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<b>DISTRICT COURT, OTERO COUNTY, COLORADO</b> 13 West 3 <sup>rd</sup> Street, Rm. 207 La Junta, CO 81050	FILED IN COMBINED COURT OTERO COUNTY, COLO.
<b>Plaintiff: PEOPLE OF THE STATE OF COLORADO</b>  v.  <b>Defendant: JAMES ADAM PATRICK ASHBY</b>	JAN 12 2015  ▲ COURT USE ONLY ▲
<b>Attorneys for Defendant:</b> BRUNO, COLIN & LOWE, P.C. Michael T. Lowe, #33489; <a href="mailto:mlowe@brunolawyers.com">mlowe@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
<b>MOTION FOR SEQUESTRATION OF WITNESSES (D-4)</b>	

NOW COMES the Defendant, James Adam Ashby, by and through his undersigned counsel, Michael T. Lowe and Carrie L. Slinkard, and hereby moves this Court to sequester the State's witnesses from the presentation of testimony at the Defendant's preliminary hearing pursuant to Colorado Rule of Evidence 615, and further, that any such witnesses be instructed not to discuss their testimony with other witnesses throughout the pendency of this case. In support of this motion, the Defendant states as follows:

I.

Trial courts shall impose sequestration orders on witnesses at the request of either party. Colo. R. Evid. 615. Rule 615 of the Colorado Rules of Evidence provides that, at the request of a party, "the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion." C.R.E. 615. The Rule contains three exceptions and does not authorize the exclusion of: (1) a natural person who is a party, (2) an

officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the prosecution of his cause. *Id.*

The purpose of Rule 615 “is to prevent the testimony of one witness from being influenced by that of another...” *People v. Brinson*, 739 P.2d 897, 899 (Colo. App. 1987); *see also People v. Melendez*, 102 P.3d 315, 319 (Colo. 2004) (“Sequestration orders are meant to prevent witnesses from tailoring their testimony to that of other witnesses and to aid the court in the detection of false testimony.”); *People v. Villalobos*, 159 P.3d 624, 629 (Colo. App. 2006) (“The purpose of a sequestration order is to prevent a witness from conforming his...testimony to that of other witnesses and to discourage fabrication and collusion”) (quotation marks and citation omitted); *Geders v. United States*, 425 U.S. 80, 96 S.Ct. 1330, 47 L.Ed.2d 592 (1976) (“Sequestering witnesses restrains them from tailoring their testimony to that of earlier witnesses and aids in detecting testimony that is less than candid”). This purpose “is accomplished under the Rule’s terms by ordering witnesses to withdraw from the courtroom until called.” *Brinson*, 739 P.2d at 899. Further, a trial court “may also direct witnesses not to discuss the case with each other.” *Id.*, *see also Melendez*, 102 P.3d at 319; *Villalobos*, 159 P.3d at 629; and *People v. Wood*, 743 P.2d 422 (Colo. 1987).

In deciding whether to impose sanctions for violation of a sequestration order, a trial court must consider three principal factors: (1) the involvement, or lack thereof, of a party or the party's counsel in the witness's violation of the order; (2) the witness's actions and state of mind in violating the order, and whether the violation was inadvertent or deliberate; and (3) the relationship between the subject matter of the violation and the substance of the disobedient witness's testimony. *People v. P.R.G.*, 729 P.2d 380 (Colo.App.1986). Sanctions that may be

imposed for violation of a sequestration order include citing the witness for contempt, permitting comment on the witness's noncompliance in order to reflect on his or her credibility, excluding or striking the witness's testimony, and declaring a mistrial. *People v. P.R.G., supra.*

## II.

The incident upon which the Defendant has been charged occurred on or about October 12, 2014, approximately three months ago. In that time, witnesses to this incident have spoken to the media and have provided statements suggesting they have discussed the incident among themselves and tailored their recollections of the incident to conform to one another. The preliminary hearing will be the first public presentation of evidence in this case and there is a particular and unique risk that the testimony of two witnesses endorsed by the prosecution, Ms. Viola Jacquez and Ms. Mariah Talmich, will be influenced by being permitted to attend Mr. Ashby's preliminary hearing. Both witnesses were present on scene at the time of the shooting on October 12, 2014, and accordingly, Mr. Ashby and undersigned counsel make this request for sequestration of the State's endorsed witnesses from the presentation of testimony at the preliminary hearing pursuant to Colorado Rule of Evidence 615. Mr. Ashby further requests that said witnesses be additionally instructed not to discuss their testimony with other witnesses throughout the pendency of this case.

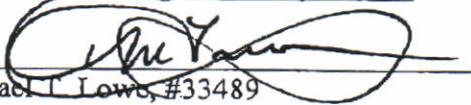
## III.

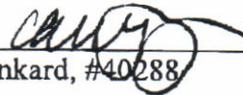
Mr. Ashby makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: federal and state constitutional rights to bail, due process, trial by jury, right to counsel, equal 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.

Dated and Respectfully Submitted, this 12<sup>TH</sup> day of JANUARY, 2014.

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By:   
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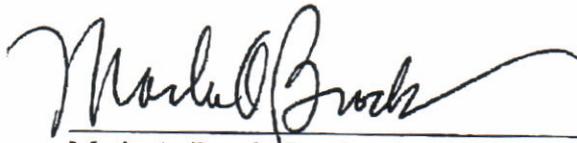
By:   
Carrie L. Slinkard, #40288

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2015, a true and correct copy of the foregoing **MOTION FOR SEQUESTRATION OF WITNESSES** was served by facsimile transmission, addressed to the following:

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16<sup>th</sup> Judicial District Attorney's Office  
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