

District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903	DATE FILED: June 4, 2020
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. LETECIA STAUCH, Defendant	DATE FILED: June 4, 2020 2:35 PM FILING ID: E39BBE4AF4CCE CASE NUMBER: 2020CR1358 σ COURT USE ONLY σ
MEGAN A. RING, Colorado State Public Defender Kathryn Strobel (No. 42850) Deputy State Public Defender 30 E Pikes Peak Ave Suite 200 Colorado Springs, Colorado 80903 C. Colette LeBeau (No. 43164) Deputy State Public Defender 132 W B St #200 Pueblo, CO 81003 Phone (720) 475-1235 Fax (719) 7475-1476 E-mail: Kathryn.strobel@coloradodefenders.us Colette.LeBeau@coloradodefenders.us	Case No. 20CR1358 Division 15S Ctrm: S403
D-14 Response to the People’s (P-06) Motion to Quash Defense SDT to CSPD and CBI for litigation packets	

Letecia Stauch, through counsel, files this response to the people’s motion (P-06) filed on June 3, 2020 to quash the Defense’s subpoena duces tecum to the Colorado Springs Police Department and Colorado Bureau of Investigation litigation packets.

1. On May 31, 2020, the Defense filed a subpoena duces tecum (SDT) to the Colorado Springs Police Department (CSPD) and to the Colorado Bureau of Investigation (CBI) to appear on June 5, 2020 at 8:30A.M. to produce the original DNA litigation packs for all completed DNA and serology testing in the instant case.
2. On June 3, 2020, the people filed a motion to quash the Defense’s SDT. The prosecution’s motion acknowledges that the Metro Crime Lab (MCL) has completed testing on items of evidence in this case. The people state that additional rounds of testing are currently underway.

3. In the prosecution's P-06 motion, the people state that the litigation packet includes all materials maintained by the lab and multiple requests for these materials prior to completion of all testing would result in the same documents being released in discovery over and over again. The people argue that this approach would be confusing and redundant.

4. The people acknowledge that the Colorado Rules of Criminal Procedure Rule 16(I)(b)(3) states that "the prosecuting attorney shall perform other obligations under subsection (a)(1) **as soon as practicable** but not later than 35 days before trial."

5. Colorado Rules of Criminal Procedure Rule 16(I)(a)(1)(III) provides that "The prosecuting attorney shall make available to the defense the following material and information which is within the possession or control of the prosecuting attorney, and shall provide duplicates upon request, and concerning the pending case:... Any reports or statements of experts made in connection with the particular case, including results of ... scientific tests, experiments, or comparisons."

6. Colorado Rules of Criminal Procedure Rule 16(I)(c)(1) states that "Upon the defense's request and designation of material or information which would be discoverable if in the possession or control of the prosecuting attorney and which is in the possession or control of other governmental personnel, the prosecuting attorney shall use diligent good faith efforts to cause such material to be made available to the defense." The underlying data produced through the testing process and calculations are in the possession of other government personnel, the Metro Crime Lab (MCL).

7. The Defense has requested the litigation packets from the prosecution. The prosecution has not provided the litigation packets through the normal discovery process.

8. "The court shall issue suitable subpoenas or orders to cause such material to be made available to the defense, if the prosecuting attorney's efforts are unsuccessful and such material or other governmental personnel are subject to the jurisdiction of the court." Colo. R. Crim. Pro. 16(I)(c)(2).

9. The prosecution cites People v. Baltazar, 241 P.3d 941 (2010) to support their position. In Baltazar, the defense moved for permission to issue ex parte subpoenas duces tecum to third parties arguing that Crim. P. 17(c)'s requirement to provide a copy to opposing counsel would permit the prosecution to discover damaging information uncovered by the defense in its investigation. Id. at 942. The district court issued an order that the subpoenas be returnable to the defendant herself, rather than the court and it mandated the disclosure of information discovered by this process only if the defendant decided to use that information at trial and only if the information would require disclosure by Crim. P. 16. Id. The Colorado Supreme Court held that Crim. P. 17(c) "subpoenas may command only in-court production, rather than production solely to and for the benefit of the defendant." Id.; cf. CBA Formal Ethics Op. 102 (1998)(disapproving as "clearly a misuse of Rule 17(c)" the issuance of "subpoenas in criminal proceedings to conduct secret pretrial discovery" or to obtain "exclusive review of information").

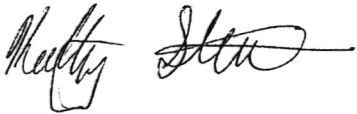
10. Crim. P. 17(c) provides a means by which a criminal defendant can compel third parties to produce evidence for use either at trial or for pretrial inspection under the supervision of the court, where the latter is necessary to facilitate and expedite trials involving voluminous discovery, not to grant additional discovery. People v. Spykstra, 234 p.3d 662, 668 (Colo. 2010). In Spykstra, the defense issued a subpoena duces tecum to the parents of a child in a sexual assault case commanding them to produce every electronic device in their possession. Id. at 664.

11. In the instant case, the Defense is not requesting the production of evidence solely to and for the benefit of Ms. Stauch or to grant additional discovery. The Defense has issued a subpoena for MCL to provide the litigation packets for those items that have been tested and that is within their possession. The Defense disagrees that receiving the litigation packets of the underlying data produced through the testing process, the calculations, and the notes of the analyst would be

confusing. Providing the litigation packets “as soon as practicable” would allow the Defense time to review the underlying data and the calculations that produced the analyst’s results. It would be contrary to the Colorado Rules of Criminal Procedure for governmental personnel to have possession of the litigation packets and to not disclose them to the Defense as soon as practicable.

Wherefore, Ms. Stauch, through Counsel, files this response to the people’s motion (P-06) to quash the Defense’s SDT to CSPD and CBI for the litigation packet. Ms. Stauch files this motion pursuant to the Due Process Clause, the Right to a Fair Trial, and the right to effective assistance of Counsel, under the United States Constitution Fifth, Sixth, and Fourteenth Amendments and the Colorado Constitution article II, sections sixteen and twenty-five.

RESPECTFULLY SUBMITTED,



/ _____
Kathryn Strobel (No. 42850)
Deputy State Public Defender



/ _____
C. Colette LeBeau (No. 43164)
Deputy State Public Defender

Dated: June 4, 2020