

Boulder District Court, Boulder County, State of Colorado 1777 Sixth Street Boulder, Colorado 80302	DATE FILED: October 6, 2023 4:57 PM
People of the State of Colorado, v. AHMAD AL ALIWI ALISSA, Defendant.	▲ COURT USE ONLY ▲
<i>Attorney for the People:</i> Michael Dougherty, Esq., Ken Kupfner, Esq., and Adam Kendall, Esq. <i>Attorney for Defendant:</i> Kathryn Herold, Esq., and Sam Dunn, Esq.	Case Number: 2021CR497 Division 13 Courtroom G
ORDER RE: RESTORATION HEARING	

This matter comes before the Court on September 27, 2023, for a restoration hearing. Michael Dougherty, Esq., Ken Kupfner, Esq., and Adam Kendall, Esq., appear on behalf of the People. Kathryn Herold, Esq. and Sam Dunn, Esq. appear on behalf of Defendant, Ahmad Alissa, who also appears. The proceedings were recorded on the FTR.

SWORN TESTIMONY

1. Dr. Julie Gallagher. This witness is tendered, pursuant to C.R.E. 702, as an expert in the field of forensic psychology with a focus on competency evaluations.
2. Dr. Loandra Torres. This witness is tendered, pursuant to C.R.E. 702, as an expert in the field of forensic psychology.
3. Dr. Hareesh Pillai.
4. Dr. Scott Bender, via Webex. This witness is tendered, pursuant to C.R.E. 702, as an expert in the field of forensic neuropsychology with a focus on competency evaluations.

ADMITTED EXHIBITS:

The Court took Judicial Notice of the entire case file, including all treatment reports filed with the Court.

BACKGROUND

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), ten 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. On September 1, 2021, Defendant's counsel 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, eventually transferring him to the Colorado Mental Health Institute in Pueblo ("CMHIP") in December 2021. This case is set for a preliminary hearing on November 14, 2023.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS

The Court reviewed the evidence, the case file, and applicable law, and considered the testimony and arguments of counsel. The findings and rulings made on the record are incorporated herein, and the Court now issues the following findings and orders.

1. Restoration Review Hearing:

Dr. Julie Gallagher testified at the hearing, estimating that she has performed around 500 competency evaluations in her capacity as a board-certified forensic psychologist with the American Board of Psychology. Dr. Gallagher testified that the Boulder District Attorney's office reached out to her after Defendant was initially found incompetent to stand trial. Dr. Gallagher was given the task of reviewing whether Defendant's evaluators were meeting the best practice standards for competency evaluations before eventually being given additional questions regarding whether restoration procedures were being added at the right pace and whether neuropsychological testing should have been conducted sooner. Dr. Gallagher reviewed thousands of pages of Defendant's medical records and treatment notes, putting together a timeline of his treatment after her review. Defendant's evaluators concluded that Defendant suffered from schizophrenia, and based upon the review of Defendant's documents, Dr. Gallagher agreed with this conclusion. The Defendant was not initially reporting any symptoms of a mental illness, but his evaluators observed him to be distracted and noticed his eyes darting around the room, as if hearing or seeing things that others could not. His answers were also slow and distracted, he was not keeping proper care of his personal hygiene, and he exhibited paranoia that pointed toward a psychotic disorder. Dr. Gallagher clarified between the positive symptoms of schizophrenia, such as the presence of something that would otherwise not be there, like hallucinations, delusions, or false beliefs, and the negative symptoms of schizophrenia, such as the absence of things that would normally be present, such as a lack of motivation to interact with other people or a reduced affect. Dr. Gallagher's review of Defendant's records indicated the presence of both the positive and negative symptoms of schizophrenia.

Dr. Gallagher testified that there are four main areas of a Defendant's competency evaluation: 1) the Defendant's factual understanding of the situation such as the roles of individuals involved and the meaning of their trial and plea options; 2) the Defendant's rational understanding and ability to appreciate how the facts apply to their situation, such as whether the judge is a neutral party and their attorney is working on their behalf; 3) the Defendant's reasoning and decision-making, applying a reality-based logic to their situation and making appropriate decisions based in reality; and 4) the Defendant's ability to assist counsel regarding their case. Dr. Gallagher testified that the standard of evaluation is not rigid but is contextual and complex cases require higher demands on defendants and their counsels. Someone facing a plea deal on a misdemeanor needs to know less than someone facing multiple murder charges.

