ADVANCE SHEET HEADNOTE
March 16, 2026

2026 CO 16

No. 24SC16, *People v. Day*—Mental-Condition Evidence—Mental-Condition Examination—Competency.

The supreme court holds that a defendant must be competent before undergoing a mental-condition examination under section 16-8-107(3)(b), C.R.S. (2025). Accordingly, a trial court shouldn't use an incompetent defendant's failure to cooperate with personnel during a competency evaluation as a basis to exclude expert mental-condition evidence at trial. Because the trial court did so here, the supreme court affirms the judgment of the court of appeals and remands the case for a new trial on all charges for which the defendant's culpability is at issue.

The supreme court also provides guidance on how courts should apply *People v. Moore*, 2021 CO 26, 485 P.3d 1088, and CRE 403 in determining the admissibility of mental-condition evidence.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 16

Supreme Court Case No. 24SC16
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA1717

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Maria Laida Day.

Judgment Affirmed
en banc
March 16, 2026

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JUSTICE HOOD delivered the Opinion of the Court, in which **JUSTICE GABRIEL**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined. **CHIEF JUSTICE MÁRQUEZ**, joined by **JUSTICE BOATRIGHT** and **JUSTICE BLANCO** dissented.

JUSTICE HOOD delivered the Opinion of the Court.

¶1 Maria Laida Day hit her boyfriend with her car, causing his death. She claimed it was nothing more than a tragic accident. The prosecution disagreed. Based in part on her behavior immediately after the incident, they charged Day with second degree murder and other offenses. Day's mental condition at the time of the killing thus became a crucial issue at trial.

¶2 Although Day never alleged that she was not guilty by reason of insanity ("NGRI"), she still sought to introduce expert testimony that alluded to her previously diagnosed mental illness. More specifically, she hoped to show in part that her failure to take certain prescribed anti-psychotic medication in the days leading up to the killing could have affected whether she had acted knowingly, the requisite culpable mental state for second degree murder.

¶3 Section 16-8-107(3)(b), C.R.S. (2025), allows a defendant to offer such evidence, even in the absence of a NGRI plea, but only if she first notifies the prosecution and submits to a state-sponsored, mental-condition examination. Day provided notice under section 16-8-107(3)(b), but a mental-condition examination never occurred.

¶4 The trial court cited Day's lack of cooperation with the evaluator as the reason no examination occurred, but Day was incompetent to proceed at the time she failed to cooperate. Even so, the trial court refused to permit Day's psychiatric

expert to testify at trial about her mental condition at the time of the offense. A jury convicted Day as charged.

¶5 A division of the court of appeals reversed and remanded the case for a new trial on all counts for which culpability was at issue. *People v. Day*, 2023 COA 115, ¶ 1, 544 P.3d 1242, 1244–45.

¶6 We now affirm the judgment of the court of appeals, albeit on slightly different grounds. We hold that a defendant must be competent before undergoing a mental-condition examination under section 16-8-107(3)(b).

I. Facts and Procedural History

¶7 In July 2015, Day hit her boyfriend with her car, as she pulled away after dropping him off in front of a business in Leadville. Evidence suggested he hit his head on a concrete barrier during the collision. She drove off. He later died at a hospital from the resulting injuries. When police officers contacted Day after she turned herself in, they reported that she appeared calm, nonchalant, and possibly under the influence of drugs or alcohol. The prosecution charged Day with second degree murder, leaving the scene of an accident, vehicular homicide, and two crime-of-violence sentence enhancers.

¶8 Day decided to forgo a plea of NGRI, but she filed a notice of intent to introduce expert testimony of her mental condition on the day of the incident pursuant to section 16-8-107(3)(b). In November 2015, Dr. Karen Fukutaki

conducted a sanity evaluation of Day at the Summit County jail. In her report, Dr. Fukutaki said that "Day's denial that she has ever experienced psychotic symptoms is in marked contrast to the overt psychotic symptoms she reportedly has exhibited in jail and at [the Colorado Mental Health Hospital in Pueblo ('CMHHIP')]," and "raises significant questions as to whether her account of her mental state on the day of the accident is accurate," in part because Day seemingly has "no insight into her mental illness or the reason she has been prescribed [medication]." Dr. Fukutaki opined that Day's failure to take her prescribed anti-psychotic medication during the two days before the incident may have caused some thought disorganization that impaired her judgment and problem-solving abilities:

> [Day] might have been experiencing some difficulty in her perception of reality that might have impacted her ability to recognize the severity of the situation and [the victim's] need for immediate medical attention. Thought disorganization, impairment in problem-solving ability, and anxiety might have accounted for her having left the scene and having delayed contacting the police. It might also have accounted for her appearing to be under the influence to the police.

¶9 After Day filed her notice to introduce expert mental-condition evidence, the court ordered an inpatient examination with CMHHIP. Attempts to complete a mental-condition examination spanned several years. The following timeline reflects key events along the way.

- January 2016: Defense counsel filed a notice of intent to introduce expert testimony of Day's mental condition on the day of the incident pursuant to section 16-8-107(2)(b).[1]

- February 2016: The court ordered Day to undergo a mental-condition examination. CMHHIP was ordered to complete its report by April 29, 2016.

