

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲ COURT USE ONLY ▲
PEOPLE OF THE STATE OF COLORADO v. JAMES EAGAN HOLMES, Defendant	Case No. 12CR1522 Division: 201
ORDER REGARDING DEFENDANT'S AMENDED MOTION TO EXCLUDE LATE-DISCLOSED EVIDENCE THAT WAS PREVIOUSLY WITHHELD FROM THE DEFENSE, OR TO IMPOSE THE ALTERNATIVE SANCTION OF A RECESS (D-275a)	

INTRODUCTION

The defendant is charged with the murders of 12 people and the attempted murders of 70 people at the Century 16 Theatres located at 14300 E. Alameda Ave., Aurora, Colorado, on July 20, 2012, during the midnight premier of the Batman movie, *The Dark Knight Rises*. He has also been charged with Possession of Explosive or Incendiary Devices at his apartment—1690 Paris St., Aurora, Colorado—on July 20, 2012. On June 4, 2013, the defendant entered a plea of not guilty by reason of insanity. Jury selection commenced on January 20, 2015, and the Court anticipates that opening statements will take place in April or May.

Defense Motion D-275a concerns “a videotape of the defendant taken on September 20, 2012 in a holding cell of the Arapahoe County Courthouse.” Motion at pp. 1-2.¹ The video, which was not provided to the parties until early January 2015, shows [REDACTED] [REDACTED] *Id.* at p. 2. The defense argues that the untimely disclosure of the video by the Arapahoe County Sheriff’s Office (“ACSO”) should be deemed a violation of Crim. P. 16 by the prosecution, and should be remedied by a sanction—exclusion of the video or, in the alternative, a one-week or a two-week continuance in the form of a recess. *Id.* at pp. 3-4. The prosecution objects to the motion. *See generally* Response. On January 20 and February 9 of 2015, the Court held an evidentiary hearing during which ACSO’s Undersheriff, Louie Perea, testified. For the reasons articulated in this Order, the defendant’s motion is denied.

THE PARTIES’ DISPUTE

The People do not challenge the defense’s assertion that it has made numerous requests to ACSO throughout the pendency of this litigation for all of the jail records related to the defendant. *See* Motion D-275 Reply, Ex. A;

¹ The defense initially raised this request in Motion D-275. After the motion was fully briefed, the defense sought and received leave of the Court to amend the motion in order to request the additional, alternative sanction of a continuance. The defense then filed Motion D-275a, which “includes all original arguments as well as the additional request.” Motion at p. 1 n.1. The prosecution thereafter filed a response to Motion D-275a. This Order addresses only the arguments advanced in relation to Motion D-275a. Motion D-275 is denied as moot.

Response at p. 1 (“the defendant is correct that he made repeated direct inquiries to [ACSO] for video recordings”). The People also agree “that this recording was (obviously) in the possession of [ACSO], and was not provided to the defendant until this year.” Response at p. 1. “The People believe that the video should have been provided” to the defense in a timely fashion “pursuant to the defense’s requests made directly to [ACSO].” *Id.* The parties’ dispute centers around two issues: (1) whether ACSO’s failure to disclose the video in a timely fashion should be imputed to the prosecution so as to constitute a discovery violation under Crim. P. 16; and (2) if so, whether either of the sanctions requested by the defense is appropriate.

THE PARTIES’ ARGUMENTS

The defense asserts that ACSO’s failure to timely disclose the video should be imputed to the prosecution because ACSO is “a law enforcement agency that is in frequent communication” with the District Attorney’s Office (“DA’s Office”). Motion at p. 3. At the hearing, the defense also argued that ACSO is one of the agencies that participated in the investigation of this case and reported to the DA’s Office regarding this case. According to the defense: (1) there were a number of ACSO members who were first responders on the scene at the theater immediately after the shooting; (2) ACSO responded to the defendant’s apartment shortly after the shooting; (3) ACSO’s members wrote a number of police reports that have

been discovered in this case; (4) at the prosecution's request, ACSO collected the defendant's booking video and video recorded the defendant 24 hours a day at the jail during his first six weeks of incarceration; (5) ACSO collected and provided the prosecution the defendant's mail at the jail; (6) ACSO took photos of the defendant's cell and provided those photos to the prosecution; and (7) ACSO provided to the prosecution materials surrounding the defendant's November 2012 hospitalization, including video and photos taken at the jail and at Denver Health Medical Center ("DHMC"). As a sanction for the prosecution's alleged discovery violation, the defense asks the Court to exclude the video from evidence at trial. *Id.* In the alternative, the defense seeks "a continuance in the form of a one to two week recess in between the empanelment of the jury in this case and opening statements." *Id.* at p. 4.

