

District Court, Boulder County, Colorado Court Address: 1776 6 th Avenue Boulder, CO 80306	
THE PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant.	DATE FILED: April 26, 2024 4:00 PM σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender Kathryn Herold #40075 Supervising Deputy State Public Defender Samuel Dunn #46901 Deputy State Public Defender Boulder Regional Public Defenders 2555 55TH Street D-200, Boulder, CO 80301 Phone: (303) 444-2322 Fax: (303) 449-6432 E-mail: boulder.defenders@state.co.us	Case No. 21CR497 Division 13
MR. ALISSA’S MOTION FOR DISCLOSURE OF RULE 404(B) EVIDENCE(D-050)	

AHMAD ALISSA, by and through counsel, moves this Court to order discovery of any evidence to be submitted under C.R.E. 404(b) for a hearing on the admissibility of this evidence. In support of this motion, Mr. Alissa states the following:

1. The government may attempt to introduce evidence of prior “bad acts” under C.R.E. 404(b). Mr. Alissa requests full disclosure of this evidence and a hearing to determine admissibility.
2. Evidence of other transactions is inadmissible to prove “a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” C.R.E. 404(b)(1). Rule 404 provides that such evidence of other crimes, wrongs, or acts may be admissible only in certain narrowly limited circumstances. C.R.E. 404(b)(2).
3. Other transaction evidence under C.R.E. 404(b)(2) is inadmissible unless the proponent establishes that the evidence (1) relates to a material fact, (2) is logically relevant, (3) is being introduced for a reason other than to show that the defendant has a “bad character” in order to suggest probability that he “committed the crime charged because... he acted in conformity with his bad character,” and (4) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice to the defendant. *People v. Spoto*, 795 P.2d 1314, 1318 (Colo. 1990).
4. If the prosecution attempts to admit other transaction evidence under C.R.E. 404(b), the prosecution is required to (1) “provide reasonable notice of any such evidence that the prosecutor intends to offer at trial, so that the defendant has a fair opportunity to meet it” and (2) “articulate in the notice the permitted purpose for which the prosecutor intends to offer the


evidence and the reasoning that supports the purpose.” C.R.E. 404(b)(3)(A),(B).Such notice must be in writing. *Id.*

5. Specifically, the prosecution is required to present a "precise evidential hypothesis" in relation to how the prosecution will permissibly use the proposed evidence. *Yusem v. People*, 210 P.3d 458, 464 (Colo. 2009). The prosecution must explain how the proposed evidence has a purpose independent of those forbidden by C.R.E. 404(b). *Id.* at 465.
6. Evidence of similar acts inherently casts a “damning innuendo” on the accused. *Stull v. People*, 344 P.2d 455, 458 (Colo. 1959). Such evidence is likely to breed prejudice in the mind of jurors and introduce irrelevant collateral issues to the criminal case. *Id.*
7. The rules of discovery are “designed to further the truth-seeking process,” and pretrial disclosure of relevant information promotes fairness by reducing the risk of “trial by ambush.” *People v. Lanari*, 827 P.2d 495 (Colo. 1992) (en banc).
8. The Colorado Supreme Court recently abolished the doctrine of *res gestae* as a method of introducing other act evidence. *People v. Rojas*, No. 20SC399, 2022 WL 521921, at *9 (Colo. Feb. 21, 2022). All evidence of other acts which suggest “bad character (and thus a propensity to commit the charged offense)” are admissible only as provided by C.R.E 404(b) and the *Spoto* analysis; such evidence is no longer admissible under a *res gestae* theory. *Id.* at *11.
9. Regardless of if evidence of other acts is admissible for a permissible purpose under C.R.E. 404(b), other act evidence may be excluded if it is irrelevant under C.R.E. 403. Other act evidence may also be excluded if “its probative value is substantially outweighed by the danger of ... unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” C.R.E. 403; *Spoto*, 795 P.2d at 1320-21 (applying C.R.E. 403 to evidence of other acts offered to show intent under C.R.E. 404(b)).
10. Pretrial notice of 404(b) evidence is necessary to ensure the preservation of Mr. Alissa’s rights to a fair trial, due process, and effective assistance of counsel under the United States and Colorado Constitutions. U.S. CONST. amend. V, VI, XIV; COLO.CONST. art. II, §§ 16, 25.
11. Mr. Alissa moves for a hearing on this motion.

WHEREFORE, Mr. Alissa moves this Court to order discovery as set forth above, and to consider the admissibility of such evidence during a hearing in advance of the trial date, should any such 404(b) be produced.

Mr. Alissa makes these arguments and motions, and all motions and objections in this case, whether or not expressly stated at the time of the motion or objection, under the Due Process, Trial by Jury, Right to Counsel, Confrontation, Compulsory Process, Equal Protection Cruel and Unusual Punishment and Privilege Against Self Incrimination Clauses of the federal and Colorado Constitutions, and the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution, and Art. II, §§ 3,6,7,8,16,18,20,23 and 25 of Colorado’s Constitution.

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER



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Certificate of Service

I hereby certify that on ___April
26_____, 2024, I served the foregoing
document through Colorado E filing to all
opposing counsel of record.

KH_____

Dated: April 25, 2024

