

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	COURT USE ONLY
PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant	
Michael T. Dougherty, District Attorney Adam Kendall, Chief Trial Deputy District Attorney 1777 Sixth Street Boulder, CO 80302 Phone Number: (303)441-3700 FAX Number: (303)441-4703 E-mail: akendall@bouldercounty.org Atty. Reg. #38905	Case No. 21CR497 Div:13
People’s Motion for Restoration Hearing (P-014)	

On March 13, 2023, the Court issued an Order finding (1) that the Colorado Mental Health Institute at Pueblo (“CMHIP”) has the sole authority to determine the appropriate treatment for Ahmad Al Aliwi Alissa (the “Defendant”) while he is being restored to competency and (2) asking the People to “file a supplemental brief” including “an offer of proof” supporting the request for a restoration hearing. Based on the Court’s March 13 Order, the People now formally move for a restoration hearing in this case and provide the following as the basis for this request:

I. Background

On December 3, 2021, the Court found Defendant incompetent to proceed forward in this case. The Court committed Defendant to the care and custody of the Colorado Department of Human Services and ordered that he be transported to CMHIP to be restored to competency. Since Defendant’s admission to CMHIP, CMHIP has provided the Court and the parties with statutorily

required competency evaluations approximately every 91 days. Each of these reports has found that Defendant remains incompetent to proceed.

CMHIP has repeatedly alleged that Defendant is incompetent to proceed due to negative symptoms associated with schizophrenia, a mental health disorder first diagnosed when competency was raised by Defendant's attorneys in this case. CMHIP has opined that these symptoms prevent Defendant from being able to communicate with his attorneys at a level sufficient to understand the criminal proceedings in this case and assist in his defense with a reasonable degree of rational understanding.

Negative symptoms associated with schizophrenia can include losing interest in life and activities, lack of concentration, being less likely to initiate conversations, and feeling like there is nothing to say. Notably, some of the negative symptoms associated with schizophrenia are also associated with depression and other antisocial disorders. Defendant was diagnosed with depressive disorder and antisocial personality disorder by Dr. Patricia Westmoreland in November of 2021. The doctors currently responsible for evaluating Defendant's competency, Drs. Loandra Torres and Katherine Reis, candidly acknowledged on November 14, 2022, that there is a possibility that Defendant's lack of communication and participation in the restoration process could be volitional and not a product of his schizophrenia diagnosis, but they circumstantially "believe" this is not the case. Dr. Torres also shared that CMHIP does not currently have a board-certified neuropsychologist on staff because the prior neuropsychologist had resigned/retired from CMHIP.

During Defendant's time at CMHIP, he has repeatedly declined to attend group sessions, including programming specifically aimed at improving his functional abilities, and he has repeatedly failed to fully comply with the restoration process. Specifically, he has repeatedly

refused to discuss the crimes committed in this case, and he has declined individual sessions on occasion. As an example, since his admission to CMHIP Defendant has refused to answer questions about his offense and informed staff his “attorney said not to answer questions.” *See* Alissa Case File Part 1, filed with the Court on August 15, 2022, pp. 3, 294, 319. CMHIP continually allows Defendant to refuse to participate in the treatment process, despite Defendant taking medication to treat his schizophrenia diagnosis for months. Every report filed by CMHIP to date reflects Defendant’s repeated refusals to undergo treatment. The following most recent filings received by this Court from CMHIP reflect Defendant’s continued lack of participation in the treatment process:

- CDHS Treatment Summary Report filed on March 6, 2023
 - Defendant is “refusing served meals” and refused medication because “he does not think he needs” it. *See* p. 3.
- Report from CMHIP filed on March 1, 2023
 - Defendant reports “I don’t think I have one” when his insight to his mental illness was discussed. *See* p. 12.
 - Defendant refuses to meet with the behavioral health RN one-on-one. *See* p. 12.
 - Defendant refuses to accept education regarding his diagnosis and recommended treatment. *See* p. 13.
 - Defendant refuses to answer legal questions and is “making minimal progress towards legal goals due to refusal to participate in a [one-on-one] meeting.” *See* p. 13.
 - Defendant “is making minimal progress towards psychoses goals due to lack of insight into current diagnosis and recommended treatment, as well as refusal to accept any education regarding current diagnosis and recommended treatment . . . [Defendant] refuses to accept education regarding current medication or discuss any benefits experienced since taking this medication.” *See* p. 13.

