

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	FEB 03 2016
v.	DR. LYNETTE D. CORNELIUS CLERK OF COURT
ROBERT LEWIS DEAR, Defendant	◊ 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: state.pubdef@coloradodefenders.us	Case No. 15CR5795 Division 10
D-019 MOTION TO REMOVE UNREDACTED VERSION OF MOTION D-017 FROM CASES OF INTEREST SECTION OF COURT'S WEBSITE, AND TO RECONSIDER RULING ON MOTION D-011	

Pursuant to his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments and Colorado Constitution article II, sections 16, 18, 20, 23, and 25, Mr. Dear, through counsel, respectfully moves the Court to order the Colorado Judicial Branch to remove the unredacted version of Motion D-017 from its website and to reconsider its ruling on Motion D-011. In support of this motion, the defense states the following:

1. On January 20, 2016, defense counsel filed a Motion to Stay Competency Examination Until Motions D-15 and D-16 Are Resolved [D-017].

2. Consistent with the Court's oral policy requiring counsel to provide both an unredacted and redacted version of pleadings filed, defense counsel filed a redacted version of the pleading with the clerk's office redacting paragraph 3, in which defense counsel stated that they had received information that Mr. Dear had been transported to Pueblo.¹ See Exhibit A, attached.

3. The defense redacted this information because it felt compelled to share this information with the Court to underscore the urgency of resolving the motion, but did not believe that it was appropriate to reveal the fact of Mr. Dear's transfer to the public. Defense counsel's reasoning was that this information was likely to generate additional pre-trial publicity about the case and place Mr. Dear's state and federal constitutional rights to a fair trial by an impartial jury in jeopardy. See, e.g., *Sheppard v. Maxwell*, 384 U.S. 333, 350-51 (1966); U.S. Const. amends V, VI, XIV; Colo. Const. art. II, secs. 16, 23, 25. Defense counsel also redacted this information

¹ The defense has not redacted the same information from this pleading because it has already been disseminated to the public and the bell cannot now be unrung.

because it surmised that the El Paso County Jail and CMHIP would not want this information to be revealed to the public due to safety and security concerns.

4. Despite the fact that the defense specifically redacted this information in the “redacted” copy of the pleading it filed with the Court, several days later, the Colorado Judicial Branch posted the *unredacted* version of Motion D-017 on the Cases of Interest section of its website. Although the pleading contains the Court’s version of its own “redacted” stamp, there are no redactions in this version of the document. See Exhibit B, attached (obtained from: [https://www.courts.state.co.us/userfiles/file/Court_Probation/04th_Judicial_District/El_Paso/Robert%20Dear/D-017_%20Mtn%20Stay%20Comp%20Eval%20until%20Mtn%20D15%20%26%20D16%20Resolved%20\(D-017\).pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/04th_Judicial_District/El_Paso/Robert%20Dear/D-017_%20Mtn%20Stay%20Comp%20Eval%20until%20Mtn%20D15%20%26%20D16%20Resolved%20(D-017).pdf)).

5. Not surprisingly, the media seized upon this information and began reporting that Mr. Dear had been transferred to Pueblo. See, e.g., Exhibit C. The articles specifically cite the defense’s pleading as the source of this information.

6. As a result of the Colorado Judicial Branch posting the unredacted version of this pleading on its website, defense counsel have now been put in the untenable position of unwittingly *generating* more pre-trial publicity about their client’s case and jeopardizing Mr. Dear’s constitutional rights to a fair trial by an impartial jury, see U.S. Const. amends VI, XIV, Colo. Const. art. II, secs. 16, 25, in direct conflict with their obligation to protect these rights and to provide Mr. Dear with effective assistance of counsel under the Sixth and Fourteenth Amendments and article II, section 16 of the Colorado Constitution.

7. It is unclear whether the posting of this unredacted version of this pleading was intentional or whether it was the result of some sort of clerical error. Either way, this is precisely the type of situation that defense counsel forecast in paragraph 7 of Motion D-011,² which requested a court order directing the Colorado Judicial Branch to remove pleadings in this case from the “Cases of Interest” section of its website. The Court orally denied Motion D-011 on December 9, 2015.

