



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