Dr. Gallagher noted that delusions are the most frequent interference for those with schizophrenia because they may have an idea about their case that is patently false. However, in this case, there was no meaningful evidence of delusions being an obstacle to Defendant's competency and Dr. Gallagher testified that the largest hurdles to Defendant's competency were his negative symptoms of schizophrenia. Defendant was not communicating clearly, often giving very vague and general, slow answers to questions. In initially evaluating Defendant, evaluators struggled to analyze the third competency prong regarding Defendant's reasoning and decision-making because Defendant's negative symptoms of schizophrenia were so severe, with Defendant often deflecting or giving noncommittal answers by saying he didn't know, or he wasn't sure. When Defendant arrived at the state hospital in December 2021, the transport officer indicated that Defendant had been cooperative but that his attorney had told him not to answer questions. It was hard to tell if Defendant could not or simply would not share his reasoning with evaluators. The treatment notes also showed that Defendant stated that he was directed by counsel not to talk about his case, but evaluators ultimately concluded that there was more at play than a purely volitional decision not to talk and they described Defendant as generally having impoverished speech and thought, even regarding hypotheticals that did not directly discuss the facts of his case.

By March 2023, Defendant had been at CMHIP for over a year and his functioning had begun to decline after he refused his previously prescribed medication, Zyprexa. Defendant was subsequently prescribed the medication Clozaril/Clozapine, and to counteract Defendant's decompensation, a forced medication order was issued and CMHIP started providing individual competency sessions where Defendant was more responsive. Previously, Defendant almost never attended the group competency sessions and did not meaningfully participate when he did attend. However, the individual restoration treatment provider was able to get Defendant to open up more during their sessions, actively working on issues that had previously been a barrier to his restoration to competency. Dr. Gallagher testified that this marked a turning point in Defendant's restoration to competency as Defendant began discussing legal issues one-on-one with the psychologist. Dr. Gallagher noted that she was surprised that they hadn't sought an involuntary medication order sooner, but, given Defendant's trajectory of significant improvement since being prescribed Clozaril in March 2023, she was not surprised that he was opined

to be restored to competency in August 2023. However, Dr. Gallagher also testified that if the Court finds that Defendant is competent to proceed, he should not be sent back to the Boulder County Jail because he would be at a much greater risk of regressing and decompensating in the correctional setting. She noted that having a Defendant return to the jail and decompensate due to unwillingness to take medication, may result in the Defendant having to return to CMHIP for restoration, and if restored, returned to the jail if CMHIP will again, not keep him. This cycle, in all likelihood, will continue and may ultimately result in the Defendant decompensating to the point that he is not restorable.

Dr. Loandra Torres testified that she is employed in the court services department in the office of civil and forensic mental health, located at CMHIP. She is both a licensed psychologist in the state of Colorado and board certified in forensic psychology, specializing in forensic psychological evaluations, including competency evaluations. She was employed as a full-time competency evaluator for two years before being promoted to a supervisor position and eventually promoted into the role of clinical director for court services. As clinical director, she still maintains a small caseload of evaluations, but her primary duties involve the supervision of other evaluators. In her capacity with CMHIP, Dr. Torres estimates that she has conducted somewhere between 600 and 700 competency evaluations and has previously been qualified as an expert witness in the area of forensic psychology about 35 times.

Dr. Torres defined competency in the legal context as an individual having sufficient present ability to consult with their lawyer with a reasonable degree of rational understanding in order to assist in their defense as well as having a rational and factual understanding of the proceedings against them. Dr. Torres clarified that they typically look at two main prongs. First, they evaluate an individual's factual and rational understanding of the proceedings, essentially whether an individual understands what they are being charged with, what allegations they are facing, whether an individual understands the potential consequences for being found guilty, how they should comport themselves in the courtroom, what plea options are available to them and what consequences can be expected upon entering the plea, and the roles of individuals involved in the case. Second, they evaluate an individual's ability to consult with a lawyer to assist in their defense with a reasonable degree of rational understanding, including whether the individual is able to communicate information that is relevant to their defense and understand the evidence against them as well as information that would reasonably be expected to assist in their defense. When a defendant is found to be incompetent, the first focus of treatment is to treat any underlying psychiatric condition, most often through psychiatric medication. The second focus is to get the individual to participate in groups that educate them about court proceedings. Occasionally, individual sessions are part of this restoration treatment.

