

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon Street Colorado Springs, CO 80903	DATE FILED: December 28, 2021 1:18 PM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. LETECIA STAUCH, Defendant	DATE FILED: December 28, 2021 1:18 PM
Attorney or Party without Attorney (Name and Address): BARKER & TOLINI, P.C. JOSHUA TOLINI, ESQ. 720 S. Tejon Colorado Springs, CO 80903 Phone Number: (719)227-0230 FAX Number: (719)227-0964 Atty. Reg. #: 30119	Case No. 20CR1358 Division 15
MOTION TO REQUIRE DISCLOSURE OF ANY INTENT TO ADMIT SIMILAR TRANSACTION OR OTHER UNCHARGED MISCONDUCT EVIDENCE PURSUANT TO CRE 404(b), INCLUDING ADMISSION UNDER ANY THEORY OF <i>RES GESTAE</i> (D-39)	

COMES NOW Leticia Stauch, by and through counsel, Counsel for the Defendant respectfully objects to any evidence of uncharged transactions, incidents, bad acts, or alleged offenses, and requests the Court order the prosecution to give notice within fifteen days of the receipt of this motion, of any intent to offer evidence of similar transactions, prior bad acts, or any other material that the prosecution believes to be admissible under CRE 404(b) or under a theory of "*res gestae*." AS GROUNDS, Ms. Stauch states:

1. Any evidence of alleged similar transactions is highly prejudicial and inadmissible absent a prosecutorial showing of all requirements of C.R.S. § 18-6-801.5, *People v. Spoto*, 195 P.2d 1314 (Colo. 1990), and *People v. Garner*, 806 P.2d 366 (Colo. 1991). These requirements will necessitate an extensive pre-trial hearing into the admissibility of any evidence offered pursuant to CRE 404(b) and/or a theory of so-called "*res gestae*."

2. 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 (or evidence offered under C.R.S. § 18-6-801.5) no later than 15 days after receipt of the Order. Effective September 27, 2007 the Colorado Supreme Court amended Colorado Rule of Evidence 404(b) to include the following "provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial ... of the general nature of any such evidence it intends to introduce at trial." (emphasis added).

3. 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.

4. Ms. Stauch requests this Court Order the prosecution to comply with C.R.S. §18-6-801.5, *Spoto*, 795 P.2d 13 14 (Colo. 1990), and *Garner*, 806 P.2d 366 (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). *See also Kaufman v. People*, 202 P.3d 542 (Colo. 2009).

5. Improper admission of material offered under CRE 404(b) can, and does, cause reversal of convictions, in both federal court, *see e.g. United States v. Commanche*, 577 F.3d 1261 (10th Cir. 2009) (reversing convictions), and in Colorado state court, *see e.g. People v. Becker*, 2014 COA 36, ___ P.3d ___, 2014 WL 1254437 (Colo. App. March 27, 2014) (reversing child abuse conviction); *People v. Strodman*, 10CA0137 (Colo. App. Dec. 15, 2011) (reversing conviction); *Yusem v. People*, 210 P.3d 458 (Colo. 2009); *Kaufman v. People*, 202 P.3d 542 (Colo. 2009) (reversing conviction on other grounds, and reversing the trial court's ruling admitting evidence under CRE 404(b)). *See also Kinney v. People*, 187 P.3d 548 (Colo. 2008) (reversing sex assault conviction because trial court admitted charges for which the defendant had not been convicted and then restricted his cross-examination on that subject).

6. Rule 404(b) requires pre-trial notice: "upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial." CRE 404(b). In *Kaufman v. People*, *supra*, the prosecution did not give the defense adequate notice of other acts that the prosecution ended up introducing. *Id.*, at 553 ("Prior to trial, Kaufman filed a request for disclosure of 404(b) evidence, asking for advance notice and a pretrial hearing on the admissibility of such evidence. Around that time, the prosecution also filed a notice of its intent to offer evidence ... The notice did not list a specific purpose for CRE 404(b) admissibility." The Court of Appeals reversed the conviction on other grounds, but then included a lengthy admonition for guidance at the retrial, explaining the trial court's errors in admitting a number of other bad acts and uncharged conduct. *Id.*, 202 P.3d at 562.

7. Absent the requested safeguards, Ms. Stauch 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, as well as the right to be free of cruel and unusual punishment.

8. Ms. Stauch makes this demand, 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, to defend life, to the equal administration of justice, trial by jury, right to counsel, equal protection, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, privileges and immunities, and right to appeal clauses of the federal and Colorado Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution. Ms. Stauch also relies upon the Rules of Evidence, including but not limited to CRE 401, 402, 403, 404, and 608, and the Rules of Criminal Procedure, including Crim.P. 16(I), as well as *Brady v. Maryland*, 373 U.S. 83 (1963) and progeny. Ms. Stauch cross-references and incorporates by reference all pleadings filed in this case, and caselaw cited therein and at oral argument. Ms. Stauch demands that this case be handled under procedures and standards that provide heightened reliability.

WHEREFORE, Ms. Stauch respectfully objects to any evidence of similar transactions and requests the Court order the prosecution to give notice within fifteen days of the receipt of this motion, of any intent to offer evidence of similar transactions, prior bad acts, or any other material that the prosecution believes to be admissible under CRE 404(b) or under a theory of “*res gestae*.”

s/ Joshua Tolini
Joshua Tolini #30119
Dated: December 28, 2021