- May 2016: CMHHIP notified the court that, due to resource constraints, Day hadn't been evaluated, and it requested an extension of time to complete the examination.

- July 2016: CMHHIP once again requested an extension of time to complete the evaluation.

- September 2016: CMHHIP informed the court that it wasn't equipped to videotape the mental-condition examination. The court rescinded a prior order that the mental-condition examination be recorded.

- October 2016: Day was admitted to CMHHIP to be evaluated. CMHHIP terminated the examination process because it didn't have video-recording capabilities. Additionally, the examiner believed that the prosecution had failed to provide him with all the discovery materials he needed. (In a subsequent motion, the prosecution asserted that they had provided CMHHIP with all the materials the prosecution then had.) The examiner felt he couldn't proceed until he reviewed additional information. The court again issued an order directing CMHHIP to evaluate Day without video recording the examination.

- December 21, 2016: CMHHIP reported that Day twice refused to complete the examination. Day refused because she was under the impression that the CMHHIP evaluator was conducting a NGRI evaluation and she wasn't pleading NGRI. Defense counsel contacted

[1] Counsel mistakenly cited section 16-8-107(2)(b), which doesn't exist, when she presumably meant to invoke section 16-8-107(3)(b). Counsel later corrected this mistake in a proposed order in March 2017.

CMHHIP to alleviate confusion between Day and CMHHIP regarding the purpose of the examination.

- December 28, 2016: The prosecution moved to preclude Day's assertion of a "[m]ental [d]efect [d]efense" because Day hadn't cooperated with CMHHIP to complete the mental-condition examination.

- February 9, 2017: Before the court ruled on the prosecution's motion to exclude mental-condition evidence, CMHHIP re-attempted to evaluate Day. The examiner asked Day, "What plea do you intend to enter?" She replied, "Not guilty." When the examiner explained the elements of a not guilty plea and that Day was there for a mental-condition examination for a NGRI plea, Day exclaimed that she wasn't there for that. The examiner reported that he "terminated the examination due to ethical concerns" and stated his only experience with mental-condition examinations involved NGRI pleas.

- February 10, 2017: Defense counsel asked the court to issue an order clarifying that the examination was for introducing mental-condition evidence not an insanity defense. Day asserted that CMHHIP's misunderstanding of the court-ordered examination contributed to her confusion and alleged uncooperativeness.

- February 24, 2017: The court ordered an evaluation pursuant to section 16-8-107(2)(b), a subsection that doesn't exist but which defense counsel had mistakenly cited in the notice; presumably, the court meant to invoke section 16-8-107(3)(b).

- March 2017: The court vacated the February 24 order and issued a new order for an evaluation pursuant to section 16-8-107(3)(b). The court also ordered a competency evaluation as authorized by section 16-8.5-105, C.R.S. (2025).

- April 2017: Despite the pending court orders, Day was transferred back to the county jail without completing the evaluations.

- July 2017: Defense counsel moved for a competency evaluation because Day seemed to be decompensating in jail while awaiting evaluation at CMHHIP.

- August 2017: The court again ordered CMHHIP to obtain custody of Day and complete a competency evaluation.
- September 2017: CMHHIP notified the court that Day hadn't been admitted yet and requested an extension of time to file its report due to resource constraints.
- November 2017: CMHHIP conducted a competency evaluation and found Day competent to proceed. CMHHIP didn't conduct a mental-condition examination.
- December 2017: The court again ordered CMHHIP to conduct a mental-condition examination.
- January 2018: CMHHIP notified the court that it expected to submit its report on or before April 30, 2018.
- March 2018: Defense counsel again moved to suspend proceedings due to Day's incompetence, arguing Day's mental health had worsened while in jail.
- April 2018: The court again ordered CMHHIP to conduct both a competency and a mental-condition evaluation. This was at least the fourth order for a mental-condition examination.
- June 2018: CMHHIP conducted a competency evaluation of Day and found she met the criteria for a form of schizophrenia and was incompetent to proceed to trial. The examiner observed Day seeming to respond to internal stimuli and noted that Day questioned the validity of the court order. The evaluator also indicated that he couldn't complete the mental-condition examination because Day wasn't cooperative. The court issued an order finding Day incompetent to proceed, and the prosecution and defense counsel agreed that Day should be committed to CMHHIP for inpatient restoration-to-competency treatment.
- August 2018: CMHHIP admitted Day for restoration treatment.
- October 2018 and December 2018: CMHHIP re-evaluated Day and found her incompetent to proceed.

- March 2019: CMHHIP re-evaluated Day and found her competent to proceed. CMHHIP didn't conduct a mental-condition examination.
- May 2019: At defense counsel's request, and as permitted by section 16-8.5-103(3), C.R.S. (2025), a third-party psychologist conducted another competency evaluation. The psychologist confirmed that Day was competent to proceed. The court agreed that Day had been restored to competency and set the trial for August 2019.

¶10 In the four-year period between defense counsel's notice of intent to introduce expert mental-condition evidence and the trial date, no mental-condition examination was ever completed.

