

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	DATE FILED: January 26, 2023 1:51 PM
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
People’s Motion for Court Order Regarding Additional Information Related to Defendant’s Competency, or in the Alternative, People’s Motion for Restoration Hearing (P-012)	

On December 3, 2021, the Court found Ahmad Al Aliwi Alissa (the “Defendant”) incompetent to proceed forward in this case. The Court committed Defendant to the care and custody of the Colorado Department of Human Services and ordered that he be transported to the Colorado Mental Health Institute at Pueblo (“CMHIP”) to be restored to competency. Since Defendant’s admission to CMHIP, CMHIP has provided the Court and the parties with statutorily required competency evaluations approximately every 91-days. Each of these reports has found that Defendant remains incompetent to proceed.

Additionally, upon the People’s request and the Court’s order, CMHIP has provided materials, documents, and recordings CMHIP has created and accumulated during the pendency of this case.

Over the past several months, the People have reviewed the competency evaluations and related materials produced by CMHIP, discussed the matter with doctors employed by CMHIP, and worked to understand common practices in the fields of psychology and neuropsychology under the circumstances of this case. The People have concerns regarding CMHIP's evaluations of Defendant and the findings in the reports provided by CMHIP.

For the reasons further detailed below, the People request that the Court order that Defendant undergo a complete, recorded forensic neuropsychological assessment in order to properly determine if he is competent to proceed in this matter. If this request is denied, the People move the Court set a restoration hearing in short order.

I. Background

CMHIP has repeatedly alleged that Defendant is incompetent to proceed due to symptoms associated with a mental health disorder suffered by Defendant and first diagnosed when competency was raised by Defendant's attorneys in this case. CMHIP has opined that these symptoms prevent Defendant from being able to communicate (i.e. diminished speech output, a decrease in self-initiated, purposeful activities, etc.) with his attorneys at a level sufficient to understand the criminal proceedings in this case and assist in his defense with a reasonable degree of rational understanding.

During his time at CMHIP, Defendant has repeatedly declined to attend group sessions, including programming specifically aimed at improving functional abilities, and he has repeatedly failed to fully comply with the restoration process. Specifically, he has repeatedly refused to discuss the crimes committed in this case, and he has declined individual sessions on occasion. Yet, CMHIP has not conducted any standardized, formal testing of Defendant to determine if Defendant is unable to communicate about his case and comply with the restoration process

because of a mental health disorder or because he is making a choice to remain noncompliant and not fully engaged.

It is a standard, nationalized practice to conduct a forensic neuropsychological assessment of defendants under the circumstances of this case. These exams are the best way to determine whether symptoms are consistent with what they purport to be. A typical neuropsychological evaluation is a comprehensive assessment of intellectual functions, attention and concentration, speech, language, learning and memory, processing speed, perception, and executive functions. Deficits in these abilities have well-established connections with underlying function and can have clear implications for questions of legal capacity and responsibility. Such evaluations contain rigorous assessments of response bias and distortion and help to constrain error and bias in the assessment of an individual.

The People participated in a phone call with Drs. Loandra Torres and Katherine Reis on November 14, 2022, where the People raised the possibility of conducting some form of neuropsychological testing of Defendant to further assist CMHIP in their work with him. While Dr. Torres acknowledged that there is a possibility that Defendant's lack of communication and participation in the restoration process could be volitional, she believes these issues are symptoms of a mental health disorder and therefore sees no reason to proceed with neuropsychological testing of Defendant. Dr. Reis agreed with Dr. Torres. Dr. Torres also mentioned that CMHIP does not currently have a board-certified neuropsychologist on staff because the person had resigned from CMHIP. The People also spoke with Dr. Richard Pounds of CMHIP on that same day; he invited the People to make additional requests of CMHIP when necessary.