The prosecution counters that it should not be held responsible for ACSO's late disclosure because "requests made directly to [ACSO] for records associated with the defendant's confinement do not fall under the ambit of Crim. P. 16." Response at p. 1. Further, contends the prosecution, [REDACTED] and is not covered under any mandatory discovery provision of Crim. P. 16, nor is it required to be produced pursuant to any Order." *Id.*

EVIDENTIARY HEARING

In Order D-275, the Court inquired as to the reasons ACSO failed to provide the video to the defense in response to one of the many requests for all jail records related to the defendant. Order D-275 at pp. 1-2. Along with its response, the prosecution submitted a report by one of its investigators documenting a recent interview with Perea.² Motion D-275 Response, Attachment D. Perea told the investigator that the video was not provided because “it was strictly an officer safety issue, not related to the case itself.” *Id.* p. 2. He added that the video was “kept for officer safety purposes.” *Id.*

In his reply in support of Motion D-275, the defendant contested the prosecution’s assertion that Perea acted in “good faith.” Motion D-275 Reply at p. 3. Further, the defendant maintained that it was “inappropriate . . . to resolve the motion” by relying “on a second-hand version of Undersheriff Perea’s statements, [] filtered through the prosecution, as to why the video was not previously disclosed to the defense.” *Id.* at p. 2. Therefore, the defendant requested a hearing. *Id.* at p. 2 n.2.

In Order D-275-A, the Court granted the defendant’s request for a hearing. Order D-275-A at p. 3. The Court held an evidentiary hearing on January 20 and February 9 of 2015. Perea testified at the hearing.

² The prosecution also submitted a copy of the video in question. Motion D-275 Response, Attachment C. The Court has reviewed the video.

CREDIBILITY DETERMINATION

The Court observed Perea's manner, demeanor, and body language while on the stand, and considered his means of knowledge, strength of memory, and opportunity for observation. The Court assessed the reasonableness or unreasonableness of his testimony, the consistency or lack of consistency of his testimony, and whether his testimony was contradicted or supported by other evidence. The Court examined whether Perea had a motive to lie, as well as whether bias, prejudice, or interest in the case affected his testimony. Finally, the Court took into account all other facts and circumstances shown by the evidence which affected Perea's credibility

The Court finds Perea credible and his testimony reliable. The resolution of Motion D-275a reflects these two credibility findings.

FINDINGS OF FACT

ACSO is divided into two separate bureaus: the Detention Administrative Services Bureau ("DASB") and the Public Safety Bureau ("PSB"). All patrol officers are members of PSB. Only PSB performs "investigation services." Members of that bureau were among the first responders at the theater and wrote reports that have been discovered by the prosecution in this litigation. A number of officers from the same bureau later responded to the defendant's apartment and also wrote reports that have been discovered by the prosecution in this litigation.

DASB did not participate in the investigation at the theater or at the defendant's apartment. In fact, there is no evidence in the record that DASB was present at either crime scene.

Since his arrest, the defendant has been held at the Arapahoe County jail. DASB has collected his mail and forwarded it to the prosecution, and the prosecution, in turn, has discovered it to the defense. In November 2012, a number of deputies within the same bureau wrote reports regarding an incident at the jail that required the transfer of the defendant to DHMC for medical treatment. Those reports, along with some related videos, were provided to the prosecution and discovered to the defense. Finally, at some point in 2013, at the prosecution's request, DASB took photographs of the defendant's cell at the jail. Those photographs have been discovered to the defense as well.

During 2012 and 2013, Perea was the Chief of DASB. He was promoted from DASB Chief to ACSO Undersheriff in February 2014.

On July 20, 2012, when the shooting occurred, Perea was in charge of the "administrative operations function of the jail," including "Court Services, records section, civil warrants, classifications, medical, [and] all that encompasses detention operations and the administrative services bureau." Perea was initially involved in the security plan related to the incarceration of the defendant.