¶11 The parties prepared for the August trial, and Day expected Dr. Fukutaki to testify. During voir dire, however, the court declared a mistrial because it couldn't seat an impartial jury. The court reset the trial for January 2020 in a different county.

¶12 Leading up to the second trial, the prosecution again moved to exclude Dr. Fukutaki's mental-condition testimony under section 16-8-107(3)(a)—which prohibits admission of "evidence relevant to the issue of insanity" unless the defendant pleads NGRI—and CRE 403. The prosecution argued that allowing Day to present mental-condition evidence without pleading NGRI would allow her to bypass procedural requirements and consequences, such as submitting to a sanity examination, facing a trial on the issue of sanity, and being committed to a state facility until eligible for release if the jury finds her NGRI.

¶13 At a hearing on the motion in November 2019, the trial court found that the defense had complied with the statutory requirements of section 16-8-107(3)(b) and asked defense counsel to provide an offer of proof and a proposed limiting instruction so the court could make findings pursuant to the rules of evidence. Defense counsel did so, explaining that she expected Dr. Fukutaki to testify to Day's mental illness—a psychotic thought disorder—and that Day had reported not taking her prescribed anti-psychotic medication for the two days before the incident. Counsel explained that Dr. Fukutaki would also testify generally "about psychotic thought disorders, and their impact on an individual's capacity for complex thought organization and problem-solving cognitive functions," which was being offered "to explain Ms. Day's post-event conduct." Defense counsel's proposed limiting instruction explained that the evidence pertaining to Day's mental illness was being offered to explain the role that illness played in her post-event conduct, actions on scene, and at the hospital. The jury instruction stated that the affirmative defense of insanity hadn't been asserted and that the defense in this case was a factual defense. The evidence was therefore being offered, not to show that Day was incapable of forming the culpable mental state of knowingly, but to show that Day "was not in fact aware that her conduct was practically certain to cause the resulting death of [the victim]."

¶14 The trial court granted the prosecution's motion to exclude Dr. Fukutaki's testimony. The court noted that, to introduce evidence of a defendant's mental condition, the defendant must have undergone a court-ordered examination pursuant to section 16-8-107(3)(b), but no such examination had occurred here because of Day's noncooperation: "Accordingly, on this basis alone the Court can deny the introduction of the defendant's mental condition."

¶15 Beyond this statutory concern, the trial court cited several evidentiary bases for excluding the proffered mental-condition evidence. First, the proposed testimony was based upon Day's self-report regarding her medication. Second, Dr. Fukutaki's assessment was too speculative, as indicated by her statements that Day "*might* not have appeared overtly psychotic . . . but *could* have been experiencing some thought disorganization" and "*might* have been experiencing some difficulty in her perception." *People v. Day*, No. 15CR26, at 4 (Dist. Ct., Lake Cnty., Dec. 18, 2019) ("December 2019 Order") (unpublished order) (omission in original) (emphases added) (quoting Day's Offer of Proof Regarding C.R.S. 16-8-107(3)(B) Evidence, November 25, 2019). Third, Dr. Fukutaki's assessment, and therefore her proposed testimony, conveyed issues related to Day's sanity at the time of the offense. Fourth, even if Dr. Fukutaki's testimony appropriately sought to explain only Day's post-event conduct, the risk was too great that a jury would conflate evidence of Day's mental condition just after the alleged offense

with Day's mental condition during the alleged offense. The court also emphasized that Day was introducing mental-condition evidence related to a mental illness and most cases regarding mental-condition evidence involved an intellectual disability, not a mental illness. So, the court found that the proffered testimony was "an attempt [to] present an insanity defense without entering a not guilty plea by reason of insanity." *Id.*

¶16 The case proceeded to trial on January 27, 2020, and the jury found Day guilty as charged. The court sentenced Day to thirty-five years in the custody of the Department of Corrections.

¶17 Day appealed her conviction, challenging the trial court's refusal to admit her expert mental-condition evidence. A division of the court of appeals concluded that the trial court had abused its discretion in two ways by excluding Day's proffered expert mental-condition evidence. *Day*, ¶ 24, 544 P.3d at 1248. First, the division concluded the trial court had erred as a matter of law by "fault[ing] Day for failing to 'cooperate' with a mental condition examination conducted while she was incompetent." *Id.*

¶18 Second, the division concluded that the trial court had misapplied *People v. Moore*, 2021 CO 26, 485 P.3d 1088, "by failing to parse the proffered evidence to 'distinguish what is probative of insanity under this exacting definition from what is not.'" *Day*, ¶ 26, 544 P.3d at 1248 (quoting *Moore*, ¶ 5, 485 P.3d at 1093). The

division ultimately concluded "that the only piece of testimony that was probative of insanity, and thus inadmissible, was the testimony regarding Day's ability to perceive reality or the severity of the situation. Everything else fell short of being probative of insanity and was thus admissible." *Id.* at ¶ 35, 544 P.3d at 1250. In reaching this conclusion, the division also rejected the prosecution's argument that the evidence was inadmissible under CRE 403, explaining that the admissibility of mental-condition evidence is measured by its "relatedness to insanity, not its proposed purpose." *Id.* at ¶ 36, 544 P.3d at 1250. However, the division didn't determine whether the evidence was inadmissible under CRE 403 because it reasoned that "any prejudice resulting from the lack of a CMHHIP evaluation can be remedied on remand by the trial court's reordering of the proper examination before the testimony is presented on retrial." *Id.* Finally, the division noted that there are several cases that apply mental-condition evidence more broadly than just situations involving intellectual disabilities. *Id.* at ¶ 29, 544 P.3d at 1249. The division reversed and remanded the case for a new trial on all counts for which Day's culpability was at issue. *Id.* at ¶ 41, 544 P.3d at 1251.