Dr. Torres described schizophrenia as an illness characterized by problems in thinking, perception, and emotions, usually resulting in an individual developing inaccurate, non-reality-based perceptions. Positive symptoms of schizophrenia are the symptoms typically associated with the disease that are traits an average person does not exhibit, such as hallucinations or delusions that other people do not or cannot experience, or are not based in reality. Negative symptoms of schizophrenia are traits

that the average person would typically exhibit but that a person diagnosed with the mental illness may not, such as diminished emotional expression, diminished capacity for speech, diminished motivation to engage in goal-directed activities, and diminished pleasure and socialization. These negative symptoms are often characterized by a notable withdrawal from engagement with others. It is sometimes difficult to make the distinction between the negative symptoms of schizophrenia and a voluntary choice to disengage, but practitioners attempting to discern the difference will look at the individual's behavior across contexts, settings, and people. If an individual is presenting similarly with all individuals and in all contexts, it is easier to attribute that sort of isolation to symptoms of a mental illness. However, if it's more of a choice, an evaluator may see them engage more with peers rather than the treatment team, or with the treatment team more than the evaluator, or similar disparities. Additionally, individuals who won't talk about their crime may be able to discuss a multitude of other topics that are less sensitive, but making this distinction is difficult and it is often problematic to say that a particular withdrawal is fully attributable to one factor or the other as there may be overlapping factors in whether a defendant wants to engage with a competency evaluation or his treatment providers or groups.

Dr. Torres testified that she became involved in this case when the issue of competency was initially raised and the referral came to her department through the Court. Dr. Torres completed the first CMHIP competency evaluation tendered October 21, 2021. The Defendant was subsequently found to be incompetent and was placed at CMHIP. He had never previously been hospitalized, psychologically treated, or medicated. Dr. Torres's role was as a competency evaluator, so she was not involved in specific treatment decisions. Dr. Torres spoke with Defendant's attorneys and everyone involved in Defendant's care as well as reviewing Defendant's discovery and reviewing all information available on Defendant's history prior to interviewing him. After reviewing all of this information, Dr. Torres would interview Defendant to compare how consistently he is able to relate the information they already know about him. Next, Dr. Torres would perform a mental status evaluation, asking questions about Defendant's current condition and asking questions about any symptoms he may be experiencing, before turning to the competency interview itself. The competency interview focuses on questions associated with Defendant's understanding of the factual proceedings of the courtroom as well as their understanding of the allegations against them, the understanding of the evidence, and Defendant's ability to make decisions as it pertains to his legal case. CMHIP typically has one doctor involved in competency evaluations, but in high profile cases such as this one, they usually include two doctors in the evaluation. There were two doctors involved in all but one of Defendant's competency evaluations. Dr. Kate Reis was the second doctor involved in Defendant's competency evaluations.

Dr. Torres met with Defendant eleven times during the course of eight competency evaluations. Dr. Torres reviewed all of Defendant's competency evaluations to prepare for her testimony, and they all indicated that Defendant was restorable, even noting improvement at various times. Dr. Torres' most recent competency evaluation of Defendant, filed with the Court on August 18, 2023, concluded that Defendant had been restored to competency, stating that he "does not 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... Mr. Alissa is competent to proceed to adjudication.” Dr. Torres testified that Defendant’s improvement is primarily attributed to the psychiatric medication that he is receiving. Defendant has been receiving medication since his arrival at CMHIP in December 2021, but there have been several adjustments that have been made to his medication regimen. Clozapine/Clozaril, which was first prescribed in March 2023, has been most impactful in restoring Defendant’s mental health functioning. After Defendant’s January 2023 competency evaluation, Defendant began refusing his Zyprexa medication, resulting in a deterioration in his functioning, with Defendant not sufficiently eating or taking in fluids. This led to the forced medication order and the switch to Clozaril. CMHIP also started providing individual, one-on-one restoration sessions with Defendant meeting with a psychologist who helped provide the education normally provided in group sessions. Both the new medication and the individual sessions eventually led to Defendant’s restoration to competency in August 2023.

