

**REDACTED**

District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903	DATE FILED: May 12, 2020
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  <b>LETECIA STAUCH,</b> Defendant	
MEGAN A. RING, Colorado State Public Defender Kathryn Strobel (No. 42850) Deputy State Public Defender 30 E Pikes Peak Ave Suite 200 Colorado Springs, Colorado 80903 C. Colette LeBeau (No. 43164) Deputy State Public Defender 132 W B St #200 Pueblo, CO 81003 Phone (720) 475-1235 Fax (719) 7475-1476 E-mail: <a href="mailto:Kathryn.strobel@coloradodefenders.us">Kathryn.strobel@coloradodefenders.us</a> <a href="mailto:Colette.LeBeau@coloradodefenders.us">Colette.LeBeau@coloradodefenders.us</a>	Case No. <b>20CR1358</b>  Division 15S
<b>D-10</b>  <b>MOTION TO CONTINUE PRELIMINARY HEARING</b>	

Letecia Stauch, through counsel, hereby moves the court continue the Preliminary Hearing and Proof-Evident, Presumption-Great hearing in this case, currently scheduled to being on June 5, 2020. In good faith, defense counsel consulted with the prosecution regarding this motion. The prosecution objects.

The deadly and highly contagious COVID-19 pandemic was announced by the World Health Organization on March 11, 2020. On March 10, 2020 Colorado Governor Polis declared a State of Emergency and on March 26, 2020, the Governor entered his “stay at home” order. Colorado Springs Public Defender Office Head Rosalie Roy closed the El Paso County Trial Office of the Public Defender on March 20, 2020 and it has remained closed to the public since that date. Attorneys were instructed to work from home and all in-person investigative work was suspended due to a positive COVID-19 test in the office on March 20, 200. Employees have been instructed not to go in person to visit clients at the jail. The Office of the Colorado State Public Defender has also instructed employees to work from home whenever possible. While the Governor instituted a less-restrictive “Safer at Home” order on April 27, 2020, the Governor’s order still “strongly advises” Coloradans to stay home whenever possible to prevent the spread of COVID-19.

**I. MS. STAUCH MOVES TO CONTINUE THE PRELIMINARY HEARING AND PROOF-EVIDENT, PRESUMPTION GREAT HEARING IN THIS CASE BECAUSE SHE IS UNABLE TO MEET WITH HER DEFENSE COUNSEL DUE TO THE COVID-19 PANDEMIC AND RESTRICTIONS AT THE COLORADO SPRINGS CRIMNIAL JUSTICE CENTER.**

- a. Ms. Stauch is being held at the Colorado Springs Criminal Justice Center (CJC). She is [REDACTED]. Ms. Stauch is charged with two counts of First Degree Murder. Ms. Stauch is being held without the ability to post bond due to the nature of her charges.
- b. The defense has diligently met with Ms. Stauch to review discovery with her and prepare for the upcoming hearing. Since March 11, 2020, the defense team has been meeting with Ms. Stauch entirely by online video visitation. From March 11<sup>th</sup> to May 4<sup>th</sup>, the jail permitted counsel to meet with Ms. Stauch via online video for one to two hours at a time, approximately three to four days per week.
- c. On May 4, 2020, for reasons that are unclear to the defense, the Colorado Springs Justice Center suddenly stopped allowing video visitation for professional visits to inmates housed in [REDACTED]. (See Attached Exhibit A)
- d. It is unclear what prompted this change in policy at CJC. The staff at the jail has informed defense counsel that the only way for counsel to speak to Ms. Stauch is to go in person to the jail and to meet with Ms. Stauch in an attorney room with glass in between counsel and Ms. Stauch, and a mandatory closed trap. Phone, video and contact visits have been prohibited pursuant to the new jail visitation policy. While the new policy prohibiting professional video visits and limiting in person visits was issued formally on May 6, 2020, counsel has not been permitted to conduct a video visit with Ms. Stauch since April 30, 2020.
- e. Counsel was permitted by jail staff to conduct a brief phone conversation with Ms. Stauch on May 12, 2020, in order to advise her of this motion to continue. Ms. Stauch has agreed to request this continuance based on the grounds cited in this motion.
- f. Counsel is aware of the challenges that confront the jail staff during the COVID-19. In consideration of public health guidelines and the staffing challenges at the jail, counsel contacted the CJC Day Shift Commander, Lt. Eric Carnell, and suggested a prescheduled fixed time for video visits so that staffing could be predictably arranged for video visits with Ms. Stauch. Counsel alternatively suggested that Ms. Stauch be able to use a locked contact room with a portable video visitation booth so that deputies would not have to sit with her during her visits, or that Ms. Stauch be permitted phone calls to counsel's cell phone. The entire defense team has made themselves available any time of the day to meet with Ms. Stauch and accommodate the staffing difficulties at the jail. All suggestions short of requiring the defense team to enter the jail and visit Ms. Stauch in person, and thus risk the spread of COVID-19, have been denied.
- g. On April 29, 2020, the day shift commander at the jail told defense counsel, Kathryn Strobel, that CJC would not accommodate a pre-determined video visitation schedule so that Ms. Stauch could meet with her counsel because there was too many "other circumstances." The commander did not tell counsel what those circumstances were that prohibited a video visitation meeting between Ms. Stauch and her defense counsel. The commander informed counsel that CJC cannot and will not allow for a set time for Ms. Stauch to meet with counsel via video because of her security status and the limitations on staffing at the jail. The commander further advised Ms. Strobel that it is difficult and time consuming to transport Ms. Stauch to video visits.
- h. The prohibition on visitation between Ms. Stauch and her defense team has reached the point that requires court intervention. To date, the defense has received approximately