¶19 The prosecution petitioned for certiorari, and we granted their petition.[2]

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[2] We granted certiorari to review the following issues:

1. Whether the court of appeals erred by holding that the trial court abused its discretion in considering respondent's non-cooperation with the court-ordered mental condition examination.

II. Analysis

¶20 We begin by identifying the controlling standards of review and relevant principles of statutory interpretation. Next, we discuss the statutory requirements for admitting expert testimony about a defendant's mental condition and differentiate mental condition at the time of an alleged offense from competency to stand trial. Then, we apply the facts of this case and examine how competency and noncooperation affected Day's ability to introduce expert mental-condition testimony. Finally, we discuss the evidentiary basis for admitting mental-condition evidence under *Moore* and CRE 403.

A. Standard of Review

¶21 We review a trial court's evidentiary ruling for an abuse of discretion. *Moore*, ¶ 26, 485 P.3d at 1095. "A trial court abuses its discretion when its decision is 'manifestly arbitrary, unreasonable, or unfair,' or based on a misapplication of the law." *People v. West*, 2025 CO 61, ¶ 13, 578 P.3d 832, 835 (quoting *People v. Kent*, 2020 CO 85, ¶ 28, 476 P.3d 762, 768).

¶22 Here, because Day preserved the alleged error and because the trial court's exclusion of the evidence implicates Day's ability to present a complete defense,

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2. Whether the court of appeals improperly expanded *People v. Moore*, 2021 CO 26, 485 P.3d 1088, to preclude consideration of the purpose for which mental condition evidence is offered when evaluating the admissibility of such evidence under CRE 403.

we will reverse unless the error was harmless beyond a reasonable doubt. *Hagos v. People*, 2012 CO 63, ¶ 11, 288 P.3d 116, 119; *People v. Johnson*, 2021 CO 35, ¶ 17, 486 P.3d 1154, 1158 (stating that interference with a defendant's ability to present a complete defense is a constitutional error that requires reversal if there is a reasonable possibility that the error might have contributed to the conviction).

¶23 Determining whether the trial court erred requires us to interpret the relevant statutes, and we review issues of statutory interpretation de novo. *Moore*, ¶ 25, 485 P.3d at 1095. When interpreting statutes, our primary task is to ascertain and give effect to the legislature's intent. *People v. Griego*, 2018 CO 5, ¶ 25, 409 P.3d 338, 342. We begin with the statute's plain language, giving words and phrases their common and ordinary meanings. *Id.* If the statutory language is unambiguous, we apply it as written. *Id.*

B. Mental Condition and Competency

¶24 Generally, defendants are prohibited from introducing evidence of insanity unless they enter a NGRI plea. § 16-8-107(3)(a). But, regardless of whether the defendant pleads NGRI, "evidence in the nature of expert opinion concerning the defendant's mental condition" may be admissible as long as it's not probative of insanity and certain conditions are met: the defendant must first give notice to the court and the prosecution of her intent to introduce the evidence, and the defendant must undergo a court-ordered examination pursuant to section

16-8-106, C.R.S. (2025). § 16-8-107(3)(b). A defendant's proposed mental-condition evidence tends to be probative of insanity if it implicates the definition of mental disease or defect. *Moore*, ¶ 44, 485 P.3d at 1098. Mental diseases or defects are defined as "severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance." § 16-8-102(7), C.R.S. (2025).

¶25 Defendants are required to cooperate with personnel during court-ordered examinations. § 16-8-106(2)(c). If a defendant doesn't cooperate, she may not introduce expert testimony regarding her mental condition at trial. *Id.* A defendant may still, however, introduce other mental-condition evidence, but the fact of her noncooperation during the examination may be admissible to rebut any such evidence. *Id.*

¶26 Cooperation isn't defined by statute. The word "cooperate" generally means "to act or work with another" or to "act together or in compliance." *Cooperate*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/cooperate [https://perma.cc/86F9-VFYG]. Applying this ordinary meaning, we conclude that "cooperate" in section 16-8-106(2)(c) means that the defendant must work with the evaluator and comply with the court order to complete the examination.

¶27 The hiccup in this case is that, at the time Day was evaluated and deemed uncooperative, she was incompetent. For that reason, we must determine if the court may even order a mental-condition examination of an incompetent defendant, let alone fault her for noncooperation if it does.