Dr. Torres testified that her January 2023 competency evaluation of Defendant concluded that he was not competent. Defendant was aware of the charges against him and was able to provide a brief account of the alleged events on the day of the incident. Defendant knew that he could be sentenced if he proceeded to trial and it was determined that Defendant could maintain appropriate courtroom behavior at trial. Defendant was calm, responded appropriately to question, had the ability to track information within the context of the interview, understood the roles of various courtroom personnel, and always had a fair understanding of his potential pleas and their consequences. Defendant has always had a reasonable factual understanding of the proceedings before him, but there were concerns about his rational understanding and abilities. For example, he would often only give very brief responses to questions about the advantages or disadvantages of a defendant testifying on their own behalf. As part of the January competency evaluation, Defendant was able to identify members of his defense team, but he still exhibited impoverished speech, producing a lower quantity and quality of speech, merely giving vague responses to questions that he would not elaborate upon after further inquiry. Defendant’s continued impoverished speech remained an obstacle to his competency during this January 2023 evaluation, though Dr. Torres noted that it was possible Defendant was intentionally limiting the discussion and simply chose not to speak. Throughout the course of several competency evaluations, when it came to discussing the actual alleged offenses, Defendant often refused to talk about the allegations, claiming that it was too difficult or overwhelming for him to discuss. It would be expected that Defendant would need to be able to talk about these events with his defense team, but Dr. Torres noted that it’s possible that his attorneys may have told him to remain silent and not speak with anybody about any of the allegations or the details around his alleged offenses. Dr. Torres stated that this is not an unreasonable request from his attorneys, but during the competency evaluation, they would try to work around this by explaining to Defendant that, for the purposes of assessing competency, it’s important to consider whether they understand the charges that they are facing and whether they are able to communicate and assist in their defense.

Following the January 2023 competency evaluation, where Defendant was found incompetent to stand trial but remained restorable, Defendant began refusing some doses of his anti-psychotic medications, resulting in a deterioration of his condition. This eventually led to the treatment team seeking a court order for Defendant's medication to be administered involuntarily, coinciding with a simultaneous change from his previous medication of Zyprexa to Clozaril. Defendant's treatment team had begun speaking with Defendant about using Clozaril during the Fall of 2022, but Defendant refused at that time due to the possibility of heavy side effects with that new medication and the necessity for regular blood draws. However, after the Court approved the involuntary medication request in March 2023, Defendant started taking Clozaril and has continued taking it ever since, gradually increasing the dosage until they reached a therapeutic level, where the blood draws confirmed that the dosage was at an adequate level in Defendant's system. Immediate results aren't expected for these kinds of medications, but they eventually observed that Defendant started engaging more and isolating less after the switch to Clozaril. The April 2023 report noted some early improvements, but not significant improvements since Defendant had only been on the drug for a couple of weeks and Defendant's dosage hadn't reached a therapeutic level yet. However, the improvements were most pronounced during the August 2023 evaluation – enough to deem Defendant had been restored to competency.

Dr. Torres testified that group sessions with Defendant's treatment team are intended to be educational, focusing on factual information about court proceedings, particularly for those with less experience with the criminal justice system. These group sessions include a "BLK" group, teaching basic legal knowledge like the basic roles of court participants or the meaning of guilty and not guilty pleas, and a "RDM" group, addressing rational decision-making by having attendees work through hypothetical scenarios to see if they can apply the BLK knowledge to specific situations. There is no sanction available to "punish" patients for not attending these groups, and Defendant generally declined to attend these groups, but over the course of Defendant's various evaluations, he demonstrated the ability to learn and retain information across multiple evaluations. Additionally, after the switch of Defendant's medication to Clozaril, it was noted that Defendant showed a greater willingness to engage in social interactions and engage with peers, such as at karaoke or bingo groups, and he began communicating better with his treatment team. Additionally, in Defendant's case, formal testing prior to Defendant's April evaluation had concluded that Defendant's ongoing failure to communicate could largely be contributed to the negative symptoms of schizophrenia rather than an attempt to feign any memory or cognitive impairments, so it made sense that Defendant's improvement would progress.

