

DISTRICT COURT, PITKIN COUNTY, COLORADO
506 East Main Street, Aspen, CO 81611
(970) 925-7635

COMBINED COURT
PITKIN COUNTY

10 APR -2 AM 11:15

THE PEOPLE OF THE STATE OF COLORADO ASPEN, COLORADO

vs.

CARLOS IRWIN ESTEVEZ

Defendant

▲ COURT USE ONLY ▲

Attorney for Defendant

Richard Cummins, P.C.

Richard Cummins Att. Reg #: 7286

1280 Ute Avenue, Suite 10, Aspen, Colorado 81611

Phone Number: (970) 920 2310

Fax Number: (970) 920 2312

E-mail: rcumminslaw@aol.com

Case No: 09CR98

MOTION TO SUPPRESS CUSTODIAL STATEMENTS

COMES NOW the Defendant, Carlos Irwin Estevez, by undersigned counsel and moves this Court to suppress all statements made to law enforcement officials as they were obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1966) and its progeny. As grounds in support of this motion, Mr. Estevez states as follows:

1. On December 25, 2009, three officers of the Aspen police department responded to a report of domestic violence. Specifically, the officers were informed via dispatch that a woman had called 911 claiming her husband had a knife and that he was attempting to leave the residence.
2. With this information, three uniformed officers of the Aspen Police Department, Officer Valerie McFarlane, Officer Rick Magnuson and Officer Casey Ward responded to the address, with Officer Ward covering the rear of the house, while Officer Magnuson entering the residence through the front door.
3. Once in the residence, Mr. Estevez, pursuant to Officer Magnuson's direction, went to the basement of the residence and was questioned by Officer Magnuson and made numerous statements.
4. Officer Magnuson did not, prior to questioning Mr. Estevez, inform him of his rights pursuant to Miranda v. Arizona.
5. Because a reasonable person in Mr. Estevez's situation would believe that he was not free to leave, Mr. Estevez was clearly in-custody at the time he was questioned by Officer Magnuson. Thus, any statements made by Mr. Estevez during this custodial interrogation must be suppressed as such was obtained in violation of the rule of Miranda v. Arizona, 384 U.S. 436 (1966); People v. Elmarr, 181 P.3d 1157 (Colo. 2008); People v. Minjarez, 81 P.3d 348 (Colo. 2003); People v. Matheny, 46 P.3d 453 (Colo. 2002).

WHEREFORE, it is respectfully requested that an evidentiary hearing be held to permit Mr. Estevez to present evidence in support of this motion.

RESPECTFULLY SUBMITTED this 1st day of April, 2010.

RICHARD CUMMINS, P.C.

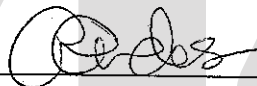
By: 

Richard Cummins, #7286
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2010, I delivered a true and correct copy of the foregoing **Motion to Suppress Custodial Statements** to the following via US Mail:

Office of the District Attorney
Attention: Arnold Mordkin
Ninth Judicial District
506 East Main Street, #204
Aspen, CO 81611



DISTRICT COURT, PITKIN COUNTY, COLORADO
506 East Main Street, Aspen, CO 81611
(970) 925-7635

FILED IN COMBINED COURT
PITKIN COUNTY
10 APR -5 PM 1:12
ASPEN, COLORADO

THE PEOPLE OF THE STATE OF COLORADO

vs.

CARLOS IRWIN ESTEVEZ

Defendant

^ COURT USE ONLY ^

Attorney for Defendant

Richard Cummins, P.C.