- Defendant “has attended 2 out of 10 nursing core groups offered, putting him at 20% for attendance.” *See* p. 13.
- The word “refuse” or “refused” appears 49 times in relation to Defendant’s actions while at CMHIP in the March 1, 2023 filing alone. *See supra*.

Despite the fact that (1) symptoms of depression and anti-social behavior overlap with the negative symptoms of schizophrenia; (2) Defendant has made the volitional choice not to participate in his treatment; and (3) that there is an incentive for criminal defendants to feign or exaggerate symptoms in the context of competency evaluations and treatment, CMHIP has not conducted any standardized, formal testing of Defendant to determine if Defendant is unable to communicate about his case and comply with the restoration process because of a mental health disorder or because he is making a choice to remain noncompliant and not fully engaged.

It is a standard, nationalized practice to conduct a forensic neuropsychological assessment of defendants under the circumstances of this case. These exams are not used merely for cases where a defendant has a cognitive defect (such as dementia, traumatic brain injury, or some other impairment). Rather, neuropsychologists opine that these assessments are the best way to determine whether symptoms are consistent with what they purport to be, or if a defendant’s choice to not participate in his treatment is merely volitional. Neuropsychological assessments remain the gold standard for parsing out cerebral dysfunction from an individual’s conscious decision making. A typical neuropsychological evaluation is a comprehensive assessment of intellectual functions, attention and concentration, speech, language, learning and memory, processing speed, perception, and executive functions. Deficits in these abilities have well-established connections with underlying function and can have clear implications for questions of legal capacity and responsibility. Such evaluations contain rigorous assessments of response bias and distortion and help to constrain error and bias in the assessment of an individual.

Testimony based on neuropsychological evidence is routinely admitted in courts across the United States. One of the reasons for this is the neuropsychological assessment's emphasis on standardization and objectivity. The opportunity for error and bias is constrained by the standardized application of testing methods. And the examinee's performances are compared to large samples of demographically similar individuals, allowing for statistically-based determinations of impairment, and estimates of potential error rates. Evidence of impairment or dysfunction is derived from these comparisons, as opposed to subjective judgment alone.

The People first raised this issue with the Court in July of 2022. As addressed in the People's Motion for Court Order Regarding Documents, Materials, and Recordings from the Colorado Mental Health Institute at Pueblo ("People's Motion 011"), filed on July 20, 2022, the People had made repeated requests to CMHIP in early to mid-2022, and despite the nature of this case, the People did not receive any response from CMHIP. Finally, an attorney responded on behalf of CMHIP and directed the People to obtain a court order for any information from CMHIP. The People filed People's Motion 011. The Court ordered that CMHIP comply with the law and provide information and documents related to Defendant's competency evaluation to the parties, as well as access to the evaluators for the purpose of discussing the competency evaluation.

Additionally, the Court ordered the doctors to provide information on what, if any, testing has been done to determine whether Defendant's refusal to discuss the facts surrounding his conduct reflects a mental health disorder and/or a conscious decision to avoid any discussion or admission of guilt. Such information is necessary because Defendant's cooperation can be considered in the Court's competency determination. *See* C.R.S. § 16-8.5-105(2).

From those records and documents ordered by the Court, the People learned that no testing had been conducted. Also, as previously noted, Defendant has made several statements stating

that he refused to answer questions because his attorney said not to answer questions. *See* Alissa Case File Part 1, *supra*.

As a result of that review and the previously mentioned November 14, 2022 conversation with Drs. Torres and Reis, on December 21, 2022, the People asked CMHIP to conduct a standardized forensic neuropsychological assessment of Defendant. CMHIP failed to respond to the December 21 request until the People filed the People’s Motion for Court Order Regarding Additional Information Related to Defendant’s Competency, or in the Alternative, People’s Motion for Restoration Hearing (“People’s Motion 012”) on January 26, 2023, asking this Court to order CMHIP to conduct the testing of Defendant. At that point, CMHIP informed the People that they had had “no concerns” with allowing an expert board-certified forensic neuropsychologist hired by the People to perform a complete forensic neuropsychological assessment of Defendant so long as they had access to the evaluating doctor and all testing data (as noted above, CMHIP does not currently have a board-certified neuropsychologist on staff). The parties briefed this Court regarding Defendant’s treatment at CMHIP, and the Court issued its March 13 Order. The People then informed CMHIP of the Court’s March 13 Order and asked CMHIP to determine if a neuropsychological examination of Defendant would assist in their treatment.

