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FILED WITH DISTRICT AND COUNTY COURTS OF EL PASO COUNTY, COLORADO

DISTRICT District Court, El Paso County, Colorado Court Address: 270 S. Tejon St. Colorado Springs, Colorado 80903	APR 19 2016 DR. LYNETTE CORNELIUS CLERK OF COURT ▲ COURT USE ONLY ▲
People of the State of Colorado vs. Defendant: Robert Dear, Jr.	Case #: 15CR5795 Division #: 10
District Attorneys: Daniel H. May, #11379, Jeffrey Lindsay, #24664, and Donna Billek, #30721 105 E. Vermijo Colorado Springs, CO. 80903 Phone Number: 719-520-6000 District Attorney: Daniel H. May, #11379	
D-022 PEOPLE’S RESPONSE TO DEFENDANT’S MOTION FOR IN CAMERA REVIEW OF EXPERT MATERIALS TO DETERMINE WHETHER DISCLOSURE IS NECESSARY PURSUANT TO ORDER RE: P-011	

COMES NOW, DANIEL H. MAY, by and through his duly appointed deputy and hereby submits the following People’s Response to Defendant’s Motion for In Camera Review of Expert Materials to Determine Whether Disclosure is Necessary Pursuant to Order Re: P-011. The People state their position as follows:

1. The People are at a distinct disadvantage regarding the nature of the materials submitted to the Court. No privilege log or summary of the materials submitted to the Court has been provided to the Court and/or the prosecution. The only information provided by the defense is that it is a “summary” of a meeting that a mental health professional had with the Defendant on March 24, 2016.
2. In P-011 the People requested the production of evaluations, medical records, and other information on the Defendant to be able to conduct a meaningful hearing on April 28, 2016 in which it is the Defendant’s burden to show that the Defendant is incompetent. The Court granted the release of some of the information requested in P-011. The deadline by which the Defendant was to exchange information was April 11, 2016.
3. In P-011 the People requested any information of any mental health professionals who have visited the Defendant in the jail and/or had been present in the courtroom during court hearings.

[REDACTED]

4. In the April 11, 2016 disclosure by the defense the People were provided a limited amount of information in the form of a summary and notes involving [REDACTED]. The defense disclosed that they did not believe that there was any additional information they would have to provide from any other mental health professional.
5. According to the defense attorneys, they did not receive information from [REDACTED]. Based on the motion filed by the Defendant it is unclear if the Court has received all of the documentation generated by [REDACTED].

[REDACTED]

[REDACTED] Without knowing the nature of the materials submitted to the Court under seal, [REDACTED] [REDACTED] which would include a review of records, observations of the Defendant, and meetings with the Defendant. However, one of the first steps of a mental health provider assisting is such a capacity would necessarily involve a determination of competency before further information gathering from the Defendant could occur. [REDACTED]
7. C.R.S. §16-8.5-104(1) provides for the production of documents relating to the issue of competency to be provided to the court and to the prosecution through a statutory waiver of any privilege. Further, the statute requires that once a request for the information has been made “the evaluator or treatment provider shall provide the information for use in preparing for a hearing on competency or restoration and for use during such a hearing.” Further, C.R.S. §16-8.5-104(2).C.R.S. 16-8.5-104(4) provides that “the court shall order both the prosecutor and the defendant or defendant’s counsel exchange the names, address, reports, and statements of each physician or psychologist who has examined or treated the defendant for competency.”
8. As previously argued to the Court, the definition of incompetence in C.R.S. §16-8.5-101(11) requires, in part, that a defendant have a mental disability or developmental disability. Further, a “mental disability” is defined in C.R.S. §16-8.5-101(12) as a “substantial disorder of thought, mood, perception, or cognitive ability that results in marked functional disability, significantly interfering with adaptive behavior.” This definition, by its nature, includes other medical and/or mental health records that are not necessarily labeled “competency” but contain relevant information or observations that would be relevant to the determination of competency by the Court and necessary to be heard at a hearing on such matters. One is not “treated” for competency as competency is a legal determination but rather is treated for an underlying issue that may or may not affect a defendant’s competency.
9. The statute does not limit the exchange of information only to those witnesses who will be called at a competency or restoration to competency hearing. Additionally, the statute also does not limit discoverable information to that of materials who are expressly hired for the purpose of assessing the Defendant’s competency. If a mental health professional addresses competency before being able to move to further testing of the defendant, then it makes sense that the

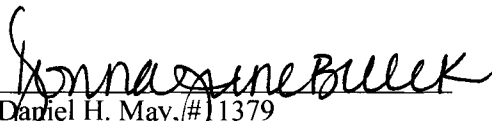
evaluator has examined the defendant for the issue of competency although not expressly hired to evaluate for competency to stand trial. The limits the Defendant asks the Court to impose is not supported by case law or by the statute. If anything, the statute encourages full disclosure of information by the parties.

10. The People believe that any information acquired by any mental health professional in the course of their work on the Defendant's case that touch on the issue of competency be released to the prosecution regardless of whether the express purpose of the work was to evaluate competency to stand trial. The statute makes no such distinction but rather requires that information relating to competency be exchanged by the parties. Allowing for such a distinction would allow defense attorneys to end run the exchange of information requirement provided for by the legislature.
11. If the Court believes that an in camera review of the materials is appropriate, the People suggest that an alternate method of handling this discovery issue be conducted by another judicial officer. It would only require the Court to cede this narrow issue to another judicial officer. Unlike other times where information is submitted to the Court for review to determine if the information should be released to discovery, this Court will be the finder of fact with regard to the issue of the Defendant's competency. Competency is presumably the nature of the materials provided to the Court. If the Court reviews the materials and orders that the materials not be released to the prosecution, the Court may unknowingly or subconsciously be tainted by the information in the material either to the benefit or detriment of either party. The People believe that this alternative will provide for a better and cleaner record of this particular discovery issue.

WHEREFORE, the People ask this Court to release all documentation generated by [REDACTED] to the prosecution in advance of the April 28, 2016 hearing. Further, the People request that if this Court believes that an in camera review is necessary that this Court cede the review of the documentation for an in camera review to another judicial officer.

Respectfully submitted this 19th day of April, 2016.

DANIEL H. MAY, #11379
DISTRICT ATTORNEY

By: 
Daniel H. May, #11379
Jeffrey Lindsay, #24664
Donna Billek, #30721

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PEOPLE'S RESPONSE TO DEFENDANT'S MOTION FOR IN CAMERA REVIEW OF EXPERT MATERIALS TO DETERMINE WHETHER DISCLOSURE IS NECESSARY PURSUANT TO ORDER RE: P-011 (D-22)** has been forwarded to the Public Defender's Office by placing it into the Public Defender's box for pickup:

419-16

Alena Jacques