However, once a plan of action was put into effect, he “let the lieutenant and the sergeants deal with the operations.”

Shortly after the shooting, Perea reached out to the DA’s Office to discuss the availability of a video recording of the defendant’s booking process. After meeting with an investigator in the DA’s Office, Perea made that recording available. On July 23, 2012, Perea advised the DA’s Office that DASB was willing and able to video record the defendant “24 hours a day, seven days a week.” This was an unusual offer, as DASB had never before video recorded a defendant at the jail 24 hours a day. The DA’s Office asked ACSO to video record the defendant continuously.

On July 27, 2012, defense counsel wrote a letter to the Sheriff at ACSO, indicating that they were aware that DASB was conducting continuous videotape surveillance of the defendant, and that, since such “footage is likely to be material to the preparation of [the] defense, [they were] formally requesting” that it be preserved. *See* D-PT-15. The defense further asserted that ACSO was obligated to preserve all such footage. *Id.* Perea, who was copied on the letter, understood that DASB “was to provide [the footage] to the [DA’s Office] who, in turn, [would] provide[] it” to the defense. It was Perea’s expectation that “anything” DASB provided to the prosecution would be provided to the defense. A copy of that letter

was not sent to the DA's Office. Therefore, the DA's Office was not aware of the defense's request.

DASB later realized that the continuous video recording of the defendant was a labor-intensive process because it required assigning a deputy to download the video from the server onto DVDs. "It required [the deputy] to perform pretty much close to 40 hours of work per week to download that video." Accordingly, in late August 2012, DASB notified the DA's Office that this was not a viable procedure, and on August 31, the DA's Office informed DASB that it could stop recording the defendant 24 hours a day. DASB stopped continuously recording the defendant on August 31, 2012.³

A few weeks later, a sergeant and a lieutenant advised Perea "[redacted] [redacted] that they wanted [him] to view the video" that is the subject of Motion D-275a. *See* P-PT-146. The video, which is about 11 minutes long, was recorded on September 20, 2012, while the defendant was in custody in a holding cell at the courthouse, waiting to be brought into the courtroom by DASB deputies. [redacted]

³ While questioning Perea, defense counsel asserted that they never communicated to anyone at ACSO that it could stop recording the defendant 24 hours a day. However, the defense never requested that the defendant be recorded 24 hours a day. Only the prosecution did so. What the defense requested is that whatever footage was recorded should be preserved. There is no allegation that any such footage has not been provided to the defense by the DA's Office.

[REDACTED]

[REDACTED].⁴

The defendant's behavior on the video is not atypical of inmates or people who are under arrest in the back seat of a police car. DASB does not generally keep these recordings or turn them over to the DA's Office. Only if the conduct depicted on the video constitutes criminal activity would DASB complete an offense report or an incident report and submit the video into evidence.⁵ Perea concluded that the defendant's conduct on the video did not rise to the level of "a potential criminal violation" or a situation in which ACSO may be civilly liable. Therefore, neither an offense report nor an incident report was completed. Additionally, Perea determined that [REDACTED]

[REDACTED]

[REDACTED] inmates do the same actions [] everyday not only in the jail but out on the street."

⁴ Because the incident depicted in the video took place after August 31, 2012, it was not recorded pursuant to the prosecution's request. Instead, it was recorded as part of ACSO's routine procedures. There are video cameras in some of the holding cells in the courthouse that record on a server through a remote computer. Those recordings are not maintained indefinitely by DASB. In fact, they are maintained for less than two months. DASB uses recordings from these cameras to assess safety issues related to the interaction of DASB personnel and inmates at the courthouse. Recordings from these cameras are sometimes used "for internal review of procedures" or are forwarded to DASB's training section for "possible training."

⁵ DASB completes an offense report "when there's a criminal act." It completes an incident report when it "believe[s] there may be some civil liability" exposure.