8. The continued practice of posting these pleadings on the “Cases of Interest” section of the website significantly increases the risk that negative publicity about this case will be generated and will impact Mr. Dear’s constitutional rights to a fair trial by an impartial jury. Allowing the Colorado Judicial Branch to continue to post the pleadings and orders in this case on its website will also have a chilling effect on the ability of the defense to make candid arguments about significant legal issues in the case going forward, especially because the defense is now concerned that the Colorado Judicial Branch will refuse to honor its proposed redactions in the future. See *United States v. McVeigh*, 119 F.3d 806, 815 (10th Cir. 1997) (quoting *Matter of New York Times Co.*, 828 F.2d 110, 114 (2d Cir.1987) (“The court, in applying the balancing test mandated by the First Amendment, should give added weight to fair trial and privacy interests where requiring disclosure will have a potential chilling effect on

² In paragraph 7, the defense wrote: “In defense counsel’s experience, attempts to redact sensitive information from pleadings and orders are not sufficient to protect such information about the case from being disseminated to the public. Mistakes can and do occur.”

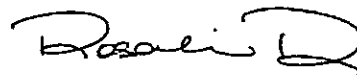
future movants.”).

9. For these reasons, the defense hereby moves the Court to remove the unredacted version of Motion D-017 from its website, and to reconsider its ruling on Motion D-011. In addition to the arguments and authorities cited above, the defense incorporates by reference all arguments made and authorities cited in Motion D-011.

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: February 3, 2016

I hereby certify that on 2/3, 2016, I

mailed, via the United States Mail,
 faxed, or
 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

Michael

People v. Dear, 15CR5795

Motion D-019

Exhibit A

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	JAN 20 2016 DR. LYNETTE 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: state.pubdef@coloradodefenders.us	Case No. 15CR5795 Division 10
D-017 MOTION TO STAY COMPETENCY EVALUATION UNTIL MOTIONS D-15 AND D-16 ARE RESOLVED	

Robert Dear, through counsel, respectfully moves this Court to stay the competency evaluation it ordered on December 23, 2015, until the Court resolves the outstanding issues raised in Motions D-15 and D-16. In support of this motion, he states the following:

1. On January 11, 2016, defense counsel filed Motions D-15 and D-16. Motion D-15 is a request to limit the scope of the competency evaluation to an inquiry into Mr. Dear's present competency, and to preclude the examiner from inquiring about or discussing with Mr. Dear the facts surrounding the charged offenses in this case, or Mr. Dear's mental state at the time of the alleged offenses. Motion D-16 requests a protective order prohibiting the Colorado Mental Health Institute at Pueblo from disclosing the evaluation and materials relied upon by the examiner at this time.

2. The Court has not yet ruled on these motions.

3. Undersigned counsel has now received information that Mr. Dear has been transported to Pueblo.

4. Motions D-15 and D-16 raise issues that must be resolved prior to the competency evaluation of Mr. Dear taking place.

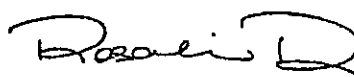
5. Therefore, the defense respectfully requests that the Court issue the attached order forthwith to ensure that these important legal issues are resolved and Mr. Dear's rights to due process, the effective assistance of counsel, and a fair trial are protected. *See People v. McGlotten*, 134 P.487, 490 (Colo. App. 2005) ("Courts have inherent authority to issue orders that are necessary for the performance of judicial functions This inherent authority extends

beyond the power to control litigants, lawyers, and court personnel.”); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”); U.S. Const. amends V, VI, XIV; Colo. Const. art. II, secs. 16, 18, 23, 25.

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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Dated: January 20, 2016

I hereby certify that on 1-20, 2016, I

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 X faxed, or
 hand-delivered

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

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

Michael NCB

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ORDER RE: D-017 MOTION TO STAY COMPETENCY EVALUATION UNTIL MOTIONS D-15 AND D-16 ARE RESOLVED	

Defendant's motion is hereby GRANTED. The Colorado Mental Health Institute at Pueblo is hereby ordered to refrain from conducting a competency assessment on the defendant in the above-captioned case until further order of the Court.

