

DISTRICT COURT, EL PASO COUNTY, COLORADO 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903	DATE FILED February 12, 2023 February 26, 2023
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. ANDERSON ALDRICH, Defendant	σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender Joseph Archambault #41216 Chief Trial Deputy Michael Bowman #48652 Deputy State Public Defender 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903 Phone: (719) 475-1235 Fax: (719) 475-1476 Email: springs.pubdef@coloradodefenders.us	Case No. 22CR6008 Division 21
<p style="text-align: center;">MOTION TO COMPEL IMMEDIATE DISCLOSURE OF ALL CLUB Q SURVEILLANCE IN LAW ENFORCEMENT POSSESSION AND IMPOSE SANCTIONS FOR VIOLATION OF THE PROSECUTION'S DISCOVERY OBLIGATIONS</p> <p style="text-align: center;">[D-21]</p>	

Mx. Anderson Aldrich¹, by and through counsel moves the Court to ORDER that the District Attorneys' Office produce to Mx. Aldrich all of the Club Q surveillance in law enforcement possession and sanction the District Attorney for their non-compliance with their discovery obligations. Mx. Aldrich states the following in support:

Factual Background:

1. The allegations in this case stem from a shooting which occurred inside Club Q on November 19, 2022. Inside that club, there was video surveillance which recorded video and audio. This surveillance system has at least 25 different camera (channels) angles.

¹ Anderson Aldrich is non-binary. They use they/them pronouns, and for the purposes of all formal filings, will be addressed as Mx. Aldrich.



Image of Surveillance taken by CSPD Detective.

2. As the parties are well aware, Mx. Aldrich frequented Club Q many times over the past year. While there, Mx. Aldrich would talk to and interact with other individuals. There are receipts for Mx. Aldrich purchasing drinks and food on multiple occasions and ID scans. Mx. Aldrich was at Club Q on at least the following dates:
 - a. 2/19/21;
 - b. 8/31/21- purchased two karaoke entries, two double Jack Daniels, fries, Sierra mist, double Absolut twice, double Grey Goose, and a double captain Morgan;
 - c. 11/5/21- paid entertainment fee, double Jack Daniels, Sierra Mist, double Grey Goose, single Grey Goose, a single Fireball, and Fries;
 - d. 2/5/22- charge for Saturday drag Show, and three Smirnoff single drinks;
 - e. 2/6/22- charge for Jack Daniels and a red bull;
 - f. 2/19/22- charge for double Smirnoff, and a single Smirnoff;
 - g. 10/1/22- charge for double well vodka, a COS Apple Single, and fireball shot;
 - h. 10/29/22- charge for double well vodka, single absolute, and fries;

- i. 11/19/22- charge at approximately 10:15 for DJ after 930.

See also Exhibit A. disco pp 405-407, FBI report

3. At a hearing on January 13, the prosecution claimed that the voluminous discovery they gave to the defense the week of January 9, contained the Club Q surveillance, this was factually inaccurate. *See* Exhibit B, Letter from defense to prosecution, 1/18/23. The defense had not received any Club Q surveillance on January 13, 2023, and did not start receiving any parts of Club Q Surveillance until January 24, 2023. This was eleven days after the District Attorney's Office misrepresented to the Court that the defense already had all of this surveillance footage. To date, the District Attorney has never corrected this misrepresentation with the Court. Even though part of the District Attorney's argument against the defense's motion to continue was this misrepresentation that the defense already had all of the Club Q surveillance footage.
4. The surveillance footage provided appears in the following format: folders are labelled by date, within each folder or "day" video files appear as segments. The clips vary in length from roughly one-second, to several minutes. Some files or dates have hundreds of segments, some files contain only a handful. While the video provided is identified by date, the disclosure does not cover every date within the date range provided.
5. Defense's cursory review of the piecemeal disclosure has nevertheless identified lack of surveillance provided from relevant time periods. Specifically:
 - a. Counsel still does not even have ALL of the angles from the day of November 19, 2022. Counsel has only received some angles and some of the times of those angles. Still some of the angles that the defense has received is video ONLY with no audio.
 - b. For the days that the parties know Mx. Aldrich was at Club Q on the following dates there has been no surveillance discovered²:
 - i. February 19, 2021;
 - ii. August 21, 2021;
 - iii. November 5th, 2022;
 - iv. February 5th, 2022;
 - v. February 6th, 2022;