¶28 A defendant is incompetent to proceed if, as a result of a mental or developmental disability, the defendant lacks "sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding in order to assist in the defense, or . . . [if] the defendant does not have a rational and factual understanding of the criminal proceedings." § 16-8.5-101(12), C.R.S. (2025). When the issue of competency is raised, if the court has insufficient information to make a preliminary finding or if a party objects to the court's preliminary finding, the court must order the Department of Human Services to evaluate the defendant and prepare a report. § 16-8.5-103(2). The statute requires the defendant to cooperate with the competency evaluator and, if she doesn't, the statute explains that the defendant's noncooperation may be used as evidence against her at a competency or restoration hearing to "rebut any evidence introduced by the defendant with regard to the defendant's competency." § 16-8.5-105(2). However, if the lack of cooperation is the result of a developmental or mental disability, then the fact of noncooperation can't be introduced at those hearings. *Id.*

¶29 If there is reason to believe that a defendant is incompetent to proceed, the trial court must suspend the proceedings until the competency of the defendant has been determined. *People v. Zapotocky*, 869 P.2d 1234, 1237 (Colo. 1994). The prohibition against prosecuting an incompetent defendant "attaches at the commencement of formal criminal proceedings and continues throughout the execution and satisfaction of the sentence." *Jones v. Dist. Ct.*, 617 P.2d 803, 807 (Colo. 1980). So, while a defendant is incompetent, a court may only proceed with matters that are "susceptible of fair determination prior to trial and without the personal participation of the defendant." § 16-8.5-102(1), C.R.S. (2025).

¶30 Here, the trial court's order excluding the proffered expert mental-condition testimony implicitly determined that Day's competency was irrelevant to her noncooperation. The division disagreed, concluding that Day couldn't be faulted for her noncooperation while she was incompetent. *Day*, ¶¶ 24–25, 544 P.3d at 1248.

¶31 We resolve that disagreement now.

C. Application

1. Competency Examination

¶32 The trial court, in its order granting the prosecution's motion to exclude expert mental-condition evidence, noted that Day didn't cooperate with the CMHHIP examiner. The court referred to the June 2018 report, in which CMHHIP

found Day incompetent and reported that the state hospital couldn't complete the mental-condition examination because Day was not cooperative.

¶33 On appeal, the division concluded that the trial court had erred by faulting Day for failing to cooperate during the June evaluation. *Id.* at ¶ 25, 544 P.3d at 1248. The division reached this conclusion based on section 16-8.5-105(2), which prohibits the use of a defendant's noncooperation in competency evaluations at subsequent hearings if the noncooperation was the result of "a mental disability." Because Day's noncooperation was during a competency evaluation and she has a previously diagnosed mental illness, the division concluded that the trial court shouldn't have faulted her for her noncooperation when determining the admissibility of the expert mental-condition testimony. *Day*, ¶ 25, 544 P.3d at 1248.

¶34 Although we agree with the division that Day shouldn't be faulted for noncooperation while incompetent, we do so for different reasons. Section 16-8.5-105(2) applies only to the admissibility of a defendant's noncooperation at subsequent competency and restoration hearings, not all subsequent hearings in a defendant's case. Therefore, section 16-8.5-105(2) simply doesn't govern whether Day's noncooperation during a competency evaluation may be considered by the trial court when determining the admissibility of expert mental-condition testimony at trial.

¶35 Still, as discussed above, one aspect of incompetence is a defendant's inability to rationally understand the proceedings or assist in her defense because of a mental disability. § 16-8.5-101(12). For this reason, when a defendant is deemed incompetent, the court shouldn't proceed with matters that require the defendant's personal participation for a fair determination of the issue. § 16-8.5-102(1). A mental-condition examination requires a defendant's personal participation. And if a defendant can't meaningfully participate in her defense, she likely can't meaningfully participate in such an examination either. An incompetent defendant who is struggling to understand the purpose of the mental-condition examination can't be expected to fulfill the purpose of the examination. Because cooperating with a mental-condition examination is a key step in a defendant's ability to present expert mental-condition evidence as part of her defense, the examination shouldn't proceed until the defendant is competent to proceed. *See Zapotocky*, 869 P.2d at 1237.

¶36 Here, after CMHHIP exhibited confusion about the type of examination that had been ordered, the court entered its March 2017 order, which reiterated that CMHHIP should conduct a mental-condition examination, not a sanity examination. After that clarification, CMHHIP only attempted to conduct a mental-condition examination at times when Day was deemed incompetent. But she couldn't reasonably participate in a mental-condition examination during that

time, so her lack of cooperation in any such examination shouldn't be used against her to exclude expert mental-condition evidence. Her incompetence rendered any mental-condition examination, and her cooperation (or lack thereof) with such an examination, a nullity.

¶37 Day requested, and the court ordered, a mental-condition examination multiple times before trial, but CMHHIP failed to conduct the examination while Day was competent. When the prosecution moved to exclude Dr. Fukutaki's mental-condition testimony, the court's April 2018 order for a mental-condition examination remained in place. Day relied on CMHHIP to follow the order and complete the examination. Before the trial court excluded Day's expert mental-condition evidence, it should have enforced its order by directing CMHHIP to examine Day while she was competent. (At this juncture, the court hardly needed any reminders about defense counsel's continuing desire for the examination. The issue had been front and center literally for years, and the court recognized the need for the examination in its written ruling.) Instead, the trial court granted the prosecution's motion in limine. It did so, at least in part, because of the defendant's lack of cooperation in completing the mental-condition examination in June 2018 (while incompetent), stating that "on that basis alone" it could exclude all mental-condition evidence. December 2019 Order, at 2. We agree with the division that, in doing so, the trial court abused its discretion.

