

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 520 W. Colfax Ave. Denver, Colorado 80204	DATE FILED: June 2, 2017 10:45 AM
PEOPLE OF THE STATE OF COLORADO vs. BRUCE DOUCETTE, STEPHEN NALTY, JANIS BLEASE, STEVEN BYFIELD, LAURENCE GOODMAN, DAVID COFFELT, HARLAN SMITH, and BRIAN BAYLOG, Defendants	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
BETH MCCANN, District Attorney Robert S. Shapiro, #26869 Special Deputy District Attorney 1300 Broadway, 9 th Floor Denver, CO 80203 Attorney Phone: 720-508-6000 Attorney E-mail: robert.shapiro@coag.gov	Case Nos: 17CR10089, 17CR10085, 17CR10086, 17CR10087, 17CR10088, 17CR10090, 17CR10091, 17CR10092 Courtroom: 5D
MOTION FOR DISCOVERY	

The People, through District Attorney Beth McCann, and her designated Special Deputy District Attorney, Robert S. Shapiro, pursuant to Rule 16, Part II (a)(1) of the Colorado Rules of Criminal Procedure move this Honorable Court for the following:

1. That the defendants be ordered to provide **nontestimonial identification evidence, specifically handwriting exemplars** to the Prosecution's expert, Richard Lewis of ReBeL Documents, LLC so that he can conduct a series of document examinations that are relevant and necessary to these ongoing filed prosecutions.

2. Colorado Rule of Criminal Procedure Rule 16, Part II (a)(1) states, "Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, upon request of the prosecuting attorney, the court may require the accused to give any nontestimonial identification as provided in Rule 41.1(h)(2)." Colorado Rule of Criminal Procedure Rule 41.1 (h)(2) then defines the term "nontestimonial identification" to include, but not limited to, handwriting exemplars.
3. The current filed cases allege that these defendants committed various acts against or towards various Public Servants in Colorado, including but not limited to the signing, uttering, and serving of various signed documents. The Grand Jury investigation that led to the filing of charges against these defendants uncovered a voluminous amount of documents, many of which included signatures and other examples of handwriting, that purportedly were written by these defendants. Please refer to and incorporate the Colorado State Grand Jury Indictment in this matter.
4. Assuming that the Court grants this Motion, the People, in conjunction with law enforcement will arrange for a date, time and location for the defendants to have the necessary exemplars collected by the document examiner.
5. Handwriting exemplars have been held to be non-testimonial and not violative of the Fifth Amendment since 1967 in *Gilbert v. California*, 388 U.S. 263, 266 (1967). The *Gilbert* Court also held that there was no Sixth Amendment violation since the taking of handwriting exemplars is not a critical stage of the proceeding. *Id.* In *United States v. Mara*, 410 U.S. 19 (1973), the Court held that a directive requiring the defendant to produce handwriting exemplars did not violate the Fourth Amendment. The *Mara* Court held that "handwriting, like speech, is repeatedly shown to the public, and there is no more expectation of privacy in the physical characteristics of a person's script than there is in the tone of his voice." *Id.* at 21. Thus, there was no requirement under the Fourth Amendment to a preliminary showing of reasonableness. *Id.* Colorado State Courts have followed the lead of the United States Supreme Court. See, e.g. *People v. Peoples*, 616 P.2d 131, 200 Colo. 509 (Colo. 1980); *Sandoval v. People*, 172 Colo. 383, 388, 473 P.2d 722, 724 (1970); *People v. Osorio-Bahena*, 312 P.3d 247 ¶ 59 (Colo.App. 2013)
6. The United States Supreme Court in *Gilbert v. California*, 388 U.S. 263, 266 (1967) held that there is no constitutional violation in taking handwriting exemplars from a defendant in the Fifth Amendment's privilege against self-incrimination nor in the Sixth Amendment's right to counsel. "A mere handwriting exemplar, in contrast to the content of what is written, like the voice or body itself, is an identifying physical characteristic outside (the Fifth Amendment's) protection." *Id.* at 266-267. Further the Court held that the taking of exemplars was not a critical stage where the Sixth Amendment right to counsel would apply. *Id.* at 267.

7. The holding in Gilbert has been quoted and applied in People v Ortega, 370 P.3d 181, 186 ¶ 28 (Colo.App. 2015) (citing the quotation above).
8. The issue was addressed as early as 1910 in Holt v United States, 218 U.S. 245 (1910). There the issue was whether there was a Fifth Amendment violation in requiring the defendant to put on a blouse that fitted him before trial and the use of such evidence at trial. The Court held that the Fifth Amendment was limited to the use of “physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material.” Id. at 252-253.
9. Finally, in Richardson v District Court, 632 P.2d 595, 598-599 (Colo. 1981) the Court held that nontestimonial evidence included “handwriting examples.”

For the above reasons, the People’s Motion for Discovery which seeks Request for Non-Testimonial Identification evidence should be granted.

Respectfully submitted,

Beth McCann
DISTRICT ATTORNEY

By:

/s/ Robert Shapiro
Robert S. Shapiro #26869

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of this motion via the ICCES e-filing system on this 2nd day of June 2017 to the four parties (Laurence Goodman, Janis Blease, David Coffelt and Brian Baylog) whose counsel have access to ICCES or to the four Pro Se Defendants who do not have access to ICCES via the Unites States Mail, postage prepaid, and addressed as follows:

Stephen Nalty
Adams County Jail
150 N. 19th Ave.
Brighton, CO 80601

Bruce Doucette
Denver County Detention Center
490 W. Colfax Ave.
Denver, CO 80204

Steven Byfield
Arapahoe County Detention Center
7375 S. Potomac St.
Centennial, CO 80112

Harlan Smith
Best last known address
716 Spruce St.
Boulder, CO 80302

/s/ *paralegal for Robert Shapiro*