Dr. Torres met with Defendant as part of his August 2023 competency re-evaluation, reviewed his prior evaluations, reviewed his CMHIP treatment records, and consulted with the psychologist performing Defendant's individual restoration sessions as well as his psychiatrist and social worker. There were no particularly concerning issues, but collateral records from treatment team notes saw notable improvement between the April and August reports, specifically regarding his improved communication on sensitive topics. The meeting with Defendant for his August 2023 re-evaluation took place over about 1.5 hours in a private treatment room in Defendant's unit. Defendant's hygiene and

presentation were notably improved from their previous evaluations, when he commonly appeared disheveled. Dr. Torres observed no apparent signs of clinical depression or mania and Defendant reported no thoughts of suicidal ideation or self-harm. Defendant's responses to questions were reasonable and logical, Defendant exhibited no perceptual disturbances, and Dr. Torres concluded that Defendant had the capacity to meaningfully participate in discussions with his attorneys. Notably, Defendant acknowledged his schizophrenia diagnosis and symptoms during his August 2023 competency re-evaluation when he would previously deny having any mental illnesses. Defendant was able to minimally discuss some of his schizophrenic symptoms when he previously would not be able to discuss them at all. Defendant described the hallucinations he used to experience, stating that he did not experience them anymore, but he had experienced them the year prior. Defendant spoke about when he first started hearing voices and that he didn't tell anybody about them. Defendant demonstrated a factual understanding of his situation and the charges against him. He demonstrated a capacity to learn and maintain information and was able to rationally discuss the case and the allegations levied against him. Dr. Torres had additional notes from the collateral source of his treatment team regarding his information retention from his individual restoration sessions. At no point during the August 2023 re-evaluation did Defendant refuse to answer any direct questions regarding the day of the alleged offenses, the events leading up to the alleged offenses, or the events of the alleged offenses in general. Defendant even noted that insanity could be a possible defense strategy when previously he was unable to sufficiently explain how he could deny having a mental illness but then proceed with a mental health defense.

Dr. Torres noted that during the August 2023 re-evaluation, Defendant was also able to acknowledge that there was a significant amount of evidence that may be used against him at trial, including that there were guns with his fingerprints on them. Defendant further explained his reasoning for purchasing the firearms, stating that he wanted to commit a mass shooting with an intention to "commit suicide by cop." Defendant acknowledged that he had family members who may be available to testify as character witnesses or as witnesses regarding a defense of not guilty by reason of insanity, though Dr. Torres clarified that this was not a subject that he would spontaneously bring up. Defendant confirmed that he was not currently experiencing any auditory hallucinations, but that he was experiencing them on the day of the alleged offenses. Based on this new, August 2023 competency re-evaluation and Defendant's previous records, including collateral reports from Defendant's treatment team, Dr. Torres and Dr. Reis concluded that Defendant had been restored to competency such that he had the sufficient present ability to consult and assist in his defense and that he had a rational and reasonable understanding of the proceedings against him. Dr. Torres primarily noted improvements in Defendant's logic and consistency in his thinking, coming to reasonable conclusions and improved decision-making across the board. Defendant also exhibited improved communication, though his speech was still impoverished and required some follow-up questions. Previously, Defendant would simply shut down after one or two follow-up questions and be unable to respond or explain his reasoning. Dr. Torres testified that, despite these significant improvements, she wanted to confirm that she wasn't missing anything before coming to her final conclusion, so she reviewed all of Defendant's treatment records since her last report and spoke to his psychiatrist about his medications before eventually

confirming her conclusion that Defendant was now competent to proceed. Dr. Reis concurred with her conclusion.

Dr. Torres further testified that she believes that Defendant should remain at CMHIP during the pendency of his case because the structured, therapeutic environment was crucial to maintaining his competency. Dr. Torres acknowledged that, as a competency evaluator, she wouldn't normally make this kind of recommendation, but Defendant's recent and tenuous improvement hinges upon Defendant's medication compliance and he would likely deteriorate if he stopped taking his medications at the Boulder County Jail. Dr. Torres noted that not all jails have the capacity or ability to maintain involuntary medications if a defendant starts to refuse to take their medications. Dr. Torres testified that Defendant could easily backslide if he stopped taking his medication. Significantly, even though Defendant has been voluntarily taking his medications ever since the forced medication order was issued by the Court, Defendant has been clear that he is only doing so because he would otherwise be physically forced to take them at CMHIP.