As a result, while the records section of DASB received multiple requests from the defense for materials related to the defendant, it could not learn about this video by searching either for the defendant's name or for an offense or incident number in its computer database. Indeed, the video was not associated with any name or number in ACSO's records management system. Further, just as DASB's records section was not aware of the video in Perea's possession, Perea was not aware that the defense had made numerous requests to DASB's records section for all materials, including videos, related to the defendant. It was not until Motion D-275 was filed that Perea became aware of such requests.⁶

Perea nevertheless "made the decision to keep" the video in one of the cabinets in his office "under lock and key" for "future training purposes." Perea did not direct his staff to forward the video to the training section of DASB because he was aware that "there was a gag order in effect" in this case and he "wanted to make sure" that the video would not be improperly released while the case was still pending for trial. [REDACTED]

⁶ Perea was aware that the defense wanted the 24/7 recordings of the defendant requested by the prosecution in July 2012 preserved. However, as indicated, those recordings stopped on August 31, 2012. Perea also admitted that in November or December 2012, the records section of DASB informed him that the defense was requesting a video recording related to the defendant's hospitalization at DHMC, as well as shorter video recordings of the defendant at the jail around the same time. But he did not know either what the defense had requested specifically or what was provided by the records section of DASB in response to that request. Nor was he involved in "the decision-making of what was going to be released." He was not privy to any of the conversations related to that request by the defense.

Although Perea was familiar with the concept of discovery in a criminal case, he did not see anything in the video that he perceived as discoverable. Moreover, since the DA's Office had asked him a month earlier to stop recording the defendant, he "felt that [the DA's Office] really had no need for the video." He did not look at the video from an investigatory standpoint because he did not believe it had any relevance to the case; he looked at the video "strictly as not anything else other than a training video" [REDACTED]

[REDACTED] Perea completed a report, which he provided, along with the video, to the DA's Office on January 8. Both were discovered to the defense by the DA's Office on January 9.

⁷ [REDACTED]

ANALYSIS

A. Was There a Discovery Violation by the Prosecution?

The parties disagree as to who has the burden of proof with respect to Motion D-275a, the party alleging a discovery violation and seeking a remedial sanction or the party responsible for ensuring that all discoverable evidence is timely provided to the defendant in a criminal case. Assuming, without deciding, that the People bear the burden of proof, the Court concludes that no discovery violation occurred.

In a criminal case, the prosecution must make available to the defendant “[a]ny books, papers, documents, photographs or tangible objects held as evidence in connection with the case.” Crim. P. 16(I)(a)(1)(IV). Under Rule 16(I)(a)(3), “[t]he prosecuting attorney’s obligations . . . extend to material and information in the possession or control of members of his or her staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his or her office.” *See also* Crim. P. 16(I)(b)(4) (“The prosecuting attorney shall ensure that a flow of information is maintained between the various investigative personnel and his or her office sufficient to place within his or her possession or control all material and information relevant to the accused and the offense charged”).

The prosecution must “use diligent good faith efforts to make available to the defense on request discoverable material which is in the possession or control of other governmental personnel.” *People v. Dist. Court*, 793 P.2d 163, 167 (Colo. 1990) (quotation omitted). As such, “[i]t is incumbent upon the prosecutor to promulgate and enforce rigorous and systematic procedures designed to preserve all discoverable evidence gathered in the course of a criminal investigation.” *Id.* (citations omitted).

The inherent flaw in the defense’s position is that it ignores that ACSO is divided into two separate bureaus, PSB and DASB, and only PSB: (1) has the type of investigative personnel referenced in Rule 16, (2) conducts the types of investigations and evaluations that fall within the purview of Rule 16, (3) regularly reports to the DA’s Office about criminal investigations, and (4) has “reported” to the DA’s Office about the investigation in this case. PSB and DASB have very different responsibilities and appear to largely operate as independent agencies. Only PSB assisted the primary investigative agencies involved in this case—the Aurora Police Department and the FBI—at the theater and the defendant’s apartment. The video in question was recorded by DASB, which did not respond to, much less participate in, the investigation at either crime scene. Nor does that bureau report to the DA’s Office regularly or with reference to this particular case. There is also no basis in the record to conclude that DASB is in frequent

communication with the DA's Office. DASB is strictly concerned with detention operations, administrative services, and safety and security issues at the jail and the courthouse.

