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| District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903 | DATE FILED: July 22, 2016 2:15 PM |
| 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-026 MOTION FOR COURT ORDER DIRECTING THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO TO PROHIBIT MR. DEAR, WHO HAS BEEN FOUND INCOMPETENT, FROM COMMUNICATING WITH THE NEWS MEDIA | |

Undersigned counsel respectfully request that the Court issue the attached proposed order directing the Colorado Mental Health Institute at Pueblo to prohibit Mr. Dear, who has been found incompetent by this Court, from communicating with members of the news media. As grounds, counsel state as follows:

1. Mr. Dear's eagerness to communicate with the media has been a recurring issue in this case. While he was incarcerated in the El Paso County Jail, Mr. Dear communicated with members of the media on numerous occasions. Some of these communications were initiated by Mr. Dear himself. Others were unfortunately initiated by members of the news media, who appeared determined to exploit this mentally ill man and cause those impacted by this tragedy more grief for the sake of generating headlines. The content of several of these conversations has been published and/or broadcast widely. *See, e.g.,* Exhibits A through C, attached.

2. On Wednesday, May 11, 2016, the Court found Mr. Dear to be incompetent to proceed in this matter after hearing testimony from court-appointed psychologists that Mr. Dear suffers from delusional disorder. 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. Mr. Dear is presently in the custody of the hospital for the purposes of restoration treatment.

3. Late last week, undersigned counsel received information from the Department of Human Services that Mr. Dear is continuing to communicate with the media during his incarceration at CMHIP.

4. Undersigned counsel believe intervention from this Court is both necessary and

appropriate under the circumstances, and are filing this motion pursuant to their ethical obligations under Colo. R. Prof. Conduct 1.14. This rule states that when a lawyer “reasonably believes that the client has diminished capacity” and is at risk of “harm unless action is taken and cannot adequately act in the client’s own interest,” the lawyer “may take reasonably necessary protective action.” *Id.*

5. The Court has concluded that Mr. Dear has a mental illness that interferes with his ability to have a rational understanding of the proceedings as well as his ability to work with his attorneys and make well-reasoned choices regarding his legal options. In reaching these conclusions, the Court noted that “Dr. Grimmert testified that Mr. Dear’s delusional beliefs are informing his decisions and his decisions are not based upon logic.” May 12, 2016 Order, p. 4. The Court further found that “the defendant’s perceptions and understanding are not rational and are not grounded in reality” and that Mr. Dear “cannot evaluate the situation he is in and provide responses that are based on reality.” *Id.* at 5.

6. In other words, Mr. Dear’s mental illness is preventing him from making rational decisions about how to proceed in his case. This includes his decision to speak to the news media, which has the potential to profoundly impact his state and federal constitutional rights to due process and a fair trial. *See, e.g.*, U.S. Const. amends. V, VI, VIII, XIV; Colo. Const. art. II, secs. 16, 18, 20, 23, 25; *see also People v. Botham*, 629 P.2d 589 (Colo. 1981); *Sheppard v. Maxwell*, 384 U.S. 333 (1966).

7. The concern that Mr. Dear’s communication with journalists will undermine his right to a fair trial is especially pronounced given that this high-profile case has received a significant amount of media attention. Moreover, some journalists have demonstrated a willingness to publish and broadcast statements made by Mr. Dear despite his obvious mental illness, and regardless of ethical codes that require journalists to “balance a criminal suspect’s fair trial rights with the public’s right to be informed,” and to “[s]how good taste” and “[a]void pandering to lurid curiosity.” *See* Society of Professional Journalists Code of Ethics, *available at*: <https://www.spj.org/pdf/ethicscode.pdf>.

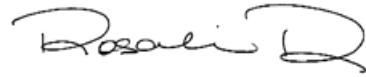
8. The Court entered an order limiting pre-trial publicity at this outset of this case that imposed certain restrictions upon attorneys, law enforcement agencies, and court personnel in an effort to protect the integrity of the trial process and safeguard Mr. Dear’s constitutional right to a fair trial. *See* Order C-003. The order states that it is “meant to provide guidelines to all involved in this case.” *Id.* at 1.

9. Counsel fear that the intent and purpose of this order, as well as Mr. Dear’s state and federal constitutional rights to a fair trial by an impartial jury, will continue to be in jeopardy unless the Court takes action and authorizes the Department of Human Services to restrict Mr. Dear’s access to journalists and media representatives so long as he remains incompetent.

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: July 22, 2016

I hereby certify that on _____ 7-22 _____, 2016, I

_____ mailed, via the United States Mail,
_____ faxed, or
_____ hand-delivered
xx _____ electronically filed

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
Office of the Attorney General
Human Services Unit
1300 Broadway, 6th Floor
Denver, Colorado 80203
(720) 508-6139 Direct
(720) 508-6041 Fax
Libbie.McCarthy@coag.gov
