

DISTRICT COURT, El Paso County, Colorado Court Address: 270 South Tejon Street Colorado Springs, CO 80903	DATE FILED: October 16, 2020 DATE FILED: October 16, 2020 2:52 PM
<b>People of the State of Colorado</b> vs. <b>Defendant: Letecia Stauch</b>	<b>▲ COURT USE ONLY ▲</b>
Deputy District Attorney: Michael J. Allen, #42955 Martha McKinney, #28745 Angelina Gratiano, #50674 Address: 105 E. Vermijo Colorado Springs, CO 80903 Phone Number: 520-6000 District Attorney: Daniel H. May, #11379	Case #: 20CR1358 Division #: 15S Courtroom #: S403
<b>[P-20]</b> <b>People's Response to Defense Brief Regarding the Use of Video and Audio Recording          During a Competency Evaluation D-19</b>	

The District Attorney of the Fourth Judicial District of the State of Colorado, through his duly appointed Deputy District Attorneys, respectfully files this response to Defense Brief D-19 regarding the use of video and audio recording during the accused's competency evaluations. In support of this response, the People state as follows:

1. On June 5, 2020, the People requested that the Defendant's first competency evaluation be recorded at the Colorado Mental Health Institute at Pueblo (CMHIP), pursuant to C.R.S. § 16-8.5-104(4). The People cited C.R.S § 16-8-106(1)(b) and § 16-8-108(1)(a) for additional authority.
2. The Court ordered the first competency evaluation to be video recorded, pursuant to C.R.S. § 16-8-106(1)(b) and § 16-8-108(1)(a).
3. On September 8, 2020, the Defense requested a second competency evaluation of the Defendant. Additionally, the Defense objected to the recording of the first competency evaluation and objected to the recording of the second competency evaluation.

Defendant Waives Privilege in Competency Evaluation

4. C.R.S. § 16-8.5-104(1) states that "*when a defendant raises the issue of competency to proceed, or when the court determines that the defendant is incompetent to proceed and orders that the defendant undergo restoration treatment, any claim by the defendant to confidentiality or privilege is deemed waived, and the district attorney, the defense*

attorney, and the court are granted access, without written consent of the defendant or further order of the court, to:

- (a) Reports of competency evaluations, including second evaluations;
  - (b) Information and documents relating to the competency evaluation that are created by, obtained by, reviewed by, or relied on by an evaluator performing a court-ordered evaluation; and
  - (c) The evaluator, for the purpose of discussing the competency evaluation.” (Emphasis added.)
5. C.R.S. § 16-8.5-104(4) allows the court to order additional information be provided to the evaluation or to either party in the case.
  6. The type of information that could be ordered by the Court in this instance may include video and audio recording for either a first or a second competency evaluation.

C.R.S. 16-8-106(1)(b) and 16-8-108(1)(a) Do Not Prohibit Recording of an Evaluation

7. C.R.S. 16-8-106(1)(b) requires that the interview for an insanity examination be recorded for a class 1 or class 2 felony charge. C.R.S. 16-8-108(1)(a) also requires video and audio recording of an examination by a psychiatrist, psychologist, or other expert when the Defendant chooses to be examined by such an expert of his or her own choice in connection with any proceedings under Article 8.
8. While C.R.S. 16-8-106(1)(b) and 16-8-108(1)(a) refer to the recording of insanity examinations, there is no language preventing the recording of an examination. Further, there are no statutory rules preventing the recording as it relates to competency.
9. It is understandable that the statute requires a recording of an insanity examination for a Class 1 or Class 2 felony charge. Without any additional resources or effort, it seems equally reasonable to allow but not require a competency evaluation to be recorded in a Class 1 or Class 2 felony charge as well.
10. Additionally, there is no harm to the Defendant in recording the second evaluation. The Defense has asked the Court to allow Dr. Jackie Grimmatt to review the video and audio recording of the first competency evaluation. If the Defense finds value in the recording of the first evaluation, the People find value in recording the second evaluation.
11. Furthermore, fairness requires that the prosecution be entitled to the same information as the Defense when admissions or statements of a defendant have been weighed by the examining physician during a sanity evaluation. *Lewis v. Thulemeyer*, 538 P.2d 441, 443 (Colo. 1975). While the holding in *Lewis v. Thulemeyer* pertains to an sanity

evaluation, the Court may consider applying the same reasoning when considering information obtained during a competency evaluation.

12. There are distinct legal differences between an insanity evaluation and a competency evaluation, as well as distinct differences in how the information gathered during the evaluations may be used. The video and audio recording of these evaluations still provides valued transparency that benefits all parties in this case.
13. The Defense notes that a court may not add, subtract, or change the words in a statute. However, the Defense cannot reasonably argue this while at the same time request that their expert be allowed to view the recording. The Defense's position is at odds with C.R.S. § 16-8.5-104(4), which allows the court to order that additional information be provided to the evaluator or either party in the case.

Crim.P.16(a)(1)(VIII) Requires the Prosecution to Turn Over All Recorded Statements of the Defendant

14. Pursuant to Crim.P.16(a)(1)(VIII), the People are required to produce to the Defense *“any written or recorded statements of the accused or of a codefendant, and the substance of any oral statements made to the police or prosecution by the accused”* (Emphasis added.)
15. In the context of discovery, Rule 16 appropriately requires the People to produce a defendant's recorded statements to the Defense. It would be inconsistent, in the context of competency, to prevent both parties from recording statements made by the Defendant. In both contexts, the privilege to the content of the statements are waived.

C.R.S. § 16-3-601 Requires the Recording of Defendant's Statements During a Custodial Interrogation

16. C.R.S § 16-3-601 requires recording of custodial interrogations during investigations for class 1 or class 2 felony charge occurring in a permanent detention facility.
17. The context and the purpose of a custodial interrogation are distinctly different than a competency evaluation, yet the importance of a recording remains the same. In both circumstances, statements made by the Defendant potentially capture admissions and confessions, as well as potentially exculpatory information.

Recording the Defendant's Competency Evaluation is the Best Evidence for All Parties

18. Recording the competency evaluations in this case will serve as the best evidence for the Court and all parties to consider as this case moves forward. The People do not pretend to be soothsayers, but it is reasonable and prudent to anticipate a competency hearing with opposing expert opinions in this case. The best evidence for all parties to consider is the first recorded competency evaluation, in addition to a recorded second competency evaluation.

The People request that the Court order: (1) The People, the Defense, and the Court may review the first recorded competency evaluation; and (2) The second competency evaluation of the Defendant should be video and audio recorded for review by the People, the Defense, and the Court.

Respectfully submitted on October 16, 2020.

/s/ Michael J. Allen  
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**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing **[P-20] People's Response to Defense Brief Regarding the Use of Video and Audio Recording During a Competency Evaluation D-19** was served via ICCES on all parties who appear of record and have entered their appearances herein according to ICCES:

Date: October 16, 2020

By: Sara Eldridge  
Paralegal