2. Admissibility of Mental-Condition Evidence Under *Moore* and CRE 403

¶38 While Day's case was on appeal, we announced our decision in *Moore*, which provided guidance on how to evaluate the admissibility of mental-condition evidence without a NGRI plea. In *Moore*, we concluded that "the trial court should determine whether the proposed testimony, in whole or in part, is *probative* of what the legislature has defined as insanity," and if it's probative of insanity, it's inadmissible. ¶ 44, 485 P.3d at 1098.

¶39 Applying this framework, the division concluded that only one part of the proffered expert mental-condition testimony—that Day's mental condition could've prevented her from accurately perceiving reality or recognizing the severity of the situation—was probative of insanity and thus inadmissible under section 16-8-107(3)(b). *Day*, ¶¶ 25, 34, 544 P.3d at 1248, 1250. The division concluded that the remaining proffered evidence—Day's mental condition, the medication she was prescribed but not taking, and that she might have been experiencing some thought disorganization—wasn't "suggestive of the type of mental disease or defect contemplated in the insanity statute." *Id.* at ¶ 33, 544 P.3d at 1250.

¶40 We agree with the division that the trial court's ruling swept too broadly when it rejected all of Dr. Fukutaki's testimony because, in doing so, the trial court failed "to distinguish what is probative of insanity under [the statute's] exacting

definition from what is not." *Moore*, ¶ 5, 485 P.3d at 1093; *see also People v. Ray*, 2025 CO 42M, ¶ 28, 575 P.3d 400, 419 ("While we can't fault the trial court for failing to foresee this development, 'we generally apply the law in effect at the time of appeal.'" (quoting *People v. Owens*, 2024 CO 10, ¶ 112, 544 P.3d 1202, 1228)).

¶41 The division also said it was unpersuaded by the prosecution's CRE 403 argument that the probative value of Day's expert mental-condition evidence was substantially outweighed by the risk of unfair prejudice. *Day*, ¶ 36, 544 P.3d at 1250. The division observed that it was "bound by *Moore*'s guidance, which measures admissibility of mental condition evidence by its relatedness to insanity, not its proposed purpose." *Id.* But this statement seemingly conflated the statutory analysis with the evidentiary analysis.

¶42 In *Moore*, we explained that section 16-8-107(3)(a)'s preclusion of "evidence that is 'relevant to the issue of insanity,'" absent a NGRI plea, means that a defendant may not introduce mental-condition evidence "that tends to prove or disprove the issue of insanity—that is, evidence that is probative of what is [statutorily] defined as insanity." *Moore*, ¶ 33, 485 P.3d at 1096 (quoting § 16-8-107(3)(a)); *see also* CRE 401 (defining evidentiary relevance). However, "evidence that doesn't tend to prove insanity may be admitted [to support other defenses] so long as such evidence otherwise conforms to the statutory requirements and the rules of evidence." *Moore*, ¶ 44, 485 P.3d at 1098; *see also id.*

at ¶ 36, 485 P.3d at 1097 (explaining that "section 16-8-107(3)(b) allows the admission of evidence of a mental condition that doesn't constitute a 'mental disease or defect' necessitating an NGRI plea"); *People v. Vanrees,* 125 P.3d 403, 408 (Colo. 2005) (noting that "there is nothing within Colorado's statutory insanity framework indicating that our General Assembly intended to create an 'all or nothing' insanity defense that applies in all cases where the defendant presents evidence challenging the culpable mental state element of the crime charged"). Therefore, to determine whether a defendant's proffered evidence is probative of insanity or some other defense, courts should consider "whether testimony regarding a mental condition meets the definition of insanity"; courts need not "yield to a defendant's stated purpose in seeking admission of the evidence." *Moore*, ¶ 38, 485 P.3d at 1097.

¶43 That's the statutory analysis.

¶44 But for CRE 403 purposes, the court must consider whether the evidence, which is otherwise admissible (meaning, it has passed the court's statutory analysis), should nonetheless be excluded because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." In evaluating whether testimony should be excluded under CRE 403, the trial court must, therefore, be

mindful of the purposes for which the testimony is offered. *People v. Cooper*, 2021 CO 69, ¶ 52, 496 P.3d 430, 441. So, for the evidentiary analysis, it matters that the purpose of some of the mental-condition evidence was to rebut the prosecution's argument that Day's post-event behavior proved her culpable mental state. Because the mental-condition examination may affect the CRE 403 analysis, we refrain from resolving that evidentiary issue now. Instead, we leave it to the trial court to address the issue on remand after the examination occurs.

¶45 Moreover, we agree with the division that the exclusion of this evidence wasn't harmless beyond a reasonable doubt. The prosecution relied heavily on Day's post-event demeanor to prove her culpable mental state, and the trial court's ruling denied Day the opportunity to rebut that evidence.

