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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
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. ROBERT LEWIS DEAR Defendant	DR. LYNETTE CORNELIUS CLERK OF COURT ♦ COURT USE ONLY ♦
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	Case No. 15CR5795 Division 10
OBJECTION TO EXPANDED MEDIA COVERAGE AND REQUEST FOR HEARING [D-007]	

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Robert Dear, by and through counsel, respectfully objects to the requests by any media outlet and/or their agents for expanded media coverage for the November 30, 2015 advisement hearing in this matter and further objects to expanded media coverage at all future proceedings in this case.

1. Multiple media outlets have asked this Court to authorize audio, visual, and still photography expanded media coverage of the November 30, 2015 advisement hearing for Mr. Dear.

2. Mr. Dear objects to the requests made by these media outlets.

3. Denial of the media's requests is necessary to protect Mr. Dear's rights under the United States Constitution and Colorado Constitution to a fair trial by an impartial jury, to effective assistance of counsel, to be presumed innocent, and to due process of law, among other fundamental rights. Those rights support both a presumption against expanded media coverage and placing the burden of proving the appropriateness of expanded media coverage on those who seek it. Further, the Colorado Supreme Court Rules, Chapter 38, Rule 2, "Media Coverage of Court Proceedings" sets out factors that a Court should consider *before* permitting expanded media coverage thereby indicating a presumption against expanded media coverage, and that the burden of proof lies with the media to prove that its activities will not interfere with the court proceedings or defendant's rights.

4. Colorado Supreme Court Rules, Chapter 38, Rule 2, "Media Coverage of Court Proceedings" outlines the factors this Court must consider in determining whether to authorize expanded media coverage in court proceedings. Said factors are:

(I) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;

(II) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from solemnity, decorum and dignity of the court; and

(III) Whether expanded media coverage would create adverse effects that would be greater than those caused by traditional media coverage.

5. Applying these factors, it is clear that this Court should not authorize expanded media coverage for the November 30, 2015 advisement, nor any other proceeding, in this case. Expanding media coverage heightens the risk of prejudicing Mr. Dear's constitutional right to a fair trial. See Audrey Winograde, *Cameras in the Courtroom: Whose Right Is It Anyway?* 4 Sw. J.L.&Trade Am. 23 (1997) at 29 ("There is little dispute that from the moment a trial judge announces that a case will be televised, the case becomes a 'cause celebre.' The morbid details become interesting to the whole community, including prospective jurors."). Expanded television coverage, due to the nature of medium, will only increase the chance of tainting prospective jurors. Cf. Christo Lassiter, *The Appearance of Justice: TV or Not TV-That is the Question*, 86 J. Crim. L. & Criminology 928, 930:

But in the vast majority of cases courts adjudicate highly personal lives of people and compromise nothing of interest to the general public beyond that of prurient voyeurism. The trial process represents the best possible human effort to do justice in an imperfect world. In-court camera coverage...can be prejudicial to the very process it seeks to showcase by infecting it with political bias of all kinds, petty, personal and demographic...

There are three prejudicial effects of cameras in the courtroom, First, the trial, in reality, operates on a larger theme than the matter under charge; the judicial process is corrupted by a substitution of the solemn, calm, deliberate judgment of the finder of fact for the outrage of an inflamed public. Second, the adversarial system, designed for neutral and dispassionate judicial prosecution, transforms into an instrument of a politically motivated prosecution. Third, the public outcry leads to political vice of judicial disposition against a disfavored minority.

Id. at 934-35.

7. Local and national media outlets are extensively covering this case. Hence, the probability of tainting potential jurors is already of great concern and this Court should take every opportunity it has to control the media's impact on this case and protect the rights of Mr. Dear by denying any request for expanded media coverage in this case. See Robert Hardaway & Douglas R. Tumminello, *Pretrial Publicity in Criminal Cases of National Notoriety: Constructing a Remedy for the Remediless Wrong*, 46 Am. U.L. Rev. 39, 44 (1996):

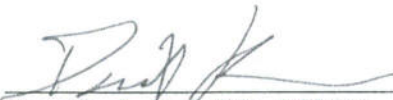
[P]retrial publicity becomes a more difficult issue for the trial court judge to resolve when the media and the nation are watching. Otherwise ordinary crimes that would receive nominal local treatment become subjects of national engrossment when they involve 'murder and mystery, society, sex, and suspense. Accordingly, media treatment of the crime is more widespread, and resultant publicity about the crime reaches a larger population of potential jurors than in less notorious cases. In addition, potential jurors are more likely to have been exposed to more in-depth, all-encompassing publicity about the crime, the defendant, or the victim.

Id. at 44.

8. Denying requests for expanded media in this case will not prejudice the media's ability to cover this case. Most likely, the media will present in force within and without the courthouse on November 30, 2015, as evidenced by the media's coverage and speculation regarding this case so far. There has been no shortage of images of Mr. Dear in the press during the past several days. Moreover, Mr. Dear is only scheduled to appear in court by video this afternoon. Thus, traditional coverage, without the distractions of cameras and lights in the courtroom will serve the media's purpose without jeopardizing Mr. Dear's constitutional rights to due process, a fair trial, and a fair and impartial jury. U.S. Const. amends. V, VI, VIII, XIV; Colo. Const. art. II, secs. 16, 18, 20, 23, 25; *see also People v. Botham*, 629 P.2d 589 (Colo. 1981); *Sheppard v. Maxwell*, 384 U.S. 333 (1966).

9. Mr. Dear therefore respectfully objects to any request by any media outlet and/or their agents for expanded media coverage for the November 30, 2015 advisement in this matter and further objects to expanded media coverage at all future proceedings in this case. Mr. Dear further requests a hearing before any such request is granted. Mr. Dear further requests a court order requiring thirty days' notice in advance of any hearing for which such future requests are made.

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. 