Richard Cummins Att. Reg #: 7286

1280 Ute Avenue, Suite 10, Aspen, Colorado 81611

Phone Number: (970) 920 2310

Fax Number: (970) 920 2312

E-mail: rcumminslaw@aol.com

Case No: 09CR98

**MOTION FOR IN CAMERA REVIEW OF MATERIALS SPECIFIED
IN SUBPOENA DUCES TECUM SERVED ON ASPEN POLICE
DEPARTMENT**

COMES NOW the Defendant, Carlos Irwin Estevez, by undersigned counsel, who moves this Court to conduct a review of materials subpoenaed to this Court from the Aspen Police Department. As grounds Mr. Estevez states as follows:

1. On or a about December 25, 2009, at approximately 8:40 A.M., Officer McFarlane was called to the residence at [REDACTED] Colorado on a report of domestic violence.
2. Once at the residence, Officer McFarlane conducted an interview with the alleged victim Ms. Brooke Mueller. Later that day Officer McFarlane returned to the residence to conduct a second interview with the alleged victim. At that time Mueller admitted that she had not been entirely forthcoming regarding the circumstances giving rise to her December 25th report and that she no longer wanted criminal charges filed.
3. Should this case go to trial, it is anticipated that Officer McFarlane and her recollection of Ms. Mueller's statements and demeanor will be critical to the prosecution's case. Accordingly, Mr. Estevez is constitutionally entitled investigate and legitimately impeach the credibility of this prosecution witness.
4. On February 26, 2010, Officer McFarlane left the employ of the Aspen Police Department under circumstances which give rise to legitimate questions regarding her character for truthfulness. In an effort to ascertain the discovery necessary to investigate this avenue of impeachment, Mr. Estevez has served a *subpoena duces tecum* on the Aspen Police Department and the City of Aspen for its internal investigation and/or personnel file relative to Officer McFarlane's departure from the

**Motion For In Camera Review Of Materials Specified In Subpoena Duces Tecum
Served On Aspen Police Department**

Page 2 of 2

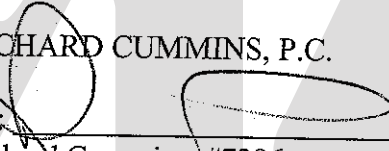
department. The return date of these subpoenas, which are attached as Exhibit A to this motion, is April 12, 2010.

5. Under CRE 608(b) a witness may be cross-examined about specific instances of conduct that are probative of the witness's character for truthfulness or untruthfulness. People v. Knight, 167 P.3D 147 (Colo. App. 2007); People v. Pratt, 759 P.2d 676 (Colo. 1988).
6. The material subpoenaed by the defense may reveal specific instances of conduct on the part of Officer McFarlane that are probative of her character for truthfulness or untruthfulness.

WHEREFORE, Mr. Estevez respectfully requests that this Court conduct an in camera review of the material provided by the Aspen Police Department and the City of Aspen and thereafter order disclosure of any and all material which bears on the ex-officer's credibility.

RESPECTFULLY SUBMITTED THIS 5 day of April, 2010.


RICHARD CUMMINS, P.C.

By: 
Richard Cummins, #7286
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2010, I delivered a true and correct copy of the foregoing **Motion For In Camera Review Of Materials Specified In Subpoena Duces Tecum Served On Aspen Police Department** to the following:

Office of the District Attorney
Attention: Arnold Mordkin
Ninth Judicial District
506 East Main Street, #204
Aspen, CO 81611



DISTRICT COURT, PITKIN COUNTY, COLORADO
506 East Main Street, Aspen, CO 81611
(970) 925-7635

THE PEOPLE OF THE STATE OF COLORADO

vs.

CARLOS IRWIN ESTEVEZ

Defendant

▲ COURT USE ONLY ▲

Attorney for Defendant

Richard Cummins, P.C.

Richard Cummins Att. Reg #: 7286

1280 Ute Avenue, Suite 10, Aspen, Colorado 81611

Phone Number: (970) 920 2310

Fax Number: (970) 920 2312

E-mail: rcumminslaw@aol.com

Case No: 09CR98

SUBPOENA DUCES TECUM

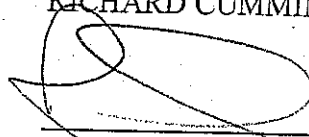
TO: CITY OF ASPEN
PERSONNEL DEPARTMENT
130 S. GALENA STREET
ASPEN, CO 81611

You are ordered to produce at the offices of the Clerk, Combined Court, 506 East Main Street, Aspen, Colorado 81611, Attention: Judge Boyd at 9:00 A.M. on Monday, April 12, 2010, all personnel records for Police Officer Valerie McFarlane.

