

District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903	DATE FILED: May 31, 2017 7:44 AM
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff	
v.	σ COURT USE ONLY σ
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-030	
MOTION TO QUASH SUBPOENA DUCES TECUM ISSUED ON MAY 22, 2017	

Mr. Dear, through counsel, respectfully moves this Court to quash the subpoena duces tecum served on the Colorado Mental Health Institute at Pueblo on Monday, May 22, 2017:

1. On August 12, 2016, the prosecution issued a subpoena duces tecum seeking records pertaining to Mr. Dear at the Colorado Mental Health Institute at Pueblo. The defense filed a motion to quash that subpoena, arguing that the subpoena was overbroad.

2. On November 21, 2016, the Court issued an order on Motion D-27 disagreeing with some of the defense's arguments. Concomittantly, the Court issued an Order Regarding Subpoena Duces Tecum Issued to the Colorado Mental Health Institute at Pueblo Issued [Sic] by the Prosecution on August 12, 2016. In that order, the Court directed CMHIP to provide certain information in response to the SDT including audio/video files (which the defense objected to in Motion D-27), medication logs, food logs, security reports, and grievance forms (which the defense objected to in its Response to Prosecution's Submission of Proposed Order Regarding Records Requested Pursuant to a Subpoena Duces Tecum to the Colorado Mental Health Institute at Pueblo and Notice to Court [P-14]), and also directed the hospital to redact personal medical information unrelated to competency, restoration, or Mr. Dear's diagnosis of delusional disorder.

3. On May 22, 2017, the prosecution issued another subpoena duces tecum for Mr. Dear's records from CMHIP. The language in that subpoena is substantially similar to the language used in the August 12, 2016 subpoena. At the end of the subpoena, the prosecution states that **"The records produced must be in compliance with the conditions provided as stated in the Order issued by the Court on November 21, 2016 (a copy of which has been attached)."**

4. At the competency review hearing held on May 25, 2017, the Court indicated that it would allow CMHIP until June 15, 2017 to respond to the subpoena. The Court further confirmed that as with the August 12, 2016 subpoena duces tecum, the records produced in compliance with the May 22, 2017 SDT should adhere to the conditions of the Court's November 21, 2016 order.

5. The defense hereby moves to quash the May 22, 2017 subpoena duces tecum. Although the Court previously ruled on the issues raised in Motion D-27, that motion only pertained to the August 12, 2016 subpoena. The defense is filing this motion to adequately preserve its arguments concerning the overbreadth of the May 22, 2017 subpoena as well as its argument concerning deficiencies in the Court's November 21, 2016 order.

6. Mr. Dear incorporates by reference all applicable arguments made in Motions D-016 and D-027, as well as his Response to Motion P-014, in which he articulated specific objections to the prosecution's proposed order that was eventually adopted by the Court and issued on November 21, 2016.

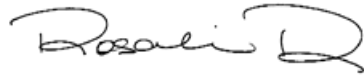
7. Mr. Dear also continues to object to the disclosure of any privileged information under the circumstances of this case, and incorporates by reference the arguments and authorities contained in Motion D-016.

8. The prosecution has not yet indicated whether or not it is seeking the death penalty in this case. Because the death penalty has not yet been ruled out as a possible punishment, this Court should take particular care to construe the waiver provisions of C.R.S. § 16-8.5-104 as narrowly as possible to ensure full protection of Mr. Dear's constitutional rights. *See, e.g., Spaziano v. Florida*, 468 U.S. 447, 456 (1984) ("heightened standard of reliability" applies to capital proceedings); *Beck v. Alabama*, 447 U.S. 625, 637 (1980) (risk of unreliable conviction "cannot be tolerated" in case where defendant's life is at stake); *Gardner v. Florida*, 430 U.S. 349, 357-58 (1977); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976); *People v. Young*, 814 P.2d 834, 846 (Colo. 1991); *People v. Rodriguez*, 786 P.2d 1079 (Colo. 1989).

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: May 31, 2017

I hereby certify that on _____ May 30 _____, 2017, I
Served the foregoing document by E-Filing through Colorado Courts E-Filing same to all
opposing Counsel of record.

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

Nicole Colt

/s/ Nicole Colt

