

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	DATE FILED: August 22, 2023 1:07 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
Notice Regarding Defendant's Status and Request to Set for Forthwith Preliminary Hearing (P-016)	

On August 18, 2023, the Colorado Department of Human Services (“CDHS”) provided the Court and the parties a competency re-evaluation report for Ahmad Al Aliwi Alissa (the “Defendant”). CDHS has determined that Defendant does not currently have a mental disability or developmental disability that prevents him from having sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding in order to assist in his defense or prevents him from having a rational and factual understanding of the criminal proceedings. Thus, CDHS determined that Defendant is now competent to proceed in this case.

The People will not contest the findings of the August 18, 2023 report from CDHS. While understanding that pursuant to C.R.S. § 16-8.5-113 Defendant has until September 1, 2023 to challenge the re-evaluation report by (1) requesting a second competency evaluation or (2) setting for

a hearing, in anticipation of the case proceeding forward, the People raise the following issues and requests ahead of the August 29, 2023 status hearing scheduled in this case:

First, if the Court determines that Defendant is competent to proceed, the People are hopeful that CDHS will exercise its discretion and allow Defendant to remain housed at the Colorado Mental Health Institute at Pueblo (“CMHIP”) while pending trial. According to CDHS, it is because of “consistent medication compliance” and the recent addition of a new drug that Defendant is now competent. CDHS describes his competency status as “tenuous” and “strongly recommend[s]” that he receive ongoing psychiatric care and take medications as ordered to remain competent. The re-evaluation report notes that it is Defendant’s medication regime and the stable therapeutic environment at CMHIP that have played “a significant role in him maintaining competency.”

The Boulder County Jail is not a mental health hospital and is not as well equipped or able to administer care, medication, or the same level and methods of treatment as CMHIP. The People have conferred with Boulder County Jail staff about CDHS’s determination that Defendant is competent to proceed. Because of the limitations of mental health treatment and care at the Boulder County Jail, the Jail fully supports Defendant remaining at CMHIP while this case is pending and will transport Defendant from CMHIP whenever required by the Court.

The competency statutes do “not mandate that a restored defendant be returned to the county jail but, rather, uses the permissive language ‘may be returned to the ... county jail.’” *People In Int. of Joergensen*, 2022 COA 126, ¶ 21. Instead, the executive director of CDHS, “knowing that the [Boulder] County Sheriff may not have the ability to administer medications . . . may elect to keep” Defendant at CMHIP pending trial. *Id.* If Defendant were to be moved to the Boulder County Jail—a concept that CDHS’s own re-evaluation report does not endorse—CDHS would be required to communicate regularly and completely with the Boulder County Jail to ensure “an orderly transfer of

[Defendant] . . . to ensure there is no decompensation.” *Id.* at ¶ 23. It has taken nearly two years for CMHIP to restore Defendant to competency in this case. As the Court is well aware, the People expressed significant concerns about the medication and treatment previously provided to Defendant by CMHIP. Having now restored him to competency, it would be irresponsible for CDHS to send him back to the Boulder County Jail at this stage of the case considering CDHS has labeled his competency status as “tenuous” and determined that any “disruptions in his current medication regime” could jeopardize his competency.

Finally, this case was originally scheduled for a joint preliminary hearing and proof evident or presumption great hearing on September 7, 2021. On September 1, 2021, counsel for Defendant challenged Defendant’s competency, and the proceedings in this case have been stayed ever since. At that time, the People were prepared to proceed forward with the hearing, and requested the Court allow the hearing to occur. *See* People’s Request for Clarification for the Court Following the Filing of Defendant’s Notice Raising Competency (P-008). Counsel for Defendant indicated that prior to September 1, 2021, no “determination” of Defendant’s competency by counsel had taken place. *See* Motion to Vacate Preliminary Hearing and Suspend the Proceedings (D-017). Thus, it is safe to assume that both parties were fully prepared to proceed with the hearing back on September 7, 2021.

It has now been almost two years—to the day—since proceedings in this case were stayed. With the recent holding in *People v. Smith*, 2023 CO 40, ¶ 45, the Court need only set the matter for preliminary hearing at this time (as that proof evident or presumption great hearing is no longer required). The People remain prepared to proceed forward with the preliminary hearing. The People and the victims in this case request the Court set the hearing for the earliest possible date without any further delay.

WHEREFORE, the People request the Court issue orders and findings consistent with this filing once the CDHS's competency finding becomes final.

Respectfully submitted,

MICHAEL T. DOUGHERTY
DISTRICT ATTORNEY

By:
s/Adam Kendall
Adam Kendall
Chief Trial Deputy District Attorney
August 22, 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 August 22, 2023, and addressed as follows:

Kathryn Herold
Daniel King
Sam Dunn
Office of the Colorado State Public Defender – Boulder
2555 55th Street Suite. D-200
Boulder, CO 80301

s/Adam D. Kendall
Adam D. Kendall