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DISTRICT COURT, EL PASO COUNTY, COLORADO 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903	DATE FILED: November 28, 2022 8:45 AM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. ANDERSON ALDRICH, Defendant	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
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 align="center"> MOTION TO PROHIBIT THE PROSECUTION AND ITS AGENTS FROM OBTAINING ANY RECORDS FROM THE EL PASO COUNTY SHERIFF OR JAIL ABOUT MEDICAL OR PROFESSIONAL VISITS WITH MX ALDRICH </p> <p align="center"> [D-11] </p>	

Mx. Anderson Aldrich¹, by and through counsel moves this Court to enter an order prohibiting the prosecution and its agents from obtaining any records relating to Mx. Anderson's professional visits and medical records, including but not limited to visitor logs and records of professional visits and any medical or nursing records on the following grounds:

1. Mx. Anderson is currently housed at the El Paso County Jail.
2. It is the practice of the jail to keep visitor logs and jail incident reports. These logs usually include information regarding the individuals who have visited an inmate, when they visited an inmate and how long they stayed. This log includes information about visits with attorneys, investigators, and confidential experts.
3. The jail also utilizes staff and outside agencies to provide medical and psychological treatment. The jail and these professionals generate reports that often contain privilege medical and psychological information.
4. Mx. Anderson's communications and records relating to such communications with his attorneys and the attorney's investigators and legal assistants are confidential and protected. *See* C.R.S. § 13-90-107(1)(b); §16-3-402, *et seq.*

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.

5. Mx. Anderson has a right to communicate with not only counsel, but also defense experts without intrusion by the prosecution:

[T]he defense expert's relationship with the defendant and counsel has been protected from intrusions by the state. The law has recognized several doctrines that afford a degree of confidentiality to the expert-defense relationship. Thus, statements made to the expert by the defendant and counsel may be protected by the attorney-client privilege. *Miller v. District Court*, 737 P.2d at 838. Similarly, Crim. P. 16(II)(b), as we have construed it, does not authorize prosecution discovery of an expert's reports or statements if that information will not be used at trial. *People v. District Court*, 187 Colo. 333, 341, 531 P.2d 626, 630 (1975). Additionally, although the scope of the doctrine is not clear in these circumstances, the work-product rule may also shield from disclosure materials produced by an expert. *People v. District Court*, 187 Colo. at 342-43, 531 P.2d at 631. In some circumstances, related privileges may apply to particular types of experts. *E.g.*, § 13-90-107(1)(d), (f), (g), 6 C.R.S. (1973 & 1986 Supp.) (privileges for physicians, surgeons, registered professional nurses, certified public accountants, licensed psychologists). And sometimes, a defendant's privilege against self-incrimination may prohibit prosecution use of statements of an expert where the expert is repeating, as a "conduit," statements made by the defendant. *People v. Roark*, 643 P.2d 756 (Colo.1982); *People v. Rosenthal*, 617 P.2d 551 (Colo.1980).

As a practical matter, too, an expert hired by defense counsel is likely to feel a degree of loyalty to the defendant's cause. We need not ascribe this fact to base motives on the part of the experts; indeed, the nature of the adversary process, the confidentiality surrounding legal representation and professional norms and ethics of particular experts all may foster this attitude of loyalty to the defendant.

We believe the confidentiality and loyalty of expert consultants traditionally enjoyed by defendants and defense counsel is a crucial element in the effective legal representation of the defendant. A relationship of trust permits the defendant, counsel and the expert to engage in a full and frank interchange, affording counsel an accurate and honest assessment of the defendant's case. Without such a relationship, the assistance of the expert, and thus defense counsel, is likely to be ineffective.

Consequently, the prosecution should not be permitted to intrude upon this relationship as a matter of course and convert a defense expert into a potential witness-in-chief against the defendant. We can imagine few intrusions more disruptive to the efforts of defense counsel.

Hutchinson v. People, 742 P.2d 875, at 881-82 (Colo. 1987).

6. The prosecution is not allowed access to any information about which doctors, psychologists, psychiatrists, attorneys, and defense experts that Mx. Anderson has met, or when or how long such meetings lasted, or what occurred in those meeting.
7. Disclosure of any information about these topics (even in the form of logs about which professional visits occurred, who was there, or how long the meetings lasted)

violates Mx. Anderson's rights to effective assistance of counsel, including with it the right to meet with his attorneys and establish a confidential relationship with them, and the right to properly investigate and prepare all possible defenses. U.S. Amends V., VI, XIV, Colo. Const. Art. II, § 3, 16, 23, and 25.

8. Mx. Anderson expressly maintains all privileges and in no way waives those privileges.
9. Mx. Anderson request this Court enter an order prohibiting the prosecution from seeking any such records, any medical or professional visits, and prohibiting the El Paso Sheriff from releasing any such records absent further order of the Court.
10. Mx. Anderson moves for a hearing on this matter.

WHEREFORE, it is respectfully requested that this Court enter an order prohibiting the prosecution and its agents from obtaining any records relating to Mx. Anderson's professional visits and medical records, including but not limited to visitor logs and records of professional visits and any medical or nursing records.

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER



Joseph Archambault #41216
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Dated: November 28, 2022

Certificate of Service

I certify that on November 28, 2022, I served the foregoing document electronically through Colorado Courts E-Filing to all opposing counsel of record.
s/skoslosky