

DISTRICT COURT, El Paso County, Colorado Court Address: 270 South Tejon Street Colorado Springs, CO 80903	DATE FILED: July 24, 2020
People of the State of Colorado vs. Defendant: Letecia Stauch	▲ COURT USE ONLY ▲
Deputy District Attorney: Michael J. Allen, #42955 Martha McKinney, #28745 Angelina Gratiano, #50674 Address: 105 E. Vermijo Colorado Springs, CO 80903 Phone Number: 520-6000 District Attorney: Daniel H. May, #11379	Case #: 20CR1358 Division #: 15S Courtroom #: S403
[P-19] People's Notice of Prior Records Requests During Competency Proceedings	

The District Attorney of the Fourth Judicial District of the State of Colorado, through his duly appointed Deputy District Attorney, respectfully provides the following information to the Court:

1. On June 4, 2020, defense counsel filed a motion raising the issue of competency and the Court subsequently ordered a competency evaluation take place at the Colorado Mental Health Institute in Pueblo (CMHIP). The People, to obtain documents that would be relevant to the evaluator, filed several motions and issued multiple subpoena duces tecum (SDT) asking for the following:
 - a. Court orders finding a waiver of confidentiality
 - b. Names, addresses, reports and statements of each mental health professional who has examined or treated the defendant for a mental disability or developmental disability.
 - c. Multiple SDT to medical and mental health providers for the Defendant that the People had identified (Criminal Justice Center (CJC) and Fort Carson)
 - d. Multiple SDT to previous employers of the Defendant.

2. The People argued that prior mental health treatment records are relevant to the evaluation based on the statutory definition of competency in C.R.S. § 16-8.5-101(12) which requires, in part, that a defendant have a mental disability or developmental disability. And a mental disability, in turn, is defined under C.R.S. § 16-8.5-101(15) as a “substantial disorder of thought, mood, perception, or cognitive ability that results in marked functional disability, significantly interfering with adaptive behavior.” Therefore,

the statutory finding that there is a waiver of privilege relates to treatment for the underlying mental disability or developmental disability.

3. Further the People argued that employment records are permissible under C.R.S. § 16-8.5-104(4) which allows the court to order additional information be provided to the evaluator or to either party in the case. In addition, C.R.S. § 16-8.5-105(3) allows an evaluator to use the medical and social history of the defendant to aid in forming an opinion as to the defendant's competency.
4. During court proceedings on July 17, 2020, the Court remarked that he had not previously experienced the prosecution pursuit of records prior to the return of an initial competency evaluation. The People responded to the Court questioning that our office had pursued records in the past and had been successful in obtaining them in some instances¹. The Court requested that the People file this pleading listing previous cases where this had occurred.
5. In the past, the People have pursued records for use in the initial competency evaluation in one of two ways with varying results:
 - a. Through motions practice requesting a finding of a waiver of privilege and requiring disclosure to the prosecution of all relevant records gathered by the defense.
 - b. By subpoena duces tecum for specific records with information obtained through the investigation or through a court order that defense provide the names and contact information of treating professionals.
6. A list of at least some instances of record pursuit and the results are as follows:
 - a. **Frank Goad, 2013CR2942** – the People pursued records through motion and SDT for Colorado Department of Corrections (CDOC) including medical records, behavioral records and parole records, Probation records and CJC Records. The Court granted the release of some records after redacting of medical/mental health treatment information. The Court did not release mental health records beyond previous competency evaluation. There were no written orders. (*See attached – 2013CR2942 Register of Action (ROA) - People's Notice Exhibit 1*).
 - b. **Kenneth Lankford, 2013CR4476** – the People pursued records through a court order requiring defense counsel to provide “the names, addresses, reports and statements of each physician or psychologist who has examined or treated the defendant for a mental disability.” The Court granted this portion of the motion and ordered the records be turned over to the Prosecution. The Defense produced

¹ The People must correct the record. During the July 17, 2020 court appearance, counsel for the People indicated, in response to the Court's questioning, that we had been successful in obtaining documents in a homicide case in Division 17. That case was Michael Ray, 2014CR3837, which involved competency proceedings which lasted almost 1 year and NGRI proceedings which lasted 4 months. After further review, it was after the second competency evaluation and during the NGRI portion that records were sought and received and not prior to the initial competency evaluation. The People apologize for this factual error.