The failure to comply with a subpoena without adequate excuse may be deemed contempt of court. Colo. R. Crim. P. 17(h).

RESPECTFULLY SUBMITTED this 1st day of April, 2010.

RICHARD CUMMINS, P.C.



Richard Cummins, #7286
Attorney for Defendant

DISTRICT COURT, PITKIN COUNTY, COLORADO
506 East Main Street, Aspen, CO 81611
(970) 925-7635

THE PEOPLE OF THE STATE OF COLORADO

vs.

CARLOS IRWIN ESTEVEZ
Defendant

▲ COURT USE ONLY ▲

Attorney for Defendant
Richard Cummins, P.C.
Richard Cummins Att. Reg #: 7286
1280 Ute Avenue, Suite 10, Aspen, Colorado 81611
Phone Number: (970) 920 2310
Fax Number: (970) 920 2312
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Case No: 09CR98

SUBPOENA DUCES TECUM

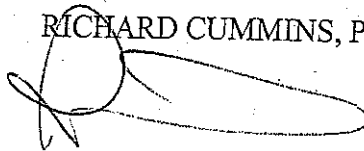
TO: ASPEN POLICE DEPARTMENT
INTERNAL AFFAIRS
506 E. MAIN STREET, SUITE 102
ASPEN, CO 81611

You are ordered to produce at the offices of the Clerk, Combined Court, 506 East Main Street, Aspen, Colorado 81611, Attention: Judge Boyd at 9:00 A.M. on Monday, April 12, 2010, all internal investigation files pertaining to Officer Valerie McFarlane, including but not limited to: any and all audio or video recordings taken from her patrol car at the end of her shift on February 19, 2010.

The failure to comply with a subpoena without adequate excuse may be deemed contempt of court. Colo. R. Crim. P. 17(h).

RESPECTFULLY SUBMITTED this 1st day of April, 2010.

RICHARD CUMMINS, P.C.



Richard Cummins, #7286
Attorney for Defendant

FILED IN COMBINED COURT
10 APR -2 AM 11:16

ASPEN, COLORADO

THE PEOPLE OF THE STATE OF COLORADO

vs.

CARLOS IRWIN ESTEVEZ

Defendant

▲ COURT USE ONLY ▲

Attorney for Defendant

Richard Cummins, P.C.

Richard Cummins Att. Reg #: 7286

1280 Ute Avenue, Suite 10, Aspen, Colorado 81611

Phone Number: (970) 920 2310

Fax Number: (970) 920 2312

E-mail: rcumminslaw@aol.com

Case No: 09CR98

DEFENDANT'S MOTION FOR SPECIFIC DISCOVERY

COMES NOW the Defendant, Carlos Irwin Estevez, in the above entitled matter, and moves for an order pursuant to Rule 16 of the Colorado Rules of Criminal Procedure and the federal and Colorado constitutions, for an order directing the People to disclose the items of specific discovery that are within or are constructively within its possession. As grounds in support of this request, Mr. Estevez states as follows:

1. On December 25, 2009, at 8:35 a.m., the Aspen Police Department was called to [REDACTED] on a report of domestic violence. In response to this call three police officers were dispatched to the [REDACTED] street address, arrested Mr. Estevez and ultimately charged him in the above captioned case.
2. Prosecutors have a constitutional and statutory obligation to disclose to one facing criminal charges, any material that tends to negate the guilt of the accused. People v. Lincoln, 161 P.3d 1274 (Colo. 2007) citing Brady v. Maryland, 373 U.S. 83 (1963) and United States v. Agurs, 427 U.S. 97 (1976). This obligation includes providing to the defense any evidence which impeaches the testimony of a material witness. Lincoln, 161 P.3d at 1279 citing Strickler v. Greene, 527 U.S. 263 (1999).
3. Failure to disclose such information violates an accused's constitutional right to due process of law. U.S. Amendment XIV; article II § 25 of the Colorado Constitution; Brady v. Maryland, 373 U.S. 83 (1963); United States v. Agurs, 427 U.S. 97 (1976); Lincoln, 161 P.3d at 1279.
4. It is believed that the prosecution in this case has in its possession and control information that is exculpatory and which must be disclosed. For that reason, Mr. Estevez specifically requests the prosecution disclose forthwith the following information:

