

# REDACTED

<b>DISTRICT</b> District Court, El Paso County, Colorado Court Address: 270 S. Tejon St. Colorado Springs, Colorado 80903	<b>FILED-DISTRICT &amp; COUNTY COURTS-EL PASO CO., CO</b>  MAR 25 2016  LYNETTE D. CORNELIUS CLERK OF COURT ▲ COURT USE ONLY ▲
<b>People of the State of Colorado</b> vs. <b>Defendant: Robert Dear, Jr.</b>	Case #: 15CR5795 Division #: 10
District Attorneys: Daniel H. May, #11379, Jeffrey Lindsay, #24664, and Donna Billek, #30721 105 E. Vermijo Colorado Springs, CO. 80903 Phone Number: 719-520-6000 District Attorney: Daniel H. May, #11379	
<b>P-011</b>	
<b>PEOPLE'S MOTION FOR DISCOVERY AND DISCLOSURE OF MEDICAL AND MENTAL HEALTH DOCUMENTS; DISCOVERY OF AND DISCLOSURE OF EXPERT OPINIONS RELATING TO THE ISSUE OF THE DEFENDANT'S COMPETENCY; REQUEST FOR PRODUCTION OF THE DOCUMENTS IN ADVANCE OF THE HEARING; REQUEST FOR A SUBPOENA DUCES TECUM DATE PRIOR TO THE HEARING; AND REQUEST FOR NOTICE OF WITNESSES INTENDED TO BE CALLED AT THE APRIL 28, 2016 HEARING</b>	

COMES NOW, DANIEL H. MAY, by and through his duly appointed deputy and hereby submits the following People's Motion for Discovery and Disclosure of Medical and Mental Health Documents; Discovery of and Disclosure of Expert Opinions Relating to the Issue of the Defendant's Competency; Request for Production of the Documents in Advance of the Hearing; Request for a Subpoena Duces Tecum date prior to the hearing; and Request for Notice of Witnesses Intended to be Called at the April 28, 2016 hearing. The People state their position as follows:

1. The Defendant was sent to the Colorado Mental Health Institute at Pueblo for the purposes of a competency evaluation. That evaluation has been received by the Court and was distributed to the parties on March 11, 2016. On March 24, 2016, the Defendant, through his attorney, did not seek a hearing or second evaluation regarding the competency evaluation findings and requested the Court accept the recommendation outlined in the evaluation. Pursuant to C.R.S. §16-8.5.103, the People, however, have requested a hearing on the matter. The statute required that the hearing be set within 35 days of the request for a hearing unless good cause is shown to extend that deadline. Currently, the hearing is scheduled for April 28, 2016.
2. At a hearing, it is the Defendant's burden to provide evidence to the Court to show by a preponderance of the evidence that the Defendant is incompetent to proceed as required by C.R.S. §16-8.5.103(7). [REDACTED]

[REDACTED]

3. The Defendant has placed his mental health, in particular his competency, at issue and it will be the sole issue at the hearing currently scheduled for April 28, 2016.
4. The People request the following documents be released to them
  - a. Any and all reports of competency evaluations, including second evaluations or other evaluations, whether formal or informal, of the Defendant by any potential witness, whether an expert or not, to be called by the defense.
  - b. Any and all information, testing, documents, notes, working files, and/or video/audio relating to the competency evaluation(s) that are/were created by, obtained by, reviewed by, or relied on by any evaluator, including but not limited to, the court-ordered evaluators from the Colorado Mental Health Institute at Pueblo.
  - c. The names, address, reports, and statements of each physician, psychologist, or other mental health treatment provider who has examined and/or treated the defendant for competency.
  - d. The names, addresses, reports, and/or statements of each physician, psychologist, or other mental health treatment provider who has examined and/or treated the defendant for a mental disease or disability.

[REDACTED]

  - f. Any and all information and/or records including but not limited to: files, testing, data (including any "raw data"), notes, observations logs, working files, report and full disclosure of any conversations with the defendant and/or his counsel, audio/video from the Colorado Mental Health Institute at Pueblo. [REDACTED]
  - g. Any and all records pertaining to medical and mental health treatment at the El Paso County Jail.
5. C.R.S. §16-8.5-104(1) provides for the production of these documents to the court and to the prosecution through a statutory waiver of any privilege since the Defendant has raised the issue of competency. Further, the statute requires that once a request for the information has been made "the evaluator or treatment provider shall provide the information for use in preparing for a hearing on competency or restoration and for use during such a hearing." C.R.S. §16-8.5-104(2). The statute also provides that the Court can order additional information not delineated in the statute that it deems necessary for the evaluator, the Court, or the parties in the case to consider on the question of competency. C.R.S. §16-8.5-104(4).

