

DISTRICT COURT, El Paso County, Colorado Court Address: 270 South Tejon Street Colorado Springs, Colorado 80903	DATE FILED: November 17, 2021 DATE FILED: November 17, 2021 1:56 PM
People of the State of Colorado vs. Defendant: LETECIA STAUCH	▲ COURT USE ONLY ▲ Case #: 20CR1358
District Attorney, Michael J. Allen, #42955 Senior Deputy District Attorney, Dave Young, # 21118 and Deputy District Attorney, Angelina Gratiano, #50674 105 E. Vermijo Colorado Springs, CO 80903 Phone Number: 719-520-6000	Division #: 15
[P-27] PEOPLE’S BRIEF ADDRESSING ISSUES RAISED BY DEFENDANT’S NOTICE OF INTENT TO PRESENT EVIDENCE OF HER MENTAL CONDITION	

Comes Now, Michael J. Allen, District Attorney for the Fourth Judicial District, and his duly appointed Deputy District Attorneys, submits [P-27] People’s Brief Addressing Issues Raised by Defendant’s Notice of Intent to Present Evidence of Her Mental Condition. This brief is submitted in response to the Court’s order of November 4, 2021.

Colorado Statutory Process

1. On November 4, 2021, through counsel, the defendant gave notice pursuant to §16-8-107(3)(b), C.R.S. 2021 stating, “it is likely that we are going to introduce evidence by a mental health expert regarding Ms. Stauch’s mental condition after the disappearance of Gannon Stauch.” See 11-4-21 Transcript, p. 3, lines 14-16.
2. “When the defendant gives notice pursuant to section 16-8-107(3) that he or she intends to introduce evidence in the nature of expert opinion concerning his or her mental condition, the court shall order an examination of the defendant pursuant to section 16-8-106.” §16-8-103.7(3)(a), C.R.S. 2021.

All examinations ordered by the court in criminal cases shall be accomplished by the entry of an order of the court specifying the place where such examination is to be conducted and the period of time allocated for such examination. The defendant may be

committed for such examination to the Colorado psychiatric hospital in Denver, the Colorado mental health institute at Pueblo, the place where he or she is in custody, or such other public institution designated by the court. In determining the place where such examination is to be conducted, the court shall give priority to the place where the defendant is in custody, unless the nature and circumstances of the examination require designation of a different facility. The defendant shall be observed and examined by one or more psychiatrists or forensic psychologists during such period as the court directs. For good cause shown, upon motion of the prosecution or defendant, or upon the court's own motion, the court may order such further or other examination as is advisable under the circumstances. Nothing in this section shall abridge the right of the defendant to procure an examination as provided in section 16-8-108. §16-8-106(1)(a), C.R.S. 2021.

An interview conducted in any case that includes a class 1 or class 2 felony charge or a felony sex offense charge described in section 18-3-402, 18-3-404, 18-3-405, or 18-3-405.5, C.R.S., pursuant to this section must be video and audio recorded and preserved. The court shall advise the defendant that any examination with a psychiatrist or forensic psychologist may be video and audio recorded. A copy of the recording must be provided to all parties and the court with the examination report. Any jail or other facility where the court orders the examination to take place must permit the recording to occur and must provide the space and equipment necessary for such recording. If space and equipment are not available, the sheriff or facility director shall attempt to coordinate a location and the availability of equipment with the court, which may consult with the district attorney and defense counsel for an agreed upon location. If no agreement is reached, and upon the request of either the defense counsel or district attorney, the court shall order the location of the examination, which may include the Colorado mental health institute at Pueblo. §16-8-106(1)(b), C.R.S. 2021.

