

Boulder District Court, Boulder County, State of Colorado 1777 Sixth Street Boulder, Colorado 80302	DATE FILED: August 29, 2023 4:52 PM
<b>People of the State of Colorado,</b>  v.  <b>AHMAD AL ALIWI ALISSA,</b> Defendant.	<b>▲ COURT USE ONLY ▲</b>
<i>Attorney for the People:</i> Michael Dougherty, Esq., and Ken Kupfner, Esq.  <i>Attorney for Defendant:</i> Kathryn Herold, Esq.	Case Number: <b>2021CR497</b>  Division <b>13</b> Courtroom <b>G</b>
<b>MINUTE ORDER RE: STATUS CONFERENCE</b>	

This matter comes before the Court for a status hearing on August 29, 2023. Michael Dougherty, Esq., and Ken Kupfner, Esq., appear on behalf of the People. Kathryn Herold, Esq., appears on behalf of Defendant, Ahmad Alissa, who does not appear. The proceedings were recorded on the FTR. The findings and rulings made on the record are incorporated herein, and the Court now issues the following findings, conclusions of law, and ORDERS:

1. On April 5, 2023, the Court granted the People's *Motion for a Restoration Hearing* and eventually set the matter for a restoration hearing to start on May 23, 2023, and to continue through May 25, 2023. However, the parties filed an *Unopposed Motion to Continue Restoration Hearing* on May 16, 2023, indicating that the competency evaluation provided to the Court on April 21, 2023, and subsequent treatment records received on May 1, 2023, included new and substantial information about Defendant being administered involuntary medication starting in March and recent improvements in treatment engagement by Defendant. Because of the recency of these significant disclosures and the lack of time for the People's intended expert witnesses, Dr. Gallagher and Dr. Bender, to review the materials prior to the hearing, the parties requested that the restoration hearing be continued until late August. The Court granted the request and eventually set the matter for a new, three-day restoration hearing starting on August 29, 2023, and extending through August 31, 2023.
2. On August 9, 2023, the parties filed a *Joint Motion to Continue Restoration Hearing*, arguing that neither party had received the updated CMHIP competency re-evaluation report and that CMHIP had informed them that the report would be provided by August 19, just ten days prior to the scheduled hearing. The parties had consulted and agreed that, even if the

competency re-evaluation report was provided sooner, it would not allow adequate time for experts to review the most recent findings and issue updated expert reports based on the information, so the parties requested that the Court convert the August 29, 2023, restoration hearing into a competency review date to ensure that the Court and the parties received the legally required competency re-evaluation report as soon as possible. The Court granted this request and converted the August 29, 2023, setting into a status conference.

3. On August 18, 2023, the Colorado Department of Human Services filed a report opining that Defendant was competent to proceed. On August 22, 2023, the People filed their *Notice Regarding Defendant's Status and Request to Set for Forthwith Preliminary Hearing (P-16)*, stating that they were not contesting the findings from the recent report and requesting that the Court set the matter for a preliminary hearing at the earliest possible date. In their argument, the People noted that the matter was originally set for a joint preliminary hearing and proof evident or presumption great hearing on September 7, 2021, prior to Defendant's counsel challenging his competency, and so it would appear that both parties were fully prepared to proceed with the hearing back on September 7, 2021.
4. On August 29, 2023, Defendant filed his *Objection to Finding of Competency and Request for a Second Evaluation (D-23)*, objecting to the finding that Defendant was competent, asserting that the complexities of Defendant's mental illness (along with the complexities of his case) warrant a second competency evaluation under C.R.S. §16-8.5-113, and requesting that said competency evaluation be performed by Dr. Westmoreland.
5. At the August 29, 2023, status conference, the People argued that they are strongly opposed to a second competency evaluation, asserting that the results of the August 18 CDHS report were the result of gradual changes that built up over a period of time and ultimately concluding that Defendant is competent to proceed. The People assert that under C.R.S. §16-8.5-113, the Court has discretion regarding whether to allow a second evaluation, if requested, or to deny the request and proceed to a competency hearing. The People note that the procedural history of the case, including extraordinary delays in it proceeding, and the impact on the victims' families weigh in favor of denying a request for a second evaluation. The People additionally provided the Court and counsel with the legislative history for House Bill 2008-1392, enacting the restoration to competency statute, arguing that the overview of the bill sounds "eerily familiar to the situation the state hospital faces today" regarding the increase in demand for competency evaluations and restorations generating a significant backlog in county jails. The People argue that the statute was altered to encourage a prompt determination of competency, and a restoration to competency, so that proceedings may take place as soon as the defendant is mentally able to participate, and that this is an advantage to defendants who seek release from confinement and to the courts and district attorneys who are managing dockets as well as attending to the emotional needs of the victims. The People further note that the recent report opining Defendant being competent to proceed is a natural result of the steps that the state hospital has taken in 2023, including seeing improvement