² The defense has been discovered surveillance footage for two days in June 2021, three dates in July 2021, October 29-31, 2021, and every day from November 1 through November 21, 2022 however November 2022, the defense has only a few videos that have any audio and does not have audio for many of the relevant times.

vi. February 19th, 2022;

vii. October 1st, 2022;

6. Equally troubling is the fact that Mx. Aldrich still received partial discovery and not all of the surveillance in what has been discovered. The defense was told by the District Attorneys Office that they had made all of the video files were converted from a DVR type device into files that have video and audio. It appears, however, that of the 220,000 video files, 26 of those files have audio. In addition, some days have full days with over 700 videos from that date while other days have only a few hours of video. For example, October 29, 2022, when the parties know that Mx. Aldrich was at Club Q, for certain camera angles (or channels) show there are only three videos, however, on October 31, 2022, when there is no evidence Mx. Aldrich was spending time at Club Q, those same angles have over 600 videos. *See Exhibit C* (file all exhibits suppressed.) The defense has the photograph of the system that CSPD took, but has not been given every angle or channel, information about which angles/channels did not record, and which agent of law enforcement made decisions to not turn over certain footage, or not convert video to audio.

Legal Argument:

7. The prosecution continues to ignore their obligations under Crim. P. 16, *Brady v. Maryland*, 373 U.S. 83 (1963) and *Kyles v. Whitley*, 514 U.S. 419 (1995). *See Motion to Compel Immediate Disclosure of Jail Surveillance that contains Attorney-Client Privilege Material and Impose Sanctions for Violation of the Prosecution's Discovery Obligations [D-20]*.
8. In *Brady*, the United States Supreme Court held that the government's failure to disclose evidence favorable to the accused upon request violates due process "where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, at 87. A few years later, the Court held that the government has a duty to volunteer this evidence even in the absence of a specific request. *United States v. Agurs*, 427 U.S. 97, 101-08 (1976).
9. Crim. P. 16 expressly imposes a continuing duty to disclose, and it is broader and more expansive than *Brady* because it requires the government to release any material or information that "tends to" negate guilt or mitigate punishment. *See Crim. P. 16(I)(a)(2)*. Significantly, there is no materiality requirement in Crim. P. 16(I)(a)(2).
10. Crim. P. 16(I)(a)(1), (III) requires the prosecution to disclose to the defense all "any books, papers, documents, photographs or tangible objects held in connection with the case." These disclosures must be made "as soon as practicable but not later than 21 days after the defendant's first appearance at the time of or following the filing of charges

” Crim. P. 16(I)(b)(1). It cannot be argued the recording of attorney-privileged meeting of Mx. Aldrich and counsel is not “tangible evidence” held in connection with the case.