Defendant's Motion For Specific Discovery

Page 2 of 3

- a. Any and all statements made by or attributed to any and all witnesses in this case, including but not limited to all back-up documentation such as handwritten notes; audio recordings and/or videotaped statements;
 - b. Disclosure of any and all attempts on the part of the alleged victim to supplement her statement to law enforcement regarding the events of the 12/25/09 incident, including disclosure of what law enforcement did in response to these attempts.
 - c. Disclosure of any and all information in the possession and/or control of the district attorney and/or the Aspen Police Department as agents of the district attorney, regarding Aspen Police Officer Valerie McFarlane and the events giving rise to and the reasons for her subsequent removal from the Aspen Police Department. People v. District Court, 664 P.2d 247 (Colo. 1983)(recognizing that for discovery purposes the district attorney has an obligation to disclose to defense counsel all discoverable material and information in the possession or control of the district attorney and the police department).
 - d. Disclosure of any internal policies of the Aspen Police Department regarding rules pertaining the arrest of suspects where there is a report of domestic violence.
 - e. Disclosure of the criminal history of any and all witnesses in this case.
 - f. Disclosure of any and all records and information revealing prior misconduct or bad acts attributed to any witness, including any criminal prosecutions, investigations, or potential prosecutions pending or that could be brought against any witness.
5. To the extent that the prosecution claims any of these requests implicates information which is privileged, confidential or otherwise protected from discovery, Mr. Estevez respectfully requests that the district attorney provide all such material to this Court along with a written explanation of the basis upon which disclosure of the material is being withheld.

RESPECTFULLY SUBMITTED this 1st day of April, 2010.

RICHARD CUMMINS, P.C.

By: 

Richard Cummins, #7286

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2010, I delivered a true and correct copy of the foregoing **Defendant's Motion For Specific Discovery** to the following via US Mail:

Office of the District Attorney
Attention: Arnold Mordkin
Ninth Judicial District
506 East Main Street, #204
Aspen, CO 81611



TMZ

DISTRICT COURT, PITKIN COUNTY, COLORADO
506 East Main Street, Aspen, CO 81611
(970) 925-7635

IN COMBINED COURT
PITKIN COUNTY

10 APR - 2 AM 11:16

THE PEOPLE OF THE STATE OF COLORADO
vs. PEN. COLORADO

vs.

CARLOS IRWIN ESTEVEZ

Defendant

▲ COURT USE ONLY ▲

Attorney for Defendant

Richard Cummins, P.C.

Richard Cummins Att. Reg #: 7286

1280 Ute Avenue, Suite 10, Aspen, Colorado 81611

Phone Number: (970) 920 2310

Fax Number: (970) 920 2312

E-mail: rcumminslaw@aol.com

Case No: 09CR98

**MOTION FOR ORDER REQUIRING PROSECUTION TO
DISCLOSE BY A DATE CERTAIN ITS INTENTION RELATIVE TO
THE INTRODUCTION OF "OTHER ACTS" EVIDENCE AT TRIAL**

COMES NOW the Defendant, Carlos Irwin Estevez, by undersigned counsel, who moves this Court to conduct a review of materials subpoenaed to this Court from the Aspen Police Department. As grounds Mr. Estevez states as follows:

