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| <b>FILED IN THE DISTRICT AND COUNTY COURTS OF EL PASO COUNTY, COLORADO</b>   |                                    |
| MAR 31 2016  |                                    |
| DR. LYNETTE D. CORNELIUS<br>CLERK OF COURT   |                                    |
| ▲ COURT USE ONLY ▲   |                                    |
| <b>DISTRICT</b><br>District Court, El Paso County, Colorado<br>Court Address: 270 S. Tejon St.<br>Colorado Springs, Colorado 80903   | Case #: 15CR5795<br>Division #: 10 |
| <b>People of the State of Colorado</b><br>vs.<br><b>Defendant: Robert Dear, Jr.</b>  |                                    |
| District Attorneys: Daniel H. May, #11379, Jeffrey Lindsay, #24664, and Donna Billek, #30721<br>105 E. Vermijo Colorado Springs, CO. 80903<br>Phone Number: 719-520-6000<br>District Attorney: Daniel H. May, #11379 |                                    |
| P-011  |                                    |
| <b>PEOPLE'S REPLY TO DEFENDANT'S RESPONSE TO PROSECUTION'S MOTION FOR DISCOVERY</b>  |                                    |

COMES NOW, DANIEL H. MAY, by and through his duly appointed deputy and hereby submits the following People's Reply to the Defendant's Response to Prosecution's Motion for Discovery. The People state their position as follows:

1. The Defendant is presumed competent. People v. Morino, 743 P.2d 49, 51 (Colo. App. 1987); People v. Kilgore, 992 P.2d 661, 663 (Colo. App. 1999). At the prior court hearing, the Defendant, through his counsel, asked this Court to agree with the recommendations in the evaluation from the Colorado Mental Health Institute at Pueblo. [REDACTED] The People, as allowable under the statute, requested a hearing. The burden is on the Defendant to show his incompetency. The argument made by the defense that the Defendant did not raise the issue of his competency is without merit and the Court has previously disagreed with the Defendant's prior arguments on that issue. The People maintain that the Defendant and his attorneys have placed Defendant's mental health at issue.
2. C.R.S. §16-8.5-104 provides that there is waiver of claims of confidentiality and privilege and the information is to be shared by the parties. The Court has advised the Defendant of such a waiver and it is referenced in the Court's order from December 23, 2015 (paragraph 17, Advisement Regarding Competency Evaluation (C-005)).
3. The Defendant argues that the People have made a broad request for discovery. Such a request is necessary as the People cannot possibly be aware of all of the information that may be available as they do not have access to the defense file and/or access to the Defendant to be able to make specific requests for items. The People are aware of some information available and the possibility of other information that may be available and have requested such in their motion for

discovery. In order to hold the defense to their obligation to provide the information, the People have no choice but to make a broad discovery request.

4. The Defendant argues that only documents relied on by the evaluators should be provided to the prosecution. The statute, however, does not recognize, proscribe, or demand of the Court such a limitation, and, in fact, allows the Court to order release of information in addition to the information outlined in 16-8.5.104 (1) and (3). The People believe that the information they have requested complies with statute and the information would be relevant and necessary for the People to review and adequately prepare for the upcoming hearing scheduled on the issue of competency.
5. As the People argued in their initial request for discovery, the fact that certain documents were not considered by the evaluators can be just as important as the documents they did consider. For example, the evaluators considered some information from the jail (jail logs, videotapes, and reports) but did not consider any mental health or medical notes at the jail. The People did not have access to those documents and, therefore, those documents were not provided to the evaluators by the prosecution. It would appear from the report by the evaluators that the Defendant did not provide those documents either despite the fact that they have the same ability to provide information to the evaluators as the prosecution. The same can be said for the records of the Defendant on the night of his arrest when he was taken to Memorial Hospital.<sup>1</sup>


Whether the Defendant has made a strategic choice to forego turning over relevant documents to the evaluators or not, he cannot use the statute as a shield to hide relevant information, documents, reports, opinions, or other observations of the Defendant related to the mental health disability that affects the Defendant's competency.

6. The Defendant's arguments are contrary to the statute. The language of the statute shows that there is legislative intent to provide access to records and information and records must be shared by the parties and the statute clearly provides that there should be an exchange of information. The Defendant's arguments to the Court would essentially render the statutes and legislative intent meaningless.

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

Respectfully submitted this 31<sup>st</sup> day of March, 2016.

DANIEL H. MAY, #11379  
DISTRICT ATTORNEY

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

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<sup>1</sup> The People's request asked for records for November 27, 2015 but the Defendant may have been admitted on November 28, 2015 and would amend the request to obtain records from November 27-28, 2015 from Memorial Hospital.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **PEOPLE'S REPLY TO DEFENDANT'S RESPONSE TO PROSECUTION'S MOTION FOR DISCOVERY (P-11)** has been forwarded to the Public Defender's Office by placing it into the Public Defender's box for pickup:

3/31/14

*Lina Jacques*