

District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903	DATE FILED: July 6, 2020
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. LETECIA STAUCH, Defendant	
MEGAN A. RING, Colorado State Public Defender Kathryn Strobel (No. 42850) Deputy State Public Defender 30 E Pikes Peak Ave Suite 200 Colorado Springs, Colorado 80903 C. Colette LeBeau (No. 43164) Deputy State Public Defender 132 W B St #200 Pueblo, CO 81003 Phone (720) 475-1235 Fax (719) 7475-1476 E-mail: Kathryn.strobel@coloradodefenders.us Colette.LeBeau@coloradodefenders.us	σ COURT USE ONLY σ Case No. 20CR1358 Division 15S Ctrm: S403
<p>[P-08 RESPONSE]</p> <p>DEFENSE OBJECTION TO P-08 AS OVERBROAD BECAUSE GRANTING THEIR REQUEST WOULD VIOLATE MS. STAUCH'S CONSTITUTIONAL RIGHTS TO ATTORNEY-CLIENT PRIVILEGE, HIPPA, 20 U.S.C. 1232, C.R.S. 22-1-123, AND C.R.S. 13-90-107.</p>	

On June 5, 2020, the defense filed a motion under seal raising competency in both 20CR1358 and 20CR3170. The court, pursuant to requests by both the people and the defense, ordered Ms. Stauch to be transported to the Colorado Mental Health Institution in Pueblo (CMHIP) in order to undergo competency evaluation as a Tier One patient.

The prosecution requests in their P-08 motion that the defense provide the names, addresses, reports, and statements of every mental health professional that has ever treated Ms. Stauch for a mental disability or developmental disability. This specific request is outside of the scope of C.R.S. 16-8.5-104, and should be denied by this court as overbroad

C.R.S. 16-8.5-104 "Waiver of Privilege" states:

- 1) When a defendant raises the issue of competency to proceed, or when the court determines that the defendant is incompetent to proceed and orders that the defendant undergo restoration treatment, any claim by the defendant to confidentiality or privilege is deemed waived, and 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:
 - a. Reports of competency evaluations, including second evaluations.
 - b. Information and documents relating to the competency evaluation that are created by, obtained by, reviewed by, or relied on by an evaluator performing a court-ordered evaluation; and
 - c. The evaluator, for the purpose of discussing the competency evaluation.
- 2) Upon the request by either party or the court for the information described in subsection (1) of this section, the evaluator or treatment provider shall provide the information for use in preparing for a hearing on competency or restoration and for use during such a hearing.
- 3) An evaluator or facility providing competency evaluation or restoration treatment services pursuant to a court order issued pursuant to this article is authorized to provide, and shall provide, procedural information to the court, district attorney or defense counsel, concerning the defendant's location, the defendant's hospital or facility admission status, the status of evaluation procedures, and other procedural information relevant to the case.
- 4) Nothing 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 in the case, nor does it limit the information that is available after written consent of the defendant.
- 5) The court shall order both the prosecutor and the defendant or the defendant's counsel to exchange the names, addresses, reports, and statements of each physician or psychologist who has examined the defendant for competency.
- 6) Statements made by the defendant in the course of any evaluation shall be protected as provided in section 16-8.5-108." (emphasis added)

As is clear from the statute, if something is relied upon or created by the evaluator assessing competency, then the prosecution is entitled to have that information by requesting it from the evaluator pursuant to subsection (2). However, nothing in the statute authorizes the court to grant

the prosecution direct access to Ms. Stauch's social or medical history – nor does it give authorization for the prosecution to subpoena records from Ms. Stauch's medical or psychological providers, her schools, her employers or anyone else. The statute, cited in its entirety above, only provides for disclosure of that information relied upon by an evaluator for purposes of assessing competency.

The statute does not provide for any permission, authorization, or disclosure of every treating psychologist or physician's name, address, report, or statements who has treated Ms. Stauch in the past. It does not provide for the disclosure of that information directly to the prosecution, nor does it grant the prosecution access to those records independently without an additional written waiver. The information and disclosures requested by the prosecution in their motion amount to a fishing expedition in which the prosecution is seeking information about Ms. Stauch that is not relevant to competency under the guise of the competency statute.

