

District Court, Jefferson County, Colorado 100 Jefferson County Parkway, Golden, CO 80401	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. DESIREE GONZALEZ, Accused.	DATE FILED December 12, 2023 3:09 PM FILING ID: 6643D78CC4D0F CASE NUMBER: 2022CR3360 σ COURT USE ONLY σ
MEGAN A. RING, Colorado State Public Defender Chelsea Lauwereins, No. 55011 Deputy Public Defender Golden Regional Office 560 Golden Ridge Road, #100, Golden, CO 80401 Phone: (303) 279-7841 Fax: (303) 279-3082 E-mail: chelsea.lauwereins@coloradodefenders.us	Case No. 22CR3360 Division: 7
<p align="center">MOTION AND DEMAND PURSUANT TO <i>BRADY v. MARYLAND</i> FOR DISCOVERY OF IMPEACHING, EXCULPATORY, AND MATERIAL INFORMATION [D5]</p>	

Ms. Gonzalez, by and through counsel, moves this Court for an Order directing the prosecution to make inquiry and discover and disclose all of the following within its possession, custody, or control, or the existence of which is known or by the exercise of due diligence could become known, to the prosecution which may have exculpatory or impeachment value. In support thereof, Ms. Gonzalez provides the Court with the following:

1. This motion for disclosure of all exculpatory and impeachment material is made pursuant to COLO. R. CRIM. P. 16 and pursuant to the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and art. II, § 25 of the Colorado Constitution; *Brady v. Maryland*, 373 U.S. 83 (1963); *U.S. v. Bagley*, 473 U.S. 667 (1985); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Strickler v. Greene*, 527 U.S. 263 (1999); *Youngblood v. West Virginia*, 547 U.S. 867 (2006); and *Smith v. Cain*, 132 S.Ct. 627 (2012).
2. “The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *People v. Dist. Ct. El Paso Cnty.*, 790 P.2d 332, 337 (Colo. 1990).
3. The material that the prosecution must provide to the accused includes, but is not limited to:
 - a. Evidence that a prosecution witness has a motive or bias because he or she has entered into an agreement with the prosecution, received leniency from the state, or has outstanding litigation or cases with a prosecutorial agency, including juvenile cases, or parole or probation proceedings. *See Davis v. Alaska*, 415 U.S. 308 (1974); *People v. Bonman*, 669 P.2d 1369 (Colo. 1983); *People v. Pate*, 625 P.2d 369 (Colo. 1981);

- b. Evidence of the misdemeanor convictions of a prosecution witness that are probative of untruthfulness or dishonesty. *See People v. Armstrong*, 704 P.2d 877 (Colo. App. 1985) (cross-examination of witness concerning her prior conviction for the misdemeanor offense of making a false police report is permissible);
- c. Any deferred judgment or sentence pleas entered into by any witness that are not yet finished at the time the witness has made statements or appeared at a court proceeding. *See People v. Vollentine*, 643 P.2d 800, 802-803 (Colo. App. 1982);
- d. Any probation or parole at any time during the pendency of this case. The fact that a state witness is on probation or parole is probative of bias or motive and is admissible regardless of the type of underlying conviction or adjudication. *Davis v. Alaska*, 415 U.S. 308, 319-20, 39 L.Ed.2d 347, 355-56 (1974).
- e. Any grants of immunity to prosecution witnesses. *Giglio v. United States*, 405 U.S. 150, 154-55 (1972) (due process is violated where the prosecution fails to disclose the grant of immunity to a prosecution witness);
- f. Any pending cases at any time during the investigation or pendency of this case. 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*, 498 P.2d 1142 (1972); *People v. Bowman*, 669 P.2d 1369, 1375 (Colo. 1983); *People v. Leonard*, 608 P.2d 832 (Colo. App. 1979), *cert. denied* 1980.
- g. Any payments made to a prosecution witness for his services to the police or prosecutorial authority. *See United States v. Shaffer*, 789 F.2d 682, 687-89 (9th Cir. 1986);
- h. Any records or information concerning specific instances of untruthfulness or dishonesty or character for untruthfulness or dishonesty by any prosecution witness, such as the use of false names or making false reports to the police, sheriff, or fire departments. C.R.E. 608; *Lyda v. United States*, 321 F.2d 788, 793 (9th Cir. 1963).
- i. Information concerning alternative suspects considered by the police or prosecution. *See Bowen v. Maynard*, 799 F.2d 593, 611 (10th Cir. 1986), *cert. denied*, 479 U.S. 962 (1986) (state violated due process by failing to disclose list of other suspects because a released suspect resembled the accused and matched the description of the perpetrator); *see also People v. Flowers*, 644 P.2d 916, 918 (Colo. 1982) (an accused may prove his innocence by establishing the guilt of another);
- j. Any other evidence relevant to the motive, bias, or interest of the witnesses. *See Merritt v. People*, 842 P.2d 162, 166 (Colo. 1992) (a defendant is allowed broad cross-examination of the bias and motive of prosecution witnesses); *People v. Pate*, *supra*;
- k. Any and all records of and information concerning the prior psychiatric or psychological treatment, evaluation, or hospitalization of all prosecution witnesses since evidence of the mental condition of a witnesses is admissible as bearing on the credibility of the witness. *People v. Schuermann*, 190 Colo. 474, 548 P.2d 911, 913 (1976); *People v. Borrelli*, 624 P.2d 900, 904 (Colo. App. 1980); and
- l. 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. *See People v. Roberts*, 37 Colo. App. 490, 553 P.2d 93 (1976); *People v. Marquez*, 384 F.2d 920, 921

