

<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>		
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
<b>ORDER REGARDING CERTAIN VICTIMS REQUEST FOR ACCESS TO          DISCOVERY IN THE CRIMINAL PROCEEDINGS</b>		

### INTRODUCTION

THIS MATTER comes before the Court on the request of some of the victims of the November 27, 2015 shooting who have filed a civil action against the Planned Parenthood Federation of America, Rocky Mountain Planned Parenthood, Inc., a/k/a Planned Parenthood of the Rocky Mountains, Inc. in the District Court, County of Denver, (16CV31798) Judge Elizabeth Starrs presiding. The victims ask the Court for discovery of material which they state would ordinarily be subject to discovery; however, the criminal court Gag Order prevents them from obtaining said discovery. The Plaintiffs in the civil matter urge the Court to modify the Gag Order to allow them and their counsel to obtain discovery. In addition the Plaintiffs argue, inter alia, that a protective order would be sufficient to allow discovery of information from law enforcement agencies while maintaining the confidentiality of such information consistent with the Gag Order.

### Procedural History

This case involves a shooting that occurred on November 27, 2015 at approximately 11:30 a.m. at the Planned Parenthood building located at 3480 Centennial Blvd., Colorado Springs, Colorado. The Court on December 23, 2015 ordered the defendant to the Colorado Mental Health Institute at Pueblo for a

competency evaluation. A competency report was filed with the court on March 11, 2016. Hearings concerning defendant's competency were held on April 28, 2016 and May 10, 2016. Pursuant to said hearings the defendant was found incompetent to proceed and he was remanded to the Colorado Mental Health Institute for treatment. The defendant pursuant to a November 2, 2016 report remains incompetent to proceed. The matter is presently set for an additional review date on February 15, 2017.

Counsel for the Plaintiffs in the civil matter have filed a Gag Order position paper and have argued their position in open court. Defense counsel in the civil case state that the materials can be released for discovery purposes only and the parties would agree not to release the information publicly. In short the civil defendants are asking the Court to parse out the discovery.

Both the district attorney and defense counsel in the criminal matter urge the Court not to release the discovery. The district attorney in oral argument and in their November 15, 2016 reply to third party civil plaintiffs' Gag Order position paper join, at least in part, with defense counsel's reasoning to not release the discovery. The district attorney does not have an objection to release of discovery or material prior to the November 27, 2015 date. Mr. Dear by and through his defense counsel object to the release of any information arguing that if the Court were to release any information the Court could not guarantee their containment in any way and that said release would jeopardize the criminal matter. Defense counsel for Mr. Dear filed a response to the position paper on November 2, 2016.

The Court heard oral argument on November 16, 2016 and took the matter under advisement.

#### Analysis

Plaintiffs' counsel in the civil case ask for the following information: (1) the video surveillance from the day of the shooting at the Colorado Springs Planned Parenthood building; (2) any video or still photos taken during the siege or after by CSPD or any other law enforcement agency; (3) any history that CSPD or other investigating agencies have regarding prior threats against the facility in question, and any history of CSPD responding to the facility due to threats; (4) law enforcement interviews of witnesses and victims of the shooting; (5) any emails or other evidence seized from Planned Parenthood that goes to notice on the part of Planned Parenthood; and (6) the autopsy of Ke' Arre Stewart.

Mr. Dear through counsel argues that the matter is not properly before the court and that the Plaintiffs should not be allowed to intervene in the criminal matter. The Court will allow the Plaintiffs to raise the issue in the criminal context; however, the

Court is denying the Plaintiff's request for the release of discovery while the criminal case is in its present posture.

As the parties are aware the case at bar has been subject to intense public scrutiny and the release of this information at this stage of the proceedings may jeopardize Mr. Dear's right to a fair trial by an impartial jury. The Court finds that the protective order offered by the civil counsel does not provide sufficient protection.

The material requested by Plaintiffs' counsel has not been displayed in prior hearings such as motions hearings or preliminary hearing; thus, any release of said information would interfere with the integrity of this litigation and would interfere with the defendant's right to a fair trial. This Court finds that the People's interest (district attorney) in preserving the integrity of the prosecution of this case and the defendant's constitutional right to a fair trial outweigh the victims' interest in receiving the requested discovery to facilitate their civil lawsuit.

