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District Court, El Paso County, Colorado Court address: 270 South Tejon Colorado Springs, CO 80903 Phone Number: (719) 452-5446	DATE FILED: September 26, 2016
People of the State of Colorado, Plaintiff, v ROBERT LEWIS DEAR, JR, Defendant.	
Attorney or Party without Attorney (Name and Address): Phone Number: Email: FAX Number: Atty.Reg#:	Case Number: 15CR5795 Division 10 Courtroom W570
ORDER (D-028) REGARDING MOTION TO ASSUME JURISDICTION OVER MATTERS AT ISSUE IN PUEBLO DISTRICT COURT CASE NO. 16MH262 AND REQUEST FOR RULING FORTHWITH	

The Court has reviewed the above-entitled motion, response and reply and pursuant to said review and a review of the file, the Court finds and Orders as follows:

1. The defendant by and through counsel requests that this Court assume jurisdiction over the appropriateness of imposing involuntary medications on the defendant. Counsel for Mr. Dear asks this court to assume jurisdiction and litigate the issue within the context of Mr. Dear's criminal case. Defense sets forth a number of arguments as to why this is appropriate.
2. The district attorney has responded by citing C.R.S. 16-8.5-112(2) stating the statute states that "a petition for involuntary treatment shall be heard in the court of the jurisdiction where the defendant is located."
3. The Reply filed by defense states that this court can assume jurisdiction over the issue and this court should assume jurisdiction based upon the unique circumstance in Mr. Dear's case.

Procedural History

This case involves a shooting that occurred on November 27, 2015 at approximately 11:30 a.m. at the Planned Parenthood Building located at 3480 Centennial Blvd., Colorado Springs, Colorado. The Court on December 23, 2015 ordered the defendant to the Colorado Mental Health Institute at Pueblo for a competency evaluation. The Court at said December 23, 2015 court appearance advised the defendant both orally and in writing of his rights concerning the evaluation process. The competency evaluation was filed with the court on March 11, 2016 and copies of the evaluation were provided to both the district attorney and defense counsel on the March 11th date.

Neither party requested a second evaluation. Defense counsel asked the Court to accept the findings contained in the evaluation and the district attorney requested a hearing pursuant to C.R.S. 16-8.5-103(6). Hearings were held on April 28, 2016 and May 10, 2016. Defense counsel presented the testimony of Detective Schiffelbein and Dr. Jackie Grimmatt and rested stating they had met their burden of proof. Dr. Gray was called to testify by the District Attorney. The Court pursuant to its order of May 11, 2016 found the defendant incompetent to proceed and committed the defendant to the care and custody of the Colorado Department of Human Services for treatment directed toward restoring competency.

Analysis

1. The bulk of defendant's argument is that this court is more familiar with the case than the Pueblo District Court and that this court will have to continue to make competency determinations in the future; thus, the criminal court should determine involuntary medication issues.

2. C.R.S. 16-8.5-113(2) is very clear on where the issue of involuntary treatment shall be heard. The statute states, "A petition for involuntary treatment shall be heard in the court of the jurisdiction where the defendant is located. The department shall promptly deliver a copy of the order granting or denying 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."

3. The defendant is located in Pueblo County; thus, the hearing should be held in the Pueblo District Court. The court has considered the language of C.R.S. 16-8.5-113(3) and assuming for arguments sake that the criminal court has the option to hear the medication issue this court declines to exercise said option and this court will not assume jurisdiction over involuntary treatment issues. The District Court hearing as presently scheduled in Pueblo District Court may proceed.

4. The Court finds that it is not appropriate to assume jurisdiction over the medication issues within the context of the pre-existing criminal matters. Although this case has received considerable publicity and the charges are very serious there are not unique circumstances that convince the Court to not follow subsection (2) of the above cited statute.

5. In addition, the Court has considered the argument that hearing the medication issue in the criminal matter would ensure a full and fair record on appeal in the criminal matter. The Court finds that this argument is misplaced. The Pueblo District Court proceedings will be on the record and transcripts of said proceedings can be obtained by counsel if necessary.

WHEREFORE, the motion is DENIED. The Pueblo District Court matter may proceed as that court deems appropriate. The clerk in division 10 will notify the Pueblo District Court of today's order.

DONE this 26~~th~~ day of September, 2016.

BY THE COURT:

Sic Mathew
District Court Judge