6. C.R.S. 16-8.5-104(4) provides that “the court shall order both the prosecutor and the defendant or defendant’s counsel exchange the names, address, reports, and statements of each physician or psychologist who has examined or treated the defendant for competency.”
7. The definition of incompetence in C.R.S. §16-8.5-101(11) requires, in part, that a defendant have a mental disability or developmental disability. Further, a “mental disability” is defined in C.R.S. §16-8.5-101(12) as a “substantial disorder of thought, mood, perception, or cognitive ability that results in marked functional disability, significantly interfering with adaptive behavior.” This definition, by its nature, could include other medical and/or mental health records that are not necessarily labeled “competency” but contain relevant information or observations that would be relevant to the determination of competency by the Court and necessary to be heard at a hearing on such matters. [REDACTED]  
[REDACTED]  
[REDACTED] C.R.S. §16-8.5.104(4) grants the court authority to order additional records, documentation, and/or information “in addition to that set forth in subsections (1) and (3) of this section to be provided to the evaluator, or to either party to the case...”
8. The People do not have a meaningful way to determine the existence of some of these records except through the defendant and his attorneys. While defense counsel may not currently be in possession of those records, they can obtain information from their client in order to comply with the statutory requirements. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
9. Since the evaluators use a defendant’s medical and social history of the defendant to aid in the formation of their opinion of the defendant’s competency, these records become relevant. The lack of the use of these documents by the evaluator may be just as relevant and the reliance of the use of these records to aid in their opinion. As such complete mental health related records, regardless of whether they are specifically labeled as a mental health record, would be essential for evaluation of and/or consideration by the Court in the determination of the defendant’s competency. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
10. The defendant would also be required to provide, at the very least, the documentation utilized by the evaluators from the Colorado Mental Health Institute at Pueblo and their file(s) as required by C.R.Crim.P. 16, Part 2(b)(1) and (b)(1). In particular, Part 2(b)(1) requires that the defense disclose

the underlying facts or data supporting the opinion in that particular case of an expert endorsed as a witness. If a report has not been prepared by that expert in aid in compliance with other discovery obligations of this rule, the court may order the party calling that expert to provide a written summary of the testimony describing the witness’s


opinions and the bases and reasons therefore, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

11. Based on C.R.S. 16-8.5-108(2) the People request that the information requested be provided prior to the hearing as to allow for the prosecution to adequately prepare for a meaningful opportunity to cross-examine the witness(es) at the hearing on the determination of the defendant's competency. The People also request that documentation that is subpoenaed to the Court by the prosecution be released to the prosecution in advance of the hearing. The People would release these documents through the normal course of discovery to the defense. The People would request that the Court provide a specific subpoena return date prior to the hearing for the receipt of the documents.
12. The People also request that the Court order the defendant to provide the names and other information requested within 3 business days after the issuance of the Court's order so as to allow the prosecution to prepare for the hearing.
13. The People also request the Court to order the defendant to provide a list of witnesses, expert or lay witnesses, he intends to call at the hearing on April 28, 2016 so the People can determine if additional witnesses will be necessary and/or to allow for preparation of the hearing.

WHEREFORE, the People ask this Court to grant the People's Motion.

Respectfully submitted this 25<sup>th</sup> day of March, 2016.

DANIEL H. MAY, #11379  
DISTRICT ATTORNEY

By:   
Daniel H. May, #11379  
Jeffrey Lindsay, #24664  
Donna Billek, #30721

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **People's Motion for Discovery and Disclosure of Medical and Mental Health Documents; Discovery of and Disclosure of Expert Opinions Relating to the Issue of the Defendant's Competency; Request for Production of the Documents in Advance of the Hearing; Request for a Subpoena Duces Tecum Date Prior to the Hearing; and Request for Notice of Witnesses Intended to be called at the April 28, 2016 Hearing (P-11)** has been forwarded to the Public Defender's Office by placing it into the Public Defender's box for pickup:

3/25/16

Lina Jacques