The People then sent a letter to Drs. Torres, Reis, and Pounds on December 21, 2022, formally requesting that CMHIP conduct a neuropsychological evaluation of Defendant. Specifically, District Attorney Michael Dougherty requested the following:

I respectfully propose that a board-certified clinical neuropsychologist with experience in competency to stand trial evaluations conduct an examination of the defendant. It is my belief that such an exam would take one full day. In our conversation, you had shared with me that the doctor who specializes in such exams is no longer employed with CMHIP. If you wish, I can connect you with a board-certified clinical neuropsychologist with experience in criminal cases. He is available and willing to assist with, or conduct, the examination.

As I explained in our phone conversation, my goal is to have the defendant restored to competency so that the criminal process can move forward without further delay. . . . Based on our telephone conversation, as well as a careful review of the competency evaluation, I believe that a forensic neuropsychological assessment is appropriate and necessary at this juncture.

Please let me know if you wish to arrange for a phone conversation or to meet in person. I am available to do so at your convenience. I look forward to speaking with you soon. I hope you and your families enjoy a wonderful holiday season. *See* December 21, 2022 letter, attached hereto as Exhibit 1.

To date, CMHIP has not responded to the People's December 21, 2022, request. In fact, the only acknowledgment that CMHIP received and read the People's request is found in the January 16, 2023, competency evaluation completed by Drs. Torres and Reis where they state that they "reviewed a letter authored by Mr. Dougherty on 12/21/2022." *See* Report, p. 2, CDHS Competency Re-Evaluation filed with the Court on January 19, 2023. Notably, the January 16, 2023, competency evaluation does not discuss any completed or pending neuropsychological testing of Defendant. All evidence indicates that CMHIP has no intention of having a board-certified clinical neuropsychologist with experience in competency evaluations conduct an examination of Defendant.

II. Argument and Authority

Pursuant to C.R.S. § 16-8.5-104(1), when the issue of competency is raised “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: . . . [i]nformation and documents . . . relied on by an evaluator performing a court-ordered evaluation.” Moreover, “[n]othing 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 to the case.*” C.R.S. § 16-8.5-104(4) (emphasis added).

As results of standardized neuropsychological testing of Defendant are critical to the determination of Defendant’s competency to proceed forward in this case, the People request that the Court order this information to be provided to the evaluators, the Court, and the parties through a complete forensic neuropsychological evaluation of Defendant conducted by a board-certified clinical neuropsychologist with experience in competency evaluations. All materials relied on, created, and used during this examination should be preserved and provided to the evaluators, the parties, and the Court. Further, the evaluation should be audio and video recorded in order for the evaluators and the parties to fully analyze and review the evaluation. The People are willing to provide names of suitable doctors to appoint to conduct the evaluation.

Alternatively, pursuant to C.R.S. § 16-8.5-113(1), the “court may order a restoration hearing *at any time* on its own motion, on motion of the prosecuting attorney, or on motion of the defendant.” (emphasis added). Should the Court deny the People’s request for a forensic neuropsychological evaluation of Defendant, the People request the Court set a restoration hearing

where the Court may receive sworn testimony from the doctors responsible for restoring Defendant to competency along with other experts in the field.¹

WHEREFORE, the People hereby request the Court order that (1) Defendant undergo a full forensic neuropsychological evaluation by a board-certified clinical neuropsychologist with experience in competency evaluations in criminal cases, (2) all materials relied on, created, and used during this examination be preserved and provided to the evaluators, the Court, and the parties, and (3) all aspects of the neuropsychological evaluation of Defendant be audio and video recorded and provided to the evaluators, the Court, and the parties. Alternatively, should the Court deny the request for a neuropsychological evaluation of Defendant as detailed above, the People move the Court to set a restoration hearing in this matter forthwith.

Respectfully submitted,

MICHAEL T. DOUGHERTY
DISTRICT ATTORNEY

By:
s/Adam Kendall
Adam Kendall
Chief Trial Deputy District Attorney
January 26, 2023

¹ Regardless of the Court's ruling on the People's request in this Motion, as the statute allows for the Court to order a restoration hearing at any time, the People reserve the right to request a hearing at a later date.

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 January 26, 2023, and addressed as follows:

Kathryn Herold
Daniel King
Sam Dunn
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s/Adam D. Kendall
Adam D. Kendall