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DISTRICT COURT, EL PASO COUNTY, COLORADO 270 SOUTH TEJON STREET COLORADO SPRINGS, COLORADO 80903	FILED IN THE DISTRICT AND COUNTY COURTS OF EL PASO COUNTY, COLORADO NOV 30 2015 DR. LYNETTE CORNELIUS CLERK OF COURT ♦ COURT USE ONLY ♦
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. ROBERT LEWIS DEAR Defendant	Case No. 15CR5795 Division 10
DOUGLAS K. WILSON, Colorado State Public Defender Rosalie A. Roy (No. 26861) Deputy State Public Defender 19 North Tejon Street Suite 105 Colorado Springs, Colorado 80903 Phone: (719) 475-1235 Fax: (719) 475-1476 Email: cosprings.defenders@state.co.us	Division 10
<p align="center">MOTION FOR ACCESS TO AND PRESERVATION OF THE CRIME SCENE [D-005]</p>	

Pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and article II, sections 16, 18, and 25 of the Colorado Constitution, Robert Dear, through his attorneys, moves for a court order preserving and granting counsel and their agents access to inspect the crime scene at Planned Parenthood, 3480 Centennial Boulevard, Colorado Springs, and the surrounding area. In support of this motion, Mr. Dear states the following:

1. The Office of the State Public Defender has been appointed to represent Mr. Dear.
2. Mr. Dear is alleged to have committed multiple murders at the offices of Planned Parenthood in Colorado Springs on November 28, 2015.
3. The Planned Parenthood office and the surrounding area is the principal crime scene in this case. The scene is currently being processed by law enforcement.
4. The defense requests that this Court issue an order directing the Colorado Springs Police Department and the other law enforcement agencies involved to preserve and refrain from releasing the scene to afford the defense team and defense experts the opportunity to inspect and observe the scene.
5. Inspection of the scene prior to its release is vital to Mr. Dear's defense.
6. The United States and Colorado Constitutions grant criminal defendants the right to investigate, prepare, and present a defense free from unreasonable governmental interference. *See U.S. Const. amends. V, VI, and XIV; Colo. Const., Art. II, §§ 16, 18 and 25.*
7. Moreover, the concept of fundamental fairness embedded in the Due Process Clause entitles a defendant to a general right of access to evidence. *See Ake v. Oklahoma*, 470

U.S. 68, 77 (1985) (“[A] criminal trial is fundamentally unfair if the State proceeds against [a] . . . defendant without making certain that he has access to the raw materials integral to the building of an effective defense.”); *California v. Trombetta*, 467 U.S. 479, 485 (1984) (to safeguard right to present a complete defense embodied in Due Process Clause, “the Court has developed ‘what might loosely be called the area of constitutionally guaranteed access to evidence.’” (citation omitted)); *United States v. McClelland*, 141 F.3d 967, 971 (10th Cir. 1998) (“A defendant’s Fourteenth Amendment due process rights include a general right to access evidence.”).

8. In addition, counsel is obligated under the Sixth Amendment to conduct a thorough and independent pretrial investigation. See *Von Moltke v. Gillies*, 332 U.S. 708, 721 (1948) (“Prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved”); *Powell v. Alabama*, 287 U.S. 45, 57 (1932) (noting that “thorough-going investigation and preparation” by defense counsel is “vitally important”); *People v. Tackett*, 742 P.2d 957, 959 (Colo. App. 1987) (“A defendant is entitled to a pretrial investigation of sufficient thoroughness to develop potential defenses and uncover facts relevant to guilt and punishment.”).

9. Finally, the Colo. R. Crim. P. 16, Pt. 1(a)(1)(IV) requires the prosecution to “make available to the defense . . . [a]ny . . . tangible objects held as evidence in connection with the case.” This obligation extends beyond the prosecuting attorney to “any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his or her office.”

10. Counsel is willing to abide by all reasonable conditions that may be placed on the inspection of the scene for the purposes of preserving the integrity of the physical evidence.

11. On the basis of the foregoing authorities and Mr. Dear’s weighty interest in exploring and gathering relevant and material evidence in his defense, the Court should order that the Colorado Springs Police Department and the other law enforcement agencies involved should preserve and hold the scene to allow counsel an opportunity to access and inspect it, subject to such reasonable limitations and restrictions as the Court may impose.

Mr. Dear files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution.



Rosalie A. Roy (No. 26861)
Deputy State Public Defender
Dated: November 30, 2015

Certificate of Service

I certify that on 11/30/15,
I served the foregoing document by
delivering mailing same to
all opposing counsel 