District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903	DATE FILED: July 13, 2020
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. **LETECIA STAUCH,** Defendant	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

[P-14 DEFENSE REPONSE]

DEFENSE MOTION TO QUASH THE PEOPLE'S SUBPOENA FOR PRODUCTION OF ANY AND ALL RECORDS PERTAINING TO MS. STAUCH FROM ACADEMY SCHOOL DISTRICT 20

The Defense files this motion to quash the people's subpoena for any and all records relating to Ms. Stauch from Academy School District 20 because it is overbroad, oppressive, and unreasonable and violates the warrant requirements.

I. The prosecution issued a subpoena to the custodian of records at Academy School District 20 for any and all records relating to Ms. Stauch.

1. On June 29, 2020, the people filed a subpoena on Colorado Courts e-filing system (ICCES) directing the custodian of records, Bob Cohn, at Academy School District 20 to produce any and all records relating to Letecia Stauch.

II. The prosecution's request to Academy School District 20 to obtain any and all records relating to Ms. Stauch is an overbroad, unreasonable, and oppressive subpoena. This Court should quash the subpoena.

2. It is unclear what records the prosecution believes exist at Academy School District 20 that pertains to the pending charges against Ms. Stauch. The prosecution's request to Academy School District 20 for any and all records relating to Ms. Stauch is an overbroad, unreasonable, oppressive subpoena. In the prosecution's third-party subpoena, they have not demonstrated their burden for the requested material set forth in People v. Spykstra, 234 P.3d 662, 669 (2010). In addition, the request for any and all records relating to Ms. Stauch is in effect a search warrant and violates Ms. Stauch's constitutional right to be free from unreasonable searches and seizures by the government.

3. The court may quash or modify the subpoena if compliance would be unreasonable or oppressive. Colo. Crim. Pro. Rule 17(c), (2020).

4. The Defense has filed responses to the prosecution's motion P-08 and P-09 outlining the prosecution's misinterpretation of the competency statute C.R.S. §16-8.5-104(1). At this time, there has been no finding about whether Ms. Stauch is incompetent to proceed or competent to proceed. The Defense raising competency does not open the door to the prosecution obtaining the entirety of Ms. Stauch's medical records, mental health records, social history, and educational records.

a. The prosecution is using this subpoena as an investigatory tool and has not met their burden set forth in Spykstra to require pre-trial production of any and all records relating to Ms. Stauch's from Academy School District 20.

5. When a criminal pretrial third-party subpoena is challenged, the prosecution must demonstrate:

(1) A reasonable likelihood that the subpoenaed materials exist, by setting forth a specific factual basis;

(2) That the materials are evidentiary and relevant;

(3) That the materials are not otherwise procurable reasonably in advance of trial by the exercise of due diligence;

(4) That the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and

(5) That the application is made in good faith and is not intended as a general fishing expedition.

People v. Spykstra, 234 P.3d 662, 669 (2010).

6. Each of these requirements ensures that a Crim. P. 17(c) subpoena is not an investigatory tool. Id. at 669. "A Crim. P. 17(c) subpoena is limited to "evidence," and when a subpoena is returnable pretrial, the trial court, if called upon, must also consider the circumstances of the subpoena to determine whether it is unreasonable or oppressive." Id. In Spykstra, the defense issued subpoenas duces tecum (SDT) to the parents of an alleged child sex assault victim. Id. at 664. The SDT commanded the parents to produce every electronic device in their possession. The district attorney moved to quash the subpoena as unreasonable and oppressive and asserted that compliance with the subpoena would expose irrelevant personal information including personal medical information. Id.

7. "A subpoena duces tecum is reasonable if it: (1) is for a lawfully authorized purpose; (2) seeks information relevant to the inquiry at hand; and (3) contains a "specification of the documents to be produces [that is] adequate but not excessive, for the purposes of the relevant inquiry." People v. Mason, 989 P.2d 757, 762 (1999) *citing* Oklahoma Press Publ'g Co. v. Walling, 327 U.S. 186, 209 (1946).

