District Court Jefferson County, Colorado 100 Jefferson County Parkway Golden, CO 80401	DATE FILED: March 16, 2018 6:35 PM CASE NUMBER: 2010CR498
PEOPLE OF THE STATE OF COLORADO v. **BRUCO STRONG EAGLE EASTWOOD,** Defendant.	▲ **COURT USE ONLY** ▲ **Case Number: 10CR498** **Division 7** **Courtroom 4A**

ORDER RE: RENEWED NOTICE OF TEMPORARY PHYSICAL REMOVAL FOR TREATMENT AND REHABILITATION—INCREASED UNSUPERVISED

THIS MATTER comes before the Court on the Colorado Mental Health Institute ("Institute") at Pueblo's Renewed Notice of Temporary Physical Removal for Treatment and Rehabilitation—Increase Unsupervised filed on December 29, 2017. The Court, having reviewed the Colorado Mental Health Institute's Renewed Notice ("Notice"); the People's objection; the letters presented to the Court in preparation for today's hearing; the testimony provided by Dr. McCann and Dr. Pounds at the hearing; the statements made by one of the victims and other members of the community; the arguments made at the hearing; and the applicable law; **FINDS** and **ORDERS** as follows:

BACKGROUND

A jury trial in this matter concluded in October 2011. The jury found Defendant Bruco Eastwood guilty of one of the felonies with which he was charged and sentenced him. The jury found Defendant not guilty by reason of insanity as to the other charges. As to the charge that the Defendant was found guilty, this Court—with Judge Munch presiding—ordered the maximum punishment available under law for that crime.

As to the charges to which Defendant was found not guilty by reason of insanity, Defendant was ordered to the Colorado Mental Health Institute in Pueblo, and the Court's responsibility is to oversee the treatment of him at the Institute. In March 2015, the Court held a hearing to make a

determination as to whether The Colorado Mental Health Institute's recommendation that Defendant be allowed to leave the facility under supervision adequately ensures public safety. Judge Munch found that this recommendation did adequately ensure public safety, specifically finding that it was "important to the defendant's treatment" for Defendant to interact with people outside the facility and learn to cope with the stress that this may bring. Tr. at 144, Mar. 13, 2015. Judge Munch further found that it was important for the people working with Defendant at the state hospital to observe these interactions and adjust Defendant's treatment as necessary. *See id.*

The Institute now requests that Defendant be allowed to leave the grounds of the state hospital without staff supervision.

LEGAL STANDARD

Although an insanity acquittee has a limited right to treatment, he has no right to treatment outside the institution in which he has been placed, except with approval of the court. People v. Riggs, 87 P.3d 109, 115 (Colo. 2004). The court is not granted the authority under C.R.S. § 16-8-118(1)(c) to impose conditions[1] on such treatment, and therefore, it must satisfy itself that any proposal for removal for treatment and rehabilitation is consistent with the safety of both the public and the acquittee, before granting its approval. Id.

ANALYSIS

The Institute reports that Defendant's paranoid schizophrenia is currently stabilized with medication, that Defendant has remained medication compliant, and that his risk for violent recidivism is low. *See* Renewed Notice at 23. While Defendant is still exhibiting "breakthrough symptoms," the Institute maintains that these have been "ameliorated" and that they confident these symptoms can be managed, given Defendant's track record of observing and reporting symptoms,

[1] While C.R.S. § 16-8-115(3)(a) authorizes the Court to impose such terms and conditions it determines are in the best interest of the defendant and community in the context of release, C.R.S. § 16-8-118(1)(c) does authorize such imposition in Temporary Removal for Treatment and Rehabilitation Notice. Riggs, 87 P.3d at 115.

asking for help, attending therapy sessions, and accepting increased doses of medication as necessary. *Id.* at 22-23. The Institute reports that Defendant has safely used his off-ground supervised privileges since 2015, accumulating more than 700[2] hours off-grounds. *Id.* at 23.