The People argue in their motion that additional information is permitted under C.R.S. 16-4-104 (4) but the People's motion fails to mention that Ms. Stauch's written permission is required for that information listed in that subsection. Ms. Stauch has not provided permission in writing for additional materials to be provided to the prosecution. Pursuant to C.R.S. 16-4-104, the defense will provide the people with the report and the name of the professionals who evaluate Ms. Stauch for competency. Should the evaluator rely on collateral information not already in the possession of the prosecution, the statute provides the proper procedure for obtaining that information in C.R.S 16-8.5-104 (2). As stated clearly within the statute, the people can request those documents relevant to competency from the evaluator prior to a hearing on competency. By requiring the prosecution to follow the procedure outlined in the statute, this court will further ensure that any disclosure of information to the prosecution is relevant to competency, and nothing more.

The people argue that because a defendant's social history is something for any evaluator to consider and ask Ms. Stauch about when she is evaluated, that opens the door to forcing the defense to disclose Ms. Stauch's entire social, medical, and mental health history to the prosecution – not the evaluator – prior to the completion of the evaluation in question and any subsequent competency hearing. Such an overbroad and invasive disclosure requirement necessarily includes information that has nothing to do with competency or the privileges deemed waived by the raising of the issue.

The defense objects to the allegation that Ms. Stauch or her counsel would intentionally mislead a competency evaluator by providing incomplete information. Nothing in the record on this case indicates the need for this concern, and the defense objects and requests that the court deny the groundless allegation as any basis for disclosures not authorized in the statute. In the hypothetical circumstance that the people deem that the court ordered evaluation is somehow incomplete, the statute authorizes a number of remedies for such a circumstance short of authorizing such broad access to Ms. Stauch's entire life history regardless of whether or not it relates to Ms. Stauch's competency evaluation.

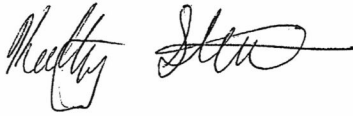
The prosecution cites *Gray v. District Court*, 884 P.2d 286 (Colo. 1994) and *People v. Ullery*, 984 P.2d 586 (Colo. 1999) for as grounds for their request. The defense notes that these cases related to the topics of sanity and impaired mental condition and not to the separate and distinct issue of a defendant's competence to stand trial. Further, each case cited pre-dates the current law regarding competency in Colorado. Lastly, regardless of what the statutes and case law permit regarding sanity and impaired mental condition, the statute at issue in this case regarding waiver of privilege as to Competency, C.R.S. 16-8.5-104, provides a stricter and narrower disclosure than those discussed in *Gray* and *Ullery* by including the language "...each physician or psychologist **who has examined or treated the defendant *for competency***" in subsection (5), when it discusses which information should be exchanged regarding Ms. Stauch's physicians and psychologists. *See* C.R.S. 16-8.5-104(5) (emphasis added). Had the legislature intended for a broader interpretation, or an interpretation that was identical to the sanity and impaired mental condition statutes, they would have written the language identically. However, because the statute in question here is written to narrowly and precisely define that information which should be exchanged, *Gray* and *Ullery* do not resolve this issue for the court.

C.R.S. 13-90-107(1)(g) provides that Ms. Stauch's private medical and psychological information are protected from disclosure due to the privileged nature of that information without the necessary waiver from Ms. Stauch. C.R.S. 22-1-123 and 20 U.S.C. 1232 (g) protect Ms. Stauch's educational records from disclosure without a waiver by Ms. Stauch. The Health Insurance Portability and Accountability act of 1996 protect Ms. Stauch's private medical information. The waiver mentioned in C.R.S. 16-8.5-104 applies only to the records, notes, documents and information that are

specifically relied upon by a competency evaluator, and nothing more. To broaden the above-mentioned waiver as the people request is a violation of the privileges cited herein.

Further, Ms. Stauch still enjoys Attorney-Client Privilege. Thus, requiring defense counsel to report directly to the prosecution regarding her entire medical and mental health history outside the scope of those things relevant to competency is still a violation of that privilege. Allowing the Prosecution to subpoena otherwise protected information, or granting their motion would be a violation of Colorado State law and Federal law. Such broad disclosure requirement as requested by the prosecution violates Ms. Stauch's right to counsel pursuant to the Sixth Amendment to the United States Constitution and Article 2 Section 16 of the Colorado Constitution, her right to Remain Silent, the Due Process Clause, the Right to a Fair Trial, and the right to effective assistance of Counsel, under the United States Constitution Fourth, Fifth, Sixth, and Fourteenth Amendments and the Colorado Constitution Article II, sections Six, Seven, Sixteen, Eighteen and Twenty-five. Therefore, the Defense Objects.

RESPECTFULLY SUBMITTED,



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Kathryn Strobel (No. 42850)
Deputy State Public Defender



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C. Colette LeBeau (No. 43164)
Deputy State Public Defender

Dated: July 6, 2020