

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, Colorado 80302	DATE FILED: May 6, 2024 2:16 PM
PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant	COURT USE ONLY
Michael T. Dougherty, District Attorney, Reg. #41831 1777 Sixth Street Boulder, CO 80302 Phone Number: (303) 441-3700 FAX Number: (303) 441-4703 E-mail: mdougherty@bouldercounty.gov	Case No. 21CR497 Div: 13
Response to Defendant’s Motion for Second Sanity and Mental Condition Evaluation & to Continue Trial (D-054)	

On May 3, 2024, Ahmad Al Aliwi Alissa (the “Defendant”) filed his Motion for Second Sanity and Mental Condition Evaluation & to Continue Trial (D-054) (the “Motion to Continue”) in this matter, requesting to continue the jury trial scheduled to begin on August 12, 2024. Because (1) Defendant is unable to articulate with specificity why they cannot get their expert examination completed before the trial date, and (2) Defendant has had adequate time to prepare for trial, this Court should deny his request. In support of this motion, the People further state as follows:

BACKGROUND

This matter has been pending since March 22, 2021, when Defendant murdered ten people at the King Soopers at Table Mesa in south Boulder.

Defendant is charged with ten counts of Murder in the First Degree (F1), forty-seven counts of Attempted Murder in the First Degree (F2), one count of Assault in the First Degree (F3), six counts of Possession of a Large-Capacity Magazine During the Commission of a Felony (F6), and forty-seven counts of Crime of Violence with a Semiautomatic Assault Weapon as a Sentence Enhancer.

This case was originally scheduled for a joint preliminary hearing and proof evident or presumption great hearing on September 7, 2021. On September 1, 2021, Defendant's counsel first raised the issue of Defendant's competency to stand trial. On October 1, 2021, Defendant was found not competent to proceed to adjudication. After a second competency evaluation was completed on November 26, 2021, the Court found Defendant incompetent to proceed and referred him for in-patient restoration treatment, transferring him to the Colorado Mental Health Institute in Pueblo ("CMHIP") in December 2021.

After a lengthy delay in the proceedings while Defendant was deemed incompetent, the case began to move forward when this Court found him restored to competency on October 6, 2023. On November 14, 2023, this Court conducted a preliminary hearing. At the conclusion of the preliminary hearing regarding the probable cause of the charges, Defendant's counsel requested that Defendant be arraigned with the intention of entering a plea of not guilty by reason of insanity ("NGRI"). Defendant proceeded to enter an NGRI plea. At that point, since the case had been pending for nearly three years, both parties indicated a desire to obtain the required NGRI evaluation of Defendant as expediently as possible.

On November 14, 2023, the Court set the case for a three-week jury trial starting August 12, 2024, with jury selection beginning during the week of August 5, 2024. The Court additionally sets the matter for a status conference on January 12, 2024.

On December 29, 2023, the Colorado Department of Human Services ("CDHS") filed a Report stating that, "given the enormity of the discovery material and case filed to be reviewed; including interviewing some collateral resources who may require an interpreter, [Defendant's] evaluation will not be completed prior to the January 2024 review date."

At the hearing on January 12, 2024, CDHS stated that they intended to complete interviews in February so the report could be written in March, but they requested a new deadline of April 30, 2024, in order to give them some margin for error. At the time, the parties agreed that this schedule would still provide sufficient time to prepare for trial. Both the prosecution and the defense reaffirmed that this schedule would be workable.

On April 29, 2024, the evaluators provided the Report to the Court and the parties. The evaluators determined that Defendant does not currently have a mental disability or developmental disability that prevents him from having sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding in order to assist in his defense or prevents him from having a rational and factual understanding of the criminal proceedings. As such, the evaluation confirmed that Defendant remains competent to proceed to trial.

Additionally, the evaluators concluded that Defendant did not suffer from a mental disease or defect, or from a condition of mind caused by mental disease or defect, that left him incapable of knowing the wrongfulness of his actions or that prevented him from forming the culpable mental state. They determined that Defendant was sane at the time he committed the mass murder.

This matter remains set for a motions hearing for the week of June 3, 2024 and jury trial starting the week of August 12, 2024. However, on May 3, 2024, Defendant filed the Motion to Continue.

This case must proceed forward without further, unnecessary delay. The victims in this case have been awaiting trial for far too long and strongly object to any further delay. The People are strongly opposed to any further delay.

DEFENDANT’S BASIS FOR A CONTINUANCE – ADDITIONAL EVALUATION

Defendant requests that a sanity evaluation be completed by an expert of his choice. Under C.R.S. § 16-8-108(1)(a), Defendant is entitled to have an examiner of his choice be given a *reasonable opportunity* to conduct the examination. It is the People’s position that, with trial set for August, there remains sufficient time for Defendant’s expert to conduct the examination.

In Defendant’s Motion to Continue, he states, a delay of the trial is necessary for his “chosen examiner be given a reasonable opportunity to familiarize himself with the collateral materials, conduct investigation and interview Mr. Alissa.” However, Defendant’s motion is devoid of any information indicating why their expert has failed to review the collateral materials or conduct any investigation to date. This could have been completed over the past several months. Defendant has been in competency proceedings since December 2021. Furthermore, Defendant entered an NGRI plea on November 14, 2023. Over the past several months, Defendant’s expert could have reviewed all the materials except for the final report from CDHS. Defendant’s motion fails to explain why none of this work has been completed.