The People argue that the Notice should not be approved secondary to public safety concerns, which are of paramount importance. *See* Riggs, 87 P.3d at 114. The People argue that neither C.R.S. § 16-8-118(1)(c) nor case law interpreting this statute, citing *Riggs*, allow the Court to impose conditions. Rather, the decision to grant the Notice must be a straight up or down decision. The People further argue that Defendant has been inconsistent in reporting hallucinations; that there are 6 months of treatment notes missing from 2016; that 2017 involved an increase in breakthrough symptoms, with a corresponding increase in medication; and that the command hallucinations in 2015 and 2017 involved dangerous thoughts. The People urge the Court to deny the application, and to find that this proposal inadequately addresses public safety.

The Defense argues that this is a routine filing, and that the Court's purpose in reviewing the notice is not to retry the case—but to oversee Defendant's treatment at the institute and to account for public safety. The Court agrees, but, for the reasons described below, the Court finds that the application does not reasonably ensure public safety.

The Defense further argues that unsupervised off-grounds experiences are medically necessary, and that if Defendant does not get unsupervised off-grounds privileges, it will increase his recidivism risk. The Defense argues that there is a system in place to manage the unsupervised privileges. The Court disagrees.

Should Defendant be permitted to leave the grounds of the state hospital unsupervised, Defendant hopes to find part-time employment; volunteer at the Friendly Harbor Drop-In Center, and

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[2] The Court notes that while the Renewed Notice cited 600 hours of off-grounds supervised time completed, Dr. McCann testified that this had risen to 700 hours by the date of the hearing.

visit with his mother. Defendant hopes to spend approximately 3-4 overnights per year at his mother's home. *See* Renewed Notice at 23.

1. Concerns Regarding Requests in the Notice

The Court has significant concerns with the Renewed Notice as postured and the recommendations for off grounds activities: For one, the Court is concerned that there are not yet sufficient safeguards in place to ensure that Defendant does not pose a significant safety risk to the community and to himself while working for outside employers off-grounds. While Dr. McCann testified that these issues have been "infrequent" in the past with other patients, the Court is concerned that the Institute has not maintained a consistent line of communication with employers in the past. For example, Dr. McCann indicated that one employer did not report suspicions that a patient had been stealing until after that patient had been fired. While the Court is mindful that state hospital staff check-in with these employers periodically, this is not enough to ensure community safety when patients like Defendant are involved. The Court notes that while Dr. McCann indicated that it was "unlikely" that Defendant could suffer a major mental health setback in just one day, she did not rule out this possibility. Patients like Defendant require employers to be able to identify when there is a problem and proactively report it. It is particularly important to have a plan and training in place in the event the Defendant fails to react to his breakthrough symptoms in a manner commensurate with instructed protocols (i.e., take a prn dose of his medication and call staff to discuss the hallucination).

Second, concerning the request for overnight visits with his mother, Defendant has a troubled history with his mother. *See* Renewed Notice at 6-9, 11, and 22. Defendant has reported that his mother used to kick him as a child, and that his mother attempted to stab him with scissors when he was 24 years old. P. *See* Renewed Notice at 6. His mother also did not seek help when Defendant first told her of his hallucinations in 2002. *See* Renewed Notice at 8. Also concerning, Defendant's mother gave him a book on the Columbine shooting, which the state hospital staff found very troubling and harmful towards his treatment. *See* Renewed Notice at 11. And despite years of mental

health issues, Defendant's mother is not familiar with his breakthrough signs of distress. *See* Renewed Notice at 22.

While it appears that Defendant's mother had good intentions in giving this book to her son—she wanted him to see he was different from the Columbine shooters—the Court finds it extremely troubling that she did not consult Defendant's treaters before giving her son something that could potentially trigger severe symptoms. Defendant's mother has not yet demonstrated that she can consult with and work with her son's treaters in the manner necessary to ensure either the community's or her son's safety while Defendant is staying with her—even if just for a few overnights, as suggested by the Institute today. And the Notice is silent on a plan to accomplish this request.