19,902 pages of paper discovery, and over 250 items of media discovery, most of which contain multiple separate media files such as audio files, photographs, or video files. It is vital that the defense team is able to review discovery with Ms. Stauch in order to provide Ms. Stauch effective assistance of counsel pursuant to the ABA Guidelines, Amendment Six of The United States Constitution and Article II Section Sixteen of the Colorado Constitution. Ms. Stauch is entitled to be informed of the evidence against her, and to review it with her attorneys in confidence prior to her preliminary hearing.

- i. Even if counsel were permitted to enter CJC in person to visit Ms. Stauch, Ms. Stauch would only be allowed to view her discovery behind a glass window pane and she would be unable to hear any audio files or watch any video due to the limitations of the attorney booths at the jail. The May 6<sup>th</sup> Policy in Exhibit A prohibits electronics such as laptops and phones without a court order, so no digital discovery would be permitted absent a court order.
- j. While it may be more convenient for the CJC staff that counsel go in person to the jail to meet with Ms. Stauch, requiring counsel to go in person to the jail during the COVID-19 pandemic increases the risk of spread of the virus both to the jail staff and their families, Ms. Stauch, other inmates, and to the defense team and their families.<sup>1</sup>
- k. While the defense is aware that no inmate at the CJC has tested positive for COVID-19, unfortunately many EPSO deputies have tested positive for the virus, and tragically, one has died from COVID-19.<sup>2</sup> At least three deputies employed and working at CJC have tested positive for COVID-19.<sup>3</sup> Further, the jail cannot guarantee that no inmate currently has the virus because they have not tested all or even a majority of the inmates incarcerated. In a conversation with undersigned counsel Ms. Strobel on May 4, 2020, Lt. Eric Carnell, the Day Shift Commander at the Colorado Springs Justice Center, refused to provide counsel with documentation or confirmation regarding how many inmates have been tested for COVID-19 to-date, how many inmates or deputies are currently exhibiting symptoms of COVID-19, how many inmates or deputies are in quarantine currently, or how many people have been in CJC and become symptomatic during or after their release.
- l. Quarantining symptomatic inmates is only one piece of the concerns surrounding the spread of the virus. The scientific community has confirmed that people can carry and spread the virus and be pre-symptomatic and asymptomatic, which is one of the reasons this particular virus is so difficult to control.<sup>4</sup> It is beyond reason to argue that the Colorado Springs Justice Center is the only place in the world that is immune from the danger of a COVID-19 outbreak, and that they alone can ensure the prevention of

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<sup>1</sup>“COVID-19 in Correctional and Detention Facilities” February–April 2020; available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e1.htm>

<sup>2</sup>“El Paso County Sheriff’s Office confirms deputy died from COVID-19” 4/2/20 KOAA News; located at <https://www.koaa.com/news/covering-colorado/el-paso-county-sheriffs-office-confirms-deputy-died-from-covid-19>

<sup>3</sup>“3 Deputies at El Paso County jail have tested positive for COVID-19; virus ‘likely’ to spread to inmates, Sheriff’s office warns” 4/3/20 THE GAZETTE; located at [https://gazette.com/news/3-deputies-at-el-paso-county-jail-have-tested-positive-for-covid-19-virus-likely/article\\_409db30c-75bf-11ea-a37c-334d20e5bf37.html](https://gazette.com/news/3-deputies-at-el-paso-county-jail-have-tested-positive-for-covid-19-virus-likely/article_409db30c-75bf-11ea-a37c-334d20e5bf37.html)