1. The prosecution in this case has suggested that it may seek to introduce evidence pursuant to 404(b) of the Colorado Rules of Criminal Procedure and/or C.R.S. § 18-6-801.5 (hereinafter referred to as "other acts evidence").
2. Undersigned counsel has in the course of several conversations inquired of the District Attorney to identify the specific acts and the basis for which he believes the acts would be admissible under Colorado law. To date the prosecution has refused to say whether the prosecution intends to seek introduction of bad acts evidence and has specifically refused to give undersigned counsel any specifics regarding the acts or the legal basis, if any, for admission at trial.
3. Colorado law is crystal clear that evidence of this type is inadmissible unless the prosecution provides notice and proof that the prior act occurred *and* unless it can be shown that the prior act is sufficiently relevant to the pending case as to be admissible. Yusem v. People, 210 P.3d 458 (Colo. 2009); People v. Garner, 806 P.2d 366 (Colo. 1991); People v. Spoto, 795 P.2d 1314 (Colo. 1990); People v. Ma, 104 P.3d 273 (Colo. App. 2004) reversed on other grounds 121 P.3d 205 (Colo. 2005).
4. Because the decision to seek admission of "other acts" evidence carries with it the potential of complicating the litigation of a criminal case by injecting extraneous issues for both this Court and the parties, the prosecution should not be permitted to wait indefinitely before making a decision on this issue.

**Motion For Order Requiring Prosecution To Disclose By A Date Certain Its
Intention Relative To The Introduction Of "Other Acts" Evidence At Trial**

Page 2 of 2

Accordingly, Mr. Estevez respectfully requests that this Court enter an order requiring the District Attorney to file its intention to seek admission of prior acts pursuant to CRE 404(b) and/or C.R.S. § 18-6-801.5 by April 16, 2010.

RESPECTFULLY SUBMITTED THIS 1st day of April, 2010

RICHARD CUMMINS, P.C.

By: 

Richard Cummins, #7286
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2010, I delivered a true and correct copy of the foregoing **Motion For Order Requiring Prosecution To Disclose By A Date Certain Its Intention Relative To The Introduction Of "Other Acts" Evidence At Trial** to the following: via US Mail

Office of the District Attorney
Attention: Arnold Mordkin
Ninth Judicial District
506 East Main Street, #204
Aspen, CO 81611



DISTRICT COURT, PITKIN COUNTY, COLORADO
506 East Main Street, Aspen, CO 81611
(970) 925-7635

THE PEOPLE OF THE STATE OF COLORADO

vs.

CARLOS IRWIN ESTEVEZ

Defendant

▲ COURT USE ONLY ▲

Case No: 09CR98

**ORDER RE: DEFENDANT'S REQUEST FOR NOTIFICATION AS
TO THE DISTRICT ATTORNEY'S INTENTION TO SEEK
ADMISSION OF PRIOR ACTS**

THE COURT, having reviewed Defendant's Request for Notification as to the District Attorney's Intention to Seek Admission of Prior Acts ORDERS that the District Attorney disclose said information to the Defendant no later than April 16, 2010.

DONE THIS _____ day of April 2010 in Aspen, Colorado.

BY THE COURT:

DISTRICT COURT JUDGE

DISTRICT COURT, PITKIN COUNTY, COLORADO
506 East Main Street, Aspen, CO 81611
(970) 925-7635

FILED IN COMBINED COURT
PITKIN COUNTY

10 APR -2 AM 11:16

ASPEN, COLORADO

THE PEOPLE OF THE STATE OF COLORADO

vs.

CARLOS IRWIN ESTEVEZ

Defendant

^ COURT USE ONLY ^

Attorney for Defendant

Richard Cummins, P.C.