¶46 Therefore, we affirm the division's reversal of Day's conviction as to each count for which her culpability was at issue, and we remand the case for a new trial consistent with this opinion.

III. Conclusion

¶47 We affirm the judgment of the court of appeals, albeit on slightly different grounds, and we remand the case for further proceedings consistent with this opinion.

CHIEF JUSTICE MÁRQUEZ, joined by **JUSTICE BOATRIGHT** and **JUSTICE BLANCO**, dissented.

CHIEF JUSTICE MÁRQUEZ, joined by JUSTICE BOATRIGHT and JUSTICE BLANCO, dissenting.

¶48 I agree with the majority that a court may not fault a defendant for failing to cooperate with a mental-condition examination if the defendant is incompetent at the time of the examination. Maj. op. ¶¶ 34–36. But I disagree with the majority's conclusion that the trial court abused its discretion when it granted the People's motion in limine to exclude Maria Laida Day's mental-condition evidence.[1] Under section 16-8-107(3)(b), C.R.S. (2025), "the defendant is not permitted to introduce evidence . . . concerning the defendant's mental condition . . . without having undergone a court-ordered examination pursuant to section 16-8-106[, C.R.S. (2025)]." Because Day had never undergone the requisite examination, the trial court was required by statute to exclude her proffered mental-condition evidence.

¶49 The majority avoids this outcome by inexplicably shifting the burden of ensuring that the examination takes place from the proponent of the evidence, the defense, to the trial court. Maj. op. ¶ 37. Though I acknowledge that the frustrating series of events in this case are not the fault of any one party, the

[1] Since I would affirm the trial court's decision to exclude Day's mental-condition evidence because it failed to meet the requirements of section 16-8-107(3)(b), C.R.S. (2025), I would not reach the other evidentiary questions related to our decision in *People v. Moore*, 2021 CO 26, 485 P.3d 1088, or Colorado Rule of Evidence 403.

ultimate burden of ensuring that proffered evidence meets the statutory requirements must lie with the proponent of the evidence, not the trial court. Here, the defense, as the proponent of this evidence, had the obligation to ensure that the proffered evidence met the statutory requirements of section 16-8-107(3)(b) to be introduced at trial. At a minimum, defense counsel had an obligation to inform the court that the requisite examination had still not taken place and to seek enforcement of the court's previous order. Defense counsel failed to do so. I cannot agree that the trial court abused its discretion by failing, sua sponte, to halt the impending trial to enforce an order issued years earlier. Rather, the trial court properly excluded the evidence on the grounds that no mental-condition evaluation had been conducted pursuant to section 16-8-107(3)(b). *People v. Day*, No. 15CR26, at 2 (Dist. Ct., Lake Cnty., Dec. 18, 2019) (unpublished order) ("December 2019 Order"). Because the court's ruling was not manifestly arbitrary, unreasonable, unfair, or a misapplication of the law, I respectfully dissent.

I. Section 16-8-107(3)(b) Required the Trial Court to Exclude the Evidence

¶50 When interpreting statutes, our goal is to discern and effectuate the legislature's intent. *See Town of Minturn v. Tucker*, 2013 CO 3, ¶ 27, 293 P.3d 581, 590. In doing so, we "must respect the legislature's choice of language." *Oakwood Holdings, LLC v. Mortg. Invs. Enters. LLC*, 2018 CO 12, ¶ 12, 410 P.3d 1249, 1252.

Thus, "[i]f the statutory language is clear, we apply it as written." *Dep't of Revenue v. Agilent Techs., Inc.*, 2019 CO 41, ¶ 16, 441 P.3d 1012, 1016.

¶51 In this case, the language of section 16-8-107(3)(b) is clear that the completion of a court-ordered mental-condition examination is a mandatory prerequisite to the introduction of expert mental-condition evidence: "[T]he defendant is not permitted to introduce evidence in the nature of expert opinion concerning the defendant's mental condition . . . without having undergone a court-ordered examination pursuant to section 16-8-106."

¶52 This language establishes a bright-line rule: If the defendant has not undergone a court-ordered mental-condition examination, the court may not allow expert mental-condition testimony. The statute has no exceptions or qualifiers.

¶53 Under section 16-8-106(2)(c), if a defendant fails to cooperate with personnel conducting an examination, the court must preclude defense expert testimony on the defendant's mental condition:

> If the defendant does not cooperate with psychiatrists, forensic psychologists, and other personnel conducting the examination, *the court shall not allow* the defendant to call any psychiatrist, forensic psychologist, or other expert witness to provide evidence at the defendant's trial concerning the defendant's mental condition . . . .

(Emphasis added.)

¶54 This language is also clear. As the majority correctly reasons, however, a defendant who is incompetent (and is thus unable to understand the proceedings or assist in their defense) should not be faulted for failing to cooperate with a mental-condition examination, a process that requires a defendant's personal participation. *See* § 16-8.5-101(12), C.R.S. (2025); Maj. op. ¶¶ 28, 35–36. Thus, I agree with the majority that the trial court erred in holding Day's noncooperation against her because she was incompetent at the time of the June 2018 examination.

