


District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903	FILED-DISTRICT & COUNTY COURTS-EL PASO CO., CO  APR 15 2016 DR. LYNETTE CORNELIUS CLERK OF COURT ♦ COURT USE ONLY ♦
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. ROBERT LEWIS DEAR, Defendant	
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-024 MOTION TO SUPPLEMENT THE RECORD WITH EMAIL CORRESPONDENCE EXCHANGED BETWEEN COUNSEL FOR CMHIP, THE PARTIES, AND THE COURT	

Mr. Dear, through counsel, respectfully requests that the email correspondence attached as Exhibit A be made a part of the official record in this case. As grounds, counsel state as follows:

1. On Friday, April 8, 2016, [REDACTED] Colorado Mental Health Institute at Pueblo, emailed the Court and the parties requesting an extension of the April 11th return date on the SDT served [REDACTED] and requesting clarification of the transmission of raw data.

2. On Monday, April 8, 2016, the parties exchanged emails with [REDACTED] the Court's judicial assistant, and all agreed that April 15, 2016 was acceptable for the new SDT return date.

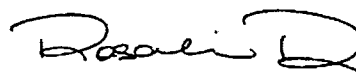
3. The Court ultimately issued a minute order reflecting the fact that there had been email correspondence between [REDACTED] the Court and the parties, and granting the extension request. However, the email communications themselves were not specifically made a part of the record.

4. The defense is concerned with ensuring that a full and complete record exists in the case in the event of an appeal. Mr. Dear has fundamental rights under the United States and Colorado Constitutions and Colorado Statutes to a complete and accurate record of all proceedings in his case. *See, e.g., Jones v. District Court*, 780 P.2d 526 (Colo. 1989); *Griffin v. Illinois*, 351 U.S. 12 (1956); *Roberts v. LaVallee*, 389 U.S. 40 (1967). Therefore, he requests that the email correspondence attached as Exhibit A be designated a part of the record.

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: April 15, 2016

I hereby certify that on 4/15, 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

 _____

Motion D-024

Exhibit A

[REDACTED]

From: [REDACTED]
Sent: Friday, April 08, 2016 2:05 PM
To: [REDACTED]
Cc: 'donna.billek [REDACTED] jeffrey.lindsey [REDACTED] King, Daniel; Nelson, Kristen; Roy, Rosalie
Subject: SDT to the Colorado Mental Health Institute at Pueblo - 15CR5795
Importance: High

Good afternoon [REDACTED] -

[REDACTED] the Colorado Mental Health Institute at Pueblo (CMHIP), is in receipt of the People's Subpoena for Production of Tangible Evidence in case number 15CR5795. They alerted me to the SDT yesterday, and are working diligently to compile everything in their possession that is response to the request.

I am also working with CMHIP to ensure that anything produced is done so in compliance with the Court's April 1st "Order re: P-011." For instance, CMHIP is reviewing the records compiled thus far to ensure that there is no medical information unrelated to the competency evaluation included. Similarly, CMHIP's practice is to request that any raw data be transferred directly from clinician-to-clinician to avoid compromising the validity of the Hospital's psychological testing. I understand that the court has already ruled that this information must be disclosed, however, it unclear whether the option of clinician-to-clinician transfer (or alternatively, entry of a protective order), has been addressed. Thus, CMHIP would like an opportunity for this to be clarified to ensure compliance with the Order.

Several of the clinicians identified who do, or may, have responsive information are away from the Hospital and have not been reachable. Additionally, I have not had sufficient opportunity to ensure what has been compiled thus far is responsive, complete, accurate, and compliant with the Court's Order.

I spoke with DDA Donna Billek and she was amenable to a brief extension of the April 11th return date, to allow CMHIP sufficient time to ensure its production is complete and accurate. However, I understand that the return date was specified by Judge Martinez.

To that end, I'm contacting you regarding whether the Court would allow a brief (3-4 day) extension of the return date. CMHIP is mindful of the April 28th competency hearing, and does not want to infringe on that date. CMHIP does not anticipate a voluminous production, and thus is confident that a brief extension will not delay the hearing, but will ensure a complete and appropriate disclosure.

