

DISTRICT COURT
WELD COUNTY, COLORADO
Court Address: PO Box 2038
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Greeley CO 80631
(970) 475-2400

DATE FILED: August 16, 2018 8:29 PM

THE PEOPLE OF THE STATE OF COLORADO vs.
Defendant:

CHRISTOPHER LEE WATTS

COURT USE ONLY

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Case Number:
18CR2003
Division/Ctrm:
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**[B] PEOPLE'S RESPONSE TO DEFENDANT'S MOTION SEEKING
COURT ORDER MANDATING DEFENSE PRESENCE DURING
AUTOPSY OF DEFENDANT'S MURDER VICTIMS**

COMES NOW, MICHAEL J. ROURKE, District Attorney in and for the Nineteenth Judicial District, County of Weld, State of Colorado, by and through his duly appointed Chief Deputy District Attorney, respectfully requests that this Court deny Defendant's request for a court order mandating that the coroner permit defense experts, attorneys, and/or investigators to be present for the autopsy of Defendant's murder victims. As grounds, the People state the following:

1. Defendant is charged with three counts of First Degree Murder and three counts of Tampering with Deceased Human Body related to the killing of his wife and two daughters. The autopsies of each of the victims is scheduled to occur at 10:00am on August 17, 2018.
2. Defense counsel has indicated in email correspondence that he intends to file a motion later tonight requesting that this Court order the coroner to permit defense experts, attorneys, and/or investigators to be present for the autopsies of the victims in this case.
3. The body of Defendant's wife was located earlier this morning after being recovered from a shallow grave near an oil tank. Later this afternoon, law enforcement recovered the bodies of Defendant's two daughters from inside oil tanks located near the grave of their mother. The Weld County Coroner has informed the prosecution that time is of the essence in conducting the autopsies, especially for the children given the period of time their bodies were submerged in oil.

4. The Coroner is an independently appointed governmental official who conducts his operations pursuant to state statute. *See* C.R.S. § 30-10-606.
5. Undersigned counsel is aware of no authority mandating the inclusion of defense-retained experts and/or attorneys at autopsies. The legislature has only provided for the presence of representatives of the Defendant in the limited circumstance of destructive testing of evidence. *See* C.R.S. § 16-3-309.
6. Moreover, the Colorado Supreme Court has also confirmed the principle that a Court's supervisory role with respect to the handling of evidence is triggered only in situations involving consumptive or destructive testing. *People v. Wartena*, 156 P.2d 469, 472 (Colo. 2007). The People respectfully assert that any non-consumptive or non-destructive gathering of evidence should not be subject to Court oversight or limitation under C.R.S. § 16-3-309 or *Wartena*.
7. Though not binding upon this Court, or directly on point, it is instructive that the Arapahoe County District Court in the James Holmes capital murder case, after considering a somewhat similar motion from the defense, concluded the following:

A trial court's role prior to testing is to oversee the preservation of evidence. *Wartena*, 156 P.2d at 472. "The authority of the Court to supervise the preservation of evidence originates in the court's role to protect the 'civilized standards of procedure and evidence.'" *Id.* (quoting *McNabb v. United States*, 318 U.S. 332, 340 (1943)). Such authority allows courts to avoid or mitigate failure to preserve evidence by prohibiting certain testing or ordering that evidence not be destroyed. *Wartena*, 156 P.3d at 173. However, except in unusual circumstances, a trial court does not have the authority to dictate procedures to a particular laboratory. *Id.*

While the Court intends to oversee the preservation of evidence prudently, outside of the statutory exception for consumptive or destructive testing, **the Court FINDS that it has no statutory authority to order the People to allow Defendant a confidential expert be present during the People's scientific testing.**

Order, Honorable William Blair Sylvester, Arapahoe County District Court, case 12CR1522, *People v. James Eagan Holmes*, August 15, 2012 (emphasis added).

8. The People respectfully assert that aside from the limitations established in C.R.S. § 16-3-309 and the Colorado Supreme Court in *Wartena*, this Court should not interfere with the execution of the People's investigation of this case. The manner in which law enforcement gathers evidence, so long as it remains within constitutional boundaries, should remain a function of the executive branch and one free of judicial mandates.

9. The People will comply with the requirements of Colo. R. Crim. P. 16 and C.R.S. § 16-3-309 regarding consumptive or destructive testing. Moreover, the People will make items of evidence available to the defense at a time and place convenient to the Defendant so that he can retain his own experts to test the evidence.
10. Finally, it is anticipated the Defendant will argue that conducting an autopsy without the presence of Defendant's representatives will deprive Defendant of a realistic ability to confront and rebut testimony under the Confrontation Clause of the United States Constitution and the Colorado Constitution. However, Defendant cannot cite any case law in support of this contention. The People assert that while the Defendant has a right at trial to confront the testimony of any pathologist or coroner investigator, Defendant does not have a right to have a representative present during the autopsy of the victims.

WHEREFORE, the People ask that this Honorable Court deny Defendant's motion in its entirety.

DATED this 16th day of August, 2018.

Respectfully submitted,
Michael J. Rourke, District Attorney

By /s/ Steve Wrenn
Steve Wrenn #35411
Chief Deputy District Attorney

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the [B] PEOPLE'S RESPONSE TO DEFENDANT'S MOTION #2, 18 and 19 has been emailed properly addressed to:

James Merson
james.merson@coloradodefenders.us

Date: 8/16/18

BY /s/Terasina White