To adopt the defendant's position would lead to absurd and impractical results. Whenever ACSO is involved in the investigation of a crime, the prosecution's obligations under Rule 16 would extend beyond any information and materials in the possession of PSB and would include those compiled by DASB during the defendant's incarceration at the jail. In other words, the investigation of any particular crime by ACSO would require the prosecution to discover all video footage of the accused at the jail, all video footage of the accused at the courthouse, all of the accused's mail at the jail, all of the accused's medical records at the jail, all documentation and video recordings related to any incidents involving the accused at the jail, any disciplinary action taken at the jail, etc. This is not what the drafters of Rule 16 envisioned.

It is true that DASB forwarded the defendant's mail to the prosecution, made his booking video available to the prosecution, continuously video recorded the defendant for approximately five weeks in July and August of 2012, took photographs of the defendant's cell at some point in 2013, and documented an incident that required the defendant's transfer to DHMC in November 2012. However, none of these actions during a span of two and a half years render the

bureau an agency with investigatory personnel conducting investigations and making evaluations for purposes of Rule 16. Nor do these actions support the defendant's contention that DASB has reported to, and been in frequent communication with, the DA's Office about the investigation in this case.

[REDACTED]

Notably, the defense apparently recognized as early as July 2012 that DASB is not the type of investigative agency whose materials are subject to Rule 16. Otherwise, it presumably would have expected, if not demanded, that all of the materials it requested directly from DASB's records section be automatically provided by the prosecution pursuant to Rule 16. Instead, defense counsel wrote numerous letters directly to the bureau asking for materials and information in its

possession related to the defendant's detention. No such letters appear to have been sent to the investigative bureau at ACSO, the Aurora Police Department, or the FBI. The Court agrees with the prosecution that the defendant's requests to DASB's records section are more akin to open records requests than they are to Rule 16 requests.

In sum, the Court concludes that the video in question does not fall within the scope of Rule 16. Accordingly, the prosecution has not violated Rule 16.

B. Even if a Discovery Violation Occurred, No Sanction is Warranted

Even assuming, for the sake of argument, that ACSO's failure to timely disclose the video at issue constitutes a discovery violation by the prosecution under Rule 16, the Court finds that no sanction is warranted. Therefore, the defendant's motion fails on this independent basis.

"Discovery sanctions serve the dual purposes of protecting the integrity of the truth-finding process and deterring prosecutorial misconduct." *People v. Acosta*, 338 P.3d 472, 476 (Colo. App. 2014) (quotation omitted). Thus, "[a] trial court should impose the least severe sanction that will ensure full compliance with its discovery orders and protect the defendant's right to due process." *Id.* (citation omitted). In determining an appropriate sanction for a discovery violation, the trial judge should consider: (1) "the reasons why disclosure was not made;" (2) "the extent of the prejudice, if any, to the opposing party;" and (3) "the feasibility of

rectifying that prejudice by a continuance, and any other relevant circumstances.” *People v. Dist. Court*, 808 P.2d 831, 837 (Colo. 1991) (quotation omitted).

That a “prosecutor had no actual knowledge” related to the discovery violation is “not a defense,” but is “a consideration in fashioning an appropriate remedy” under Rule 16. *People v. Dist. Court*, 793 P.2d 163, 167 (Colo. 1990). “In fashioning a sanction to achieve the goal of eliminating the due process violation, a court must strive to restore as nearly as possible the level playing field that existed before the discovery violation.” *Dist. Court*, 808 P.2d at 837.

In *Acosta*, the Court addressed the appropriateness of excluding evidence as a discovery sanction. 338 P.3d at 477. The Court commented as follows:

In considering sanctions, a trial court should be cautious not to affect the evidence to be introduced at trial or the merits of the case any more than necessary, and should, if at all possible, avoid excluding evidence as a means of remedying a discovery violation because the attendant windfall to the party against whom such evidence would have been offered defeats, rather than furthers, the objectives of discovery. Thus, exclusion of evidence is an inappropriate sanction where exculpatory evidence, although inadvertently withheld prior to the preliminary hearing, was revealed prior to trial.

Id. (emphasis added) (internal quotation marks and citations omitted).

Where a sanction “is not designed primarily to deter improper behavior, the goal must be to cure any prejudice resulting from the violation.” *Id.* (quotation omitted). “Absent a showing of prejudice resulting from the discovery violation, there is no reversible error.” *Id.* (citation omitted). Accordingly, “when a

continuance or a recess in a trial in progress will cure the prejudice to the defendant, the trial court should go no further in crafting a sanction to address a due process violation.” *Dist. Court*, 808 P.2d at 837.