Dr. Hareesh Pillai testified that he is Defendant's psychiatrist at CMHIP, though he left the position for about a year to pursue further training in the Summer of 2022 and was not Defendant's direct provider again until his return to CMHIP in July 2023. However, even during Dr. Pillai's absence from CMHIP, Dr. Pillai would still work with the hospital in a limited capacity, mostly to render involuntary medication opinions, including for Defendant. Dr. Pillai confirmed that Defendant has been diagnosed with schizophrenia, presenting with many of the hallmark symptoms, such as disordered thinking, isolating behavior, decreased motivation and drive, and experiencing hallucinations. Dr. Pillai testified that Defendant was initially prescribed an antipsychotic called Risperidone, but due to some ongoing issues with the side effects to that medication, Defendant was switched to a different antipsychotic medication called Olanzapine, also known as Zyprexa. Defendant voluntarily took Zyprexa for the better portion of a year until he started developing adverse side effects, at which point Defendant's medication was changed to Clozapine/Clozaril, which he is currently taking on a daily basis under Court order. The prospect of taking Clozaril was previously raised with Defendant in September 2022, but Defendant indicated that he was unwilling to voluntarily take the drug. The drug has a potentially serious side effect of decreasing white blood cell counts, initially requiring biweekly blood draws to monitor a patient's condition, and this blood draw requirement was at least partially responsible for Defendant's reluctance to take the drug voluntarily. Even after the drug was prescribed to be administered involuntarily under court order, Defendant initially resisted and had to be restrained before he relented. Dr. Pillai noted Defendant's apparent improvement upon his return to CMHIP in July 2023 after several months on his new medication such as the Defendant appearing more communicative and spontaneous. The Defendant was observed to smile and chuckle when appropriate. Dr. Pallai had never witnessed such change in the Defendant and attributes most of this improvement to Clozaril's effects.

Dr. Pillai described antipsychotic medication prescriptions to treat schizophrenia as a balancing act between increasing the dosage to target the patient's symptoms and the side effects that come with

higher doses. Treatment with antipsychotics is necessary for Defendant because they are the only treatment that is proven to be effective for schizophrenia, and Defendant's schizophrenia appears to be a severe case that is treatment resistant. Dr. Pillai testified that he has no concerns that Defendant is malingering regarding his schizophrenia symptoms and Dr. Pillai has made no observations that Defendant's symptoms have been exaggerated. Dr. Pillai noted that Defendant lacked insight into his medication and that he was only taking it because it was court-ordered. Defendant previously reported that Clozaril was not helpful for him and that he does not think that he has a psychiatric illness, at one point indicating that he thought the drug was for cholesterol treatment. Overall, Dr. Pillai described Defendant's insight into his illness as poor and that his judgment is limited.

Dr. Pillai testified that, for affidavits for involuntary, court-ordered medications, there are four criteria to meet the *Medina* requirements: 1) the patient has no insight into their psychiatric illness; 2) the medications are required to prevent a deterioration in their condition or to prevent significant harm to themselves or others; 3) the medications are being sought in the least restrictive manner; and 4) that the necessity for medications override any bonafide motivation the patient may have in refusing. Defendant met all of these requirements in March 2023 when Dr. Pillai authored the affidavit seeking the involuntary medication order for Defendant's treatment. The *Medina* court order only lasts for six months, so when it expires Dr. Pillai re-evaluates the patient to see if they still meet the criteria. If they do, Dr. Pillai authors a new affidavit to renew the court order for involuntary medication for another six months. Dr. Pillai had the same concerns for Defendant in September 2023 as he did in March 2023, including recent symptoms of psychosis for Defendant. The updated section of the most recent affidavit included an incident from September 4, 2023, when Defendant punched another patient multiple times in the face in an unprovoked manner and Defendant refused to speak to Dr. Pillai about the incident. This unprovoked assault was suspected to result from Defendant's underlying symptoms as Defendant usually follows the rules of his unit and stays to himself. Dr. Pillai testified that, in his renewed affidavit for involuntary medication, Dr. Pillai opined that Defendant has no insight into his mental illness, that Defendant's illness interferes with his ability to make rational decisions regarding his treatment, and that Defendant was incompetent to effectively participate in treatment decisions. If Defendant begins developing more insight into his mental illness, Dr. Pillai likely wouldn't continue to pursue the involuntary medication, but given Defendant's current presentation, Dr. Pillai believes it is appropriate. Dr. Pillai testified that he is concerned that if Defendant were to leave CMHIP now after being found to be competent to proceed, Defendant may again refuse to take his medications. In fact, the mental health staff at the Boulder County Jail informed Dr. Pillai that the night before the restoration review hearing, Defendant refused to take his medication while in their custody. Defendant has directly stated to Dr. Pillai that he would not take his medication unless he was forced to by the Court. Dr. Pillai testified that he believes that it is imperative for Defendant to remain on his medication to treat his schizophrenia and that he should remain at CMHIP during the pendency of his case.

