

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon Street Colorado Springs, CO 80903	DATE FILED: December 3, 2021 5:40 PM DATE FILED: December 3, 2021 5:40 PM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. LETECIA STAUCH, Defendant	
Attorney or Party without Attorney (Name and Address): BARKER & TOLINI, P.C. JOSHUA TOLINI, ESQ. 720 S. Tejon Colorado Springs, CO 80903 Phone Number: (719)227-0230 FAX Number: (719)227-0964 Atty. Reg. #: 30119	Case No. 20CR1358 Division 15
RESPONSE TO BRIEF REGARDING EVIDENCE OF MENTAL CONDITION(D-34)	

COMES NOW Letecia Stauch, by and through counsel, responds to the District Attorney's Brief Regarding Evidence of Mental Condition: AS GROUNDS, Ms. Stauch states:

1. Ms. Stauch does not dispute the first section of the Brief that recites the appropriate statute.
2. Regarding the place where the evaluation takes place Ms. Stauch would note the statute pursuant to statute "the court **shall** give priority to the place where the defendant is in custody." C.R.S. sec. 16-8-106(1)(a). Further, CMHIP at the present time is not in the best position to fulfill the requirements of the evaluation. "Even with hiring contract staff, CMHIP faces a staff shortage that continues to present barriers to timely admissions. CMHIP has a 33% vacancy rate for direct care staff as of November 11, 2021, which does not include contract staff who have been hired to provide direct services. Because of these challenges, three full units are currently not in use and two units are at half capacity; there are 95 beds not in use. We assess admissions opportunities weekly and are pursuing several strategies to ensure adequate staffing levels." November 15, 2021 Bimonthly Forensic Service and CHIMP Update. *See attachment I.*
3. Further since Ms. Stauch at this time is not entering NGRI, "the trial court has discretion under section 16-8-106(1) to specify the place where the examination is to be conducted and the period of time allocated for it, based on the nature of Wilburn's defense." People v. Wilburn, 272 P.3d 1078, 1081 (2012). Further, since Ms. Stauch is primarily offering this evidence regarding Counts 3 and 4, the Court should limit the evaluation in a way the respects Ms. Stauch's Constitutional right to remain silent in regards to Counts 1 and 2. Ms. Stauch would argue this is the only way for the statue to be Constitutional. "When reviewing a

statute upon a constitutional challenge, we must presume the statute is constitutional, and we must interpret the statute to avoid constitutional defects.” People v. Herrera, 87 P.3d 240, 244 (Colo. App. 2003)(internal quotes omitted).

4. Since Ms. Stauch is not offering the ‘mental condition’ evidence in regards to Counts 1 and 2, the statute cannot compel her to forfeit her right to remain silent regarding those allegations. “The privilege against self-incrimination is not implicated by a court-ordered mental examination when the information obtained therefrom is admitted only on the issue of mental condition.” People v. Herrera, 87 P.3d 240, 245 (Colo. App. 2003).

5. In regards to waiver of privilege, Ms. Stauch would point out that the waiver only applies to information the “concerning the mental condition” the defense intends to introduce evidence of. “Gray v. Dist. Court of Eleventh Judicial Dist., 884 P.2d 286, 296 (Colo. 1994). Ms. Stauch is not waiving any privilege, medical or otherwise that does not fit in that narrow exception.

6. Finally, the District Attorney’s recitation of Moore is misleading. While Ms. Stauch may not introduce evidence that would rise in severity to the definition of insanity through C.R.S. sec. 16-8-107(3); the remedy is not exclusion. Once the report from the defense expert is complete the court must review it and:

If the court finds that *none* of the proposed testimony tends to prove insanity, the defendant may introduce it at trial without pleading NGRI (again, so long as it otherwise satisfies any applicable statutory requirements and rules of evidence, including, for example, CRE 401 to 403 and CRE 702). If, however, the court finds that *all* the proposed testimony tends to prove insanity, the defendant may introduce it only by pleading NGRI. But if the court finds that *some* of the proposed testimony tends to prove insanity and some doesn't, the defendant must make a choice: (1) plead NGRI and seek to introduce all of the proposed testimony; or (2) withdraw the notice of intent to introduce mental condition evidence as to the portions that tend to prove insanity. Selecting the latter course means embracing the court's redactions and abiding by them at trial.

People v. Moore, 2021 CO 26, ¶ 45

s/ Joshua Tolini
Joshua Tolini #30119
Dated: December 3, 2021