

District Court, Larimer County, Colorado Court Address: 201 LaPorte Avenue, Fort Collins, CO	Δ COURT USE ONLY Δ
THE PEOPLE OF THE STATE OF COLORADO Plaintiff v. TIMOTHY MASTERS Defendant	
Coleman, Liu, Lyons, & Collins, L.L.P. Maria Liu #29575 812 8 th Street Greeley, CO 80631 Phone: (970) 336-6499 Fax: (970) 353-0214 David D. Wymore, P.C. David Wymore #7482 3855 N. 26 th Street Boulder, CO 80304 Phone & Fax (303) 447-0340	Case Number: 98CR1149 Division: 4C
MOTION FOR SANCTIONS AND RELIEF FROM PROSECUTORIAL AND JUDICIAL MISCONDUCT (33)	

Tim Masters moves for the court to impose sanctions and to grant him relief from the prosecutorial misconduct surrounding the recent tampering with court exhibits/evidence by the district attorney and its police agents, and as a result of the misconduct of the court's staff, for the following reasons:

1. The facts set forth in Tim Masters' *Motion to Disqualify the District Attorney* and *Motion To Move The Case Files And Record To Another Jurisdiction* are incorporated herein by this reference. Those facts and the record of proceedings in this case are the factual basis for this motion. The State has acted in bad faith, in violation of court orders and the rules of criminal procedure, and in a manner which impugns and casts doubt on the fairness of the criminal justice judicial process. It has attempted, probably successfully, to destroy exculpatory evidence.

2. The State obviously sees no possibility that even the most egregious misconduct will have consequences to the State, and feels that its desire to protect the unjust conviction of Tim Masters can safely be accomplished by any means the State deems necessary. Court orders, fundamental fairness and the Constitutions are irrelevant to the State if they stand in the way of preventing Tim Masters from investigating and presenting the truth.

3. The State's misconduct has predictably caused even more delay in Tim Masters' efforts to obtain postconviction relief. Tim Masters has been trying to obtain the evidence for

forensic examination for many months, and the State has obfuscated and stonewalled that effort, culminating in the most recent outrageous misconduct. Now months of delay will ensue, serving only the State's interest of protecting the conviction regardless of the truth or legal process.

4. The court should sanction the State in order to protect the integrity of the judicial process.

Of more concern is our responsibility to protect the public interest by ensuring continued confidence of the people of this state in the function and role of the office of district attorney and the integrity of the legal profession and the judicial system.

People v. Brown, 726 P.2d 638, 641 (Colo. 1986).

See also, e.g., *Pena v. District Court*, 681 P.2d 953, 956 (Colo. 1984), where the court held that the judiciary's inherent powers included:

all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence, and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the court exists; the court is, therefore it has the powers reasonably required to act as an efficient court.

5. Further, sanctions are needed to deter the State from continuing misconduct. See, e.g., *Aloi v. Union Pac. RR. Corp.*, 129 P.3d 999, 1002 (Colo. 2006) (noting the deterrence function of instruction regarding party's destruction of evidence); *People v. District Court*, 808 P.2d 831 (Colo. 1991) (noting need for punitive sanctions as a deterrent to prosecutorial misconduct). Otherwise Tim Masters has no hope of a fair postconviction proceeding, or even of being able to present his claims in a meaningful manner. This court should take firm action against the State or it will be reasonably be viewed as at least implicitly approving of the State's misconduct. This court cannot expect to render just and informed decisions on Tim Masters' claims when the State has destroyed and manipulated the evidence.

6. Having done what it could to destroy any possibility of exculpatory evidence being discovered on the exhibits which it essentially stole from the court file and then "swabbed," the State has argued and will continue to argue that Tim Masters must first establish that the exculpatory evidence actually existed before obtaining relief. The State will also use any subsequent failure of Tim Masters to present exculpatory DNA evidence at the hearing on his postconviction claims as supposed "evidence" against Tim Masters, arguing that the absence of the DNA of someone other than Tim Masters is evidence that Tim Masters was guilty. The State should not be allowed to take advantage of its own bad faith misconduct in these ways.