DEFENDANT’S BASIS FOR A CONTINUANCE -- MALWARE ATTACK

Defendant’s Motion to Continue also states that the Office of the Public Defender suffered a system-wide malware attack on February 9, 2024. As a result, according to the motion, Defendant’s team lost access to the entire case for eight (8) weeks.

This case has, however, been pending since March 2021. There has been ample time for the defense to fully analyze the evidence in the case. In fact, in Defendant’s motion for a good faith witness list (D-40), Defendant states, “at this point in [Defendnat’s] case, the prosecution has presumably fully analyzed the evidence.” Defendant’s point is well taken. Each side has had the case file for over three (3) years. The temporary loss of the case file for eight (8) weeks, in a case pending for over three (3) years should not necessitate a continuance.

The People have confirmed that the Office of the Public Defender has tried murder cases in neighboring jurisdictions since the malware attack occurred. Since February, the Public Defender's Office has represented defendants in murder trials in the Second Judicial District, Seventeenth Judicial District, and Eighteenth Judicial District.

Most importantly, the defense has had an incredibly significant amount of time to review the evidence and case reports.

APPLICABLE LAW AND ARGUMENT

Whether to grant a motion to continue a trial “is addressed to the sound discretion of the trial court, and [its] ruling will not be disturbed in the absence of an abuse of discretion.” *People v. Alley*, 232 P.3d 272, 273 (Colo. App. 2010) (citing *People v. Hampton*, 758 P.2d 1344, 1353 (Colo. 1988)). Trial courts are provided “broad discretion” on matters of continuances, including difficulties associated with “assembling the 12 witnesses, lawyers, and jurors” for a new trial date if a continuance is granted. *People v. Ahuero*, 403 P.3d 171, 175 (Colo. 2017) (quoting *Morris v. Slappy*, 461 U.S. 1, 11 (1983)).

When ruling on a motion to continue, the trial court must consider the peculiar circumstances of each case and balance the equities on both sides. *People v. Fleming*, 900 P.2d 19, 23 (Colo.1995). The trial court must consider the prejudice to the moving party if the continuance is denied and if any prejudice can be cured by a continuance. *People in Interest of D.J.P.*, 785 P.2d 129, 132 (Colo.1990). Additionally, the trial court must consider the prejudice to the opposing party if the continuance is granted. *Id.* “Trial judges necessarily require a great deal of latitude in scheduling trials.” *Ahuero*, at 175 (Colo. 2017) (quoting *Morris v. Slappy*, 461 U.S. 1, 11 (1983)). “Not the least of [a trial court's] problems is that of assembling the witnesses, lawyers, and jurors at the same place at the same time, and this burden counsels against

continuances except for compelling reasons.” *Id.* “Consequently, broad discretion must be granted trial courts on matters of continuances; only an unreasoning and arbitrary ‘insistence upon expeditiousness in the face of a justifiable request for delay’ violates the right to the assistance of counsel.” *Id.* (quoting *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983)).

This Court should consider the potential prejudice of a delay to the People, the age of the case, both in the judicial system and from the date of the offense, the timing of the request to continue, the impact of the continuance on the Court's docket and the position of the victims, since the Victims' Rights Act applies in this case.

This Court is required to consider the “grave interests at stake in seeing further procrastination be avoided and that the trial be commenced without delay.” *United States v. Bentvena*, 319 F.2d 916, 935 (2d Cir. 1963) cited in *People v. Brown*, No. 06CA1751, 2011 WL 1195778 * 5 (Colo. App. Mar. 31, 2011). Continuances may not be granted where they “would interfere with the prompt dispatch of business in the various courts, tend to prolong the trial of criminal cases, and unnecessarily add materially to the expense of proper operation of the court system.” *Arellano v. People*, 484 P.2d 801, 803 (Colo. 1971) (holding the defendant did not carry his burden in showing continuance was necessary when weighed against the public interest).

Here, defense counsel has filed a late request to continue the trial in the above captioned matter without articulating why their expert has failed to prepare for the examination permitted under C.R.S. § 16-8-108(1)(a). Furthermore, with regards to the malware attack, Defendant has been in possession of most of the discovery and evidence for *years*.

The victim families request that defendant’s trial not be delayed any further. *See* C.R.S. § 24-4.1-303(3.5). Granting the Motion to Continue would offend the public’s and the victims’ statutory and constitutional rights to the effective and speedy enforcement of Colorado’s criminal

laws. (See Exhibit A – C: Letters from Victims). As the letters make clear, every delay has a terrible impact on the victim families. The delay requested by the Defendant was, and is, one that can be avoided.

Furthermore, the granting of Defendant’s Motion to Continue will prejudice the prosecution. This three-week trial requires scheduling, travel, and arrangements for victim families and key witnesses. As the Court is aware, the scheduling of a three-week trial is incredibly difficult for the Court, the parties, and all those involved.

WHEREFORE, the People respectfully request this Court deny Defendant’s Motion to Continue as Defendant has failed to articulate a sufficient basis to justify the relief requested.

Respectfully submitted,

MICHAEL T. DOUGHERTY
DISTRICT ATTORNEY

By:
s/Michael T. Dougherty
Michael T. Dougherty
May 6, 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/hand-delivered on May 6, 2024, and addressed as follows:

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

s/Michael T. Dougherty
Michael T. Dougherty