

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.  <b>ROBERT LEWIS DEAR,</b> Defendant	JAN 11 2016  DR. LYNETTE D. CORNELIUS CLERK OF COURT  ♦ COURT USE ONLY ♦
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: <a href="mailto:state.pubdef@coloradodefenders.us">state.pubdef@coloradodefenders.us</a>	Case No. <b>15CR5795</b>   Division 10
<p style="text-align: center;"><b>D-015</b></p> <p style="text-align: center;"><b>MOTION TO LIMIT SCOPE OF COMPETENCY EVALUATION</b></p>	

Pursuant to his state and federal constitutional rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments and article II, sections 16, 18, 20, 23 and 25 of the Colorado Constitution, Robert Dear, by and through counsel, respectfully moves this Court to issue the attached order limiting the scope of the competency examination that was ordered by this Court on December 23, 2015. In support of this motion, he states the following:

1. Colorado law makes clear that the purpose of a competency evaluation and hearing is not to evaluate the defendant's mental state at the time of the charged offense, but rather, "to ascertain whether he has sufficient mental capacity to know the nature of the charge and to cooperate with his counsel in his defense." *Parks v. District Court*, 180 Colo. 202, 210, 503 P.2d 1029, 1033 (1972). Whereas insanity at the time of the alleged offense "is a complete defense to the criminal charge" which renders a defendant not guilty, incompetency "merely abates the action and is procedural in effect[.]" *People v. Gillings*, 39 Colo. App. 387, 393, 568 P.2d 92, 97 (1977).

2. The Court raised the issue of Mr. Dear's competency on its own motion on December 23, 2015. The sole issue before the competency evaluator and the Court at this time is whether Mr. Dear has "a mental disability or developmental disability that prevents the defendant from having sufficient *present* ability to consult with the defendant's lawyer with a reasonable degree of rational understanding in order to assist in the defense or prevents the defendant from having a rational and factual understanding of the criminal proceedings." C.R.S. §16-8.5-101(4) (emphasis added).

3. Therefore, the scope of any competency evaluation must not include any inquiry by the evaluator regarding the facts surrounding the charged offenses in this case, or Mr. Dear's mental state at the time of the alleged offenses. Such topics are irrelevant to the issue of his

present competency. Rather, the scope of the competency evaluation must be limited to an inquiry into Mr. Dear's present ability to understand the proceedings against him and to cooperate with counsel in a complex case involving multiple class one felonies in which the death penalty is a potential punishment.

4. Notably, Mr. Dear did not raise competency on his own or through defense counsel. He has been ordered to participate in this competency examination by the Court. Moreover, a psychiatric evaluation to determine competence to stand trial has a "neutral" purpose." *People in Interest of A.D.G.*, 895 P.2d 1067, 1072 (Colo. App. 1994). Thus, any inquiry by the competency examiner into the facts of the alleged offense or Mr. Dear's mental state at the time of the alleged offenses during this "neutral" examination and subsequent use by the prosecution of any statements made on these topics in a manner that is adverse to Mr. Dear at trial or sentencing would violate Mr. Dear's constitutional privilege against self-incrimination and a fair and reliable sentencing proceeding in violation of the Fifth and Eighth Amendments and article II, sections 18 and 20 of the Colorado Constitution. *See, e.g., Estelle v. Smith*, 451 U.S. 454, 465 (1981) (finding Fifth and Sixth Amendment violation where the state trial judge, *sua sponte*, "ordered a psychiatric evaluation of respondent for the limited, neutral purpose of determining his competency to stand trial, but the results of that inquiry were used by the State for a much broader objective that was plainly adverse to respondent."); *People ex. rel. C.Y.*, 275 P.3d 762, 769 (Colo. App. 2012) (citing *A.D.G.*, 895 P.2d at 1072 and acknowledging that ordering a juvenile, over his objection, to submit to a psychological examination for the purpose of determining whether his case should be transferred to adult court would violate the juvenile's Fifth Amendment right to be free from compelled self-incrimination because such statements could be used in a manner "plainly adverse" to juvenile).

5. The use of any such statements would further implicate Mr. Dear's state and federal constitutional rights to counsel, due process and a fair trial by an impartial jury. *See, e.g., Estelle*, 451 U.S. at 471; *Rochin v. California*, 342 U.S. 165 (1952) (Under the Due Process Clause of the Fourteenth Amendment, a state's convictions cannot be brought about by methods that offend a sense of justice); *People v. Garlotte*, 958 P.2d 469 (Colo. App. 1997).

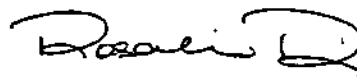
6. For these reasons, the defense respectfully requests the Court to issue the attached proposed order limiting the scope of the competency examination.

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.



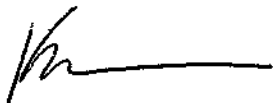
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Deputy State Public Defender



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

Dated: January 11, 2016

I hereby certify that on 1-11, 2016, I

mailed, via the United States Mail,  
 faxed, or  
 hand-delivered

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

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