

District Court, Boulder County, State of Colorado 1777 Sixth Street, Boulder, Colorado 80306 (303) 441-3792	DATE FILED: April 5, 2023 8:56 AM
<p><b>THE PEOPLE OF THE STATE OF COLORADO</b></p> <p>v.</p> <p><b>AHMAD AL ALIWI ALISSA,</b>          DEFENDANT</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p><i>Attorneys for People:</i> Michael Dougherty, Kenneth Kupfner, &amp; Adam Kendall  <i>Attorneys for Defendant:</i> Samuel Dunn, Kathryn Herold, &amp; Daniel King</p>	<p>Case Number: 2021CR497</p> <p>Division 13                  Courtroom G</p>
<p align="center"><b>ORDER RE: PEOPLE’S MOTION FOR RESTORATION HEARING (P-014)</b></p>	

THIS MATTER comes before the Court on the *People’s Motion for Restoration Hearing (P-014)* (“Motion”) filed on March 20, 2023. Defense Counsel filed *Defense Response to the Prosecution’s Motion for Restoration Hearing (P-014)* (“Response”) on March 27, 2023. The People filed *People’s Reply in Support of Motion for Restoration Hearing (P-014)* (“Reply”) on March 31, 2023. Having considered the pleadings and applicable law, the Court enters the following ORDERS:

**I. BACKGROUND**

On March 23, 2021, Defendant was arrested at the scene of a mass shooting at King Soopers grocery store in Boulder, Colorado. On March 24, 2021, Defendant was charged with ten counts of Murder in the First Degree and one count of Criminal Attempt to Commit Murder in the First Degree. On May 24, 2021, the People amended their Complaint by adding forty-six counts of Criminal Attempt to Commit Murder in the First Degree (nineteen of those counts against peace officers), one count of Assault in the First Degree, ten counts of Large Capacity Magazine Prohibited – During Crime, and forty-seven counts of Crime of Violence (sentence enhancer).

On September 1, 2021, counsel for Defendant raised the issue of competency. After three competency evaluations performed by four separate psychologists, the Court found Defendant incompetent to proceed and committed Defendant to the custody and care of the Colorado Department of Human Services (“CDHS”). Defendant was transported to Colorado Mental Health Institute of Pueblo (“CMHIP”) for restoration treatment, where Defendant remains today. Per

statutory mandate, CMHIP has performed four competency re-evaluations, where CDHS continues to conclude that Defendant remains incompetent but finds Defendant is likely restorable to competency within the reasonably foreseeable future.

After review of CDHS's reports and re-evaluations since the Court's initial determination, the People are concerned that Defendant's lack of participation in the restoration process may be voluntary. Due to said concern, the People filed a motion requesting a neuropsychological evaluation to determine whether Defendant's failure to engage in the restoration process is in fact voluntary. The Court addressed the motion at the Defendant's most recent hearing. At the conclusion of the hearing, the Court ordered further briefing regarding the Court's authority, or lack thereof, to order or prevent the performance of neuropsychological evaluation and the Court's authority, or lack thereof, to hold a restoration hearing. The Court issued an order on March 13, 2023 ("March 13 Order"), (1) finding that the Court, as well as the People and Defendant, lack the authority to order CMHIP to perform or not perform the neurological evaluation, and (2) ordering further briefing regarding the People's request for a restoration hearing. After further briefing, the issue of whether the Court will order a restoration hearing is presently before the Court.

## **II. ANALYSIS AND ORDERS**

It is within the sound discretion of the Court to grant the request for a restoration hearing at any time. C.R.S. § 16-8.5-113(1). As the Court held in its March 13 Order, the movant must demonstrate a good faith basis for the request. Therefore, the Court ordered the People to supplement their request to provide an offer of proof to support the request and provided Defense Counsel the opportunity to respond.

In their Motion, the People offer that Defendant's refusal to participate in restoration therapy may be volitional. The People assert that Defendant may be feigning his inability to participate in restoration therapy. The People make broad statements, without citation, regarding neuropsychological evaluations being the national standard to determine whether Defendant is feigning symptoms or whether Defendant's lack of participation is due to his mental health condition.

In the Response, Defense Counsel argues that the People failed to provide a sufficient offer of proof to demonstrate a good faith basis for their request. Defense Counsel argues that a restoration hearing is inappropriate as (1) all experts continue to opine that Defendant remains incompetent to proceed to trial, (2) the People have failed to allege that Defendant is in fact competent, (3) the People failed to identify the evidence it will present at the hearing, (4) the email from CMHIP stating that the neuropsychological evaluation is unnecessary undermines the People's assertion that a neuropsychological evaluation is necessary testing.

In their Reply, the People specify that they will present evidence to demonstrate that CMHIP's evaluations are flawed and inaccurate. The People assert said evidence will meet their

burden to prove that Defendant is in fact competent. The People named one expert who will offer testimony opining that Defendant is competent as evidenced by CMHIP's records. Additionally, the People offered that they shall have the testimony of an expert to discuss the appropriate standard to apply when opining on Defendant's competency.

As a preliminary matter, the Court finds that the People raise two separate issues: (1) whether there is a good faith basis for a restoration hearing and (2) whether CMHIP is providing Defendant appropriate treatment to restore Defendant's competency. Although the Court acknowledges the People's concern regarding Defendant's restoration therapy for Defendant's own mental health as well as the posture of the case, this is not the issue currently before the Court. The matter before the Court is whether to grant the People's request for a restoration hearing.

Setting aside the People's continuing arguments regarding CMHIP's failure to provide the proper treatment and inaccurate assessments of Defendant, the Court finds the People presented a sufficient offer of proof, because: (1) the People offer that they will present evidence through expert testimony that CMHIP's reports indicate that Defendant is competent; (2) the People offer that expert testimony will provide the appropriate standard to apply to determine Defendant's competency; and (3) the People assert that they will present complete and substantial evidence through witnesses and evidence to support a finding of competency. Therefore, the Court finds a good faith basis to order a restoration hearing.

Accordingly, the Court GRANTS the People's Motion for a Restoration Hearing. The Court emphasizes that the Restoration Hearing shall be an evidentiary hearing solely to determine whether Defendant has been restored to competency.

The Court ORDERS the parties to confer on the length necessary for the Restoration Hearing. If the parties determine a one-day hearing (or less) is appropriate, the Court can schedule the Restoration Hearing for April 28, 2023. The Court ORDERS the parties to contact the Division 13 Court Judicial Assistant by Monday, April 10, 2023, to confirm whether the April 28<sup>th</sup> day will work, or provide alternative agreed upon dates to the Division and the Court will determine a date for the hearing. Once the Restoration Hearing is scheduled, the Court shall issue a writ for the Defendant's appearance.

SO ORDERED: April 5, 2023.

BY THE COURT



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Ingrid S. Bakke  
District Court Judge