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<b>DISTRICT COURT OF OTERO COUNTY STATE OF COLORADO</b> 13 West 3 <sup>rd</sup> Street, Rm. 207 La Junta, CO 81050	DATE FILED: May 8, 2015 11:36 PM
<b>Plaintiff: PEOPLE OF THE STATE OF COLORADO</b>  v. <b>Defendant: JAMES ADAM PATRICK ASHBY</b>	<b>▲ COURT USE ONLY ▲</b>
<b>Attorneys for Defendant:</b> BRUNO, COLIN & LOWE, P.C. Michael T. Lowe, #33489; <a href="mailto:mlope@brunolawyers.com">mlope@brunolawyers.com</a> Carrie L. Slinkard, #40288; <a href="mailto:cslinkard@brunolawyers.com">cslinkard@brunolawyers.com</a> 1999 Broadway, Suite 4300 Denver, Colorado 80202 Telephone: (303) 831-1099 Facsimile: (303) 831-1088	Case No. 2014CR217  Division: A Courtroom 206
<b>DEFENDANT'S MOTION FOR DISCLOSURE OF ALL EXPERT WITNESSES, REPORTS, AND SUMMARIES D-16</b>	

COMES NOW, the Defendant, James Adam Ashby, by and through his undersigned attorneys, who hereby respectfully request that this Court order the prosecution to provide a list of all expert witnesses they intend to present at trial. Further, Defendant moves this Court for an order requiring the prosecution to disclose: (a) the underlying facts or data supporting the opinion of any expert endorsed by the prosecution, (b) the current curriculum vitae of any such expert, along with accurate copies of all curriculum vitas previously proffered by such witnesses in the preceding five (5) years; and (c) a written summary of testimony describing the witnesses' opinions and the reasons and bases therefore, including the results of any physical or mental examinations and any scientific tests or experiments or comparisons performed or relied upon by them with respect to the above captioned this case. In support of thereof, Defendant states as follows:

Certification of Conferral Pursuant to C.R.C.P. 121, §1-15(8)

Undersigned counsel hereby certifies that he made good faith efforts to confer with the District Attorney regarding this Motion. Undersigned counsel conferred about general objections with the District Attorney on May 6, 2015, noticing that he would thereafter call to confer on the remaining motions. Telephone messages were left for the District Attorney on the afternoon of May 8, 2015, for conferral on Defendant's remaining motions, but, counsel were not able to confer prior to filing this Motion. Counsel will continue to attempt to confer, and if any of Defendant's motions are unopposed notification of the same will be filed with the Court

1. The prosecution has not yet filed any formal expert witness endorsements in this case to date, nor have they tendered a good faith list of witnesses they intend to actually call at trial to present any expert opinions.
2. Accordingly, the Defendant respectfully asks this Court to enter an Order requiring the People to endorse any and all expert witnesses in this case well in advance of trial, since postponing the disclosure of such information until the time for cross-examination of the experts at trial, would do nothing more than result in undue delay, prejudice, and unfair surprise to the Defendant, none of which are consistent with the spirit of the Rules or the Defendant's right to a fair trial.
3. This request is being made, in part, pursuant to the provisions of Crim. P. 16(I)(a)(1)(III), which reads as follows:

The prosecuting attorney shall make available to the defense the following material and information which is within the possession or control of the prosecuting attorney, and shall provide duplicates upon request, and concerning the pending case...

4. The express language set forth in Colo. R. Crim. P. 16(I)(d)(3) states as follows:

Subject to constitutional limitations, and where the interests of justice would be served, the court may order the prosecution to disclose the underlying facts or data supporting the opinion in that particular case of an expert endorsed as a witness. If a report has not been prepared by that expert to aid in compliance with other discovery obligations of this rule, the court may order the party calling that expert to provide a written summary of the testimony describing the witness's opinion and the bases and reasons therefor, including results of physical or mental examinations and of scientific tests, experiments or comparisons. *The intent of this section is to allow the defense sufficient meaningful information to conduct effective cross-examination under C.R.E. 705 (emphasis added).*

5. The very disclosures requested by the Defendant in the instant motion are contemplated by the Colorado Rules of Evidence specifically, as the Rules provide trial courts with the

discretion to require the disclosure of facts and data underlying an expert opinion *prior to* the rendering of that expert opinion at trial. Pursuant to Rule 705, for example, expert witnesses are allowed to “testify in terms of opinion and give reasons therefore without first testifying to the underlying facts or data, *unless the court requires otherwise.*” (emphasis added). CRE 705.

6. The Defendant therefore asks this Court to hereby grant this Motion in the interests of justice and to ensure the Defendant his constitutional right to the effective assistance of counsel. Mandating disclosure of the requested information gives undersigned counsel ample opportunity to conduct a rigorous cross-examination of any expert(s) in this case. Because any prosecution expert would otherwise be required to disclose the materials he or she has relied upon either way at trial, it is appropriate for this Court to require the People to produce any documents and/or all other relevant or related information, which has otherwise been reviewed or relied upon by the expert(s) to form their expert opinions.
7. The scope of this request includes, without limitation, any and all additional information or other related documentation that any prosecution expert *intends* to review in the future, whether or not said expert has done so yet to date.

WHEREFORE, the Defendant, hereby respectfully requests that this Court order the People to produce a list of all witnesses they intend to have testify as expert witnesses at trial. Further, the Defendant seeks an order requiring the People to disclose the following information to the defense, in conjunction with the previously referenced expert endorsement of witnesses:

- (a) the underlying facts and data relied upon by the expert(s) in support of their opinion(s);
- (b) a current copy of the curriculum vitas of any expert(s) who may testify, along with accurate copies of all curriculum vitas used by them in the preceding five (5) years; and
- (c) if a report has not been prepared by any one or more of expert witnesses who may testify for the prosecution, a written summary of the testimony describing their opinions and the bases and reasons therefore, to include the results of any physical or mental examinations and of scientific tests, experiments or comparisons.

DATED this 8<sup>th</sup> day of May, 2015.

Respectfully Submitted,

BRUNO, COLIN & LOWE, P.C.

By: *s/Michael T. Lowe*

Michael T. Lowe

Carrie L. Slinkard

*Attorneys for Defendant*

In accordance with C.R.Crim.P. 49.5(g), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by the other parties, or the Court upon request.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2015, a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR DISCLOSURE OF ALL EXPERT WITNESSES, REPORTS, AND SUMMARIES D-16** was e-filed and e-served via ICCES E-System, addressed to the following:

James R. Bullock  
District Attorney  
Sixteenth Judicial District  
[jbullock@da16co.gov](mailto:jbullock@da16co.gov)

*s/Marla A. Brock*  
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