

FILED IN THE
10TH JUDICIAL DISTRICT
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COUNTY Court, Boulder County, Colorado Court Address: 1776 6 th Street Boulder, CO 80302	<div style="border: 1px solid black; width: 100px; height: 30px; margin: 0 auto; text-align: center;">BOOKS</div> <p style="text-align: center;">σ COURT USE ONLY σ</p>
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JOHN MARK KARR, Defendant	
DAVID S. KAPLAN, State Public Defender Seth Temin #18014 Deputy State Public Defender Boulder Regional Public Defenders 1881 9 th Street, Ste. 200, Boulder, CO 80302 Phone: (303) 444-2322 Fax: (303) 449-6432 E-mail: boulder.defenders@state.co.us	Case No. <u>06CR1244</u> Division

MOTION TO PROTECT THE RELIABILITY AND FAIRNESS OF THE PROCEEDINGS AND MR. KARR'S FUNDAMENTAL RIGHTS [002]

The reliability and fairness of the proceedings are particularly at issue this case. The prosecution and law enforcement have been actively investigating for almost a decade and, in addition, other innumerable individuals and employees of persons who have been under an umbrella of suspicion have also been actively investigating this matter as well. Mr. Karr moves for the following relief, and he moves for hearings on all of these matters:

I.

1. Mr. Karr moves this Court for an order requiring the Office of the District Attorney, any other law enforcement personnel, and/or their agents, any members of the media, or any private person, professional or not, to (a) get the written consent of the Colorado State Public Defender's Office before attempting to contact or interview Mr. Karr and (b) to give the Colorado State Public Defender's Office reasonable opportunity to be present prior to any contact with Mr. Karr for any purpose, on the following grounds:

2. Mr. Karr is seeking the appointment of counsel from the Office of the Colorado State Public Defender.

3. Mr. Karr does not wish to be interviewed, contacted, questioned or communicated with by any State agents, any members of the media, or any private person, professional or not, unless the written consent of the Colorado State Public Defender's Office is obtained. Mr. Karr wishes all of his contacts with State agents or media to take place through his legal counsel.

4. Consent of opposing counsel is required by the Colorado Rules of Professional Conduct (1993), Rule 4.2.

5. Mr. Karr hereby exercises his right to remain silent and privilege against self-incrimination and right to counsel under the Federal and State Constitutions. *See, e.g., Massiah v. United States*, 377 U.S. 201 (1964); *People v. Pierson*, 633 P.2d 485 (Colo. App. 1981); *People v. Pierson*, 670 P.2d 770 (Colo. 1983); *People v. Cerezo*, 635 P.2d 197 (Colo. 1981); *People v. Lowe*, 616 P.2d 118 (Colo. 1980); *People v. Jones*, 677 P.2d 383 (Colo. App. 1983); *see also Edwards v. Arizona*, 451 U.S. 477 (1981); *United States v. Henry*, 447 U.S. 264 (1980); *Maine v. Moulton*, 474 U.S. 159 (1985); *U.S. Const.* amends. V, VI, XIV; *Colo. Const.* art. II, §§ 16, 18, 25.

II.

1. Mr. Karr requests this Court to order the preservation, and production, when or if charges are filed pursuant to Crim. P. 16, of the following material:

2. Police handwritten or typed or dictated notes and tapes of any and all contacts and statements of all people contacted, or interviewed or consulted with, regarding this case. Police handwritten or typed or dictated notes and tapes of all police activities and commentary and statements regarding this case.

3. The tapes of dictations of all persons involved in the investigation of this case that are or are not transcribed into reports.

4. All records, experiments, 911 tapes, dispatch tapes, and all other audiotapes and/or videotapes and/or other media of recordings.

5. Duplicates of all photographs, videotapes and/or audiotapes of any and all autopsies.

6. These materials should be preserved and made available to defense counsel pursuant to Crim.P. 16(1)(a) and (c).

7. This discovery is required by the Fifth, Sixth, and Fourteenth Amendments of the Federal Constitution and art. II, §§ 16 and 25 of the Colorado Constitution, Crim.P. 16, Part I; and *Brady v. Maryland*, 373 U.S. 83 (1963). This information and material is exculpatory, material and relevant. *See People v. Garcia*, 627 P.2d 255 (Colo. 1980); *People v. Garries*, 645 P.2d 1306 (Colo. 1982); *People v. Thatcher*, 638 P.2d 760 (Colo. 1981); *People v. Gomez*, 198 Colo. 105, 596 P.2d 1192 (Colo. 1979).