On March 17, 2023, CMHIP responded that Drs. Torres and Reis “do not see a clinical need for neuropsychological testing to inform the question of competency at this time.” *See* March 17, 2023 email from CMHIP, attached hereto as Exhibit 1. This most recent series of communications reinforces the need for a hearing in short order. Initially, CMHIP failed to respond to the People. Only after the People’s filing of People’s Motion 012 with this Court, did the doctors (through their attorney) offer that they have “no concerns” with such an exam. Then, following

the Court's March 13 Order, CMHIP's attorney informed the People that they view the exam as unnecessary.

It is noteworthy, and confusing, for doctors to agree to allow the completion of a detailed, lengthy neuropsychological evaluation, ask to review the data underlying that evaluation, but then later deem that evaluation as unnecessary. Most importantly, CMHIP's decision regarding the evaluation is contradicted by best practices and input from other medical experts.

It is unclear to what extent the recent, well-publicized issues at CMHIP are playing a role in CMHIP's treatment of Defendant and their decision here. CMHIP is struggling with significant staffing issues and a terribly long wait list, which has impacted the lives of defendants, the population at local jail facilities, and created lengthy delays in criminal cases. A federal judge assessed a ten million dollar fine for CMHIP's repeated failures to address these significant issues. These issues are relevant to the extent that they call into question the current capacity for treatment at CMHIP, as reflected in the failures to respond to the People, the inability and refusal to conduct the additional exam, and their diagnosis in this case and others in this jurisdiction. In deciding whether to rely on CMHIP's incompetency finding, the Court may consider each of these factors.

The People now resubmit the request for a restoration hearing.

II. Argument and Authority

“Competent to proceed” means that Defendant “does not have a mental disability or developmental disability that prevents [him] from having sufficient present ability to consult with [his] lawyers with a reasonable degree of rational understanding in order to assist in the defense.” As discussed above, through the materials provided by CMHIP over the past year, and, significantly, the most recent filings from CMHIP, it is clear Defendant is choosing not to participate in his treatment at CMHIP. While Defendant has been diagnosed with schizophrenia,

he has also been diagnosed with an antisocial disorder—a behavioral problem. It is the People’s position that Defendant’s choice to not participate in his competency treatment at CMHIP is primarily volitional and not the result of schizophrenia.

Significantly, Drs. Torres and Reis have endorsed this as a distinct possibility. Additionally, other experts have consulted with the People and confirm that under the circumstances of this case as it now sits, Defendant could be feigning symptoms, his symptomology could be unrelated to his schizophrenia diagnosis, and he therefore may be competent to proceed forward in this case. The other experts have expressed significant criticisms of CMHIP’s diagnosis of Defendant and his current treatment plan. The criticism is primarily threefold: First, as noted above, CMHIP willingly accepts Defendant’s refusal to participate in treatment without any repercussions for Defendant; second, the doctors’ blind assumption and acceptance that Defendant’s refusal to discuss the day of the murders and undergo treatment are consistent with “negative” symptoms of schizophrenia; and, finally, despite Defendant’s cogent answers to questions about the legal process and his diagnosed conduct disorder and depression, the ultimate decision that he remains incompetent to stand trial.

As the Court affirmed in its March 13 Order, pursuant to C.R.S. § 16-8.5-113(1), the “court may order a restoration hearing at any time on its own motion, on motion of the prosecuting attorney, or on motion of the defendant.” At the hearing, the burden will be on the People to prove by a preponderance of the evidence that Defendant is competent. C.R.S. § 16-8.5-113(6). The People are asking the Court to allow the People the opportunity to present evidence of Defendant’s competency through witnesses at a hearing so that the Court may decide the issue of Defendant’s competency through complete and substantial information.

WHEREFORE, the People hereby renew the request for a restoration hearing.

Respectfully submitted,

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By:
s/Michael Dougherty

s/Adam Kendall
Adam Kendall
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March 20, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing served via the Colorado e-filing system on March 20, 2023, and addressed as follows:

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