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District Court, El Paso County, Colorado Court address: 270 South Tejon Colorado Springs, CO 80903 Phone Number: (719) 452-5446	FILED-DISTRICT & COUNTY COURTS-EL PASO CO., CO JAN 26 2016 DIVISION 10
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 RE: (D-016) CONCERNING MOTION FOR PROTECTIVE ORDER CONCERNING COMPETENCY EVALUATION	

The Court has reviewed the motion, response and reply and pursuant to said review issues the following order:

1. The defendant argues that because the Court ordered the competency evaluation there is presently a forced limited waiver of privilege and that said waiver does not extend to the prosecution. Thus, the defendant asks the Court to prevent the Colorado Mental Health Institute of Pueblo (CMHIP) from distributing any information pertaining to the competency evaluation with the prosecution at this stage of the proceedings. In addition the defense argues that disclosure at the present time would assist the prosecution in their investigation of Mr. Dear's background and the district attorney would attempt to use this information at trial or sentencing. The defendant's arguments are misplaced.

2. The district attorney argues, inter alia, that the Court must rely on the plain language of C.R.S. 16-8.5.101 et. seq. In addition the district attorney argues that the Court should follow the plain language of 16-8.5-105(4) as well as the entirety of the statutory scheme concerning competency.

3. The Court finds that a reading of the entire article (8.5 competency to



proceed) requires that the district attorney be given information regarding the competency examination as well as the report of the competency evaluation.

4. C.R.S. 16-8-5-105(4) is clear and requires a release of the report. Said statute specifically states, "A written report of the evaluation shall be prepared in triplicate and delivered to the clerk of the court that ordered it. The clerk shall provide a copy of the report both to the prosecuting attorney and the counsel of the defendant." The language used in the preceding quote is mandatory. The statute does not authorize any exception to this language.

5. The statute also allows either party within fourteen days after receipt of the court-ordered report to request a hearing or a second evaluation. If either party were unable to obtain a copy of the report the request for a hearing and/or second evaluation would be meaningless. A knowing request for a hearing or second evaluation can only occur if the parties have reviewed the report.

6. The fact that the Court and not the defendant asked for the competency evaluation does not alter the plain language of the statute which allows the district attorney to receive information concerning the competency examination.


7. C.R.S. 16-8.5-108 is also very specific and provides the appropriate protections for the defendant at trial. The statute limits the use of the defendant's statements made during the competency evaluation process. Section (2) of the above cited statute is also clear in its language where it states, "Nothing in this section prevents the parties from obtaining the information authorized by section 16-8.5-104 prior to the hearing."

8. The Court finds that when read as a whole, the statutory scheme permits the district attorney to have access to the competency reports when the report is provided to the Court.

WHEREFORE, the motion is DENIED. Based upon a review of the motion, response and reply, the Court does not find it necessary to set the matter for a hearing.

DONE this 26th day of January, 2016.

BY THE COURT:



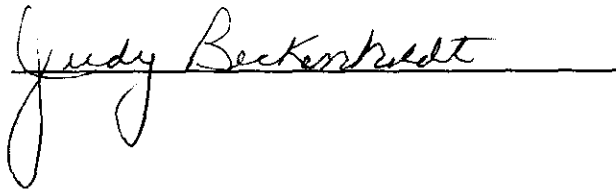
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2016 a true and correct copy of this ORDER RE: (D-016) CONCERNING MOTION FOR PROTECTIVE ORDER CONCERNING COMPETENCY EVALUATION, was delivered via EMAIL to the following:

Dan May, Esq. districtattorney@elpasoco.com
Jeff Lindsey, Esq. jeffreylindsey@elpasoco.com
Donna Billek, Esq. donnabillek@elpasoco.com
Doyle Baker, Esq. doylebaker@elpasoco.com

Daniel B. King, Esq. daniel.king@coloradodefenders.us
Rosalie Roy, Esq. rosalie.roy@coloradodefenders.us
Kristen M. Nelson, Esq. kristen.nelson@coloradodefenders.us

A handwritten signature in cursive script, reading "Judy Beckenstedt", is written over a horizontal line.