Thank you for sharing this information with Judge Martinez; I'm available by email or phone (I'm happy to provide my cell number in case I'm away from my desk) if he has any questions or needs more information.

Best regards,

[REDACTED]



Please note that my email address has changed to [REDACTED] Please update your records accordingly. Thank you.

CONFIDENTIALITY NOTICE:

This message may contain confidential and/or legally privileged information and is intended only for the individual(s) named. Any name or signature block is not a legally binding electronic signature. If you are not an intended recipient you are not authorized to disseminate, distribute, or copy this e-mail. Please notify the sender immediately if you have received this e-mail by mistake and delete this e-mail from your system.

[REDACTED]

From: [REDACTED]
Sent: Monday, April 11, 2016 10:23 AM
To: Donna Billek
Cc: districtattorney; Jeffrey Lindsey; Doyle Baker; King, Daniel; Roy, Rosalie; Nelson, Kristen; Crandall, Rhonda; Koslosky, Sherilyn; [REDACTED] martinez, gilbert
Subject: RE: Dear 15DR5795

No need to appear today. I just need to know if the 15th works for everyone.

Thank you

-----Original Message-----

From: Donna Billek [mailto:DonnaBillek@REDACTED]
Sent: Monday, April 11, 2016 10:18 AM
To: [REDACTED]
Cc: districtattorney; Jeffrey Lindsey; Doyle Baker; King, Daniel; Roy, Rosalie; Nelson, Kristen; Crandall, Rhonda; Sherilyn.Koslosky@REDACTED martinez, gilbert
Subject: Re: Dear 15DR5795

[REDACTED]

We have no objection. Does the court want us to appear this afternoon at 4 pm?

Thank you.

Donna

Sent from my iPhone

On Apr 11, 2016, at 9:13 AM, [REDACTED] wrote:

Judge Martinez got an e mail from the state hospital requesting more time to compile their records for the SDT return date.

Would Friday April 15, 2016 at 9am work for everybody?

[REDACTED]

[REDACTED]

From: Nelson, Kristen
Sent: Monday, April 11, 2016 10:25 AM
To: [REDACTED] districtattorney; Donna Billek; Jeffrey Lindsey; Doyle Baker; King, Daniel; Roy, Rosalie
Cc: Crandall, Rhonda; Koslosky, Sherilyn; [REDACTED] martinez, gilbert
Subject: RE: Dear 15DR5795

[REDACTED]

A return date of April 15, 2016 is fine with the defense. Our only request is that CMHIP file a written motion, and the court can then issue an order granting the extension of time. Alternatively, we ask that the court issue an order attaching this email correspondence and incorporating it into the record. We are just concerned about these arrangements taking place off the record in emails.

Thanks,

Kristen

Kristen Nelson
Deputy State Public Defender
Office of the State Public Defender
1300 Broadway, Suite 400
Denver, CO 80203
(303) 764-1400 x6480
kristen.nelson@coloradodefenders.us

From: [REDACTED]
Sent: Monday, April 11, 2016 9:13 AM
To: districtattorney; Donna Billek; Jeffrey Lindsey; Doyle Baker; King, Daniel; Roy, Rosalie
Cc: Nelson, Kristen; Crandall, Rhonda; Koslosky, Sherilyn; [REDACTED] martinez, gilbert
Subject: Dear 15DR5795

Judge Martinez got an e mail from the state hospital requesting more time to compile their records for the SDT return date.

Would Friday April 15, 2016 at 9am work for everybody?

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Monday, April 11, 2016 10:49 AM
To: districtattorney; Donna Billek; Doyle Baker; Jeffrey Lindsey; King, Daniel; Roy, Rosalie; Nelson, Kristen; [REDACTED]
Cc: martinez, gilbert; Crandall, Rhonda; Koslosky, Sherilyn
Subject: Dear 15CR5795
Attachments: scan.pdf

This minute order signed by Judge Martinez and sent to the above parties. The original minute order placed in the file. Also in the register of actions notation made of same.