8. In the instant case, the prosecution has failed to set forth a specific factual basis that Academy School District 20 has records that contain material that is evidentiary and relevant to the instant case. *See* Spykstra, 234 P.3d at 666. The prosecution's request for any and all records relating to Ms. Stauch to Academy School District 20 is an overbroad request and seeks irrelevant information to the pending case. There has been no finding about whether Ms. Stauch is incompetent or competent to proceed to trial. Thus, the prosecution cannot assert that they cannot properly prepare for trial without the production of these documents. The request for any and all records pertaining to Ms. Stauch from Academy District 20 is a general fishing expedition. Spykstra, 234 P.3d at 669) *citing* Nixon 418 U.S. 683, 698 (1974)(explaining that Fed. R. Crim. P. 17(c) was "not intended to provide a means of discovery for criminal cases"). This Court should quash the prosecution's subpoena.

b. The prosecution's request for any and all records relating to Ms. Stauch from Academy District 20 converts the subpoena into a search warrant.

9. Recently, the United States Supreme Court explained that it has never held that the government may subpoena third parties for records in which the suspect has a reasonable expectation of privacy. Carpenter v. United States, 138 S. Ct. 2206, 2221 (2018). In Carpenter, the State obtained cell-site location information (CSLI) of the accused without a warrant but pursuant to a court order issued under the Stored Communications Act. The Court declined to grant the state unrestricted access to a wireless carrier's database of physical location information and held that the deeply revealing nature of CSLI, its depth, breadth, and comprehensive reach, and the fact that this information is gathered by a third party does not make it any less deserving of Fourth Amendment protection. The government's acquisition of the cell-site records through a court order was a search under the Fourth Amendment. Id. at 2223.

10. In Carpenter, 138 S. Ct. 2206, Justice Alito argued that the warrant requirement did not apply when the government acquired records using compulsory process. Id. at 2221. The Court held that "Under Justice Alito's view, private letters, digital contents of a cell phone- any personal information reduced to document form, in fact- may be collected by subpoena for no reason other than "official curiosity."" Id. The Court declined to accept this view and held that a warrant is required when an individual has a legitimate privacy interest in records held by a third party. Id. at 2222.

11. The prosecution's subpoena to Academy School District 20 to produce any and all records relating to Letecia Stauch is an overbroad request for documents and irrelevant to the pending case. It is unclear if the prosecution is requesting employment records, educational records, medical records, mental health records, or social history documents that are believed to be in the possession of Academy School District 20.

12. The Fourth Amendment to the United States Constitution, and article two, section seven of the Colorado Constitution protects an individual against unreasonable searches and seizures by the government. U.S. CONST. amend. IV; *See also* COLO. CONST. art. II § 7. The basic purpose of these amendments is to "safeguard the privacy and security of individuals against arbitrary invasions by government officials." Carpenter, 138 S.Ct. at 2213. The government is required to obtain a warrant supported by probable cause before acquiring records where the individual has a legitimate privacy interest in records held by a third party. Id. at 2221-22. *See also* People v. Mason, 989 P.2d

757, 760 (1999) *citing* Carlson v. Superior Court, 129 Cal. Rptr. 650, 655 (1976)("an accused's constitutional right to privacy in his papers and records is not diminished because law enforcement officials seek to obtain them by subpoena rather than by warrant). In the instant case, the prosecution is attempting to subvert the warrant requirements by subpoenaing third parties to produce the entirety of their protected records relating to Ms. Stauch and this request is overbroad and irrelevant to the instant case.

III. Conclusion

13. This Court should quash the subpoena to Academy School District 20 for any and all records pertaining to Ms. Stauch because this subpoena is overbroad, unreasonable, and oppressive. The prosecution has not demonstrated their burden for the requested materials as set forth in Spykstra, 234 P.3d 662. Raising competency does not open the door to the prosecution obtaining Ms. Stauch's entire employment records, educational records, social history, medical records, or mental health records. Such an overbroad and invasive subpoena would include information that has nothing to do with competency or the pending charges against Ms. Stauch. Circumventing the warrant requirement by issuing a subpoena to obtain personal information reduced to document form for official curiosity is not permitted under the law.

Wherefore, Ms. Stauch, through counsel, requests that this court quash the subpoena to Academy School District 20 to produce any and all records relating to Ms. Stauch because this is a groundless request for protected records that are not supported by the law.

RESPECTFULLY SUBMITTED,

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Kathryn Strobel (No. 42850)
Deputy State Public Defender

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

Dated: July 16, 2020