

District Court, Jefferson County, Colorado 100 Jefferson County Parkway, Golden, CO 80401	DATE FILED December 12, 2023 3:09 PM FILING ID: 6643D78CC4D0F CASE NUMBER: 2022CR3360  ◆ COURT USE ONLY ◆
<b>THE PEOPLE OF THE STATE OF COLORADO,</b> Plaintiff,  v.  <b>DESIREE GONZALEZ,</b> Accused.	
MEGAN A. RING, State Public Defender Chelsea Lauwereins, No. 55011 Deputy Public Defender Golden Regional Office 560 Golden Ridge Road, #100, Golden, CO 80401 Ph. (303) 279-7841 Fax. (303) 279-3082 Email: chelsea.lauwereins@coloradodefenders.us	Case Number: 22CR3360  Division: 7
<b>MOTION FOR NOTICE OF THE PROSECUTION'S INTENT TO INTRODUCE          SIMILAR TRANSACTION EVIDENCE PURSUANT TO COLO. R. EVID. 404(b) [D4]</b>	

**COMES NOW**, Ms. Gonzalez, by and through counsel, and respectfully requests that any evidence of similar transactions intended to be used by the prosecution against Ms. Gonzalez pursuant to C.R.E. 404(b) at trial be ordered by the Court to be disclosed to defense counsel within fifteen (15) days of the receipt of this motion. As grounds, Ms. Gonzalez states as follows:

1. Any evidence of alleged similar transactions is highly prejudicial and inadmissible absent a prosecutorial showing of all requirements under *Spoto*. See *People v. Spoto*, 795 P.2d 1314, 1318 (Colo. 1990), and *People v. Garner*, 806 P.2d 366, 371-372 (Colo. 1991).
2. The defense requests this Court Order the prosecution to comply with *People v. Spoto*, 795 P.2d 1314, 1318-1319 (Colo. 1990), and *People v. Garner*, 806 P.2d 366, 371-372 (Colo. 1991) to disclose the specific evidentiary hypothesis on which a material fact can be permissibly inferred from the prior act independent of the uses forbidden by C.R.E. 404(b) (2010).
3. The Colorado Supreme Court has recently reiterated the importance of the four-part *Spoto* test. *Kaufman v. People*, 202 P.3d 542, 553 (Colo. 2009). The Colorado Supreme Court has also taken a stronger stance on the Prosecution's attempt at introducing prior bad acts. In *Yusem v. People*, "the People never articulated a precise evidential hypothesis explaining how the prior act evidence tended to prove motive, knowledge, or absence of mistake. In addition, the prior act evidence was offered and admitted for purposes that were carelessly grouped together, without consideration of whether the prior act evidence was admissible for each purpose. For instance, mental state, motive and knowledge -- while all potentially probative of

mens rea -- are separate purposes that should be individually analyzed under *Spoto*.” *Yusem v. People*, 210 P.3d 458 (Colo. 2009).

4. These requirements will necessitate a pre-trial hearing into the admissibility of any evidence.
5. Counsel also requests discovery of all alleged incidents that the prosecution seeks to elicit testimony, including the specific dates, locations, and names and addresses of all witnesses to any alleged acts.
6. The prosecution may proceed by offer of proof pursuant to C.R.S. §18-6-801.5.
7. However, if the prosecution intends to proceed in that fashion Ms. Gonzalez requests at the hearing that the Court direct the making of the offer of proof in a question and answer format pursuant to C.R.E. 103(b). If the prosecutor merely makes a statement as to what he or she feels the evidence will be and defense counsel responds with a statement rebutting that offer of proof, the Court will have no means to evaluate the prior incident other than the respective credibility’s of the prosecutor and defense counsel. An offer of proof in a question and answer format gives the Court an added evaluative element--the credibility of the witnesses, including their demeanor on the witness stand.
8. Counsel requests the Court order the prosecution to provide notice of intention to present evidence of similar transactions and any other C.R.E. 404(b) evidence no later than fifteen (15) days after receipt of the Order. Counsel also requests discovery of all alleged incidents that the prosecution seeks to elicit testimony, including the specific dates, locations, witnesses to any alleged acts.
9. The defense requests this Court Order the prosecution to comply with C.R.S. § 18-6-801.5. See *People v. Spoto*, 795 P.2d 1314, 1318-1319 (Colo. 1990), and *People v. Garner*, 806 P.2d 366, 371-372 (Colo. 1991). The prosecutor must disclose the specific evidentiary hypothesis on which a material fact can be permissibly inferred from the prior act independent of the uses forbidden by C.R.E. 404(b).
10. Absent the requested safeguards, the defendant will be deprived of constitutional rights to confront witnesses, due process, and effective assistance of counsel as guaranteed by the United States and Colorado Constitutions. See U.S. Const. amends. V, VI, XIV; Colo. Const., art. II §§ 16, 25.

**WHEREFORE**, Ms. Gonzalez requests that this Court order that any evidence of similar transactions intended to be used by the prosecution against the Ms. Gonzalez pursuant to C.R.E. 404(b) at trial be disclosed to defense counsel within fifteen (15) days of the receipt of this motion

Respectfully submitted,

*Chelsea Lauwereins*

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Chelsea Lauwereins, No. 55011  
Deputy State Public Defender

Dated: December 12, 2023

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CERTIFICATE OF SERVICE

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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