

REDACTED

District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903	FILED IN THE DISTRICT AND COUNTY COURTS OF EL PASO COUNTY, COLORADO
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. ROBERT LEWIS DEAR, Defendant	DEC 08 2015 DR. LYNETTE CORNELIUS CLERK OF COURT σ COURT USE ONLY σ
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Chief Trial Deputy State Public Defender 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: state.pubdef@coloradodefenders.us	Case No. 15CR5795 Division 10
<p style="text-align: center;">D-012</p> <p style="text-align: center;">MOTION FOR COURT ORDER DIRECTING EL PASO SHERIFF'S OFFICE TO PRESERVE AND PRODUCE ALL VIDEOTAPED FOOTAGE OF MR. DEAR</p>	

Pursuant to his state and federal constitutional rights to access to evidence, due process, a fair trial, confrontation, and to present a defense under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and article II, sections 16, 20, 23 and 25 of the Colorado Constitution, Robert Dear, through counsel, respectfully moves this Court to issue an order directing the El Paso County Sheriff's Office to preserve all video footage taken of Mr. Dear while he is in custody at the jail. In support of this motion, he states the following:

1. Counsel for Mr. Dear is aware that the El Paso County Sheriff's Office is videotaping Mr. Dear during his stay at the El Paso County Detention Facility.

2. Mr. Dear's mental health will clearly be an issue in this case. As such, any and all videotaped footage created by the jail is likely to be highly material to the preparation of Mr. Dear's defense.

3. Defense counsel sent a letter to El Paso County Sheriff Bill Elder last week requesting that the sheriff's office preserve any and all footage of Mr. Dear to ensure that none of it is erased or taped over. In that letter, counsel further requested that the sheriff's office produce such footage to the defense or provide the defense with an opportunity to view it and obtain a copy of it. See Exhibit A, attached. To date, counsel have not received any response from the sheriff's office concerning this letter.

4. Given the importance of this videotaped evidence to the defense and out of an abundance of caution, the defense requests that the Court issue the attached proposed order specifically directing the El Paso County Sheriff's Office to preserve any and all videotaped footage of Mr. Dear while he is held at the jail, and to produce this footage to defense counsel

either directly or through the discovery process.

5. The El Paso County Sheriff's Office's duty and obligation to preserve the videotaped footage described above arises out of Mr. Dear's state and federal constitutional rights to access to evidence, due process, a fair trial, confrontation, and to present a defense under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and article II, sections 16, 20, 23 and 25 of the Colorado Constitution. *See, e.g., California v. Trombetta*, 467 U.S. 479, 485 (1984); *Brady v. Maryland*, 373 U.S. 83 (1963); *People v. Sheppard*, 701 P.2d 49 (Colo. 1985); *People v. Gomez*, 596 P.2d 1192 (Colo. 1979).

6. This videotaped footage is also discoverable under Rule 16. Crim. P. 16(I)(a)(1)(IV) requires the prosecuting attorney to "make available to the defense" any "books, papers, documents, photographs or tangible objects held as evidence in connection with the case" that are within the prosecution's "possession or control." Crim. P. 16(I)(a)(3) makes clear that "[t]he prosecuting attorney's obligations under this section (a) extend to material and information in the possession or control of members of his or her staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his or her office."

7. As a law enforcement agency that is in frequent communication with the district attorney's office, knowledge in the possession of the El Paso County Sheriff's Office is imputed to the district attorney's office. *See, e.g., People v. District Court*, 664 P.2d 247, 252-53 (Colo. 1983) (knowledge of existence of fingerprint card in possession of Denver Police Department "is imputed to the district attorney by the terms of the discovery order itself and as a matter of law"); *People v. Banuelos*, 674 P.2d 964, 966 (Colo. App. 1983) ("Material in police possession is constructively in the possession of the prosecution for the purposes of discovery.").

8. For the foregoing reasons, Mr. Dear respectfully requests that the Court issue the attached proposed order directing the El Paso County Sheriff's Office to preserve this important evidence.

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.



Daniel King (No. 26129)
Chief Trial Deputy State Public Defender



Rosalie Roy (No. 26861)
Deputy State Public Defender



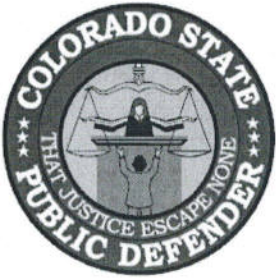
Kristen M. Nelson (No. 44247)
Deputy State Public Defender

Dated: December 8, 2015

People v. Dear, 25CR5795

Motion D-012

Exhibit A



OFFICE OF THE STATE PUBLIC DEFENDER

DOUGLAS K. WILSON
STATE PUBLIC DEFENDER

December 3, 2015

Sheriff Bill Elder
El Paso County Sheriff
27 East Vermijo Avenue
Colorado Springs, CO 80903

RE: Robert Lewis Dear

Dear Sheriff Elder,

It is our understanding that the staff of the El Paso County Detention Facility is obtaining videotaped footage of our client, Mr. Robert Lewis Dear, while he is being held in your facility.

Because this footage is likely to be material to the preparation of our defense, we are formally requesting that you preserve any and all footage of Mr. Dear to ensure that none of it is erased or taped over. We further request that you produce such footage to us or provide us an opportunity to view it and obtain a copy of it.

Your duty and obligation to preserve the videotaped footage described above arises out of Mr. Dear's rights to due process, confrontation, and access to evidence, as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article II, sections 16 and 25 of the Colorado Constitution, as well as Rule 16 of the Colorado Rules of Criminal Procedure. See, e.g., *California v. Trombetta*, 467 U.S. 479, 485 (1984); *Brady v. Maryland*, 373 U.S. 83 (1963); *People v. Sheppard*, 701 P.2d 49 (Colo. 1985); *People v. Gomez*, 596 P.2d 1192 (Colo. 1979).

Please contact us if you have any questions concerning this important matter.

Sincerely,

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Cc: Dan May, District Attorney, 4th Judicial District
Lisa Kirkman

I hereby certify that on December 8, 2015, I

 mailed, via the United States Mail,

 faxed, or

X hand-delivered

a true and correct copy of the above and foregoing document to:

Dan May
Donna Billek
Jeff Lindsey
Office of the District Attorney
105 East Vermijo Avenue
Colorado Springs, Colorado 80903
Fax: 719-520-6185

Rebecca Davis