

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: Boulder County Justice Center 1777 Sixth Street Boulder, Colorado 80302 Court Phone: (303) 441-3750	COURT USE ONLY
PEOPLE OF THE STATE OF COLORADO vs. OKEY PAYNE Defendant	
Attorney Name: Michael T. Dougherty, Reg. # 41836 District Attorney Myra E. Gottl, Deputy District Attorney #44925 Boulder County Justice Center 1777 Sixth Street Boulder, CO 80302 Attorney Phone: (303) 441-3798 Attorney Fax: (303) 441-4703 Attorney E-mail: mdougherty@bouldercounty.org	Case No: 2021CR200 Division: 4
PEOPLE’S RESPONSE TO DEFENDANT’S MOTION TO DISMISS CRIMINAL PROCEEDINGS BECAUSE DEFENDANT HAS A MENTAL DISABILITY THAT RISES TO THE LEVEL OF HIM BEING INCOMPETENT TO PROCEED AND NOT RESTORABLE WITHIN THE FORESEEABLE FUTURE PURSUANT TO C.R.S. 16-8.5-116	

The People, through District Attorney Michael T. Dougherty, respectfully submit the following Response to the Defendant’s Motion to Dismiss. For the reasons contained herein, the People do not oppose the defendant’s motion to dismiss.

**FACTUAL AND PROCEDURAL HISTORY
SUMMARY OF COMPETENCY FINDINGS**

1. On February 3, 2021, the defendant after deliberation, and with the intent to cause the death of a person other than himself, caused the death of Ricardo Medina-Rojas; in violation of section 18-3-102(1)(a), C.R.S. Additionally, this defendant, by threat and physical action knowingly placed or attempted to place two other individuals in fear of imminent serious bodily injury by use of a deadly weapon namely: a firearm; in violation of section 18-3-206(1)(a)/(b), C.R.S.

2. At the time, the defendant was 95 years old and resided at the Legacy, an assisted living facility. The defendant had in his own apartment at the Legacy. On prior occasions, Legacy staff had removed firearms from the defendant's room.
3. Following the murder, police officers and detectives responded to the Legacy. The defendant agreed to speak with the detectives. From that interview, as well as other interviews and additional investigation, the police learned that the defendant had been under the false and mistaken belief that staff members at the Legacy were stealing from him.
4. Over time, the defendant had lodged similar, false accusations against staff members at the Legacy. These allegations had been previously investigated by both the Lafayette Police Department and Adult Protective Services. It was determined that the allegations of theft were false and wholly unsubstantiated.
5. On the day of the incident, the defendant again believed that staff members had stolen from him. The defendant took a loaded handgun and waited in the lobby for employees to arrive at work. At the time, Mr. Ricardo Medina-Rojas worked as a staff member at the Legacy. He was a loving father and husband. He had never engaged in theft or misconduct against this defendant.
6. When Ricardo Medina-Rojas entered the building, this defendant pointed the gun at the head of Mr. Medina-Rojas and fired once, killing him. The defendant also menaced two other individuals with the firearm. Police recovered the handgun from the defendant's room at the Legacy. In his interview with detectives, the defendant admitted to killing Mr. Medina-Rojas and threatened to kill other staff members if he were to be released.
7. On February 9, 2021, the People filed First-Degree Murder and related charges against the defendant.
8. On April 26, 2021 defense counsel for Mr. Payne raised the issue of Mr. Payne's competency.
9. On May 5, 2021 the Court ordered a competency evaluation be conducted to ascertain whether or not Mr. Payne is competent to proceed. This Court ordered that evaluation be conducted at CMHIP.
10. Mr. Payne was admitted to CMHIP on July 22, 2021.
11. On August 9, 2021 Dr. Mattox filed his competency report with the Court. Dr. Mattox found Mr. Payne to be incompetent to proceed. In his report Dr. Mattox stated:

Mr. Payne suffers from unspecified Major Neurocognitive Disorder, with psychotic symptoms...

Regarding his prognosis, it is poor. Neurocognitive disorders are usually irreversible and progressive. Furthermore, psychotic symptoms associated with neurocognitive disorders are often difficult to treat with antipsychotic medication.

Regarding his competency to proceed, during my interview Mr. Payne exhibited a lack of understanding of his current charges, the legal process, and also a limited ability to learn and retain new information. In addition, he did not appreciate the seriousness of his charges and the punishment he could face, and his rational decision making

skills were influenced by his paranoid delusional thinking.