11. Crim. P. 16(I)(a)(1), (III) requires the prosecution to disclose to the defense “all tapes and transcripts of any electronic surveillance (including wiretape) of conversations involving the accused...” These disclosures must be made as soon as practicable. *See* Crim. P. 16(I)(b)(3). The District Attorney has not provided a working copy of this to Mx. Aldrich as soon as practical. It is clear they have the 220,000 files of this surveillance but have only given a small portion of the audio capable files to the defense. It also clear that a vast amount of video footage for relevant days has not been provided to the defense. Not providing ALL of the video and audio to the defense when it is the prosecution’s possession is not as soon as practicable under Crim. P. 16.
12. At a preliminary hearing, the prosecution bears the burden of proving probable cause and the defendant has the right to cross-examine witness called and to introduce evidence, if the prosecution fails to meet its burden the judge must discharge the defendant and dismiss the charging document. *See* Crim. P. 5(a)(4)(II); Crim. P. 7 (h)(4); *Harris v. District Court of City and County of Denver*, 843 P.2d 1316 (Colo. 1993). The prosecution must present evidence sufficient to induce a person of ordinary prudence and caution to form a reasonable belief that the defendant committed the crime charged. *See People v. Walker*, 975 P.2d 304 (Colo. 1984).
13. The preliminary hearing gives a defendant an opportunity at an early stage in the criminal proceedings to challenge the sufficiency of the prosecution’s evidence before a impartial judge. *People ex. rel. Farina v. District Court*, 522 P.2d 589 (Colo. 1974) (*citing to People v. Quinn*, 516 P.2d 420 (Colo. 1973)). “In this way, a preliminary hearing serves to ‘prevent hasty, malicious, improvident, and oppressive prosecution, to protect the person charged from open and public accusations of crime, to avoid both for the defendant and the public the expense of a public trial, to save the defendant from the humiliation and anxiety involved in public prosecution, and to ...[ensure that] there are substantial grounds upon which a prosecution may be based’.” *In re People v. Subjack*, -- P.3d --- 2021 CO 10, (Colo. 2021) (*citing to* Wayne R. LaFave, 4 Crim. Proc. § 14.1(a) (4th. Ed. 2020)).
14. Although all persons shall be bail-able for any offenses bond can be denied for capital offenses when proof is evident or presumption is great. Colo. Const. Art. II. Sec 19. (1)(a). If bail is to be denied the prosecution must come forward and present evidence that proof is evident or the presumption great that the crime charged occurred. *See People ex rel Dunbar v. District Court*, 500 P.2d 358 (Colo. 1972).
15. The burden is on the prosecution to show the constitutional exception of proof evident or presumption great on a capital offense, for the bail to be properly denied. *Gladney v. District Court*, 535 P.2d 190 (Colo. 1975). “By definition, the standard which the constitution requires before bail may be denied is greater than probable cause though less

than that required for a conviction. *Orona v. District Court*, 518 P.2d 839, at 840 (Colo. 1974) (citing to *In Re Losasso*, 24 P. 1080 (Colo. 1890)).

16. Since 1988, after Rule 16 was changed, the non-discretionary disclosures from Crim. P. (I)(a)(1) whether or not relevant to the preliminary hearing are to be disclosed to the defense, in advance of the preliminary hearing. See *People v. Adams Cty. Ct.*, 767 P.2d 802, 803-804 (Colo. App. 1988).
17. In this case, the material that has not be disclosed is both relevant and necessary for the defense to have prior to the preliminary hearing. There are multiple counts charged of intent/deliberation. The defense has not be discovered the surveillance footage the shows or displays the sound of Mx. Aldrich's interaction(s) with individual(s) at approximately 10 p.m. on November 19, 2022. What occurred there is relevant to whether or not there are facts and evidence which support charges of intent/deliberation. What a person's statements and actions were in the hours prior to an alleged crime are directly relevant to if the prosecution can prove the person acted with intent and deliberation. C.R.S. § 18-3-101(3); *People v. Sneed*, 514 P.2d 776, 778 (Colo. 1973); *People v. Valenzuela*, 825 P.2d 1015 (Colo. 1991) (citing to *People v. Madson*, 638 P.2d 19 (Colo. 1981)).
18. Intent and deliberation are elements the prosecution meet their burden of proof at the preliminary hearing on the five first-degree murder intent/deliberation counts. There are also over 40 separate counts of attempted murder intent/deliberation counts, which require prove of intent and deliberation at the preliminary hearing. Mx. Aldrich's counsel must have this surveillance footage to investigate and determine if there was intent and deliberation present in regard to those counts, and also to be able to respond and rebut such a claim if the evidence does not support it at the preliminary hearing. The prejudice from the prosecution's non-disclosure is clear.
19. The defense does not have the surveillance audio of the actions of Mx. Aldrich inside the club about an hour and a half prior to the allegations in this case, and also does not have audio and video surveillance for the many days prior to November 19, 2022, when Mx. Aldrich was at Club Q which show the actions, statements, and interactions they had. Both categories of evidence directly relate to whether or not the prosecution can meet their burden at the proof evident hearing. Without such evidence counsel is unable to investigate, decide which witnesses to call, which witnesses the prosecution might call, or how to cross-examine prosecutions witnesses on this issue at the preliminary hearing, as it relates to the intent/deliberation counts. This also prejudices Mx. Aldrich by making it more difficult for their attorneys to be able to try to convince this Court that Mx. Aldrich still deserves their constitutional right to bond.
20. What occurred around 10 p.m. on November 19, 2022, and the other occasions Mx. Aldrich spent time at Club Q, is also relevant as it relates to the bias/motivated crime counts. Mx. Aldrich is charged with over fifty different bias/motivated crimes. These counts require that the prosecution prove at the preliminary hearing that the defendant had the intent to intimidate or harass because of the victims' race, color, religion,

ancestry, national origin, physical or mental disability, or sexual orientation; and either caused bodily injury or placed an alleged victim in fear of imminent lawless action, depending the charge. C.R.S. § 18-9-121(2)(a) or (2)(b).

