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| 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,  Plaintiff  v.  JAMES WALKER,  Defendant |
| **Attorne**y:  Danielle M. McCarthy, #34573  **DANIELLE M. MCCARTHY, P.C.**  1175 Osage Street, Suite 200  Denver, Colorado 80204  Phone: (303) 350-1550  Facsimile: (303) 350-1555  E-m[ail: daniellemccarthy11@gmail.com](mailto:daniellemccarthy11@gmail.com) | **Case Number**: 16CR2658 **Division**: G **Courtroom**: 406 |
| **MOTION FOR DISCOVERY OF IMPEACHING INFORMATION** | |

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Pursuant to Rule 16 of the Colorado Rules of Criminal Procedure; the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Article II, Sections 16 and 25 of the Colorado Constitution; and ***Brady v. Maryland***, 373 U.S. 83 (1963), the defendant moves for an order directing the prosecution to make inquiry and disclose all of the following within their possession, custody, and control or the existence of which is known or by the exercise of due diligence could become known to the prosecution:

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, the defendant states as follows:
   1. Rule 16(I)(a)(1)(I) of the Colorado Rules of Criminal Procedure 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. ***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.E. 608; ***People v. Armstrong***, 704 P.2d 877 (Colo. App. 1985).
   5. The fact of probation or parole at any time during the pendency of this case is probative of bias or motive and is admissible regardless of the type of 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).
2. Any and all records or information revealing prior misconduct or bad acts attributed to any prosecution witness. Such misconduct may be admissible under Rule 608(b) of the Colorado Rules of Evidence, even though no conviction resulted, or may lead to the discovery of character evidence admissible under Rule 608(a) of the Colorado Rules of Evidence.
3. 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 formal "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*.
4. Any and all records and information 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. Borrelli***, 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.
5. Any and all records or information concerning drug and alcohol use, evaluation, or treatment of 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.
6. For purposes of discovery, any information in the possession of any law enforcement agency is deemed to be in the possession of the prosecution. ***Chambers v. People***, 682 P.2d 1173 (Colo. 1984); ***People v. Banuelos***, 674 P.2d 964 (Colo. App. 1983). Further, Rule 16(I)(c) of the Colorado Rules of Criminal Procedure requires the prosecution to make diligent good faith efforts to obtain discoverable materials that are in the possession of other governmental personnel. Therefore, the defendant requests that any order issued pursuant to this motion require the prosecution to make inquiry of appropriate law enforcement and other governmental agencies concerning the existence of discoverable materials. Specifically, the

defendant requests an order requiring the prosecution to provide at a minimum the following information:

* 1. Any reports, files, or information in the possession of any law enforcement agency regarding any contact, investigation, or uncharged crime concerning any prosecution witness and the victim, as such materials may contain the type of information requested in this motion.
  2. Any reports, files, or information in the possession of the District Attorney's Office regarding any contact, investigation, or uncharged crime involving any prosecution witness or the victim.
  3. The Federal Bureau of Investigation rap sheets of all prosecution witnesses and the victim, as it is counsel's experience that such rap sheets often contain information not appearing on National Crime Information Center/Colorado Crime Information Center rap sheets.

1. Mr. Walker further requests that all information requested in this motion be provided under all known aliases for all witnesses and the victim.

Dated: February 23, 2017. Respectfully Submitted,

**DANIELLE M. MCCARTHY, P.C.**

*Danielle M. McCarthy*

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| Danielle M. McCarthy, #34573 | **Certificate of Service**  I hereby certify that on 2/23/17, I served the foregoing document to opposing counsel via ICCES.  By: DMM |