It is further my opinion, based on the information available to me at this time, that there is a substantial probability Mr. Payne may be restorable to competency within the foreseeable future...

It is my opinion, based on the information available to me at this time, that Mr. Payne does meet requirements for certification pursuant to article 65 of title 27 (gravely disabled and danger to others), but does not meet the provision of services pursuant to article 10.5 of title 27.

See August 9, 2021 Report, Pages 6-7.

12. On August 17, 2021 this Court found Mr. Payne incompetent to proceed and ordered restoration services be conducted at CMHIP.

13. On October 29, 2021 Dr. Muller filed a competency report with the Court finding Mr. Payne incompetent to proceed. In Dr. Muller's report she stated:

Regarding restorability, the precise etiology of Mr. Payne's impairments remains somewhat unclear, and additional testing is scheduled to take place in the future. That being said, by all accounts, it appears he most likely has a neurocognitive illness that is progressive in nature, and his psychiatrist is of the opinion that psychiatric medications are unlikely to help his psychotic symptoms. Although his prognosis is poor, without the additional test data, it would be premature to say that Mr. Payne cannot be restored to competency in the foreseeable future. It is my opinion, based on the information available to me at this time, that there is a substantial probability Mr. Payne is not restorable to competency within the foreseeable future.

See October 29, 2021 Report, Page 7.

14. Dr. Muller also references a recent note from Mr. Payne's psychologist that he was making progress in understanding the structure and function of the judicial system, but not making as much progress in terms of his rational understanding. CMHIP planned to schedule an MRI of Mr. Payne's brain for November of 2021.

15. On January 24, 2022 Dr. Muller filed a competency report with the Court finding Mr. Payne incompetent to proceed. In this report, Dr. Muller stated that Mr. Payne's presentation has largely remained unchanged. Specifically, she had the following opinion:

Regarding restorability, the available information indicates Mr. Payne has maintained paranoid and seemingly delusional beliefs for nearly four years, without periods of psychiatric stability. His diagnostic picture is most consistent with a neurocognitive illness. These kinds of disorders are progressive in nature, without recovery of lost functioning. Psychiatric medications are sometimes helpful in managing mental health symptoms associated with the disorders; however, Mr. Payne has refused to take such medications. Moreover, his psychiatrist has remained of the opinion that there is a low

probability Mr. Payne specifically will improve with the incorporation of psychiatric medication, and that the risk of pursuing involuntary administration of medication outweighs any expected benefits. Given the aforementioned information, I see no reason to believe Mr. Payne will be restored to competency in the foreseeable future.

See January 24, 2022 Report, Page 7-8.

16. Neither party filed a motion objecting to Dr. Muller's findings nor requested a hearing.
17. Mr. Payne has been in restoration for seven months. While at CMHIP, he has participated in group sessions, individual sessions and studied an ITP workbook. He has refused to take antipsychotic medications, and often refuses other medications. As noted above, he has harbored delusional beliefs for nearly four years.
18. The People spoke with Dr. Muller and Dr. Dygert, Mr. Payne's primary treating doctor at CMHIP to better understand the change in opinion that Mr. Payne may be restorable in the foreseeable future (October 2021) with the opinion that he would not be restorable and is permanently incompetent to proceed (January 2022).
19. Mr. Payne's situation is unique because of his delusions, advanced age and refusal to participate in testing.
20. First, Mr. Payne has paranoid delusions and ideation, which are documented back to 2018. His paranoia has proven to be a barrier in testing, diagnosis and treatment while at CMHIP.
21. For example, Mr. Payne refused to participate in an MRI and neurological testing, believing that both would be "rigged." He, also, believed that medical staff would steal his belongings when he underwent medical exams. These delusional beliefs about possible thefts by medical staff at CMHIP are consistent with his repeated allegations against Legacy staff.
22. Dr. Muller opines that the delusional beliefs will seriously impact Mr. Payne's ability to make rational decisions about his case, defense strategy, and communicate with his attorneys. These types of delusions, according to the doctors, do not necessarily respond to psychiatric medications.
23. Second, is Mr. Payne's age – he is currently 96 years old. Mr. Payne has shown signs of dementia, such as short-term memory impairment, issues with time orientation, and difficulties with executive functioning. Additionally, there are more risks in forcing someone who is Mr. Payne's age to take psychiatric medication. Dr. Dygert's opinion is that the minimal potential benefits of forcing medication do not outweigh the risks and the side effects of the medication.