Richard Cummins Att. Reg #: 7286

1280 Ute Avenue, Suite 10, Aspen, Colorado 81611

Phone Number: (970) 920 2310

Fax Number: (970) 920 2312

E-mail: rcumminslaw@aol.com

Case No: 09CR98

**MOTION TO PRESERVE VIDEOTAPE SURVEILLANCE OF
FEBRUARY 19, 2010 POLICE CONTACT BETWEEN OFFICER
VALERIE MCFARLANE AND TROY HOOPER**

COMES NOW the Defendant, Carlos Irwin Estevez, by undersigned counsel, who moves this Court to order the Aspen Police Department to preserve a copy of the videotape surveillance of the February 19, 2010 contact between Officer Valerie McFarlane and Mr. Troy Hooper and any audiotape or other tape pertaining to contact between Office Valerie McFarlane and Mr. Troy Hooper, and as grounds in support of this request states as follows:

1. On or a about December 25, 2009, at approximately 8:40 A.M., Officer Valerie McFarlane was called to the residence at 320 West Hallam, Aspen, Colorado on a report of domestic violence.
2. Upon arrival at the residence, Officer McFarlane conducted an interview with the alleged victim, Ms. Brooke Mueller.
3. Ms. Mueller thereafter informed Officer McFarlane that she had not been completely forthcoming vis-à-vis the events of December 25, 2009 and that she did not want charges to be filed.
4. It is anticipated that Officer McFarlane will be a critical witness at trial vis-à-vis her contact with Ms. Mueller and Mr. Estevez's ability to legitimately call her credibility into question will be critical as well.
5. On February 26, 2010, Officer McFarlane left the employ of the Aspen police department under circumstances that call her character for truthfulness into question. The incident that gave rise to the termination of her employment was favorable treatment given an editor of the Aspen Daily News. This incident was

**Motion to Preserve Videotape Surveillance of February 19, 2010 Police Contact
Between Officer Valerie McFarlane and Troy Hooper**

Page 2 of 2

captured by her squad car's surveillance camera. Contemporaneous to the filing of this motion, Mr. Estevez has filed a *subpoena duces tecum* with the Aspen Police Department asking that the investigative file pertaining to this incident, including the surveillance tape, be brought to this Court for an in camera review.

6. It is believed that this videotape contains information that is directly relevant to Officer McFarlane's character for truthfulness and thus could be relevant impeachment evidence at trial.

WHEREFORE, Defendant respectfully requests this Court order the Aspen Police Department to preserve a copy of the subject surveillance videotape and any audiotape of the interaction between Officer McFarlane and Mr. Hooper.

RESPECTFULLY SUBMITTED THIS 1st day of April, 2010.

RICHARD CUMMINS, P.C.

By: 

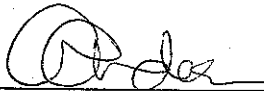
Richard Cummins, #7286
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2010, I delivered a true and correct copy of the foregoing **Motion to Preserve Videotape Surveillance of February 19, 2010 Police Contact Between Officer Valerie McFarlane and Troy Hooper** to the following: *via US Mail*

Office of the District Attorney
Attention: Arnold Mordkin
Ninth Judicial District
506 East Main Street, #204
Aspen, CO 81611

James R. True, Special Counsel
The City of Aspen
City Attorney's Office
130 S. Galena Street
Aspen, CO 81611



DISTRICT COURT, PITKIN COUNTY, COLORADO
506 East Main Street, Aspen, CO 81611
(970) 925-7635

THE PEOPLE OF THE STATE OF COLORADO

vs.

CARLOS IRWIN ESTEVEZ

Defendant

^ COURT USE ONLY ^

Case No: 09CR98

**ORDER RE: DEFENDANT'S MOTION TO PRESERVE
VIDEOTAPE SURVEILLANCE OF THE CONTACT BETWEEN
OFFICER VALERIE MCFARLANE AND MR. TROY HOOPER**

THE COURT, having reviewed Defendant's Motion to Preserve Videotape Surveillance of the contact between Officer Valerie McFarlane and Mr. Troy Hooper HEREBY ORDERS that the District Attorney preserve a copy of the subject surveillance videotape or any other tape reflecting contact between Officer Valerie McFarlane and Mr. Troy Hooper

DONE THIS _____ day of April, 2010 in Aspen, Colorado.

BY THE COURT:

DISTRICT COURT JUDGE