The defendant shall cooperate with psychiatrists, forensic psychologists, and other personnel conducting any examination ordered by the court pursuant to this section. Statements made by the defendant in the course of the examination shall be protected as provided in section 16-8-107. If the defendant does not cooperate with psychiatrists, forensic psychologists, and other personnel conducting the examination, the court shall not allow the defendant to call any psychiatrist, forensic psychologist, or other expert witness to provide evidence at the defendant's trial concerning the defendant's mental condition including, but not limited to, providing evidence on the issue of insanity or at any sentencing hearing held

pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102. In addition, the fact of the defendant's noncooperation with psychiatrists, forensic psychologists, and other personnel conducting the examination may be admissible in the defendant's trial to rebut any evidence introduced by the defendant with regard to the defendant's mental condition including, but not limited to, the issue of insanity and in any sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102. This subsection (2)(c) applies to offenses committed on or after July 1, 1999. §16-8-106(2)(c), C.R.S. 2021.

Regardless of whether a defendant enters a plea of not guilty by reason of insanity pursuant to section 16-8-103, the defendant shall not be permitted to introduce evidence in the nature of expert opinion concerning his or her mental condition without having first given notice to the court and the prosecution of his or her intent to introduce such evidence and without having undergone a court-ordered examination pursuant to section 16-8-106. A defendant who places his or her mental condition at issue by giving such notice waives any claim of confidentiality or privilege as provided in section 16-8-103.6. Such notice shall be given at the time of arraignment; except that the court, for good cause shown, shall permit the defendant to inform the court and prosecution of the intent to introduce such evidence at any time prior to trial. Any period of delay caused by the examination and report provided for in section 16-8-106 shall be excluded, as provided in section 18-1-405(6)(a), C.R.S., from the time within which the defendant must be brought to trial. §16-8-107(3)(b), C.R.S. 2021

A defendant who places his or her mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103 or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102; or, for offenses committed on or after July 1, 1999, by seeking to introduce evidence concerning his or her mental condition pursuant to section 16-8-107(3) waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for the mental condition for the purpose of any trial or hearing on the issue of the mental condition, or sentencing hearing conducted pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102. The court shall order both the prosecutor and the defendant to exchange the names, addresses,

reports, and statements of any physician or psychologist who has examined or treated the defendant for the mental condition. §16-8-103.6(2)(a), C.R.S. 2021

Separate opinions as to whether the defendant was insane or is ineligible for release, as those terms are defined in this article 8, and, in any class 1 felony case for an offense charged prior to July 1, 2020, an opinion as to how the mental disease or defect or the condition of mind caused by mental disease or defect affects any mitigating factor. The nature of the opinions required depends upon the type of examination ordered by the court. §16-8-106(6)(b), C.R.S. 2021

Separate opinions as to the defendant's mental condition including, but not limited to, whether the defendant was insane or is ineligible for release, as those terms are defined in this article 8, and, in any class 1 felony case for an offense charged prior to July 1, 2020, an opinion as to how the mental disease or defect or the condition of mind caused by mental disease or defect affects any mitigating factor. The nature of the opinions required depends upon the type of examination ordered by the court. §16-8-106(7)(b), C.R.S. 2021

In no event shall a court permit a defendant to introduce evidence relevant to the issue of insanity, as described in section 16-8-101.5, unless the defendant enters a plea of not guilty by reason of insanity, pursuant to section 16-8-103. §16-8-107(3)(a), C.R.S. 2021.

Defendant's court ordered mental health examination should take place at the Colorado Mental Health Institute at Pueblo.

1. Section 16-8-106(1)(a), C.R.S. 2021 gives this Court the discretion to choose from various locations where defendant's mental health examination will occur. Available options include (among others) "the Colorado mental health institute at Pueblo (CMHIP), the place where he or she is in custody, or such other public institution designated by the court." Although the statute states that the court shall give priority to the place where the defendant is in custody, the court may designate a different facility if the nature and circumstances of the examination require it. *Id.* The statute does not authorize the defendant to choose the expert who will conduct the examination. *See People v. Rosas*, 2020 CO 22 at ¶ 5, 459 P.3d 540.

