

District Court Otero County, Colorado 13 W Third Street La Junta, CO 81050 Phone: 719-384-4951 Facsimile: 719-384-4991	FILED IN COMBINED COURT OTERO COUNTY, COLO. DEC 18 2014
<hr/> PEOPLE OF THE STATE OF COLORADO V. JAMES ADAM PATRICK ASHBY, Defendant	<hr/> ▲ FOR COURT USE ONLY ▲
<hr/>	Case Number: 14CR217 Div. A Courtroom:
<hr/> ORDER GRANTING MOTION TO CONTINUE PRELIMINARY HEARING (D-3)	

This matter comes before the court, sua sponte, on defendant's Motion to Continue Preliminary Hearing. The court, having reviewed and considered the motion, having taken notice of its court file and finding itself advised in the circumstances,

FINDS, CONCLUDES AND ORDERS as follows:

1. The defendant, James Adam Patrick Ashby, is charged with murder in the second degree, in violation of 18-3-103(1) C.R.S., criminally negligent homicide, in violation of 18-3-105 C.R.S. and crime of violence, in violation of 18-1.3-406(2)(a)(I)(B) C.R.S.
2. On November 19, 2014 the defendant requested that the court conduct a preliminary hearing in this matter pursuant to the provisions of Crim. P. 7. Further, the defendant requested that the preliminary hearing be held within 35 days pursuant to Crim. P. 7(h)(2).
3. The court scheduled the preliminary hearing for a one day hearing to come before the court on December 22, 2014. Therefore, the preliminary hearing was scheduled within the 35 day time limit as requested.
4. On December 17, 2014 the defendant filed his Motion to Continue Preliminary Hearing (D-3). The defendant indicates that the "discovery received by defendant to date is voluminous, exceeding 2000 documentary pages, as well as several hours of recorded interview, video, and hundreds of photographs." As a result, counsel for the defendant

indicates an inability “to fully and completely review all documents and recordings produced.” It is further intimated that there is additional discovery forthcoming.

5. A preliminary hearing is a screening device to determine whether there is probable cause to believe that the defendant committed the crime charged. *People v. Buhrle*, 744 P.2d 247 (Colo. 1987), *People v. Quinn*, 183 Colo. 245, 516 P.2d 420 (1986). The preliminary hearing is not a mini-trial and greater evidentiary and procedural latitude is allowed. *Hunter v. District Court*, 190 Colo. 48, 543 P.2d 1265 (1975), *Maestas v. District Court*, 189 Colo. 443, 541 P.2d 889 (1975). A trial judge may curtail the right to cross-examination witnesses and to introduce evidence, but may not completely prevent inquiry into matters relevant to the determination of probable cause. *Rex v. Sullivan*, 194 Colo. 568, 575 P.2d 408 (1978), *Kuypers v. District Court*, 188 Colo. 332, 534 P.2d 1204 (1975).
6. The preliminary hearing is not an opportunity for the defendant to effect discovery. *Blevins v. Tihonovich*, 728 P.2d 732 (Colo. 1986), *Rex*, supra. Discovery is addressed in Crim P. 16. The Rule requires the prosecution to make available to the defense all non-discretionary material “as soon as practicable but not later than 21 days after the defendant’s first appearance at the time of court following the filing of charges.” Crim P. 16 Part 1(b). This has been interpreted relevant to the preliminary hearing as requiring the prosecution to provide discovery prior to the preliminary hearing, those materials relevant to the preliminary hearing. *People v. Adams County Court*, 767 P.2d 802 (Colo. App. 1988).
7. Before ultimately determining the Motion to Continue Preliminary Hearing the court believes that it must consider and balance the totality of the circumstances. In that regard, the court has considered the following matters:
 - a. the defendant’s right to have competent counsel present his defense;
 - b. the position of the prosecution in relation to the motion;
 - c. the position of the victim in relation to the motion;
 - d. the degree to which discovery has been provided; and
 - e. the timeliness of defendant’s request.
8. Due to the amount and timing of the discovery provided, and the seriousness of the charges the court accepts defendant counsel’s contention that they would not be able to adequately prepare for the preliminary hearing. The court notes that the People do not oppose the relief; however the victim’s family is opposed to the continuance. The court also notes that the defendant’s present motion was filed five days prior to the date the preliminary hearing is scheduled to commence.

9. Based on the totality of the circumstances the court grants defendant's Motion to Continue Preliminary Hearing (D-3).

10. That the Court has conferred with counsel who have agreed that the preliminary hearing shall be held on January 15th, 2015 commencing at 8:30 a.m.

11. That all parties shall appear on December 22, 2014 at 8:30 a.m. at which time the preliminary hearing will be rescheduled.

Date this 18th day of December, 2014.


DISTRICT COURT JUDGE

Pc:

James Bullock
William Culver
Andrew Hayden
Carrie Slinkard
Jamie Wynn
Michael Lowe
David Goddard

12/18/14
via
facsimile