First, the Court finds that Perea acted in good faith. He testified credibly that the reason he did not provide the video to the parties in a timely manner is that he did not believe it had any probative value. He viewed it strictly as material to be retained for training purposes [REDACTED] Nor was Perea aware that the defense had submitted numerous requests to the records section of DASB seeking all materials, including videos, related to the defendant. [REDACTED]

Second, the Court finds that the prosecution acted in good faith. There is no allegation, much less evidence, that the prosecution had knowledge of the video before January 2015. Once it acquired the video, the prosecution immediately discovered it to the defense.

Third, the Court finds that the defendant has suffered no prejudice as a result of the delayed disclosure and there is no need to “level the playing field.” The defense has not shown that [REDACTED]

[REDACTED] Nor has the defense demonstrated that the untimely discovery of the video will affect or impair trial preparation or counsel’s performance at trial.

The defense avers that if the video had been discovered in a timely manner, it “could have [REDACTED] anticipated, and adequately prepared to confront any arguments the prosecution may make about the significance of this video.” Motion at p. 3. Further, asserts the defense, the video was disclosed “on the eve of trial, when defense counsel [were] already overwhelmed by many other last-minute maneuvers, including late prosecution witness endorsements, changes to the good faith witness list, significant and voluminous new discovery, as well as myriad other pre-existing trial participation.” *Id.* The defendant’s reliance on the prosecution’s witness endorsements, changes in the good faith witness list, and the

most recent discovery provided by the prosecution is unpersuasive for the reasons articulated in Order D-267-A. *See* Order D-267-A at pp. 9-16. The discussion in Order D-267-A addressing those arguments is incorporated by reference here.

[REDACTED]

[REDACTED] As such, it is unclear why discovery of the video on January 9 is prejudicial. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In any event, the Court is planning to take every other Friday off in addition to weekends and holidays.

Defense counsel maintain that during the first three weeks of jury selection, they “found that the process” took up “virtually all of their available time.” Motion at p. 4. The Court’s perception was just the opposite. Counsel were required to spend less time in the courtroom than anticipated and had more time available outside the courtroom than expected.⁸ Additionally, the Court reiterates that there are five attorneys of record representing the defendant. The defense has plenty of manpower to both attend to issues related to jury selection and work on

⁸ The first three weeks of jury selection involved 30-minute introductory comments by the Court twice a day and the review of questionnaires filled out by prospective jurors. Courtroom time for counsel was generally limited to discussions about stipulated excusals.

the video at issue by viewing it, “absorb[ing]” it, “shar[ing]” it and “discuss[ing] it [REDACTED] and determin[ing] how to confront” it at trial if allowed into evidence. *Id.*⁹ Contrary to the defendant’s suggestion, the litigation of Motion D-275a—which required the defense to conduct legal research, draft pleadings, and prepare for the hearing—does not appear to the Court to have been significantly time-consuming, much less to have interfered with defense counsel’s ability to address the video and prepare for trial.

In any event, the Court may take a one-week recess at the end of individual *voir dire*. Although unnecessary, such recess will provide the defense with additional time “to consider how to prepare to confront this late-disclosed videotape.” *Id.*

Under the circumstances of this case, neither exclusion of the evidence nor a continuance is appropriate. Perea and the prosecution both acted in good faith, and the defendant will not suffer any prejudice as a result of the delayed discovery of the video.

CONCLUSION

For all of the foregoing reasons, the Court concludes that Motion D-275a lacks merit. Accordingly, it is denied.

⁹ The Court started conducting individual *voir dire* on February 11 and anticipates this process to continue until April or May. During individual *voir dire*, four defense attorneys have each questioned two or three prospective jurors per day, while a fifth defense attorney has not questioned any prospective jurors.

Dated this 23rd day of February of 2015.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Carlos A. Samour, Jr.", written over a horizontal line.

Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2015, a true and correct copy of the Court's **Order Regarding Defendant's Amended Motion to Exclude Late-Disclosed Evidence that was Previously Withheld from the Defense, or to Impose the Alternative Sanction of a Recess (D-275a)** was served upon the following parties of record:

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