(1967); *Use of Drugs Affecting Competency or Credibility of Witness*, 65 A.L.R. 3d 705 (1975).

- m. Prior criminal convictions and juvenile adjudications of all prosecution witnesses. Rule 16 of the Colorado Rules of Criminal Procedure requires production of “prior criminal convictions” of all prosecution witnesses, including all juvenile adjudications. This rule is not by its terms limited to felony convictions. Rule 608 of the Colorado Rules of Criminal Procedure provides that Felony convictions and adjudications may be used for impeachment purposes. Juvenile adjudications may be used for impeachment purposes when the juvenile participated in the commission of the crime for which the adult is charged. *People v. Pate*, 625 P.2d 369 (Colo. 1981). The fact that a juvenile was on 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 adjudication. *Davis v. Alaska*, 415 U.S. 308, 319-20, 39 L.Ed.2d 347, 355-56 (1974).
4. “Impeachment evidence . . . as well as exculpatory evidence falls within the *Brady* rule.” *United States v. Bagley*, 473 U.S. 667, 676, (1985). “Such evidence is ‘evidence favorable to an accused . . .’” *Id.*
5. Favorable evidence “is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome. *Id.* at 682; *Dist. Court of El Paso Cnty.*, 790 P.2d at 337 (citing *United States v. Bagley*, 473 U.S. 667, 676, (1985)).
6. “[The] touchstone of materiality is a ‘reasonable probability’ of a different result The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A ‘reasonable probability’ of a different result is accordingly shown when the government’s evidentiary suppression ‘undermines confidence in the outcome of the trial.’” *Kyles v. Whitley*, 514 U.S. 419, 434 (1995).
7. In other words,

[T]he materiality inquiry is not just a matter of determining whether, after discounting the inculpatory evidence in light of the undisclosed evidence, the remaining evidence is sufficient to support the jury’s conclusions. Rather, the question is whether “the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.”

Id. at 435.
8. Materiality is not considered on just an individual basis for each piece of evidence, but also is considered when individual pieces of evidence cumulatively amount to material evidence. *See Id.* at 436-37.
9. “The individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government’s behalf in a case, including the police.” *Strickler v. Greene*, 527 U.S. 263, 280-81 (1999); *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

10. “The prudent prosecutor will resolve doubtful questions in favor of disclosure.” *U.S. v. Agurs*, 427 U.S. 97, 108 (1976).
11. “When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within the [*Brady*] rule.” *Bagley*, 473 U.S. at 677 (citing *Giglio v. U.S.*, 405 U.S. 150, 154 (1972)).
12. “The partiality of a witness is subject to exploration at trial, and is ‘always relevant as discrediting the witness and affecting the weight of his testimony.’ We have recognized that the exposure of a witness’ motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.” *Davis v. Alaska*, 415 U.S. 308, 316-17, (1974).
13. Where the defense has made a specific and relevant request, the failure to make any response is seldom, if ever, excusable. *Agurs*, 427 U.S. at 106.

WHEREFORE, Ms. Gonzalez respectfully requests this Court to order the prosecution to timely and completely comply with its discovery obligation under *Brady v. Maryland*, *supra*, to assure the protection of Ms. Gonzalez’s constitutional rights to a fair trial, due process of law, and effective assistance of counsel under U.S. Const., Amends. V, VI, XIV; and Colo. Const., Art. II, Secs. 16 and 25.

Respectfully Submitted,

Chelsea Lauwereins

Chelsea Lauwereins, No. 55011
Deputy State Public Defender
Dated: December 12, 2023

Certificate of Service

I hereby certify that on December 12, 2023, a true and correct copy of the foregoing document was served via ICCES on all parties who appear of record and have entered their appearance herein according to ICCES. //s// Chelsea Lauwereins