

REDACTED

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| DISTRICT COURT ARAPAHOE COUNTY, COLORADO Court Address: Arapahoe County Justice Center 7325 S. Potomac St., Centennial, CO 80112 | |
| THE PEOPLE OF THE STATE OF COLORADO vs. Defendant: JAMES EAGAN HOLMES | |
| Attorney: GEORGE H. BRAUCHLER, 18 th Judicial District Attorney 6450 S. Revere Pkwy. Centennial, CO 80111 Phone: (720) 874-8500 Atty. Reg. #: 25910 | Case Number: 12CR1522 Division/Ctrm: 201 |

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION D-285a

This response is filed by the District Attorney for the 18th Judicial District.

SUPPRESSION

Because of the nature of the information contained in this response, the People request that the pleading, and any attachments, be suppressed and not available in the public court file.

RESPONSE

1. The defense has filed motion D-285a. This motion objects to the People's notification that they will call witnesses to rebut a defense expert witness, Dr. Raquel Gur. Dr. Gur has been endorsed as both a guilt-phase and penalty-phase expert witness.
2. The defense has provided the prosecution with two reports from Dr. Gur. The first report, dated June 17, 2013, was provided to the prosecution prior to the start of trial. This report is attached to this Response as Exhibit A. The second report, dated February 17, 2015, was provided to the prosecution two weeks later, on March 3, 2015, six weeks after the commencement of jury selection. That report is attached to this Response as Exhibit B.
3. Subsequent to her original report, [REDACTED] Despite the existence of notes taken by Dr. Gur, none were provided to the People [REDACTED]. The report ultimately provided

7. [REDACTED]

8. Lastly, [REDACTED]

9. Dr. Gur's new report contains a large amount [REDACTED]. It was provided to the prosecution long after the deadline that this Court set for disclosure of guilt-phase experts. Order granting P-53. The People could have filed a motion to preclude the new opinions of Dr. Gur, considering that she is an expert witness, and her second report was not provided to the prosecution until jury selection had been conducted for a month and a half. The People chose not to file such a motion, knowing that preparation for trial can sometimes be a chaotic affair. Even though the defendant notified the prosecution of the existence of Dr. Gur's new report long after the trial started, he now complains that the prosecution should have endorsed experts to rebut proposed trial testimony based on the new report.

10. At the outset, Colorado does not require the prosecution to endorse potential rebuttal witnesses, and there is no deadline for the prosecution to comply with the nonexistent requirement. *People v. Avila*, 944 P.2d 673, 675 (Colo. App. 1997) ("Neither Crim. P. 16(II)(c) nor §16-5-203 requires the prosecution to endorse rebuttal witnesses. Further, the testimony of an unendorsed expert rebuttal witness is admissible when offered solely to impeach the credibility of a defense witness, or in this instance to question the analysis of a defense expert, and not to rebut a defense." Citations omitted). Upon review of Dr. Gur's report, the prosecution notified the defendant that Drs. Resnick and [REDACTED] both of whom were previously endorsed by the prosecution, would testify in rebuttal. The People have asked [REDACTED] to prepare a report. Because the People do not want to ask Dr. Resnick to prepare a report until a final report is received from Dr. Gur [REDACTED], they will ask him to prepare a report once that is accomplished.

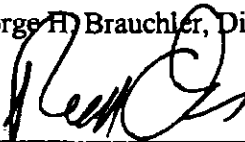
11. To the extent that the new report from Dr. Gur is intended to deal with evidence to be presented during the sentencing phase, the Court, in its denial of P-108, indicated that the People could designate rebuttal experts within 20 days of receiving expert reports, and the People complied with that deadline. The Court also noted that "by failing to adequately disclose an expert's opinions before any sentencing hearing, the defendant significantly reduces the likelihood that the Court will sustain any objection to new and unexpected rebuttal expert

testimony by the prosecution. The defendant cannot, on the one hand, conceal his sentencing expert testimony, and on the other, be heard to complain about the prosecution's sentencing rebuttal expert testimony." The People do not intend to surprise the defendant with rebuttal testimony, and will provide the defendant with expert reports.

12. Because the People will provide the defendant with reports from rebuttal experts, that portion of the defendant's motion is moot. The defendant has not demonstrated that he is entitled to any of the other relief he seeks.

13. The motion should be denied.

George H. Brauchler, District Attorney

By 

Deputy District Attorney

Registration No. 20935

CERTIFICATE OF MAILING

I hereby certify that I have deposited a true and correct copy of the foregoing in the Public Defender's Mailbox located at 6450 S. Revere Pkwy. Centennial, CO 80111, addressed to:

TAMARA BRADY, ESQ.
DANIEL KING, ESQ.
KRISTEN NELSON, ESQ.
OFFICE OF THE PUBLIC DEFENDER

Dated: 4/2/15

By 

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COURT ORDER RE: DEFENSE MOTION D-285a

THE COURT, being fully advised, and being duly apprised of the relevant facts and law, hereby DENIES defense motion D-285a.

Dated this _____ day of _____, 2015

BY THE COURT

 District Court Chief Judge Carlos A. Samour, Jr.