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FILED IN THE DISTRICT AND
COUNTY COURTS OF
EL PASO COUNTY, COLORADO

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon Street Colorado Springs, Colorado 80903	NOV 30 2015 DR. LYNETTE CORNELIUS CLERK OF COURT ♦ COURT USE ONLY ♦
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. ROBERT LEWIS DEAR, Defendant	
DOUGLAS K. WILSON, Colorado State Public Defender Rosalie A. Roy (No. 26861) Deputy State Public Defender 19 North Tejon, Suite 105 Colorado Springs, Colorado 80903 Phone: (719) 475-1235 Fax: (719) 475-1476 Email: springs.pubdef@coloradodefenders.us	Case No. 15CR5795 Division 10
MOTION FOR PRESERVATION OF PHYSICAL EVIDENCE [D-003]	

Pursuant to Colo. R. Crim. P. 16 and the Due Process Clauses of the United States and Colorado Constitutions, Defendant moves for an order requiring the prosecution to preserve and provide Defendant with access on an ongoing basis to any and all items of evidence, including but not limited to the following items:

- a. All recordings produced or seized in connection with this case;
- b. All police notes. **Defense counsel is aware that it is the practice of law enforcement to destroy their notes. Defense counsel requests an order specifically ordering law enforcement agents to preserve all notes in this case;**
- c. All scientific reports, memoranda or notes produced in connection with the events in this case;
- d. All photographs made or seized in connection with this case;
- e. All biological samples and physical evidence made or seized in connection with this case;
- f. All correspondence, including email and text mail correspondence by or to law enforcement and the prosecution concerning the investigation of this case;

g. All records and logs and receipts pertaining to the storage and movement of physical evidence;

As grounds for this request Defendant states:


1. Defendant will be making independent evaluation of all items which are possible material evidence and potentially exculpatory in this case.

2. Due process and Defendant's Sixth Amendment right to confront his accuser require that he be allowed to obtain such evidence. *People v. Harmes*, 560 P.2d 470 (1976), *People v. Norwood*, 547 P.2d 273 (1973); *People v. Sheppard*, 701 P.2d 49 (Colo. 1985).

3. The evidence seized includes items that are material and potentially exculpatory, *Brady v. Maryland*, 373 U.S. 83 (1963), and are necessary to the effective defense of this case. *Garcia v. District Court*, 589 P.2d 924 (1979).

4. This discovery is authorized by the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, Article II, Section 16 and 25 of the Constitution of the State of Colorado, and Crim. P. 16, Part I(c) and (d), and *People v. Garcia*, 627 P.2d 255 (Colo. 1980); *People v. Garries*, 645 P.2d 1306 (Colo. 1982); *People v. Thatcher*, 638 P.2d 760 (Colo. 1981); *People v. Gomez*, 596 P.2d 1192 (Colo. 1979).

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. 