¶55 But the conclusion that the trial court erred by considering Day's noncooperation under section 16-8-106(2)(c) does not change the fact that no mental-condition examination took place as required by section 16-8-107(3)(b). The latter provision forbids the defense from introducing such evidence if an examination has not taken place—regardless of the reason. The trial court correctly observed that no exam had taken place and that it could deny the introduction of such evidence "on this basis alone." December 2019 Order, at 2. The majority reasons its way around section 16-8-107(3)(b) by shifting the burden of ensuring that the defendant's evidence met the statutory requirement to the trial court. Maj. op. ¶ 37.

¶56 As a fundamental rule, the proponent of evidence bears the burden of establishing all the requirements for admission of that evidence. This is true whether those requirements are statutory, *e.g.*, § 16-8-107(3)(b), or grounded in the

Colorado Rules of Evidence. *See People v. Harris*, 43 P.3d 221, 226 (Colo. 2002) (clarifying that Colorado's "rape shield" statute requires the defendant to show the evidence meets the statute's requirements for admission); *see also People v. Vanderpauye*, 2023 CO 42, ¶ 25, 530 P.3d 1214, 1222 (holding that the proponent of hearsay evidence bears the burden of establishing a hearsay exception); *People v. Montoya*, 753 P.2d 729, 733–34 (Colo. 1988) (holding that the prosecution bears the burden of establishing the elements for admission of co-conspirator statements); *People v. Sutherland*, 683 P.2d 1192, 1197 (Colo. 1984) (holding that the proponent of real evidence bears the burden of establishing a chain of custody for such evidence).

¶57 Yet here, the majority effectively holds that the burden of ensuring compliance with section 16-8-107(3)(b) rests with the trial court. Maj. op. ¶ 37. The majority's reasoning appears to be that (1) the defense met its burden simply by notifying the court of its intent to introduce the evidence; and (2) once the trial court issued its order for the examination to take place, the burden of ensuring the examination took place before trial fell on the trial court. *Id.* Although the trial court certainly had the authority to enforce its order, I disagree with the majority's apparent conclusion that the trial court had an affirmative duty to enforce compliance with its order, sua sponte, without any notification from the defense. *Id.*

¶58 The legislature has the power to impose such affirmative obligations on trial courts and has done so in specific contexts. For example, section 16-8.5-116(3), C.R.S. (2025), requires trial courts to conduct periodic reviews of incompetency determinations. But even there, the burden is shared between the trial court, which conducts the review, and the entity evaluating the defendant, which must provide the court with updated reports to assist the court in its review. *Id.* By contrast, the majority's holding today has no grounding in section 16-8-107(3)(b) (or any other provision); it simply imposes the burden on the trial court to enforce, sua sponte, an order issued years earlier, with no apparent obligation that the defense notify the court that an examination has not taken place.

¶59 The majority's ruling today ignores the reality that trial courts rely on notification from the parties to effectively and proactively enforce their orders. As a routine example, when a trial court orders the prosecution to turn over additional evidence under Crim. P. 16, the trial court does not have an independent duty to ensure the prosecution turns over the evidence. Rather, the defense (the party seeking the evidence) has an obligation to notify the court of the prosecution's failure to comply, and the trial court then enforces its order. The same should be true here.

¶60 The majority nevertheless turns this assumption on its head and holds that the trial court abused its discretion by not taking additional action, sua sponte, to

enforce its order mere weeks before retrial. Maj. op. ¶ 37. I cannot agree. The proponent of the evidence should bear the burden of ensuring that the proffered evidence meets the statutory requirements. If that compliance requires action by the court, then the proponent must at least notify the court that action is required.

¶61 The facts here illustrate why: By the time the trial court issued the order excluding the evidence, the case had been pending for three and a half years; Day had undergone multiple competency evaluations that paused the proceedings; the trial court judge who originally issued the mental-condition examination order had been replaced by a new judge; and the case had been reset for trial following an earlier mistrial. Cases with lengthy, complex procedural histories like this one exemplify why trial judges must rely on the parties to bring issues to the court's attention. To be clear, I agree with the majority that a court may not fault a defendant who is incompetent for failing to cooperate with a mental-condition examination. Here, however, Day had been deemed competent in March 2019, several months before trial in January 2020. Nothing prevented defense counsel from flagging for the trial court during this period that Day had still not undergone a mental-condition examination as required by section 16-8-107(3)(b) and requesting enforcement of the court's previous order for the examination.[2] As the

[2] As reflected in the majority's timeline of events, Day was deemed competent to proceed in March 2019. Maj. op. ¶ 9. The record reflects no efforts from the

proponent of this evidence, the defense bore that burden. The majority's holding otherwise in this case undermines this careful balance of responsibility between the parties and the trial court.

II. Conclusion

¶62 Section 16-8-107(3)(b) plainly bars the defense from introducing mental-condition evidence without the defendant having undergone a court-ordered examination under section 16-8-106. Because Day had not undergone such an examination before retrial, the trial court properly excluded the evidence on that basis alone.

¶63 In sum, because I cannot agree with the majority that the trial court abused its discretion in excluding the evidence under the circumstances of this case, I respectfully dissent.

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defense to notify the trial court of the incomplete mental-condition examination during the eight-plus months leading up to trial.