Dr. Scott Bender testified that he is an Associate Professor of psychiatry and behavioral science at the University of Virginia School of Medicine and is board-certified by the American Board of

Professional Psychology in clinical neuropsychology. Dr. Bender has been practicing since 2002, treating or supervising the treatment of hundreds of patients. Dr. Bender has published on numerous topics, including competency issues, but primarily on malingering and the differential process when trying to detect malingering. A member of the prosecution team reached out to him to review reports from various professionals and the underlying testing data regarding Defendant. Dr. Bender received all of the raw test data from Defendant's competency evaluations conducted by Dr. Torres and Dr. Reis, including the data and report from July 18, 2023. Dr. Bender noted that when dealing with someone with symptoms of schizophrenia, effective medication is the primary treatment. However, not all medications work equally well and a treatment provider won't know which ones will work until they are prescribed. In Defendant's case, Dr. Bender thought that forensic neuropsychological testing would have been useful in determining what cognitive processes may be responsible for Defendant's competency issues. This kind of forensic neuropsychological testing also assesses whether an individual is putting forth reliable effort, making it clear whether the negative symptoms of schizophrenia are the cause of the lack of engagement by the patient rather than deliberate avoidance. Dr. Bender asserts that this kind of malingering is fairly common in a clinical setting, estimating that about 25% of patients engage in this sort of behavior, exaggerating what may even begin as legitimate symptoms. More often than not, the cases may involve genuine symptoms, but a patient may embellish those symptoms for external gain.

Dr. Bender testified that he believes the evaluations conducted for Defendant prior to April 2023 that did not include any forensic neuropsychological testing fell short of best practice standards. The April 2023 evaluation included TOMM and PAI tests, but Dr. Bender felt like the conclusion that Defendant remained incompetent to stand trial at that time was still insufficient due to gaps in the data. Dr. Bender noted that an Inventory of Legal Knowledge test, which is a test of feigned incompetence to stand trial, had still not been given to date and would have gone a long way to addressing whether Defendant was malingering with regard to his competency determination. Dr. Bender also noted that Defendant's scores on the PAI test from April 2023 indicated to him that he likely doesn't have clinical signs of schizophrenia, or if he does, they were not terribly significant at that point. Dr. Bender testified that, based on his review of the reports and the underlying testing data, he believed there was insufficient evidence to conclude Defendant was truly incompetent to stand trial at the time of his April 2023 evaluation, notably because of the lack of evaluation of Defendant's underlying cognitive skills, which would have been helpful to investigate. After reading the April 2023 reports, Dr. Bender would expect to see continued improvement as long as Defendant remained medication adherent.

The Court finds that, in accordance with C.R.S. § 16-8.5-113(6), the burden of proof by a preponderance of the evidence in this matter is on the People, who have asserted that Defendant is competent to proceed. The Court reviewed the record in this matter, including Defendant's previous competency evaluations and the CMHIP treatment summaries filed with the Court, and heard extensive testimony from a variety of expert witnesses regarding Defendant's competency. The most recent competency evaluation, authored by Dr. Torres and Dr. Reis and filed with the Court on August 18, 2023, has opined that Defendant has been restored to competency. Dr. Torres also testified extensively