7. The court should vacate the conviction and grant Tim Masters a new trial. Considering the seriousness and bad faith of the State's misconduct, which strikes at the heart of the truth-seeking function and integrity of the judicial process, this relief is both necessary in

order to redress the balance between the parties and to deter the State from further misconduct, if that is even possible. Tim Masters' right and ability to assert his right to effective assistance of counsel and to postconviction relief under Crim. P. 35 and C.R.S. § 18-1-410 has been successfully attacked by the State. There is no justification for requiring Tim Masters to prove the precise nature of the destroyed evidence in order to obtain relief.

8. A claim in this postconviction proceeding is that Tim Masters was denied his right to counsel by his trial counsel's failure to conduct an adequate investigation, including a failure to conduct the DNA testing which postconviction counsel have been attempting to accomplish for many months. Had trial defense counsel acted competently and conducted that testing, the State would not have been entitled to know that the testing had occurred unless Tim Masters listed the experts as potential trial witnesses. Crim. P. 16 at the time did permit the court to order discovery to the State of the results of defense testing, so the State would not have been entitled to the results of any testing.

9. Thus, in the context of the ineffective assistance of counsel claim, the State would not be permitted to present evidence of the results of defense DNA testing unless the accused first presented that evidence. The State would not even learn the results of that testing. *See, e.g., Perez v. People*, 745 P.2d 650 (Colo. 1987), where the court held that the State was not allowed to use an expert witness presented by the accused at a hearing on a motion to withdraw a guilty plea, at the subsequent trial. *See also Hutchinson v. People*, 742 P.2d 875, 881 (Colo. 1987).

10. Nevertheless, solely in an effort to expedite the DNA testing, Tim Masters agreed to provide the State with either adequate DNA to conduct its own testing or an opportunity to be present at the defense testing. Tim Masters should not be required to share the evidence or any test results with the State.

11. The court should order that all of the pertinent evidence and all of the "swabs" now held by the State be immediately provided to Tim Masters. The court should order that Tim Masters need not provide the State with any opportunity to be present or any samples of DNA or related material.

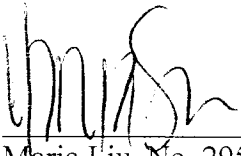
12. As was made clear at the hearing on November 6, 2006, Tim Masters will need all of the available DNA in order to adequately ascertain whether the exculpatory evidence can be located on the exhibits.

13. Tim Masters does not suggest that, aside from a new trial being ordered, there is any adequate remedy for the State's misconduct.

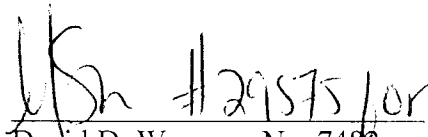
14. The court should grant Tim Masters relief because of the court's essential role in the egregious prosecutorial misconduct. After having given Tim Masters full assurances that what occurred would not occur because the court would require the State to apply to the court as Tim Masters had been required to, the court's staff then delivered up the exhibits upon request of the district attorney, without even requiring a receipt. Tim Masters has not been afforded the fair

and impartial treatment from the judiciary to which he is entitled under the due process clauses. Tim Masters justifiably and reasonably questions whether he can possibly obtain fair treatment from the judicial system. His conviction should be vacated and a new trial ordered.

15. Mr. Masters makes these motions and all motions in this case, whether or not specifically stated at the time, pursuant to the due process, trial by jury, right to counsel, equal protection, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, COLO. CONST. Art. II, §§ 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28, and Crim.P. 16.



Maria Liu, No. 29575

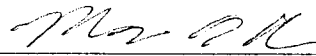


David D. Wymore, No. 7482

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was deposited into the United States mail, with sufficient first class postage prepaid, this 3 day of January, 2007, addressed to:

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Paralegal/Legal Assistant