

REDACTED

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 APR 1 -- 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: (P-011) 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 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 Court has reviewed the above motion, response and reply and pursuant to said review the Court issues the following order.

PROCEDURAL HISTORY

This case involves a shooting on November 27, 2015 at approximately 11:30 a.m. at the Planned Parenthood Building located at 3480 Centennial Blvd. in 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 (C-005) of his rights concerning the evaluation process. The competency evaluation was filed with the court on March 11, 2016. Both the district attorney and defense counsel were given a copy of the evaluation on March 11, 2016.

At the March 24, 2016 court appearance neither party requested an additional evaluation. Defense counsel asked the court to accept the findings contained in the evaluation. The district attorney pursuant to C.R.S. 16-8.5-103 requested a hearing on the matter. The hearing is set for April 28, 2016. The district attorney made an oral motion for discovery. Defense counsel asked for additional time to respond to the oral motion for discovery.

The Court asked the district attorney to file a written motion for discovery by March 25, 2016 and asked defense counsel to respond by March 31, 2016. The motion, response and reply have been filed; thus, the matter is ripe for review.

DISTRICT ATTORNEY REQUEST

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, addresses, 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.
- e. Memorial Hospital Records of Robert Lewis Dear on November 27, 2015.
- 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]

ANALYSIS

The Court is guided by C.R.S. 16-8.5-104(1) which states when a defendant raises the issue of competency to proceed any claim by the defendant to confidentiality or privilege is deemed waived, and the district attorney, defense attorney, and the court are granted access, without written consent of the defendant or further order of the court to (a) reports of competency evaluations, including second evaluations (b) information and documents relating to the competency evaluation that are created by, obtained by, reviewed by or relied on by an evaluator performing a court-ordered evaluation and (c) the evaluator, for the purpose of discussing the competency evaluation.

In addition C.R.S. 16-8.5-104(2) states upon a request by either party or the court for the information described in subsection (1) of this action, 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 hearing.

The statute in C.R.S. 16-8.5-104(4) states "Nothing in this section limits the court's ability to order that information in addition to that set forth in subsections (1) and (3) of this section be provided to the evaluator, or to either party to the case, nor does it limit the information that is available after the written consent of the defendant."

C.R.S 16-8.5-104(5) provides that "The court shall order both the prosecutor and the defendant or the defendant's counsel to exchange the names, addresses, reports, and statements of each physician or psychologist who has examined or treated the defendant for competency."

The defendant argues that the above statute does not apply because it was the court who ordered the competency exam. Said argument is misplaced. Although it was the court who asked for the evaluation defense counsel at the previous hearing asked the court to accept the findings of the evaluator. The fact that the court initiated the evaluation does not require or allow the court to disregard C.R.S. 16-8.5-104. In addition defense counsel did not object to the court asking for a competency examination. If the court were to adopt defendant's argument the competency hearing as required by 16-8.5-103 would become a mere pretense. The competency hearing

per the statute should be conducted with appropriate discovery for all parties. Discovery allows for preparations and for meaningful cross examinations. The Court disagrees with the defense position and will address the merits of the district attorneys requests.

The district attorney has requested information pursuant to paragraphs (a)-(g) in the motion, and the Court will address each paragraph separately.

Paragraph (a) of the motion asks for reports of competency evaluations, including second evaluations or other evaluations, whether formal or informal, of the Defendant by any potential witness whether expert or not, to be called by the defense. The Court finds that pursuant to C.R.S 16-8.5-104(1) (a) the district attorney is entitled to any additional competency evaluations which may have been prepared. If said evaluations have been prepared they must be provided to the district attorney. The district attorney also asks for "other evaluations" however, this goes beyond the scope of the statute. The Court is not clear as to what is meant by "other evaluations." Other evaluations may include physical or medical information that are not covered under the competency statutes; thus, they need not be provided. If defense is going to call an expert who has prepared a report said report and experts name shall be provided to the district attorney. The Court has concerns about expanding discovery beyond what is required in C.R.S. 16-8.5-104 as said expansion may violate HIPAA and/or C.R.S. 13-90-107.

Paragraph (b) of the motion asks for information, testing, notes, working files and/or video/audio relating to the competency evaluations that are/were created by, reviewed by, or relied on by any evaluator including but not limited to the court ordered evaluators from CMHI at Pueblo. The Court finds that pursuant to C.R.S. 16-8.5-104(b) the district attorney is to be provided with said information so long as it relates to competency. The competency examination report page 1 of 8 lists the documents reviewed by the evaluators; thus, the district attorney shall have access to all of said documents. In addition if the defendant has had another competency evaluation prepared the district attorney shall be provided with said evaluation. The Court finds that 16-8.5-104(4) also gives the Court the authority to order the information requested in paragraph (b) of the motion.

Paragraph (c) requests 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 competency. C.R.S. 16-8.5-104(1) authorizes access to said information; thus, it shall be provided.

Paragraph (d) asks for 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 mental disease or disability. The issue in the upcoming hearing is competency and not insanity and/or impaired mental condition. This request by the district attorney is overly broad and not authorized by C.R.S. 16-8.5-104. In addition the Court was not provided with any legal authority which authorizes the release of the requested information as it relates to a competency hearing. The Court has considered the district attorneys definitions of incompetence as outlined in paragraph 7 of their motion; however, the Court does not find that this authorizes a blanket release of all the defendant's records. The Court has also considered C.R.S. 16-8.5-104(4); however, the Court does not find that it is appropriate to use this "catch all" section to order the release of the requested documents.

Paragraph (e) asks for Memorial Hospital Records for treatment of Robert Lewis Dear on November 27, 2015. This request is overly broad. Treatment on November 27th may have been for physical issues and the Court has not been provided with any information that competency was part of said treatment.

Paragraph (f) asks for the raw data from CMHIP including information from [REDACTED]
[REDACTED]
This information shall be made available pursuant to C.R.S. 16-8.5-104(1)(b) and C.R.S. 16-8.5-104 (4).


Paragraph (g) asks for any and all records pertaining to medical and mental health treatment at the El Paso County Jail. A review of the competency examination reveals that the evaluators reviewed CJC medical records pertaining to recent incarceration; thus, said information should be provided because the evaluators themselves reviewed said documents. See C.R.S. 16-8.5-104(1)(b). In addition the Court is relying on C.R.S. 16-8.5-104(4).

WHEREFORE, the Court ORDERS the discovery to be provided pursuant to the above analysis. The disclosures and discovery shall be provided by end of business April 11, 2016. In addition the Court orders that documentation that is subpoenaed pursuant to this order be released to the prosecution no later than April 11, 2016. The People should release these documents through the normal course of discovery prior to the hearing. The Court orders a subpoena return date for April 11, 2016 at 4:00 p.m.

Both parties shall provide a list of all witnesses they intend to call for the hearing by April 15, 2016.

DONE this 15th day of April, 2016.

BY THE COURT:



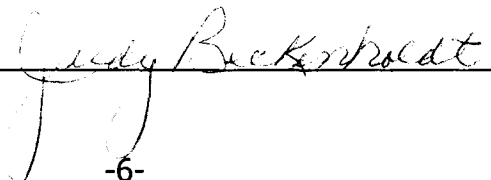
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2016 a true and correct copy of this ORDER RE: (P-011) 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 SUBPOENA DUCES TECUM DATE PRIOR TO THE HEARING; AND REQUEST FOR NOTICE OF WITNESSES INTENDED TO BE CALLED AT THE APRIL 28, 2016 HEARING was delivered via EMAIL to the following:

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