

DISTRICT COURT, TELLER COUNTY, COLORADO 101 West Bennett Avenue Cripple Creek, CO 80813	DATE FILED: July 18, 2019 12:55 PM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. PATRICK FRAZEE, Defendant	☐ COURT USE ONLY ☐
MEGAN A. RING, Colorado State Public Defender Ashley F. Porter (No. 47538) Deputy State Public Defender 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903-1603 Phone: (719) 475-1235 Fax: (719) 475-1476 Email: ashley.porter@coloradodefenders.us	Case No. 18CR330 Division 11
MOTION AND REQUEST FOR NOTICE OF COLORADO RULES OF EVIDENCE 404(b), 608, 807, AND RES GESTAE EVIDENCE (D-13)	

Patrick Frazee, through counsel, requests notice from the prosecution of any Colorado Rules of Evidence 404(b), 608, 807, and res gestae evidence it intends to introduce at trial. As grounds, Mr. Frazee states:

1. Upon request of the accused, “the prosecution in a criminal case shall provide reasonable notice in advance of trial . . . of the general nature of the evidence it intends to introduce at trial” of other misconduct. C.R.E. 404(b).
2. Mr. Frazee asks this Court to order the prosecution to provide a precise description of each allegation of other misconduct, including the date and place it is alleged to have occurred and the name(s) of the witness(es) who will testify to it, as well as the current addresses and telephone numbers of each witness.
3. Mr. Frazee asks this Court to order the prosecution to identify the specific purpose, as contemplated in C.R.E. 404(b), for which it intends to introduce this evidence at trial.
4. Mr. Frazee also requests that the prosecution disclose any Colorado Rules of Evidence 608, 807, and res gestae evidence it intends to introduce at trial. In addition, he requests that the prosecution provide the name and address of the declarant or witness that it intends to introduce this evidence through at trial.

5. Mr. Frazee also asks this Court to order the prosecution to submit proposed limiting instructions for any 404(b), 608, 807, and/or res gestae evidence it intends to introduce at trial.
6. Mr. Frazee has the constitutional right to notice of what he must defend against at trial. "The notice given must be sufficient to advise the accused of the charges, to give him a fair and adequate opportunity to prepare his defense, and to ensure that he is not taken by surprise because of evidence offered at the time of trial." *People v. Cooke*, 525 P.2d 426, 428 (Colo. 1974); *see also* U.S. CONST. AMENDS. VI; XIV; COLO. CONST. ART II, section 16. Requiring the prosecution to provide this information is fundamental to protecting Mr. Frazee against trial by ambush. *See generally Lanari v. People*, 827 P.2d 495, 499 (Colo. 1992).
7. "A fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955); *see also People v. Rhodus*, 870 P.2d 470, 473 (Colo. 1994); U.S. CONST. AMENDS. VI, XIV; COLO. CONST. ART. II, section 16.
8. In order to file any objection to allegations of other misconduct or 608, 807, or res gestae evidence the state seeks to admit, Mr. Frazee must have adequate notice of the allegations and the state's theories of admissibility.
9. Mr. Frazee makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process, Trial by Jury, Right to Counsel, Equal Protection, Cruel and Unusual Punishment, Confrontation, Compulsory Process, Right to Remain Silent, and Right to Appeal Clauses of the Federal and Colorado Constitutions, and the First, Fourth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitution, and Article II, Sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution.

Wherefore, for the foregoing reasons and authorities, Mr. Frazee respectfully requests that this Court order the prosecution to provide the information specified in this motion.

/s/ Ashley F. Porter

Ashley F. Porter (No. 47538)
Deputy State Public Defender

Dated: July 18, 2019

Certificate of Service

I certify that on 07/18/2019, I served the foregoing document by e-filing to all opposing counsel. /s/ AFP.