8. The preservation and production of requested items are material to the preparation of the defense in this case and that the request is reasonable.

III.

Mr. Karr demands and moves for the court to order the State to preserve and produce, when or if charges are filed pursuant to Crim. P. 16, all physical evidence in this matter, including but not limited to the following:

1. Access to all houses and buildings which have been seized or searched.
2. All physical evidence obtained from any source, as well as all physical evidence seized from Mr. Karr or any other person.
3. All blood samples in or around any of the buildings noted above, or which have in any way been obtained by the police or prosecution in this case.
4. All weapons from any source.
5. All supposed trace evidence, including but not limited to hairs, fibers, blood, saliva, skin and blood spatter.
6. Under *People v. Garcia*, 627 P.2d 255 (Colo. 1980), *People v. Garries*, 645 P.2d 1306 (Colo. 1982), *People v. Thatcher*, 638 P.2d 760 (Colo. 1981), *People v. Gomez*, 198 Colo. 105, 596 P.2d 1192 (Colo. 1979), and other authorities, the State must preserve at least equal amounts of any evidence tested by the prosecution, for defense testing. Mr. Karr moves for the Court to enter such an order.
7. Mr. Karr moves for the Court to order that the State preserve any evidence with any potential exculpatory or impeaching value.
8. The evidence noted herein has obvious material value to the defense, and cannot legitimately be altered or left unpreserved merely because the State either does not comprehend the value of the evidence or feels that it does not need the evidence. In either situation, the evidence is almost surely exculpatory in nature.
10. Unless the State preserves and makes available the evidence in this matter in unchanged condition, the exculpatory and evidentiary value of the evidence will be lost for Mr. Karr. Mr. Karr will be denied the ability to effectively confront and cross-examine the State's witnesses due to the loss of or unavailability of or changed condition of the evidence. Mr. Karr will be denied effective assistance of counsel if defense counsel does not have prompt access to the physical evidence in this case.

IV.

1. Mr. Karr demands and moves for compliance with Crim.P. 16, when or if charges are filed, including but not limited to the maximum time limits for production of discovery under part (I)(b). Mr. Karr demands and requests that duplicates of all duplicable materials with the exception of photographs be provided as soon as practicable.

2. Mr. Karr demands immediate access to all photographs taken by the State, so that he may specifically designate which photographs should be duplicated.

V.

Pursuant to Crim. P. 16, when or if charges are filed, and the Due Process Clauses of the United States and Colorado Constitutions, Mr. Karr requests disclosure of all records and logs and receipts pertaining to the storage and movement of physical evidence.

VI.

Revocation Of All Releases And Waivers And Assertion Of All Rights And Privileges

Mr. Karr hereby revokes and rescinds all releases, waivers and authorizations for the release of information which he may have heretofore made, and he hereby asserts all of his rights and privileges under Colorado's privilege rules, statutes and principles, including but not limited to C.R.S. § 13-90-107, and the Due Process, Right to Counsel, Confrontation, Right to Remain Silent, Privilege Against Self Incrimination, Compulsory Process, Ex Post Facto, Trial by Jury, Equal Protection, Right to Appeal and Cruel and Unusual Punishment Clauses of the federal and Colorado Constitutions, and Article II, §§ 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28, of the Colorado Constitution, and Article I, § 9, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the U.S. Constitution. Additionally, Mr. Karr revokes and rescinds all powers of attorney or other grants of any personal right to any and all individuals or entities.

VII.

1. Mr. Karr demands and moves for this Court to order the State, when or if charges are filed, to produce to Mr. Karr and to allow Mr. Karr to examine all exhibits and evidence which the State has possession or control of.

2. Crim.P. 16 (I)(a)(1)(IV) requires that the State provide to the accused all "tangible objects held as evidence in connection with the case." This must be done as soon as practicable but no later than 20 days after the filing of charges. *See* Crim. P. 16 (I)(b)(1).

