

RECORDED

DISTRICT COURT ARAPAHOE COUNTY, COLORADO Court Address: Arapahoe County Justice Center 7325 S. Potomac St., Centennial, CO 80112	<p style="text-align: center;"><b>Filed</b></p> <p style="text-align: center;">FEB - 5 2015</p> <p style="text-align: center;">CLERK OF THE COMBINED COURTS ARAPAHOE COUNTY, COLORADO</p> <p style="text-align: center;">COURT USE ONLY</p>
THE PEOPLE OF THE STATE OF COLORADO vs. Defendant: <p style="text-align: center;"><b>JAMES EAGAN HOLMES</b></p>	
Attorney: GEORGE H. BRAUCHLER, 18 <sup>th</sup> Judicial District Attorney 6450 S. Revere Pkwy. Centennial, CO 80111 Phone: (720) 874-8500 Atty. Reg. #: 25910	Case Number: <p style="text-align: center;"><b>12CR1522</b></p> Division/Ctrm: <p style="text-align: center;"><b>201</b></p>

**PEOPLE'S RESPONSE TO DEFENDANT'S MOTION [D-275a]**

This response is filed by the District Attorney for the 18<sup>th</sup> Judicial District.

1. As stated in the People's response to Motion D-275, the People agree that the Sheriff should have provided the video recording at issue to the defense pursuant to the defense's requests made directly to the Sheriff. At the same time, requests made directly to the Sheriff for records associated with the defendant's confinement do not fall under the ambit of Crim. P. 16. Furthermore, the information contained in the video is not exculpatory, and is not covered under any mandatory discovery provision of Crim. P. 16, nor is it required to be produced pursuant to any Order of this court. The defendant's argument that Crim. P. 16 mandated discovery of the recording is not supported by any precedent, and there is no precedent to support the proposition that the prosecution is required to preserve, and make available in discovery, recordings of every moment of an incarcerated defendant's life while behind bars. That being said, the defendant is correct that he made repeated direct inquiries to the Sheriff for video recordings. The defendant is also correct that this recording was (obviously) in the possession of the Sheriff, and was not provided to the defendant until this year. The People believe that the video should have been provided in response to this direct request, but there is no law that would support the imposition of sanctions for failure to completely respond to a direct request made to a law enforcement agency, as opposed to a request made through the discovery process.

2. Even if the Court were to find that the analysis applicable to failure to provide discovery pursuant to Crim. P. 16 were to apply to this situation, the defendant cannot show that the Sheriff's Office acted in bad faith, or that they are prejudiced. The defendant has not shown that his mental health experts cannot (or have not already) reviewed the video in question, and that they cannot incorporate it into their opinions prior to their testimony. Nor has the defendant

demonstrated that the fact that the video has been provided to them will cause them any burden in trial preparation, or that counsel's preparation and performance will be impaired in any way. Thus, the defendant has not shown that he should have the benefit of a suspension of court proceedings between jury selection and opening statements.

3. Even if the Court were inclined to grant the new relief sought by the defense, the particular nature of the relief is unwarranted and problematic. The defendant has not shown that the Court should grant him two weeks. A shorter time would surely be sufficient to deal with issues created by the video recording. Additionally, the defendant seeks a delay "between the empanelment of the jury in this case and opening statements." If the Court were inclined to grant the defendant any delay<sup>1</sup>, the People submit that a better procedure would be to schedule a suspension of proceedings between end of individual voir dire and the start of general voir dire, and upon resumption of the proceedings moving from the end of general voir dire directly to opening statements. The People are concerned that a lag between the conclusion of general voir dire and opening statements could cause jurors impaneled on the jury to seek release from their service, with time to think about jury service prior to opening statements and the presentation of evidence. Additionally, if the court suspended the proceedings after general voir dire but prior to opening statements, they could potentially be exposed to pretrial publicity prior to taking their actual oaths as jurors, and the parties would not be able to question the jurors on that subject.

4. The defendant's motion should be denied.

George H. Brauchler, District Attorney

By 

Deputy District Attorney

Registration No. 20035

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<sup>1</sup> The People acknowledge that the Court might want to schedule a period of time between individual jury selection and subsequent trial events notwithstanding the filing of Motion D-275a. This pleading responds to D-275a only, and does not address that scheduling question.

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: 2/4/15

By 

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**COURT ORDER RE: DEFENSE MOTION D-275**

THE COURT, being fully advised, and being duly apprised of the relevant facts and law, hereby DENIES defense motion D-275.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015

BY THE COURT

\_\_\_\_\_  
District Court Chief Judge Carlos A. Samour, Jr.