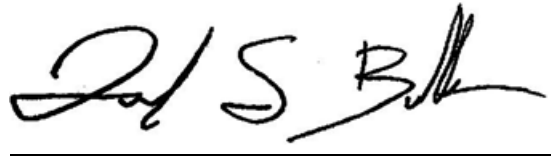
with Defendant's mental condition, Defendant receiving new medication, and Defendant receiving individual competency restoration sessions in March 2023. Defendant's April evaluation included the results of a forensic neuropsychological test conducted on Defendant for the first time in two years, marking the first step toward the August report opining that Defendant was competent to proceed. The People further note the significance of the Court previously ordering a restoration hearing in April 2023 because there was a good faith basis to believe that Defendant was competent at that time, so the August 2023 report finding him competent should not be a surprise – to the contrary, it is a long time coming. The People highlight the emotional needs of the victims as an important factor in the Court's decision regarding an additional competency evaluation, noting the outrage, frustration, and exhaustion with the delays in this matter already. For these reasons, the People request that the Court deny Defendant's request for an additional competency evaluation and set the matter for a restoration hearing and preliminary hearing as soon as possible.

6. Defendant's counsel argues that the procedural history in this case is exactly why the request for a second evaluation should be granted. It has been approximately two years since the first evaluation opined that Defendant was not competent to proceed and even the most recent evaluation opines that Defendant is profoundly mentally ill. Defendant's counsel argues that C.R.S. §16-8.5-113 gives the Court the opportunity to order a second evaluation for cases exactly like this one, and over two years of competency evaluations have found Defendant to be incompetent. Defendant's counsel maintains that they believe Defendant remains incompetent to proceed and that Defendant has due process rights to be competent prior to his prosecution. Therefore, Defendant requests that the Court order a second competency evaluation be performed prior to proceeding.
7. The Court notes that this is a difficult decision, but this case also has a unique posture where on May 25, 2023, the matter was set for a restoration hearing from August 29-August 31, 2023. So, until the stipulated motion to continue on August 9, 2023, the matter had been set for a restoration hearing that the Court can only assume the parties have been diligently preparing for, including preparing their expert witnesses to review Defendant's medical history. If this were merely a competency review where the Court had just received a report opining that Defendant was competent, the Court may see the matter differently and likely grant a request for a second evaluation. However, because of the preparation that was surely already taking place in anticipation of the original restoration hearing, the Court DENIES the request for a second evaluation and shall set the matter for a restoration hearing by October 3, 2023 – 35 days from the present hearing. The Court instructs the parties to confer regarding their schedules and their experts to determine if they can come to a stipulated agreement for the date of a new, 3-day restoration hearing within that window of time. If the parties cannot come to an agreement, the parties shall each file separate motions advocating their available dates and why they are not available for the opposing party's suggested dates.

8. The People inquire as to whether their expert witness, Dr. Bender, will be permitted to testify via Webex for the restoration hearing. Defendant objects and shall file their motion regarding the matter with the Court.
9. The Court notes that the Court is NOT making a finding regarding Defendant's competency at this time and that the state hospital must retain him at least until his next hearings are resolved.
10. The People request that the Court set the matter for a preliminary hearing and motions hearing, arguing that the Court can do so even if Defendant is found to be incompetent, so that the People may get their witnesses prepared and ready pending the results of the restoration hearing. Defendant objects, arguing that they first need to deal with the competency issues prior to proceeding further. The Court sets the matter for a 1/2-day preliminary hearing on November 14, 2023, at 9am in Division 13.

Dated August 29, 2023.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Ingrid S. Bakke', written over a horizontal line.

Ingrid S. Bakke  
District Court Judge