair trial to have full disclosure of the allegations to allow for investigation and trial preparation well in advance of his trial or motions hearing.

1. *Res Gestae* has been defined as evidence of “criminal conduct that occurs contemporaneously with or is part and parcel of the crime charged” and is not subject to the special procedural safeguards if the admission of that evidence is necessary to help the fact- finder understand the “context” in which the alleged crime occurred. *People v. Quintana*, 882 P.2d 1366 (Colo. 1994); *People v. Czemerynaki*, 786 P.2d 1100 (Colo. 1990); *People v. Lindsey*, 805 P.2d 1134 (Colo. App. 1990).
2. *Res Gestae* evidence is not automatically admissible. It is still subject to exclusion if its probative value is substantially outweighed by the possibility of unfair prejudice to the accused. *CRE 403*; *People v. Czemerynski*, *supra*.

WHEREFORE, Mr. Walker makes all of these motions, and all other motions and objections during all proceedings in this case, whether or not explicitly stated at the time of the making of the motion or objection, under the Due Process, Right to Counsel, Confrontation, Right to Remain Silent, Privilege Against Self Incrimination, Compulsory Process, Ex Post Facto, Trial by Jury, Equal Protection, Right to Appeal and Cruel and Unusual Punishment Clauses of the federal and Colorado Constitutions, and Article II, §§ 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28, of the Colorado Constitution, and Article I, § 9, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the U.S. Constitution. All authorities and citations noted herein apply to and support all requests for relief herein.

Dated: Thursday, February 23, 17. Respectfully Submitted,

DANIELLE M. MCCARTHY, P.C.

*s/ Danielle McCarthy*

Danielle McCarthy #34573

**Certificate of Service**

I hereby certify that on Thursday, February 23, 17, I served the foregoing document by mailing same to all opposing counsel of record.

 DMM