BY THE COURT:

_____ Dated

JUDGE

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
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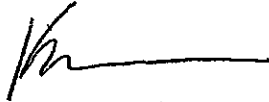
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Nick n cm

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JUDGE
Dated

People v. Dear, 15CR5795

Motion D-019

Exhibit B

REDACTED

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v.	DR. LYNETTE CORNELIUS CLERK OF COURT ♦ COURT USE ONLY ♦
ROBERT LEWIS DEAR, Defendant	Case No. 15CR5795
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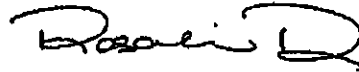
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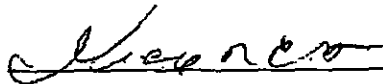
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People v. Dear, 15CR5795

Motion D-019

Exhibit C

Planned Parenthood shooter moved to Pueblo for mental evaluation

THE ASSOCIATED PRESS

Published: January 27, 2016; Last modified: January 27, 2016 11:21PM

COLORADO SPRINGS — A man who acknowledged killing three people at a Planned Parenthood clinic in Colorado Springs has been transferred to the Colorado Mental Health Institute at Pueblo for a mental competency exam, according to Denver media reports.

Court records show 57-year-old Robert Lewis Dear is awaiting the exam after a judge refused to delay it at defense attorneys' request. The judge ordered the exam in December after Dear said he wanted to fire his public defenders and represent himself.

The exam will show whether he's mentally capable of making that decision.

Dear is charged with 179 counts, including murder, attempted murder and assault, in the Nov. 27 attack that also left nine injured. During courtroom outbursts, he declared himself a "warrior for the babies" and said he was guilty.

Prosecutors say he's competent because his outbursts show an understanding of the charges.

LOCAL NEWS

Planned Parenthood shooting suspect transferred to state hospital

Judge blocks efforts by defense attorneys to prohibit evaluators from asking Robert Dear about the shooting

By Jordan Steffen
The Denver Post
The Denver Post

Posted: Wed Jan 27 18:14:18 MST 2016

The man accused of killing three people at a Planned Parenthood clinic has been transferred to the state hospital in Pueblo for a mental health evaluation.

And a judge on Tuesday rejected a defense effort to block evaluators from asking Robert Lewis Dear Jr. about facts in the case or his mental state at the time.

In a **motion filed** Jan. 20, defense attorneys for Dear revealed they "received information" that the 57-year-old had been transferred to the Colorado Mental Health Institute at Pueblo.

Dear faces 179 counts — including eight charges of first-degree murder — for the Nov. 27 attack at the Colorado Springs clinic. The 57-year-old was arrested after **a standoff with police** that lasted more than five hours.

University of Colorado at Colorado Springs Police Officer **Garrett Swasey** was killed after he responded to a call for help from the clinic. Ke'Arre Stewart, 29, and Jennifer Markovsky, 35, **also were killed**.

During a hearing Dec. 23, Dear told Chief District Judge Gilbert Martinez that he **wants to fire his public defenders** and represent himself. Dear has repeatedly declared his guilt during hearings, claiming at one point that he was **"a warrior for the babies."**

Throughout the hearing, Dear interrupted the judge and attorneys, maintaining he was competent and accusing his attorneys of trying to drug him and turn him into "a zombie."

Public defender Daniel King has used the outbursts to demonstrate his concerns about Dear's mental health.

Martinez ordered Dear to undergo a **competency evaluation** after holding a closed

hearing with Dear and his attorneys.

Dear vowed he would not cooperate during the evaluation.

Court-appointed evaluators will try to determine if Dear is mentally competent to understand the proceedings and charges against him. Proceedings will remain at a standstill until the evaluation is complete.

This month, Dear's attorneys asked the judge to prohibit evaluators at the hospital from asking Dear questions about "the facts surrounding the charged offenses in this case or Mr. Dear's mental state at the time of the alleged offenses." They argued that those issues were irrelevant in determining whether Dear is competent.

Defense attorneys also sought to block the state hospital from disclosing any information about Dear's evaluation to prosecutors. In their motion, Dear's attorneys argued that prosecutors could use the information against him "at trial or at any potential capital sentencing proceeding."

Prosecutors — who say it is still too early to comment on whether they will seek the death penalty — objected to both motions.

The judge denied both requests from defense attorneys.

A review hearing in the case has been scheduled for Feb. 24.

