

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	DATE FILED: February 2, 2023 9:08 AM
<b>PEOPLE OF THE STATE OF COLORADO</b>  v.  <b>AHMAD AL ALIWI ALISSA</b> Defendant	<b>COURT USE ONLY</b>
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
<b>People’s Supplemented and Amended Motion Regarding Additional Information Related to Defendant’s Competency (P-013)</b>	

On January 26, 2023, 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 (the “Motion”). Subsequent to filing the Motion, on January 27, 2023, the People received an email from counsel for the Colorado Mental Health Institute at Pueblo (“CMHIP”) indicating that CMHIP had no concerns with allowing an expert board-certified forensic neuropsychologist hired by the People to perform a complete forensic neuropsychological assessment of Ahmad Al Aliwi Alissa (the “Defendant”).

Thus, the relief requested in the Motion is no longer necessary. The People proposed formally withdrawing the Motion while in court on January 27, 2023 but did not do so. Instead, the People hereby only withdraw the *relief* requested in the Motion because CMHIP has no concerns with the assessment being conducted as part of Defendant’s competency evaluation.

However, per the discussion held on the record before the Court on the afternoon of January 27, 2023, the People are filing this Supplemented and Amended Motion in order to properly frame the issue currently before the Court.

### **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 symptoms associated with a mental health disorder suffered by Defendant and 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 (i.e. diminished speech output, a decrease in self-initiated, purposeful activities, etc.) 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.

During his time at CMHIP, Defendant has repeatedly declined to attend group sessions, including programming specifically aimed at improving 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. Yet, 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 the best way to determine whether symptoms are consistent with what they purport to be. 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.

The People participated in a phone call with Drs. Loandra Torres and Katherine Reis on November 14, 2022, where the People raised the possibility of conducting some form of neuropsychological testing of Defendant to further assist CMHIP in their work with him. While Dr. Torres acknowledged that there is a possibility that Defendant's lack of communication and participation in the restoration process could be volitional, she believed these issues are symptoms of a mental health disorder and therefore saw no reason to proceed with neuropsychological testing of Defendant at that time. Dr. Reis agreed with Dr. Torres. Dr. Torres also mentioned that CMHIP does not currently have a board-certified neuropsychologist on staff because the person had resigned/retired from CMHIP. The People also spoke with Dr. Richard Pounds of CMHIP on that same day; he invited the People to make additional requests of CMHIP when necessary.

The People then sent a letter to Drs. Torres, Reis, and Pounds on December 21, 2022, formally requesting that CMHIP conduct a neuropsychological evaluation of Defendant. Specifically, District Attorney Michael Dougherty requested the following:

I respectfully propose that a board-certified clinical neuropsychologist with experience in competency to stand trial evaluations conduct an examination of the defendant. It is my belief that such an exam would take one full day. In our conversation, you had shared with me that the doctor who specializes in such exams is no longer employed with CMHIP. If you wish, I can connect you with a board-certified clinical neuropsychologist with experience in criminal cases. He is available and willing to assist with, or conduct, the examination.

As I explained in our phone conversation, my goal is to have the defendant restored to competency so that the criminal process can move forward without further delay. . . . Based on our telephone conversation, as well as a careful review of the competency evaluation, I believe that a forensic neuropsychological assessment is appropriate and necessary at this juncture.

Please let me know if you wish to arrange for a phone conversation or to meet in person. I am available to do so at your convenience. I look forward to speaking with you soon. I hope you and your families enjoy a wonderful holiday season. *See* December 21, 2022 letter, attached hereto as Exhibit 1.

As of January 26, 2023, the only acknowledgment that CMHIP received and read the People's request was found in the January 16, 2023, competency evaluation completed by Drs. Torres and Reis where they state that they "reviewed a letter authored by Mr. Dougherty on 12/21/2022." *See* Report, p. 2, CDHS Competency Re-Evaluation filed with the Court on January 19, 2023. The People then filed the Motion with the Court in the afternoon on January 26, 2023.

Early on January 27, 2023, counsel for CMHIP emailed the People informing the People that CMHIP had no concerns with allowing an expert board-certified forensic neuropsychologist hired by the People performing a forensic neuropsychological assessment of Defendant. *See* January 27, 2023 email, attached hereto as Exhibit 2.

The People informed the Court and counsel for Defendant of the email received by the People during the hearing in this case held on January 27, 2023. Counsel for Defendant objected

to CMHIP allowing the People to hire an expert board-certified forensic neuropsychologist of the People's choice to perform the forensic neuropsychological assessment of Defendant. The Court allowed counsel for Defendant until February 17, 2023, to respond to the Motion and allowed the People seven (7) days to reply to any response filed by Defendant.

## **II. Issue Before the Court and Authority**

As noted above, the People are withdrawing the relief requested in the Motion. Nonetheless, a discussion of the relief requested in the Motion is informative when assessing the issue currently before the Court. In the Motion, the People relied on C.R.S. § 16-8.5-104(1) and discussed that when the issue of competency is raised “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: . . . [i]nformation and documents . . . relied on by an evaluator performing a court-ordered evaluation.” C.R.S. § 16-8.5-104(1). Further and importantly, “[n]othing in this section limits the court’s ability to order that information in addition to that set forth in subsections (1) and (3) of this section be provided to the evaluator or to either party to the case.” C.R.S. § 16-8.5-104(4) (emphasis added).

As previously discussed, Defendant has been committed to the care and custody of the Colorado Department of Human Services by this Court and he currently resides at CMHIP. While C.R.S. § 16-8.5-104 grants the Court the authority to order that *additional* information related to Defendant’s competency be provided to the parties, the Court, and the evaluator, the People are unaware of any statutory or other authority that would allow either party or the Court to dictate what CMHIP *may not do* as part of restoring Defendant to competency. For example, if CMHIP decides an outside doctor needs to be part of the restoration process, there is no legal basis in the criminal case for the Court or the parties to intervene and stop this course of action.

Here, CMHIP has decided that the opinion of an expert board-certified forensic neuropsychologist hired by the People to perform a complete forensic neuropsychological assessment of Defendant is information CMHIP is willing to consider as part of their effort to further evaluate Defendant's competency, so long as they receive the results of the assessment and all underlying data.

To be clear, the People intend for this process to be transparent and well-considered. The People will provide Defendant and CMHIP information regarding the credentials of any board-certified forensic neuropsychologist selected by the People prior to that doctor scheduling an assessment of Defendant. Any such assessment of Defendant will be video and audio recorded and all materials relied on, created, and used during the assessment will be preserved and provided to the evaluators and the parties. So long as CMHIP determines that this process and procedure is acceptable, CMHIP should be able to proceed forward with coordinating specifics to allow the forensic neuropsychological assessment of Defendant without further delay.

WHEREFORE, the People hereby withdraw the relief requested in the Motion and provide the above additional framework and specifics in this Supplemented and Amended Motion in an effort to ensure the Court record is clear prior to Defendant filing his response on or before February 17, 2023.

Respectfully submitted,

MICHAEL T. DOUGHERTY  
DISTRICT ATTORNEY

By:  
s/Adam Kendall  
Adam Kendall  
Chief Trial Deputy District Attorney  
February 2, 2023

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CERTIFICATE OF SERVICE  
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I hereby certify that a true and correct copy of the above and foregoing served via the Colorado e-filing system on February 2, 2023, and addressed as follows:

Kathryn Herold  
Daniel King  
Sam Dunn  
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*s/Adam D. Kendall*  
Adam D. Kendall