the records to the People but requested a copy of the records be sealed in the court file while they filed a Rule 21 for appellate review challenging the order to produce the records. Ultimately, the Rule 21 was denied on this issue by the Colorado Supreme Court. These actions involved a combination of oral and written court orders. *(See attached – 2013CR4476 Case ROA; People’s Motion to Require Defense to Disclose Mental Health Documents to the Prosecution; Defense Notice of Compliance with Court Order and Request to Keep Copy of Records Sealed in Court File; Court Order dated 2-20-14; Order Unsealing Records and Court Order dated 2-7-2014 – People’s Notice Exhibit 2).*

- c. **David Rhoads, 2018CR2417** - the People pursued records through a court order requiring defense counsel to provide mental health treatment records to the People. The Court, orally via minute order, found the People’s motion to be premature and ordered the defense to provide documents that are required by the statute. *(See attached – Case ROA; People’s Motion to Require Defense to Disclose Mental Health Documents to the Prosecution, Minute Order dated 11-2-2018 – People’s Notice Exhibit 3).*

- d. **James Papol, 2018CR5723** – Defense counsel raised competency on March 1, 2019 and on that date the Court ordered all CJC mental health records be turned over the CMHIP. In mid-April 2019, the People pursued records for the competency evaluation by issuing 19 different SDTs for previous medical/mental health treatment, education records, Comcor records, Stout Street, Probation, Department of Human Services and various residential treatment facilities. The defense filed motions to quash the subpoenas in early May 2019. On May 10, 2019, the Court reviewed the completed competency evaluation from CMHIP and found the defendant competent to proceed. Neither party contesting the finding. Since the evaluation had already been completed, the Court ruled that only records used in the evaluation could be released. No written orders regarding the records were found. *(See attached – Case ROA – People’s Notice Exhibit 4).*

- e. **Nashid Rivers, 2018CR2300** – Defendant underwent a competency evaluation on the Court’s own motion while appearing pro se. Defendant found competent and subsequently appointed defense counsel. On January 15, 2020, Defense counsel then raised again competency and the People filed motions to find a waiver of confidentiality and privilege for the Defendant’s medical and social history records. The Defendant objected but the Court granted the People’s motion. This order provided the release of “any medical records, psychological records, medical or psychological treatment records, medication or prescription history, education records, behavioral records, and judicial records.” Further, the People filed a motion to require Defense to disclose mental health documents to the Prosecution. This too was granted. The Court issued a third order, on February 5, 2020, regarding privileged records and clarified the Defendant “has not waived privilege to records related to his entire medical and social history. Only those records which pertain to his mental health history or are otherwise given to the competency evaluators for their consideration.”

The People also pursued records through the SDT process for medical/mental health records from the Defendant's youth and the Criminal Justice Center. When received and after an in-camera review, these records were released to the parties so that they could be forwarded to CMHIP. Originally Judge Schwartz presided over this matter, however, with his impending retirement, in early 2020, Judge Johnson had taken over the case. On March 30, 2020, Judge Schwartz issued an order recommending the release of the last set of records to the parties finding them similar to previously released records and "relevant to competency issues being addressed." This Order was followed by an April 14, 2020 Order from Judge Johnson ordering the release of the last set of records to the parties.

(See attached – 18CR2300 Case RO; People's Motion to Find a Waiver of Confidentiality or Privilege for the Defendant's Medical and Social History Records Pursuant to C.R.S. 16-8.5-104(1); Court Order dated 2-2-2020; People's Motion to Require Defense to Disclose Mental Health Documents to the Prosecution P-23; Court Order for P-23 dated 2-2-2020; Defendant's Objection to Court Finding Waiver; Court Order re: Privileged Records dated 2-5-2020; Schwartz Order re: Release of Mental Health Records dated 3-30-2020; Johnson Order re: St. Luke's Records dated 4-14-2020 – People's Notice Exhibit 5).

Respectfully submitted on July 24, 2020.

/s/ Michael J. Allen
Michael J. Allen, #42955
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Martha McKinney, #28745
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Angelina Gratiano, #50674
Deputy District Attorney

Certificate of Service

I hereby certify that a true and correct copy of the foregoing **[P-19] People's Notice of Prior Records Requests During Competency Proceedings** was served via ICCES on all parties who appear of record and have entered their appearances herein according to ICCES:
Date: July 24, 2020

By: /s/ Sara Eldridge
Paralegal