Jordan Steffen: 303-954-1794, jsteffen@denverpost.com or @jsteffendp

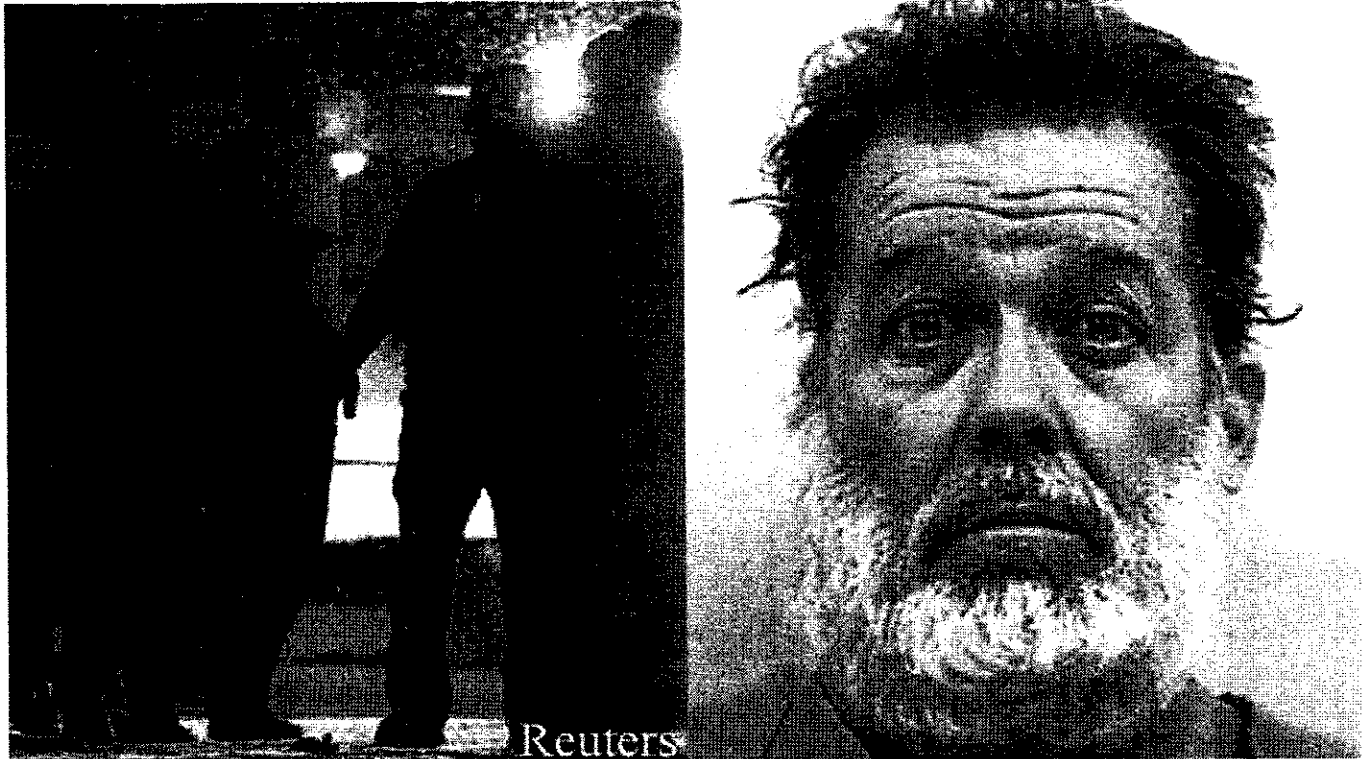
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KRDO.com

Planned Parenthood shooting suspect transferred to Pueblo

POSTED: 08:44 PM MST Jan 27, 2016



PUEBLO, Colo. -

The suspect in the deadly Planned Parenthood shooting in Colorado Springs is now at the Colorado Mental Health Institute in Pueblo.

Court documents from January 20 showed Robert Dear's attorneys had information that Dear was transferred to Pueblo.

A judge blocked a motion by the defense to stop doctors at the state hospital from asking Dear questions about the shooting.

Dear is accused of killing three people in the Black Friday shooting, UCCS Police officer Garrett Swasey, Ke'Arre Stewart, and Jennifer Markovsky.

A review hearing on Dear's case is scheduled for February 24.

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