2. Here, the Court should exercise its discretion to order that defendant's examination occur at CMHIP, given the nature and circumstances attendant to that examination. CMHIP is a secure facility that routinely conducts these types of evaluations on defendant's facing first degree murder charges. CMHIP is in the best position to conduct this evaluation pursuant to §16-8-106(1)(a), C.R.S. 2021 as it is staffed with numerous psychiatrists, psychologist, nurses, and other staff members

capable of observing the defendant for twenty-four hours a day during the pendency of the evaluation. If the evaluation is conducted at the jail there would not be an observation period as required by statute. In addition, CMHIP is also in the best position to assure that the interview portion of the evaluation will be recorded pursuant to statute.

3. CMHIP also has the best resources available to evaluate as to whether the defendant has a mental disease or defect that rises to the level of legal insanity or if relevant, any mental condition evidence that may exist based on the broad, vague nature of the defendant's notice given.

By placing her mental condition at issue, defendant waives all privileges applicable to communications with physicians and psychologists, including the attorney-client privilege.

1. Under Colorado law, a party who places in issue a confidential communication going directly to their claim or defense waives all privileges with respect to that communication. In a criminal case, an accused asserts a mental status defense waives all privileges applicable to communications with physicians and psychologists, including the attorney-client privilege. *See* section 16-8-103.6, C.R.S. 2021, which provides that a defendant who places her mental condition at issue waives "any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination . . . for the mental condition for the purpose of any trial.."

2. In *Gray v. District Court*, 884 P.2d 286 (Colo. 1994), the supreme court broadly construed the plain language of section 16-8-103.6, holding that under the statute the defendant "waives the protection to communications, including medical records, that pre-date and post-date the criminal offense, made by a defendant to a physician or psychologist in the course of examination or treatment. *Id.* at 292. The court also concluded that the admission of the defendant's records and the admission of psychiatric testimony pertaining to the defendant's mental condition neither violates the attorney-client privilege nor deprives the defendant of the constitutional right to effective assistance of counsel. *Id.* at 289-292.

3. *Gray* is unequivocal on two points. First, a defendant who asserts a mental status defense waives *all* claims of privilege to records and testimony pertaining to medical examinations pertaining to mental condition that are prepared for use at trial. And second, the waiver of privilege is broad and encompasses all communications and records, including those that pertain to matters that pre-date or post-date the offense. The purpose for such a broad waiver is based on the need to discern the truth regarding the defendant's mental state when the crime was committed. To serve this purpose, both the prosecution and the defense need full access to everything in the examination reports. *Id.* at 296.

4. Defense counsel's attempt to limit the scope of defendant's mental status defense in no way limits the scope of her mental examination, which may go into matters that pre-date or post-date any of the crimes charged, or the People's access to the results of

that examination. On this matter, the *Gray* opinion interpreting the plain language of section 16-8-103.6, and plain language of section 16-8-103.6 are clear. The right to claim the attorney-client and physician/psychologist-patient privileges are waived, as is any objection to pre- or post-offense information concerning the defendant's medical condition. *Gray, id.* at 293.

Before defendant submits to a psychiatric or psychological examination she must be advised about the risks to her rights that such an examination will entail.

1. The Colorado Supreme Court has held that the trial court should advise the defendant of the consequences of submitting to a court-ordered sanity examination, namely, that the People may use evidence acquired directly or indirectly from any communication made by the defendant during the examination to rebut any evidence offered by the defendant at trial regarding her ability to form a culpable mental state or to impeach or rebut any testimony by the defendant. *See People v. Branch*, 805 P.2d 1075, 1082, fn. 3 (Colo. 1991) (citing section 16-8-103(4) and section 16-8-107(1)(a)). The court has applied this holding to other types of examinations as well (e.g., competency exams). *Branch, id.*, at 1082-1083. The holding of *Branch* is broad and can be read to apply here as well. For this reason, the Court should advise defendant in advance of any examination of the evidentiary consequences of statements made by her during the examination.