21. The prejudice from the non-disclosure as it relates to those counts is great. Without being able to see how Mx. Aldrich interacted with individuals at 10 p.m. on November 19, 2022, and without the audio and video showing how Mx. Aldrich interacted, spoke to, and acted towards individuals at Club Q on the prior occasions, counsel is denied the ability to contest that Mx. Aldrich acted with ill-will, hatred, or dislike of any person in Club Q or the LGBTQ+ community via demonstrative video evidence. This evidence is directly relevant to whether the prosecution can prove any of the bias/motivated crime counts. Without such evidence counsel is unable to investigate, decide which witnesses to call, which witnesses the prosecution might call, or how to cross-examine prosecutions witnesses on this issue at the preliminary hearing, as it relates to the over fifty bias motivated counts.
22. This Court has broad discretion in fashioning appropriate sanctions against the prosecution. *See, e.g., People v. District Court*, 808 P.2d 831, 836 (Colo. 1991) (sanctions imposed due to discovery violations); *People v. Lee*, 18 P.3d 192, 196 (Colo. 2001) (“Because of the multiplicity of considerations involved and the uniqueness of each case, great deference is owed to trial courts in this regard, and therefore an order imposing a discovery sanction will not be disturbed on appeal unless it is manifestly arbitrary, unreasonable or unfair.”); *People v. Castro*, 854 P.2d 1262, 1265 (Colo. 1993). Additionally, this Court has the power to issue orders to ensure compliance and to impose sanctions for non-compliance pursuant to Crim. P. 16(III)(g).
23. The sanctions or remedies available to this Court may include, but are not limited to, the following: the exclusion of certain prosecution evidence, the reduction or dismissal of certain charges, giving of an instruction to the jury concerning the prosecution violation of the order, charging any further continuances to the prosecution, and complete dismissal of the case. *See People v. District Court*, 664 P.2d 247 (Colo. 1983) (exclusion of fingerprint evidence appropriate where State’s failure to obtain defendant’s prints and endorse the correct witness prior to trial forced a mistrial, which prejudiced defendant by forcing him to go to trial at a later date with a different jury); *People v. Pagan*, 165 P.3d 724, 726 (Colo. App. 2006) (recognizing that under certain circumstances, exclusion of evidence is a proper remedy); *Lee, supra* at 197 (same); *People v. Thurman*, 787 P.2d 646, 655 (Colo. 1990) (court’s complete dismissal of the case not inappropriate in some cases).
24. Mx. Aldrich objects to the prosecution hiding discoverable information which directly relates to elements of the charges prior to the preliminary. *See* U.S. Const. amends. V, VIII, XIV; Colo. Const. art. II, §§ 20, 25; Crim. P. 16; *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

25. Mx. Aldrich also objects to this non-disclosure making it more difficult for them to prove to the Court that their constitutional right to bond should not be denied. U.S. Amends, VIII, XIV; Colo. Const. Art. II. Sec 19. (1)(a).
26. Mx. Aldrich requests that this Court sanction the prosecution by (1) striking LWOP as a potential penalty in this case; (2) prohibiting the prosecution from showing any evidence of surveillance footage from Club Q during the Proof Evident/Presumption Great/Preliminary hearing; and (3) instructing the jury about the prosecution's noncompliance with their discovery obligations.
27. Mx. Aldrich requests a hearing on this matter.

For the above mentioned reasons Mx. Aldrich, moves the Court to ORDER that the District Attorneys' Office produce to Mx. Aldrich all of the Club Q surveillance in law enforcement possession and sanction the District Attorney for their non-compliance with their discovery obligations.

MEGAN A. RING
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Certificate of Service

I certify that on February 3, 2023, I served the foregoing document electronically through Colorado Courts E-Filing to all opposing counsel of record.
s/skoslosky

Dated: February 2, 2023