The Court is mindful of the fact that because of the defendant's incompetency status there is no specific date as to when the criminal matter will proceed forward. Thus, the Court is open to revisiting the issue at a later date. However, at this early stage of the proceedings a release of the information is not appropriate.

The Court has serious concerns that granting the Plaintiffs' request with the proposed protective order would not protect the defendant's right to a fair trial. Once the discovery is released this Court cannot guarantee their containment as said discovery may be used to resolve motions in the civil matter and for all intent purposes said motions would be open to the public. Granting access to discovery to nonparties at the present time would unnecessarily risk compromising the integrity of the criminal proceedings and the defendant's right to a fair trial.

The Court has also considered the Plaintiffs' prior restraint argument; however, the Court does not find that the Gag Order is a prior restraint. The Court finds that the Plaintiffs' prior restraint argument is misplaced. The Court is limiting discovery, albeit including statements that have already been made; however, said Gag Order does not fall under the prior restraint doctrine. In the case at bar, assuming for arguments sake that the Court's previous Gag Order is a prior restraint the People's interest in preserving the integrity of the prosecution and the defendant's right to a fair trial is an interest of the "highest order" that would justify a prior restraint.

WHEREFORE, this Court is ORDERING that the Gag Order stay in place with the exception of paragraph (3) any history that CSPD or other investigating agencies have regarding prior threats against the facility in question, and any history of CSPD

responding to the facility due to threats prior to November 27, 2015. The video tape of the events of the day in the possession of Planned Parenthood is subject to the Gag Order and should not be released.

DONE this 13<sup>th</sup> day of November, 2016.

BY THE COURT:

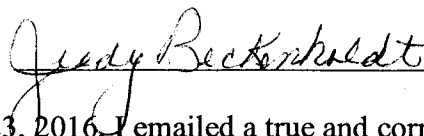
  
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District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2016, I electronically served a true and correct copy of the foregoing document to:

Dan May  
Donna Billek  
Jeff Lindsey  
Doyle Baker  
Office of the District Attorney  
105 E. Vermijo  
Colorado Springs, CO 80903

Daniel King  
Rosalie Roy  
Kristen Nelson  
Office of the State Public Defender  
19 N. Tejon  
Colorado Springs, CO 80903

  
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I hereby certify that on November 23, 2016, I emailed a true and correct copy of the foregoing document to:

Kirk R. McCormick  
McCormick & Murphy, P.C.  
929 West Colorado Avenue  
Colorado Springs, CO 80903  
Email: [kmccormick@mccormickandmurphy.com](mailto:kmccormick@mccormickandmurphy.com)

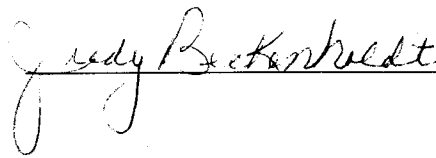
Thomas R. Brennan  
Durney & Brennan, Ltd.  
6900 S. McCarran Blvd., Suite 2060  
Reno, NV 89509  
Email: [trbrennan6192@aol.com](mailto:trbrennan6192@aol.com)

Joseph Archuleta  
Law Offices of Joseph Archuleta & Associates, P.C.  
1724 Odgen St.  
Denver, CO 80281  
Email: [archuletalaw@qwestoffice.net](mailto:archuletalaw@qwestoffice.net)

Stuart Pack  
Lisa Mayers  
Spencer Fane, LLP  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203  
Email: [spack@spencerfane.com](mailto:spack@spencerfane.com); [lmayers@spencerfane.com](mailto:lmayers@spencerfane.com)

Kevin S. Taylor  
Kyle D. Seedorf  
Taylor Anderson, LLP  
1670 Broadway, Suite 900  
Denver, CO 80202  
Email: [ktaylor@talawfirm.com](mailto:ktaylor@talawfirm.com); [kseedorf@talawfirm.com](mailto:kseedorf@talawfirm.com)

Ronald Wilcox  
Wilcox Law Firm, LLC  
383 Corona Street, Suite 401  
Denver, CO 80218  
Email: [ron@wilcox.legal](mailto:ron@wilcox.legal)

  
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