For purposes of computing defendant's statutory right to a speedy trial, the period of time from the point she is committed for observation to the point the final report is filed (if filed within a reasonable time) is excludable

1. Both the speedy trial statute and the applicable rule of criminal procedure require the discharge of any defendant who is not brought to trial within six months of pleading not guilty. *See* section 18-1-405(1), C.R.S. 2021; Crim. P. 48(b)(1). But, for purposes of the six-month period, both the statute and rule exclude any period during which the defendant is under observation or examination at any time after the issue of insanity, incompetency, or impaired mental condition is raised. Section 18-1-405(6)(a); Crim. P. 48(b)(1). Also applicable is section 18-1-405(6)(f), which excludes the period of any delay caused by the instance of the defendant.

2. At defendant's advisement hearing, defense counsel argued that only the time that defendant is under observation as part of a psychiatric or psychological examination is excluded from the six-month speedy trial period. *See* 11-4-21 Transcript, p. 14, line 23 to p. 15, line 11. Defense counsel's position is contrary to that of the Colorado Supreme Court, which has held that "the period from the time of commitment until the filing of the final psychiatric report, if filed within a reasonable time, is excludable for purposes of the six-month period." *People v. Renfrow*, 193 Colo. 131, 134-135, 564 P.2d 411, 413 (1977). In addition to the exclusions from the speedy trial statute that apply under section 18-1-405(6)(a) (for examinations due to issues pertaining to mental condition) and (6)(f)

(for delays caused at the instance of the defendant), up to an additional exclusion of no more than 3 months may apply under section 18-1-405(6)(h).

Because defendant has not entered a plea of not guilty by reason of insanity, this court must exclude any evidence at trial that is probative of insanity.

1. When a defendant gives notice under §16-8-107(3), C.R.S. 2021 that she intends to introduce expert opinion concerning her mental condition, the court shall order an examination of the defendant under section 16-8-106. Section 16-8-107(3)(a), C.R.S. 2021. But evidence obtained from that examination is not necessarily admissible at trial. Where, as here, the defendant has not entered a plea of not guilty by reason of insanity (NGRI), “the trial court must exclude any evidence that is probative of insanity, as that term has been defined by the legislature, irrespective of the ostensible purpose for which it is offered.” *People v. Moore*, 2021 CO 26, ¶ 3, 485 P.3d 1088.

2. Under *Moore*, “evidence that is ‘relevant to the issue of insanity’ is evidence that tends to prove or disprove the issue of insanity — that is, evidence that is probative of what is defined as insanity.” *Id.*, 2021 CO 26 at ¶ 33. Therefore under section 16-8-101.5(1), C.R.S. 2021, which defines insanity, the court must ask whether some or all of the proposed testimony tends to prove that the defendant (a) was so diseased or defective in mind at the time of the commission of the act to be incapable of distinguishing right from wrong, or (b) suffered from a condition of mind caused by mental disease or defect that prevented the defendant from forming a culpable mental state that is an essential element of a crime charged? *See Moore, id.* at ¶ 3.

3. Evidence of less severe mental illness than insanity may be admissible in the absence of an insanity plea, but only if it conforms to the statutory requirements and rules of evidence. *Moore, id.* at ¶ 5. Therefore, once the results of defendant’s court-ordered examination are complete, this court will be required to “parse any proffered mental condition evidence, line by line if necessary, to distinguish what is probative of insanity under this exacting definition from what is not.” *Moore, id.*

4. If the evidence generated by defendant’s examination is relevant to the issue of “insanity” as defined in section 16-8-101.5(1), that evidence is not admissible at trial because defendant has not pleaded NGRI. *See People v. Rosas*, 2020 CO 22, ¶¶ 23-24, 459 P.3d 540 (holding that evidence of the defendant’s bipolar disorder, which he offered to show that he was incapable of forming the culpable mental state, was also relevant to the issue of sanity and thus inadmissible in the absence of a NGRI plea).

Respectfully submitted this 17th day of November, 2021.