<sup>4</sup>“Asymptomatic Transmission, the Achilles’ Hell of Current Strategies to Control Covid-19”, Gandhi, Monica, Yokoe, Deborah, Havlir, Diane; The New England Journal of Medicine 4/24/20; located at <https://www.nejm.org/doi/full/10.1056/NEJMe2009758>

infection to inmates or attorneys once they enter the jail. The El Paso County Sheriff expressly acknowledged the inevitability of the virus entering the jail on April 3, 2020.<sup>5</sup>

- m. “The pathway for transmission of pandemic influenza between jails and the community is a two-way street. Jails process millions of bookings per year. Infected individuals coming from the community may be housed with healthy inmates and will come into contact with correctional officers, which can spread infection throughout a facility. On release from jail, infected inmates can also spread infection into the community where they reside.” *Pandemic Influenza and Jail Facilities and Populations*, American Journal of Public Health, October, 2009.
- n. Requiring the defense team to make the unconscionable choice between putting our personal health and that of our families at risk, and fulfilling our duties to Ms. Stauch as her counsel is dangerous and unreasonable. This choice is completely unnecessary because a safe, workable alternative is available and seemingly was only abolished because video visits are inconvenient for jail deputies to accommodate.
- o. To date, 19,879 people have tested positive in Colorado for COVID-19. 987 people have died of the virus.<sup>6</sup> El Paso County has the sixth highest number of cases and deaths from COVID-19 in the state of Colorado.

## **II. COUNSEL IS NOT PREPARED TO PROCEED TO PRELIMINARY HEARING BECAUSE THE PANDEMIC HAS PREVENTED THE DEFENSE FROM ADEQUATELY PREPARING FOR THIS HEARING.**

- a. Restrictions on travel due to the COVID-19 pandemic have prohibited the defense from investigating this case. The investigation surrounding the allegations in this case span across the state of Colorado and across the country to South Carolina and Florida. To date, the prosecution has endorsed approximately 320 witnesses, and there are likely an exponentially greater number of witnesses that have yet to be endorsed by the prosecution and the defense in this case.
- b. The defense has been unable to travel to conduct any investigation in the above locations due to the ongoing pandemic. Defense investigators cannot conduct in person interviews with witnesses, nor is it safe for investigators to go to locations of interest to the case, or visit schools, churches, or businesses to interview witnesses and retrieve records due to the Stay at Home Orders still in place throughout the state and the country
- c. The ABA guidelines in capital cases require that counsel conduct thorough and independent investigations relating to issues of guilt, penalty and mitigation. Counsel must independently investigate the circumstances of the crime and all evidence purporting to inculcate the client. The defense lawyer’s obligation includes not only finding, interviewing, and scrutinizing the backgrounds of potential prosecution witnesses, but also searching for any other potential witnesses who might challenge the prosecution’s version of events, and subjecting all forensic evidence to rigorous and independent scrutiny. Counsel should seek out an interview potential witnesses including but not limited to eyewitnesses or other witness. The defense is unable to fulfill their obligations to Ms. Stauch under the ABA guidelines due to the COVID-19 pandemic.

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<sup>5</sup> “Sheriff’s Office Message to Families and Loved Ones of Inmates in the El Paso County Jail” 4/3/20 available at <https://www.epcsheriffsoffice.com/news-releases/sheriffs-office-message-to-families-and-loved-ones-of-inmates-in-the-el-paso-county>

<sup>6</sup> <https://covid19.colorado.gov/data/case-data>

**III. THE DEFENSE HAS NOT RECEIVED NECESSARY DISCOVERY THAT WILL BE AT ISSUE DURING THE PRELIMINARY HEARING AND PROOF-EVIDENT, PRESUMPTION-GREAT HEARING.**

