

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲ COURT USE ONLY ▲
<b>PEOPLE OF THE STATE OF COLORADO</b>  v.  <b>JAMES EAGAN HOLMES,</b> <b>Defendant</b>	Case No. <b>12CR1522</b>  Division: <b>202</b>
<b>ORDER REGARDING DEFENDANT’S MOTION TO ENJOIN CMHIP          FROM PRODUCING MATERIALS RELATED TO SECOND SANITY          EXAMINATION TO THE PROSECUTION IN THE ABSENCE OF A          VALID SUBPOENA DUCES TECUM (D-243)</b>	

In Motion D-243, the defendant asks the Court “to enjoin the Colorado Mental Health Institute at Pueblo from providing all notes and supporting documentation related to the second sanity examination ordered by this Court in the absence of a valid subpoena duces tecum.” Motion at p. 1. The prosecution opposes the motion. *Id.* For the reasons articulated in this Order, the motion is denied.

The defendant cites no precedent, in Colorado or elsewhere, that authorizes the Court to enjoin the Colorado Mental Health Institute at Pueblo (“CMHIP”) from providing the documents in question. None exists.

The defendant cannot force the prosecution to obtain records through a subpoena *duces tecum* if the prosecution is able to lawfully obtain them through some other means. It is up to CMHIP to determine whether it is willing to share its records with the prosecution.

That the prosecution employed subpoenas *duces tecum* to obtain similar documents from CMHIP last year does not mean that it is required to follow the same procedure now. The motions to quash those subpoenas and the Court's resolution of those motions do not alter this conclusion. *See* Order C-61-A. To the contrary, they undercut the defendant's motion. As the prosecution's October 6, 2014 letter to CMHIP notes, Orders C-61-A and C-65-A set certain standards related to the documents that may be disclosed to the parties by CMHIP. Motion Ex. A. In its letter to CMHIP, the prosecution expressly informs CMHIP that it is only requesting those documents the Court already ruled may be provided. *Id.* Assuming CMHIP is willing to share the records with the prosecution, it would be nonsensical to require subpoenas *duces tecum* and to allow the defense to re-litigate the issues resolved in Order C-61-A. Such a procedure would jeopardize delaying the trial and would accomplish nothing of substance.

It is true that the Court entered a protection order based on its analysis in Order C-61-A. *See* Order C-65-A. However, the Court did so at CMHIP's request and to address CMHIP's concerns. The defendant at no point requested a