at this hearing and the Court substantially credits her testimony in aiding the Court's determination in this matter as she is highly qualified and has had the most direct experience with Defendant on his journey towards restoration. Dr. Torres testified, and Defendant's treatment providers all agreed, that throughout Defendant's time in treatment at CMHIP, Defendant has demonstrated that he has a solid factual and rational understanding of the proceedings against him. Defendant understands the roles of various courtroom personnel, the charges and allegations he is facing, the nature of the evidence against him, and the potential consequences for the decisions he may make during the course of the proceedings. Dr. Torres also testified, and all of Defendant's treatment providers have agreed, that the main obstacle to Defendant's competency has been his evaluators' difficulty in assessing Defendant's reasoning and decision-making and ability to consult with his lawyers to assist in his defense. Defendant's impoverished speech has made it difficult for his treatment providers and his evaluators to determine the rationality of his reasoning as he would often shut down and refuse to elaborate upon his answers, which were often vague or non-responsive to start with. It's hard to pin down the exact cause of this impoverished communication, whether it is more attributable to the negative symptoms of schizophrenia or a volitional choice to remain silent, as it has been noted by several sources that Defendant was told by his attorneys not to discuss his charges and Defendant has independently indicated that he is not comfortable with or doesn't like discussing the allegations. At times, Defendant has also shown a desire to stay at the hospital, saying that he would rather be at the hospital than the jail. Defendant has also occasionally been uncooperative regarding his medications, asserting that he doesn't want them or need them, though he has also acknowledged some benefits to his medication, such as stating that they "help me relax." Despite Dr. Bender's concerns, none of Defendant's treatment providers or competency evaluators have raised concerns about Defendant possibly malingering or exaggerating symptoms. The Court is similarly unconcerned and concurs with Defendant's treatment providers that his presentation of symptoms appears to be genuine at this time.

Ultimately, Dr. Torres and Defendant's treatment providers found March 2023 to be a turning point for Defendant's restoration to competency, when Defendant started a new medication (Clozaril) and started receiving one-on-one competency education sessions. Dr. Torres, in both her August 2023 report finding Defendant to be restored to competency and in her testimony at the hearing, credited Defendant's new medication regimen as instrumental in his improvement. Although concerns remain around Defendant's tendency toward isolation and his continued impoverished speech, the Court finds that there is clear, significant improvement in the reports provided by the hospital from the end of May through August 2023. The Court also notes there have been times in the last several months when the Defendant's progress appears to slip back with him displaying some of his more debilitating symptoms, however, the Court finds such digression does outweigh the significant progress made since March of 2023. This includes Dr. Torres noting that, during Defendant's August 2023 re-evaluation, for the first time since Defendant's arrival at CMHIP, Defendant never refused to answer any direct questions regarding the day of the alleged offenses, the events leading up to the alleged offenses, or the events of the alleged offenses in general. He was able to elaborate further upon his answers when Dr. Torres attempted to follow up and demonstrated a far improved capacity to elucidate his reasoning and decision-

making. As stated earlier, Dr. Pillai also noted a marked improvement in Defendant's presentation after his return in July 2023 from his one-year absence from CMHIP. Dr. Gallagher agreed, testifying that she was not surprised by the August 2023 competency re-evaluation's finding that Defendant had been restored because of Defendant's trajectory of improvement since starting on Clozaril in March 2023.

Therefore, the Court finds by a preponderance of the evidence that Defendant has been restored to competency and, pursuant to C.R.S. § 16-8.5-114, the Court shall resume the criminal proceedings in this matter. The Court notes that, though Defendant is currently competent to proceed, all of his treatment providers and evaluators agree that his competency remains tenuous and that he is likely to rapidly decompensate and regress if he stops taking his medication. The Court takes particular note of the fact that, in June 2023, Defendant specifically said that if he were found to be competent and is returned to jail that he would stop taking his medication. Defendant backed up this assertion by refusing to take his medication during his brief stay at the Boulder County Jail while awaiting his appearance for this restoration hearing. Even under court order, the Defendant has refused to take his medication unless there is the ability for that facility to physically force him to take his medication. It is this Court's understanding the Boulder County Jail does not have the qualified staff and equipment to force the Defendant to take his medication if he refuses. While the Court acknowledges it does not have the authority to order Defendant remain housed at CMHIP after he is found to be competent to proceed, it strongly urges CMHIP retain him, nonetheless. Given the gravity of this case and the looming prediction made by Dr. Gallagher, that ultimately the Defendant may not be restorable if he bounces back and forth between CMHIP and the jail—such a result would be an injustice to everyone who has been impacted by this case.

This matter remains set for a preliminary hearing on November 14, 2023, at 9am in Division 13.

Dated October 6, 2023.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Ingrid S. Bakke', written over a horizontal line.

Ingrid S. Bakke
District Court Judge