- a. The autopsy report in this case has not been discovered to the defense. Despite their efforts to obtain it, the prosecution has provided no timeframe for when the defense can expect to receive the autopsy report. Therefore, the defense has not been provided with details or documentation related to the cause of death, manner of death or any of the vital information contained in the autopsy report. Once the autopsy report is received, the defense will require more time than is allotted before the currently scheduled hearing to review, research and prepare to litigate the results contained therein during the preliminary hearing in this case.
- b. Among other missing pieces of discovery, DNA results are still outstanding on a number of key pieces of evidence, and [REDACTED] have not been disclosed to the defense.
- c. Without these vital items of discovery the details contained therein, with less than 20 days before a Preliminary Hearing and Proof-Evident, Presumption-Great hearing is set to begin on allegations of First Degree Murder, the defense is unable to adequately prepare. Once those documents are received, more time will be required to review, research, investigate and prepare for such a hearing in a case of this magnitude that implicates the most severe penalty available in our system of justice.
- d. Additionally, the sheer volume of discovery in this case requires more time for counsel to review and prepare to litigate at the Preliminary Hearing and Proof-Evident, Presumption-Great Hearing. More time is also necessary so that Ms. Stauch is also able to review discovery in her case with her counsel prior to the currently scheduled hearing.

**IV. THE CURRENT CHIEF JUSTICE ORDERS RELATED TO THE COVID-19 PANDEMIC THAT ARE IN PLACE TO PROTECT THE HEALTH AND SAFETY OF ALL PARTIES CONTRAVENE MS. STAUCH'S RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL, TO PARTICIPATE IN HER DEFENSE, AND HER RIGHT TO FACE-TO-FACE CONFRONTATION.**

- a. Not only do the current limitations on professional visitation at the jail ensure that Ms. Stauch will be unable to see her attorneys in the month prior to her currently scheduled Preliminary Hearing, and Proof-Evident, Presumption-Great Hearing, but also, public health guidelines, the Chief Justice Orders both from the Colorado Supreme Court and the El Paso Chief Judge Bain all require Ms. Stauch to be seated at least six feet apart from her counsel during any court proceeding. The social distancing requirements will make it impossible for Ms. Stauch to ask question of her attorneys in confidence or assist in her defense throughout the hearing.
- b. Counsel and the rest of the defense team will be unable to confer with each other during the hearing without risking the spread of COVID-19 because communicating in the midst of a hearing would require less than six feet of distance between each member of the defense team.
- c. The requirement that counsel and witnesses wear masks will limit effective cross examination because the faces of everyone in the courtroom will be obscured. The benefits

of in-person testimony at hearings cannot be overstated. Having the ability to see one's facial expressions to determine their veracity and to see how a person behaves when subjected to in-person cross examination is a promise of the United States Judicial System that Ms. Stauch does not wish to sacrifice. Thus, it is her request that this Court continue this hearing until such a time that the Confrontation Clause in the Colorado and United States Constitutions can be upheld to its ideal.


V. **PROVIING A PUBLIC HEARING WILL PLACE THE LIVES OF THE COMMUNITY, COURTHOUSE STAFF, THE JAIL STAFF, ALL COUNSEL, THE FAMILIES, AND MS. STAUCH AT RISK.**

- a. Courtroom size makes social distancing impossible in this case. The current "Safer at Home" mandate by Colorado Governor Polis limits public gatherings to less than ten people.<sup>7</sup> That requirement necessitates limitations on which members of the defense team can attend the currently scheduled hearing on June 5<sup>th</sup> and 8<sup>th</sup>.
- b. In addition to limitations on the number of people on the defense and prosecution teams, social distancing mandates will limit attendance anyone else who wishes to attend this hearing. When considering the required attendance of the Court, the court clerks, Ms. Stauch, her lawyers, and the prosecutors involved in this case, and advisory witnesses for each side, the number quickly exceeds ten people. Therefore no in-person observers will be permitted in the gallery of the Courtroom itself for this hearing. Should members of Ms. Stauch's family, members of the victim's family, members of the public, and the press wish to observe this hearing in person, they will be prohibited from doing so pursuant to the Governor Polis's orders, the Supreme Court Orders, the El Paso Chief Justice Orders, CDPHE, WHO and CDC Guidelines.

For the reasons stated above, the defense requests the court either grant this motion or schedule a hearing forthwith on the matter.

Ms. Stauch files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution.

RESPECTFULLY SUBMITTED,



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Kathryn Strobel (No. 42850)



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C. Colette LeBeau (No. 43164)

<sup>7</sup> <https://drive.google.com/file/d/1WNRWhGf-8VytCBEuW5bmrSU613MrEkbD/view>

Deputy State Public Defender

Deputy State Public Defender

Dated: May 12, 2020

**Certificate of Service**

I hereby certify that on May 12, 2020, a true and correct copy of the motion was served via ICCES on all parties who appear of record and have entered their appearances herein according to ICCES.

/s/ Kathryn Strobel