

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	DATE FILED: April 29, 2024 8:11 AM
PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant	COURT USE ONLY
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
Motion for Discovery, Theory of Defense, Notice of Alibi, and Discovery Related to Mental or Medical Defenses (P-018)	

The People, pursuant to the relevant authority cited below, move this Court to order Ahmad Al Aliwi Alissa (the “Defendant”) to provide the following to the People:

1. The People request that Defendant be ordered to produce for inspection and copying by the People, no later than 60 days prior to trial, the following material and information in the possession, custody, or control of Defendant, his agents, or of any person who participated in the investigation and evaluation of this action for Defendant, and any individual who either regularly reports to or who has reported to Defendant or his attorney with reference to this case:
 - a. Any and all reports or statements of experts endorsed by Defendant in connection with this case, including results of physical or mental examinations and the results of any scientific tests, experiments, or comparisons. Colo. R. Crim. P. 16(II)(b)(1). The People also request the disclosure of the underlying facts or data supporting the opinion of an expert endorsed as a witness. Colo. R. Crim. P. 16(II)(b)(2). If a report

has not been prepared by that expert, the People request a written summary of the testimony be prepared describing the witness's opinions and the bases and reasons therefore, including results of physical or mental examinations and of scientific tests, experiments, or comparison. *Id.*

- b. Additionally, the People request the nature of any general affirmative defense, or any defense applicable to a specific crime, which the Defendant intends to use at trial; the nature of any alibi defense which the Defendant intends to use at trial, and a statement in writing specifying the place where the Defendant claims to have been on the date(s) of the alleged offense(s); the names and addresses of the witnesses the defendant will call at trial to support the defense of alibi; and the names and addresses of any and all persons the Defendant intends to call as witnesses at trial or any hearing in this case.

Colo. R. Crim. P. 16(II)(c),(d).

2. Further, the People request that Defendant be ordered to notify the People of any intent to introduce evidence pursuant to C.R.E. 404 at least 35 days before the scheduled trial date in this matter. As the Court is aware, if Defendant intends to admit 404(b) evidence, the Court must take the time to consider all four-prongs of *People v. Spoto*, 795 P.2d 1314 (Colo.1990) before allowing the admission of other act evidence. *See People v. Pineda*, 40 P.3d 60, 68 (Colo. App. 2001). This will be time consuming. To allow the People the fair opportunity to prepare evidence to rebut any alleged C.R.E. 404 evidence proffered by Defendant, the People require the opportunity to investigate and rebut such evidence. *See People v. Dye*, 2024 CO 2, ¶ 55 (holding that a trial court may require a defendant to provide information related to C.R.E. 404(b) evidence before trial); *see also People v. McGlotten*, 134 P.3d 487, 489 (Colo. App. 2005) (“[c]ourts have inherent authority to issue

orders that are necessary for the performance of judicial functions”); *People v. Dist. Court*, 531 P.2d 626, 629 (Colo. 1975) (holding that “[t]he nature of our adversary system of justice is such that in the course of trial, a defendant voluntarily divulges the information sought at the time of trial, and for that reason alone, it is proper and reasonable to allow the district attorney to have advance access to it.”).

3. Additionally, Defendant pled Not Guilty by Reason of Insanity (“NGRI”) on November 14, 2023. Asserting this affirmative defense acts as a waiver to any privilege regarding medical records related to the defense. C.R.S. § 16-8-103.6 provides, in pertinent part, “by seeking to introduce evidence concerning his or her mental condition pursuant to section 16-8-107(3),” the defendant, “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 such mental condition.” The statute specifically provides, “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 such mental condition.” C.R.S. § 16-8-103.6(2)(a). Where the mental state of an accused is an issue in a criminal case, it is “in the interest of public justice” for the trial court to permit both the People and Defendant full access to the reports and conclusions of physicians and psychologists who have evaluated the mental state of the Defendant. *United States v. Carr*, 437 F.2d 662, 663 (D.C. Cir. 1970). Thus, the People request that Defendant be ordered to provide to the People, no later than 60 days before trial, any and all communications, material, and information provided to any expert or other individual Defendant intends on calling as a witness regarding Defendant’s sanity at trial, as well as the names, addresses, reports, and statements of

any physician or psychologist who has examined or treated Defendant for such mental condition.

Respectfully submitted,

MICHAEL T. DOUGHERTY
DISTRICT ATTORNEY

By:
s/Adam D. Kendall
Adam D. Kendall
April 29, 2024

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 April 29, 2024, and addressed as follows:

Kathryn Herold
Sam Dunn
Office of the Colorado State Public Defender – Boulder
2555 55th Street Suite. D-200
Boulder, CO 80301

s/Adam D. Kendall
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