3. Although the Rule is mandatory in its terms, in order to comply with its obligations and to facilitate the process of the trial, and in order to enable Mr. Karr to prepare for trial and to avoid surprise, the State should be ordered to perform the tasks set forth above.

4. This demand and motion necessarily includes any charts, graphs, photos, and any other tangible physical objects the State might use as evidence at trial or which is being held as evidence.

IX.

1. When or if charges are filed, Mr. Karr moves for an order to the prosecution to preserve and produce all evidence in this case, and to return the evidence and materials which were reportedly sent to other agencies for testing or evaluation, so that such materials and evidence are available for any examination and evaluation which Mr. Karr needs to conduct in order to prepare his defense to the charges against him, for the following reasons:

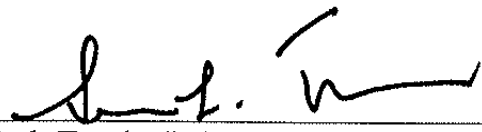
2. If they are to expeditiously and effectively prepare Mr. Karr's defense, it is essential that Mr. Karr's attorneys have access to the alleged evidence in this case without interference or delays. If the evidence is in the hands of outside police agencies, there will inevitably be delays and interference arising from those agencies.

3. The State bears an obligation under Crim. P. 16 (I) (a) (IV) to make all of the physical evidence available to the accused. The State bears the same responsibility under the Due Process, Compulsory Process and Right to Counsel Clauses of the federal and Colorado Constitutions.

4. Crim. P. 16 (I) (3) extends this obligation to all police agencies involved in any respect with the prosecutors in this case, namely the police and any agency to which the evidence has been sent.

5. Thus, Mr. Karr moves for this Court to order the State to make all of the evidence immediately available for Mr. Karr's evaluation, and to immediately notify Mr. Karr if any of such evidence is not so available.

Mr. Karr makes all of these motions, and all other motions and objections during all proceedings in this case, whether or not explicitly stated at the time of the making of the motion or objection, under the Due Process, Right to Counsel, Confrontation, Right to Remain Silent, Privilege Against Self Incrimination, Compulsory Process, Ex Post Facto, Trial by Jury, Equal Protection, Right to Appeal and Cruel and Unusual Punishment Clauses of the federal and Colorado Constitutions, and Article II, §§ 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28, of the Colorado Constitution, and Article I, § 9, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the U.S. Constitution. All authorities and citations noted herein apply to and support all requests for relief herein.


Seth Temin #18014
DEPUTY STATE PUBLIC DEFENDER

Certificate of Service

I certify that on _____,
I served the foregoing document by
delivering____ mailing____ faxing____
same to all opposing counsel.

District Court, Boulder County, State of Colorado 1777 Sixth Street, Boulder, Colorado 80302	<div style="border: 1px solid black; width: 100px; height: 50px; margin: 0 auto; text-align: center; line-height: 50px;">DOCKET</div> <p style="text-align: center; margin-top: 10px;">▲ COURT USE ONLY ▲</p>
<p>THE PEOPLE OF THE STATE OF COLORADO</p> <p>vs.</p> <p>JOHN MARK KARR, DEFENDANT</p>	
	<p>Case Number: 2006 CR 1244</p> <p>Division: 13</p>
<p>ORDER RE MOTION TO PROTECT THE RELIABILITY AND FAIRNESS OF THE PROCEEDINGS AND MR. KARR'S FUNDAMENTAL RIGHTS</p>	

The Court orders that the Office of the District Attorney, any other law enforcement personnel, and/or their agents, any members of the media, or any private person, professional or not, must obtain the written consent of the Colorado State Public Defender's Office before attempting to contact or interview Mr. Karr and to give the Colorado State Public Defender's Office reasonable opportunity to be present prior to any contact with Mr. Karr for any purpose.

Dated: August 25, 2006

BY THE COURT



Roxanne Bailin, District Court Judge

The above and foregoing were placed *faxed*
~~into the normal mailing process to~~
 the persons or attorneys indicated.
 Date: 8/25/06 By: D. Crossin

Seth Termin (303) 449-6432
 Hand-Delivered to
 District Atty's Office