

# REDACTED

<b>District Court, El Paso County, Colorado</b> Court address: <b>270 South Tejon</b> <b>Colorado Springs, CO 80903</b> Phone Number: <b>(719) 452-5446</b>	DATE FILED: November 21, 2016
People of the State of Colorado, Plaintiff,  v  ROBERT LEWIS DEAR, JR, Defendant.	
Attorney or Party without Attorney (Name and Address): Phone Number:                      Email: FAX Number:                          Atty.Reg#:	Case Number: 15CR5795 Division 10 Courtroom W570
ORDER RE: (D-027) MOTION TO QUASH SUBPONA DUCES TECUM	

THIS MATTER comes before the Court on defendant's motion to quash the subpoena duces tecum served on the Colorado Mental Health Institute at Pueblo on Friday August 12, 2016.

1. Defense Counsel argues that the subpoena duces tecum issued by the prosecution seeking to obtain records is overbroad. Defense counsel objects to the language of the subpoena seeking, "any all records of Robert Lewis, Dear, Jr DOB: 4/16/58 beginning May 20, 2016 to present.

The gist of the defendant's argument is that the prosecution is asking for records that do not specifically pertain to competency. In addition, the defense argues that video and audio materials are not referenced in C.R.S. 16-8.5-104; they should not be produced.

2. The district attorney responds that the entire statute C.R.S. 16 -8.5-104 when read as whole requires the Court to deny the motion to quash.

3. The parties at the Oct. 18, 2016 hearing argued their respective positions and the Court asked both parties to prepare a proposed order "with the understanding that I would – certainly if it's related to competency, if the doctors, psychiatrists, psychologists used an outside report in their report related to competency, if they relied

on the evaluation, they should be released. And any other records that regard physical matters considering Mr. Dear that are not related to competency, then those should not be turned over."

4. On October 24, 2016 the prosecutor submitted a proposed order regarding the subpoena duces tecum. The defense on October 26, 2016 filed a response to the submission of the proposed order.

5. The Court has reviewed the proposed order and response. The Response indicates that the prosecution is not entitled to material such as food logs, medication logs, security reports and grievance forms.

6. The Court finds that the reading of the statute as a whole (C.R.S. 16-8.5-104) allows for and in fact requires the court to release medications logs, food logs, security reports and grievance forms. Said information may be relevant as to the defendant's competency and is referenced in page 3 under the heading "Course of Hospitalization" in the Nov. 2, 2016 report to the Court. The items listed above are items that are part and parcel of the defendant's treatment history; thus they are relevant to competence issues.

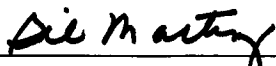
7. The fact that some material may be in a video or an audio format as opposed to a written format is a distinction without a difference. Audio and video recordings are part of the "information and documents" relating to competency. It simply does not make sense to limit the information based upon how the information is documented and/or preserved. Statutes must be read in a consistent and sensible affect.

8. Both parties per their statements at the Oct. 18, 2016 hearing were comfortable with the court having the State Hospital making the determination and remove any records not related to competency.

WHEREFORE, the Court is ORDERING the State Hospital to review the records previously provided to the Court and release all records that relate to competency. The State Hospital may release food logs, medication logs, security reports and grievance forms. Please see attached Order regarding subpoena duces tecum issued to the Colorado Mental Health Institute at Pueblo by the prosecution on August 12, 2016.

DONE this 2/31 day of November, 2016

BY THE COURT:



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District Court Judge