

District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903 THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  <b>LETECIA STAUCH,</b> Defendant	DATE FILED: September 18, 2020 2:44 PM DATE FILED: September 18, 2020 8:49 AM   σ COURT USE ONLY σ
MEGAN A. RING, Colorado State Public Defender Kathryn Strobel (No. 42850) Deputy State Public Defender 30 E Pikes Peak Ave Suite 200 Colorado Springs, Colorado 80903 C. Colette LeBeau (No. 43164) Deputy State Public Defender 132 W B St #200 Pueblo, CO 81003 Phone (720) 475-1235 Fax (719) 7475-1476 E-mail: Kathryn.strobel@coloradodefenders.us Colette.LeBeau@coloradodefenders.us	Case No. 20CR1358   Division 15S Ctrm: S403
<b>D-19</b> <b>BRIEF REGARDING THE USE OF VIDEO AND AUDIO RECORDING DURING A</b> <b>COMPETENCY EVALUATION</b>	

Ms. Stauch, through Counsel, files this brief about the use of video and audio recording during an accused's competency evaluation. Ms. Stauch states the following:

1. At the June 4, 2020 hearing, the prosecution requested that Ms. Stauch's competency evaluation at the Colorado Mental Health Institute at Pueblo (CMHIP) be video recorded.
2. This Court's order for competency evaluation (D-15) includes paragraph 5 that states, "The People have requested and the court ORDERS the competency evaluation be video recorded pursuant to C.R.S. 16-8-106(1)(b) and -108(1)(a)."
3. C.R.S. 16-8-106(1)(b) and 16-8-108(1)(a) refer to insanity examinations. Article 8 of title 16 governs insanity and article 8.5 of title 16 governs competency.
4. After the competency evaluation was completed, Defense Counsel discovered that the people's request and the Court's order pertained to insanity or mental condition examinations and

not competency examinations. There is nothing in the competency statutes that permit the audio and video recording of the competency evaluation.

I. Senate Bill 16-019 was introduced in 2016 to require video and audio recording of a defendant undergoing a mental condition examination pursuant to section 16-8-106, C.R.S.

5. In 2016, Senate Bill (SB) 16-019 was introduced to require that court-ordered mental condition examinations be video and audio recorded. The bill eventually became law effective January 1, 2017 and is incorporated in C.R.S. §16-8-106(1)(b). This statute states, “An interview conducted in any case that includes a class 1 or class 2 felony charge...pursuant to this section must be video and audio recorded and preserved...” Id. This section pertains to mental condition examinations or insanity examinations.

6. Senator Cooke, one of the sponsors of Senate Bill 16-019, presented the bill to the Senate Committee on Judiciary on February 29, 2016. Various people testified in opposition and support of the bill. Defense Counsel has attempted to listen to an audio-recording of the testimony from February 29, 2016 but it appears that there was a technical problem that did not record the testimony from this date.

7. There is a “Research Note” and a “Final Fiscal Note” associated with SB 16-019 created by the Colorado Legislative Council Staff. *See* exhibits A and B. These documents state that “The bill does not apply to competency evaluations, which determine, prior to entering a plea in a criminal case, whether a defendant is competent to proceed.” However, the research note states that it is provided for informational purposes only and should not be relied upon as an official record of action by the General Assembly and that the research note is not a legal opinion.

II. The changes to the competency statute in 2016 and 2020 did not include an amendment like the insanity statute, C.R.S. 16-8-106(1)(b), that required insanity examinations be video and audio recorded.

8. In 2016, House Bill (HB) 16-1410 was introduced to address the location where a competency evaluation is to be conducted. This bill became law effective July 1, 2016 and was incorporated in C.R.S. §16-8.5-105(1).

9. In 2020, Senate Bill (SB) 20-181 was introduced concerning measures to improve outcomes for Defendants who may be found incompetent to proceed. This bill became law effective June 29, 2020 and was incorporated in C.R.S. §16-8.5-105 making several changes to this section of the statute.

10. Neither the 2016 nor the 2020 amendments to the competency statutes in article 8.5 of title 16 included an amendment that permits video and audio recording of a competency evaluation.

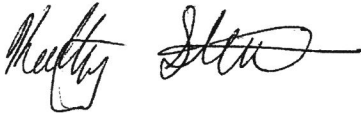
11. Only article 8 of title 16 (insanity) added this amendment in 2016 requiring that mental condition examinations, or insanity examination, be video and audio recorded.

12. In construing a statute, the court's goal is to ascertain and effectuate the legislature's intent by giving the statute's words their plain and ordinary meaning. People v. Rowell, 453 P.3d 1156, 1160 (Colo. 2019) *citing* McCoy v. People, 442 P.3d 379, 389 (2019). A court may not add, subtract, or change the words in the statute. Id. The court "must read the words as written, in context, and in accordance with the rules of grammar and common usage." Id.

13. Thus, the court may not add words to C.R.S. §16-8.5-105 (competency to proceed: evaluations, locations, time frames, and report). The court must read the statute's words as written and in context. If the legislature had intended to permit the video and audio recording of competency evaluations, they would have included this amendment in the competency statutes in 2016 when they added this language to the insanity statute.

Wherefore, Defense Counsel objects to the use of any video and audio recording of Ms. Stauch's competency evaluations in the instant case because it is not permitted by statute. Defense Counsel requests that any video and audio recordings of the competency evaluations that were distributed to the parties in the case be returned to the court and deemed inadmissible in this case.

RESPECTFULLY SUBMITTED,



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Dated: September 18, 2020