

Redacted

DISTRICT COURT, EL PASO COUNTY, COLORADO 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903	DATE FILED DATE FILED 26, January 24, 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 JAIL SURVEILLANCE THAT CONTAINS ATTORNEY-CLIENT PRIVILEGE MATERIAL AND IMPOSE SANCTIONS FOR VIOLATION OF THE PROSECUTION'S DISCOVERY OBLIGATIONS</p> <p style="text-align: center;">[D-20]</p>	

Mx. Anderson Aldrich¹, by and through counsel, moves the Court to ORDER that the District Attorneys' Office produce to Mx. Aldrich the "jail surveillance between November 22, 2022 and December 5, 2022," and sanction the District Attorney for their non-compliance with their discovery obligations. Mx. Aldrich states the following in support:

Factual Background:

1. On Friday, January 20, 2023, at 12:26pm, the state filed a notice of deposit with the court and tendered to the court, material that: (a) has not been provided to defense counsel; and (b) is protected by attorney-client privilege and confidentiality.
2. Despite repeated attempts to obtain a WORKING copy of the media that contains the violation of Mx. Aldrich's attorney-client privilege and confidentiality, Mx. Aldrich still

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.

has not been given a copy of the material. *See* Attached Exhibit A 1/20/23 Letter from Defense to Prosecution. The prosecution, for some reason, has shared this material that contains violations of Mx. Aldrich's attorney-client privilege with the United States Attorney's Office. *See* Attached Exhibit B, DA investigator report. The prosecution has now also given this material to the Court.

3. Defense counsel has no knowledge of what material the prosecution, the U.S. Attorney's Office, and the Court is in possession of, except that it contains a recorded meeting between defense counsel and Mx. Aldrich. Defense counsel and its investigators have made repeated efforts to secure this privileged material from the district attorney's office. The district attorneys have failed to turn over the requested materials, and *actively deleted* the materials from a hard drive that was set to be returned to defense counsel with the material.
4. As of the date of this motion, Mx. Aldrich has still not received this material.

Legal Argument:

5. 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).
6. In *Brady*, the United States Supreme Court held that the government's failure to disclose evidence favorable to the accused to the defense 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).
7. 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).
8. 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.
9. Crim. P. 16(I)(a)(1), (III) requires the prosecution to disclose to the defense "all tapes and transcripts of any electronic surveillance (including wiretap) of conversations involving the accused..." These disclosures must be made as soon as practicable. *See* Crim. P. 16(I)(b)(3). Had the material been delivered to the defense the same day it was discussed

with the U.S. Attorney's office, copied, and delivered to the court, it could be argued it was disclosed, "as soon as practicable." Given that the DA possessed these materials, took steps to conceal it, filed it with the court and then failed to respond to defense's request, "as soon as practicable," cannot possibly describe the DAs handling or disclosure of this discovery.

10. 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 and 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).
11. 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).
12. Mx. Aldrich is aware of no legal authority, and the Prosecution did not cite to any in [P-03], which allows the prosecution to violate Mx. Aldrich's constitutional rights to due process by hiding discoverable material in the Court's chambers and with the U.S. Attorney's Office, instead of disclosing it to the defense. *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).
13. This is not the first time the prosecution has acted inappropriately regarding their non-compliance with discovery. At a hearing on January 13, the prosecution claimed that in the voluminous discovery they gave to the defense the week of January 9, contained the Club Q surveillance, this was factually inaccurate. *See* Exhibit C, Letter from defense to prosecution, 1/18/23.
14. Mx. Aldrich requests that this Court sanction the prosecution for its pattern and practice of discovery violations by (1) striking life without parole as a potential penalty in this case; (2) striking Detective Joines as a potential witness during the Proof

Evident/Presumption Great / Preliminary hearing; and (3) instructing the jury about the prosecution's noncompliance with their discovery obligations.

15. Mx. Aldrich requests a hearing on this matter.

WHEREFORE Mx. Aldrich, through counsel moves the Court to ORDER that the District Attorneys' Office produce to Mx. Aldrich the "jail surveillance between November 22, 2022 and December 5, 2022," and sanction the District Attorney for their non-compliance with their discovery obligations.

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER



Joseph Archambault #41216
Chief Trial Deputy



Michael Bowman #48652
Deputy State Public Defender

Dated: January 26, 2023

Certificate of Service

I certify that on January 26, 2023, I served the foregoing document electronically through Colorado Courts E-Filing to all opposing counsel of record.
s/skoslosky