

REDACTED

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
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff	JUN 23 2016
v.	DIVISION 10
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-025	
MOTION FOR COURT ORDER REQUIRING THE DEPARTMENT OF HUMAN SERVICES TO PROVIDE REASONABLE NOTICE TO UNDERSIGNED COUNSEL OF ANY HEARING ON A PETITION TO INVOLUNTARILY MEDICATE MR. DEAR	

Mr. Dear, through counsel, respectfully requests that the Court issue the attached proposed order requiring the Department of Human Services to provide 30 days' advance notice to defense counsel prior to holding any hearing to involuntarily medicate Mr. Dear. As grounds, counsel state as follows:

1. On Wednesday, May 11, 2016, the Court found Mr. Dear to be incompetent to proceed in this matter. Pursuant to C.R.S. §16-8.5-111(2)(b), the Court then committed Mr. Dear to the custody of the Colorado Mental Health Institute at Pueblo (CMHIP), which is run by the Department of Human Services ("the department").

2. Mr. Dear is presently in the custody of CMHIP for the purposes of restoration treatment. C.R.S. § 16-8.5-112(1) states:

If a defendant committed to the custody of the department for evaluation or for restoration treatment meets the constitutional requirements for the administration of involuntary medication, the defendant's treating physician may petition the court for an order requiring that the defendant accept the treatment or, alternatively, that the medication be forcibly administered to the defendant. The department shall, prior to the hearing on the petition, deliver a copy of the petition to the court that committed the defendant to the custody of the department, the prosecuting attorney, and the defendant's legal representation in the criminal case, if such representation exists, and to the defendant directly if he or she does not have legal representation. A physician shall assess and

document the defendant's mental status prior to the administration of medication.

3. Mr. Dear has previously indicated in open court that he will not willingly ingest psychotropic medication, and counsel anticipate this may become an issue.

4. The statute plainly requires the department to provide notice to defense counsel of any *petition* filed with the court requesting an order authorizing the hospital to involuntarily or forcibly administer medication to a patient who has been determined incompetent to proceed in a criminal matter, and defense counsel fully expects the department to comply with this statutory requirement.

5. However, undersigned counsel have learned that in practice, it is not unusual for defense counsel to be unaware of the *hearing* that subsequently takes place on a petition requesting a court order authorizing involuntary or forced medication, and for a contract attorney based near Pueblo, rather than defense counsel in the underlying criminal case, to represent incompetent defendants at such hearings.

6. Mr. Dear's interest in avoiding involuntary or forced administration of antipsychotic drugs is protected under the Fourteenth Amendment's Due Process Clause and article II, section 25 of the Colorado Constitution. *See Sell v. United States*, 539 U.S. 166, 179 (2003); *Riggins v. Nevada*, 504 U.S. 127, 135 (1992); *Washington v. Harper*, 494 U.S. 210 (1990) ("The forcible injection of medication into a nonconsenting person's body . . . represents a substantial interference with that person's liberty."); *People in Interest of Hardesty*, 2014 WL 5034612 at *3 (Colo. App. Oct. 9, 2014) ("[A]n order for involuntary medication to render a defendant competent to stand trial implicates a 'vital constitutional liberty interest' . . ."); *People v. Medina*, 705 P.2d 961, 967 (Colo. 1985).

7. In *Sell*, the United States Supreme Court held that the Constitution "permits the Government involuntarily to administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial," but only in instances that "may be rare" and in which a number of specific factual criteria are met. *See* 539 U.S. at 179-83; *see also Hardesty*, 2014 WL 5034612 at *1-2.

8. The Sixth Amendment and article II, section 16 of the Colorado Constitution attach to any proceeding, whether in court or out of court, in which decisions implicating the forcible medication of Mr. Dear are made. As the United States Supreme Court has noted,

It is central to the Sixth Amendment principle that in addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial.

Estelle v. Smith, 451 U.S. 454, 470 (1981). *See also United States v. Weston*, 55 F.Supp.2d 23, 26 (D.D.C. 1999) (remanding decision of federal correctional facility's decision that defendant qualified for forced medication because the Bureau of Prisons failed to provide reasonable notice

to defense counsel of involuntary medication hearing at the prison, where court ordered that such notice be given at defense counsel's request).


9. Mr. Dear has been charged with multiple counts of first-degree murder and attempted first-degree murder, and as of this date, the prosecution has not declared whether or not it intends to seek the death penalty. Thus, the death penalty remains a possible punishment in this case. Given the magnitude of the case, undersigned counsel intend to represent Mr. Dear *themselves* at any hearing involving involuntary or forced medication. Moreover, given the complexity of the issues involved, defense counsel require at least 30 days' notice of any such hearing in order to secure the presence of any witnesses that might be needed. Such representation and notice is necessary in order to fully protect and vindicate Mr. Dear's state and federal constitutional rights described above.

10. Counsel therefore request the Court to sign the proposed order requiring the Department of Human Services to provide notice to defense counsel 30 days in advance of any hearing that is held on the issue of involuntary or forced medication in this case.

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: June 23, 2016

I hereby certify that on 4/23/16, 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

I further certify that on the same date, I emailed a true and correct copy of the above and foregoing document to:

Libbie McCarthy
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