

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	DATE FILED: October 11, 2021 3:49 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
Reply in Support of Request for Second Competency Evaluation and Hearing (P-009)	

Counsel for Ahmad Al Aliwi Alissa (the “Defendant”) filed the Response to the Prosecution’s Request for Second Competency Evaluation and Hearing (the “Response”) on October 7, 2021, claiming that the People’s request for a second competency evaluation of Defendant is “legally and factually baseless” and “not made in good faith.” Defendant’s interpretation of Colorado law is incorrect – the People are statutorily entitled to request and receive a second competency evaluation of a defendant when competency has been raised and a court-ordered report regarding the initial competency evaluation of that defendant has been filed with the Court.

Argument and Authority

As an initial matter, it appears Defendant does not contest the People’s right to request a hearing regarding the competency determination included in the court-ordered report filed on

October 5, 2021. *See generally* Response. Defendant only addresses the request for a second evaluation in his Response.

Pursuant to C.R.S. § 16-8.5-103(3), “[w]ithin seven days after receipt of the court-ordered report, either party may request a hearing or a second evaluation.” C.R.S. § 16-8.5-103(4) continues, “[i]f a party requests a second evaluation, any pending requests for a hearing must be continued until the receipt of the second evaluation report.” Finally, C.R.S. § 16-8.5-103(6) states that “[i]f a party makes a timely request for a hearing, the hearing shall be held within thirty-five days after the request for a hearing, or, if applicable, within thirty-five days after the filing of the second evaluation.” Here, the People requested a second evaluation within seven days after receipt of the court-ordered report.

Defendant’s objection to the People’s request for a second evaluation relies on cases interpreting the statute that governs a party’s initial challenge to an individual’s competency, C.R.S. § 16-8.5-102. *See People v. Lindsey*, 459 P.3d 530 (Colo. 2020); *Nagi v. People*, 389 P.3d 875 (Colo. 2017). The above captioned case has moved beyond this initial stage, and a court-ordered report regarding Defendant’s competency evaluation has been filed with the Court.

Case law interpreting the statute governing a request for a second evaluation is clear – pursuant to C.R.S. § 16-8.5-103(4), “if a party request[s] a second evaluation, a completed evaluation must be filed.”¹ *People v. Presson*, 315 P.3d 198, 201 (Colo. App. 2013). In *Presson*, the reviewing court determined that a party may automatically trigger a second evaluation under the statute and that the “trial court erred by proceeding to determine defendant’s competency without the statutorily required second evaluation.” *Id* (emphasis added); *see also People In Int. of W.P.*, 295 P.3d 514, 524 (Colo. App. 2013) (holding that with regard to the statute governing

¹ The statute in effect in 2013 remains nearly identical to the current statute, except for a significant change in the time-limitations on the filing of the second evaluation.

adult competency matters, “in the criminal justice system, either party may timely demand that the court order a second competency evaluation.”).

Pursuant to statutory authority, the People have requested a second evaluation of Defendant and a hearing regarding Defendant’s competency. As previously noted, the People have concerns regarding the reliability of the first evaluation produced by the Colorado Department of Human Services and the People will litigate Defendant’s competency at the to-be-scheduled hearing. However, because a party is statutorily entitled to a second evaluation when it is timely requested, the People need not respond to defense counsel’s allegations and the innuendo included in Defendant’s Response at this time.

WHEREFORE, the People hereby request the Court order (1) a second evaluation of Defendant and (2) a hearing regarding the competency determination made by Dr. Torres and Dr. Remmert.

Respectfully submitted,

MICHAEL T. DOUGHERTY
DISTRICT ATTORNEY

By:
s/Adam Kendall
Adam Kendall
Chief Trial Deputy District Attorney
October 11, 2021

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 October 11, 2021, and addressed as follows:

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