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| District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903 | FILED IN THE DISTRICT AND COUNTY COURTS OF EL PASO COUNTY, COLORADO |
| THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. ROBERT LEWIS DEAR, Defendant | JAN 25 2016 DR. LYNETTE CORNELIUS CLERK OF COURT ♦ 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-15 REPLY IN SUPPORT OF MOTION TO LIMIT SCOPE OF COMPETENCY EVALUATION | |

Mr. Dear, through counsel, files the following in reply to the prosecution's response to his Motion to Limit the Scope of the Competency Evaluation:

1. As an initial matter, the defense questions both the source and purpose of the prosecution's statements that on the date of the filing of the charges, "The Defendant had at that time refused all professional visits with his attorneys and continues to refuse to meet with them," and that on December 23, 2015 "the defendant was still refusing all professional visits with his attorneys." Because information about visits between attorney and client are privileged, defense counsel declines to comment on the veracity of these allegations. *See* U.S. Const. amend. VI; Colo. Const. art. II, sec. 16; C.R.S. § 13-90-107(1)(b); Colo. R. Prof. Cond. 1.6(a). However, there is no legitimate reason the prosecution should be in the possession of information about contact or lack thereof between Mr. Dear and his counsel, nor should the prosecution be reporting this supposed "information" in a pleading available to the public. *See* Order C-003.

2. With respect to the defense's request to limit the scope of the competency evaluation, the prosecution advances two major arguments. First, the prosecution alleges that this request "is without statutory support or case law," and claims that the defense is asking the Court to make some sort of "exception" to the statute.¹ This is untrue. To the contrary, the defense's request is in complete harmony with the law and the statute, and is simply aimed at ensuring that the competency evaluation of Mr. Dear comports with the limited purpose of the competency evaluation outlined by the statute. *See* C.R.S. § 16-8.5-101(4) & (5).

¹ The Prosecution's pleading does not have page numbers, and the paragraphs in the "Argument" section of its pleading does not have paragraph numbers either. This statement appears in the first paragraph on the last page of the pleading.

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3. Second, the prosecution argues that “by its nature” a competency evaluation requires the evaluator “to delve into the factual issues that relate to the nature of the proceedings, the charges, possible defenses, and generally, the ability to cooperate with a defendant’s attorney.” *See* Prosecution’s Response, para. 17. The prosecution further submits that “[s]ome discussion of the incident that led to the defendant being charged is germane to the issue of whether a defendant can adequately and meaningfully discuss his case with his attorneys and whether the Defendant understands the charges, the nature of the proceedings, defenses, possible penalties, and a general understanding of the circumstances that bring the Defendant before the Court.”²

4. The prosecution is incorrect. While the statute allows the competency evaluator to “use confessions and admissions of the defendant and any other evidence of the circumstances surrounding the commission of the offense, as well as the medical and social history of the defendant, in questioning the defendant,” C.R.S. § 16-8.5-105(3), there is a difference between allowing the evaluator to have a full range of information as background for conducting a thorough evaluation and authorizing the evaluator to intentionally create new and additional statements *about the charged offense and the defendant’s mental state* during the course of a competency evaluation. The former is authorized by the statute. The latter is neither authorized by the statute, nor is it necessary to a determination of whether the defendant has the *present ability* to rationally and factually understand the criminal proceedings or consult with and assist his attorneys.

5. There is simply no legal support for the prosecution’s assertion that “precluding an evaluator from asking particular questions unnecessarily places the validity of the evaluation into question.” For the reasons stated in its original motion, the defense respectfully requests the Court to grant the relief requested in Motion D-015.

² The Prosecution’s pleading does not have page numbers, and the paragraphs in the “Argument” section of its pleading does not have paragraph numbers either. This statement appears in the second paragraph on the last page of the pleading.

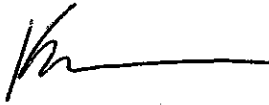
Mr. Dear files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, 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.



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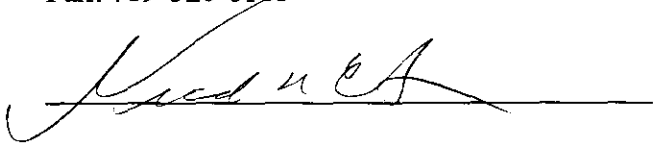
Dated: January 25, 2016

I hereby certify that on 1-25, 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

A handwritten signature in cursive script, appearing to read "Jeff Lindsey", is written over a horizontal line.