

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	DATE FILED: May 16, 2023 4:43 PM
PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant	COURT USE ONLY
Michael T. Dougherty, District Attorney Kenneth E. Kupfner, First Assistant District Attorney 1777 Sixth Street Boulder, CO 80302 Phone Number: (303)441-3700 FAX Number: (303)441-4703 E-mail: kkupfner@bouldercounty.org Atty. Reg. #29924	Case No. 21CR497 Div:13
Unopposed Motion to Continue Restoration Hearing (P-015)	

On April 5, 2023, the Court granted the People’s request for a Restoration Hearing. The parties worked diligently to find dates acceptable to the attorneys and the significant number of expert witnesses required for the hearing. Based on the agreement of the parties, on April 24, 2023, the Court issued an order setting the Restoration Hearing to occur from May 23 through May 25, 2023.

While the parties conferred regarding the date for the Court ordered Restoration Hearing, the most recent Competency Evaluation of Defendant was provided to the Court on April 21, 2023. As part of the evaluation, CMHIP—for the first time—conducted four neuropsychological tests. Additionally, on May 1, 2023, the parties received 246 pages of the most recent treatment records from CMHIP. These records include information about involuntary medication starting in March and improvements in treatment engagement by Defendant.

As indicated in prior pleadings, the People anticipate calling Dr. Julie Gallagher and Dr. Scott Bender at the Restoration Hearing. Dr. Bender and Dr. Gallagher requested the most recent 246 pages of treatment records and the raw data from the recently administered neuropsychological testing to conduct an independent review of that data. Dr. Gallagher and Dr. Bender were unwilling to render opinions or prepare reports without reviewing these materials. The parties agreed reports from Dr. Gallagher and Dr. Bender would be supplied to Defendant before May 15. Unfortunately, Dr. Gallagher and Dr. Bender have been unable to complete the reports by the agreed upon deadline due, in part, to the additional measures recently employed by CMHIP.

The People request to continue the Restoration Hearing until late August of 2023 based on the timing of the recent, significant disclosures and developments. The undersigned has conferred with counsel for Defendant regarding this request. Defendant has no objection.

I. Background and Basis for Continuance

On December 3, 2021, the Court found 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 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.

Despite the fact that it is a standard, nationalized practice to conduct a forensic neuropsychological assessment of defendants under the circumstances of this case, no evaluation (prior to April 21, 2023) included any indication or information about such testing or assessment of Defendant.

The People first raised this issue with the Court in July of 2022. As addressed in the People's Motion for Court Order Regarding Documents, Materials, and Recordings from the Colorado Mental Health Institute at Pueblo ("People's Motion 011"), filed on July 20, 2022, the People had made repeated requests to CMHIP in early to mid-2022, and despite the nature of this case, the People did not receive any response from CMHIP. Finally, an attorney responded on behalf of CMHIP and directed the People to obtain a court order for any information from CMHIP. The People filed People's Motion 011. The Court ordered that CMHIP comply with the law and provide information and documents related to Defendant's competency evaluation to the parties, as well as access to the evaluators for the purpose of discussing the competency evaluation.

Additionally, the Court ordered the doctors to provide information on what, if any, testing has been done to determine whether Defendant's refusal to discuss the facts surrounding his conduct reflects a mental health disorder and/or a conscious decision to avoid any discussion or admission of guilt. Such information is necessary because Defendant's cooperation can be considered in the Court's competency determination. *See* C.R.S. § 16-8.5-105(2). From those records and documents ordered by the Court, the People learned that no testing had been conducted. Also, as previously noted, Defendant has made several statements stating that he refused to answer questions because his attorney said not to answer questions. *See* Alissa Case File Part 1, *supra*.

As a result of that review and the previously mentioned November 14, 2022 conversation with Drs. Torres and Reis, on December 21, 2022, the People asked CMHIP to conduct a standardized forensic neuropsychological assessment of Defendant. CMHIP failed to respond to the December 21 request until the People filed the People's Motion for Court Order Regarding Additional Information Related to Defendant's Competency, or in the Alternative, People's

Motion for Restoration Hearing (“People’s Motion 012”) on January 26, 2023, asking this Court to order CMHIP to conduct the testing of Defendant. At that point, CMHIP informed the People that they had had “no concerns” with allowing an expert board-certified forensic neuropsychologist hired by the People to perform a complete forensic neuropsychological assessment of Defendant so long as they had access to the evaluating doctor and all testing data (as noted above, CMHIP did not have a board-certified neuropsychologist on staff). The parties briefed this Court regarding Defendant’s treatment at CMHIP, and the Court issued its March 13 Order. The People then informed CMHIP of the Court’s March 13 Order and asked CMHIP to determine if a neuropsychological examination of Defendant would assist in their treatment. On March 17, 2023, CMHIP responded that Drs. Torres and Reis “do not see a clinical need for neuropsychological testing to inform the question of competency at this time.” Upon receiving this response to the request for neuropsychological testing, the People filed the Motion for Restoration Hearing (People’s Motion 14) on March 20, 2023, and as noted above, the Court granted People’s Motion 14 on April 5, 2023.

On April 3, 2023, Dr. Torres and Dr. Reis—for the first time—began to conduct neuropsychological testing on Defendant and administered the Personality Assessment Inventory (PAI), 2nd Edition; the Test of Memory Malingering (TOMM); the Repeatable Battery for the Assessment of Neuropsychological Status (RBANS) Update-Record Form b; and the Trail Making Test on April 10. The administration of long-sought testing by CMHIP is a significant development in this case.

Further, an additional development of significance is the court-approved involuntary administration of medications for the Defendant as of March 13, 2023 (from a separate case filed in Pueblo, Colorado). The most recent reports from CMHIP indicate CMHIP has utilized

injections to administer Defendant's antipsychotic medication and confirmed the levels of that medication through blood work. Moreover, as noted in the April 21, 2023 evaluation, Defendant started "individual restoration treatment in March and has attended every session offered." A review of the records pertaining to the treatment sessions indicates a level of engagement by Defendant previously unseen.

Based on the need for more time for experts to prepare reports, the recent administration of neuropsychological testing of Defendant by CMHIP, Defendant receiving involuntary medication, and improved engagement by Defendant in his competency treatment, the parties are in agreement that continuing the Restoration Hearing is prudent. Within the next three weeks, it is anticipated that the People's experts will complete their reports. These reports will include the most recent developments in the treatment of the defendant and attempts to restore him to competency. The People will provide those reports to the Defendant and the Court.

Based on discussions with defense counsel regarding scheduling, the parties agree that August is the appropriate time to request that the hearing be set based on availability of counsel and witnesses. Furthermore, it is the People's position that the next Competency Evaluation of Defendant is due in mid-July. That report will be relevant to any Restoration Hearing, so an August setting is preferred.

WHEREFORE, the People request the Court continue the Restoration Hearing currently set to commence on May 23, 2023 until August of 2023.

Respectfully submitted,

MICHAEL T. DOUGHERTY
DISTRICT ATTORNEY

By:
s/Kenneth E. Kupfner
Kenneth E. Kupfner
May 16, 2023

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 May 16, 2023, and addressed as follows:

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s/Adam D. Kendall
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