24. For someone who is younger, the types of delusions Mr. Payne has would likely be related to a mental illness; however, due to Mr. Payne's age, the doctors believe that the delusions are caused by neurocognitive illness. As explained by Dr. Muller, Mr. Payne is not remembering things that happen and is trying to put all the pieces together – and in doing so, makes sense of things in a paranoid way.
25. Unlike someone who is younger, according to the doctors, Mr. Payne's condition would not likely respond to medications.
26. Dr. Muller expressed that she is limited in her ability to make a firm diagnosis for Mr. Payne because he has refused to comply with additional testing, such as an MRI and neuro-psychological evaluation.
27. It is important to note that the doctors stressed that his advanced age causes forced testing and/or forced medication to be a risky and potentially dangerous procedure. They do not believe that someone at his age, and in his condition, can be forced to submit to testing or medication against his will without serious risk to his physical health and little chance of improvement. If this defendant were of a different age, the doctors would recommend forced testing and/or medication to restore him to competency.
28. Dr. Muller also indicated that it can be difficult with dementia and neurocognitive illnesses to make a firm diagnosis even with testing, but it is hard to determine what is related to Mr. Payne's age and what is related to a mental condition without additional tests. Dr. Muller explained she opined that Mr. Payne may be restorable because she needed additional data.
29. In the most recent report, she concluded he was not likely restorable in the foreseeable future because no additional data (such as an MRI or testing) was available and because Mr. Payne had made no improvements. In her report, she notes that neurocognitive illnesses are progressive, without recovery of lost functioning.
30. C.R.S. § 16-8.5-111(2)(a.5) states that when an evaluator has provided an opinion that a defendant is incompetent to proceed and is unlikely to be restored to competency in the foreseeable future, there is a "presumption that the defendant will not attain competency within the reasonably foreseeable future." Any party trying to overcome the presumption "must prove by a preponderance of the evidence that there is a substantial probability that restoration efforts will be successful within the reasonably foreseeable future." *Id.* If the party trying to overcome the presumption is unable to meet its burden, then the trial court "shall dismiss the case." *Id.* The People do not have a good faith basis to believe that the presumption can be disproven here.

31. Due to the above legal authority, factors, and information, the People are not contesting the findings or opinion that Mr. Payne is not restorable within the foreseeable future.
32. Dr. Dygert stated that if charges are dismissed, he would proceed with placement at CMHIP through civil commitment proceedings, where Mr. Payne would be housed in the geriatric unit. That unit is a secured facility.
33. After receiving all the above information, the People spoke with the victims in the case. In speaking with the family of Mr. Medina-Rojas, it was explained that the doctors have now determined that the defendant cannot be restored to competency in the foreseeable future. The victim's family shared that they had believed this would be the outcome. They are striving to cherish the memories of Mr. Medina-Rojas, rather than focus on the criminal prosecution of the murderer.
34. In speaking with the victim of the Menacing, who worked at Legacy at the time of the incident, she explained that she had worked with the defendant for a long time, that his condition worsened over time, and she can see how he would now be incompetent to proceed.
35. As CMHIP will be seeking civil commitment of Mr. Payne in Pueblo, the People need not seek civil commitment through this case here in Boulder County.
36. Based on all the above, the People do not oppose the defendant's motion to dismiss. The defendant committed an unjustified, brutal murder. Given his age, mental condition, and competency status, the People cannot disprove the determinations by the doctors. The defendant should be held in the secured facility at CMHIP for the rest of his natural life.

WHEREFORE, the People do not oppose the defendant's Motion to Dismiss.

Respectfully submitted,

MICHAEL T. DOUGHERTY
DISTRICT ATTORNEY

By:

/s/Michael T. Dougherty
Reg. # 41831
District Attorney
March 29, 2022

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed (eFiled) a true and correct copy of this pleading into the State of Colorado's Court ICCES system. For cases involving Pro Se defendants, I further certify that I mailed a true and correct copy of this pleading to the address below.

/s/Michael Dougherty

Date: March 29, 2022

Defense on record:

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