2. Other Concerns

Overall, the Court is concerned that the Institute's proposal lacks any defined parameters pertaining to the start of unsupervised time off the campus let alone management of it. Even the two doctors, Dr. McCann and Dr. Pounds, seem to differ on how Defendant would begin unsupervised time off campus. Dr. McCann acknowledged that the proposal does not set forth any defined conditions on Defendant's off-grounds unsupervised privileges, with the Defense arguing that the Court should set these parameters—not the Institute. The Court disagrees: "the court is not itself granted the authority to impose conditions on such treatment." Riggs, 87 P.3d at 115.

The Court is mindful that the Institute requires some degree of flexibility to tailor Defendant's treatment as needed. However, neither the Renewed Notice nor the testimony presented provide the Court a meaningful understanding of even the first steps of the next phase of Defendant's proposed unsupervised treatment. For example, the experts, McCann, Ph.D. and Pounds, MD were not clear whether Defendant would be required to leave the grounds with a peer at first. The experts

similarly disagreed as to what jobs Defendant would be permitted to hold for his first job[3]. The Renewed Notice did not address employment parameters whatsoever or provide any description or discussion of parameters for Defendant's proposed off-grounds unsupervised privileges. The Renewed Notice also omitted summary of a substantial period of Defendant's treatment history[4] predating the filing of the Notice.

Next, the Court is troubled by the fact that Defendant does not yet exhibit a complete linear understanding, supported by the evidence, of his criminal offense. The Court is likewise troubled by Defendant's statement that he could become violent "if someone chases me down and corners me … I will use as much self-defense as possible." Notice at 20. Finally, the Court is concerned by Defendant's reluctance to acknowledge the relationship of his anger to his criminal offense. *Id.* The Court trusts that the Institute will work with Defendant in these areas, as significant public safety concerns remain.

That said, the Court is encouraged by Defendant's progress to include: stabilization of mental health illnesses, success with consistency in taking his medication, attending therapy sessions, attending his part-time job on campus and exercising off-grounds supervised privileges. The Court is likewise encouraged that Defendant appears to almost always report his symptoms. However, the Court remains concerned about the incomplete and tardy reporting incident from March 2017. The Court would like to see a more sustained track record of complete reporting before it will consider granting off-grounds unsupervised privileges.

To address the concerns raised by the Court during the hearing, and in this Order, the Court suggests that any future application provide more detail and/or concrete proposals, in pertinent part,

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[3] Dr. McCann testified that Defendant can apply for whatever job he wished and that a movie theater would be acceptable. Dr. Pounds explained that at first, vocational rehabilitation is indicated, and that Defendant's first job should be at Pueblo Diversified Industries. He noted that van transportation to and from the Institute is available and this employer is experienced at working with Institute patients and other disabled individuals.

[4] August 2015 through January 2016. *See* Renewed Notice at 15.

to address the following: (1) the lack of a current MMPI-2[5]; (2) the lack of any written schedule for UA and hair follicle testing; (3) the lack of parameters regarding the initial off-grounds unsupervised visits, as well as, steps to secure his first job; (4) the lack of any proposed plan regarding how the Institute envisions rolling out unsupervised time off-grounds; (5) the lack of any proposed plan for training potential employers to recognize Defendant's breakthrough symptoms; (6) the lack of a defined plan, *i.e.*, the use of a GPS tracker, to verify Defendant is where he is supposed to be while unsupervised off-grounds; and (7) the lack of any plan as to how the institute plans to address Defendant's short-term memory and poor historian issues.

For these reasons, the Colorado Mental Health Institute's request for off-grounds unsupervised privileges is **DENIED**.

SO ORDERED in **Golden, Colorado** this 16th day of March 2018.

BY THE COURT:

Laura A. Tighe
District Court Judge

[5] The Court is not persuaded that this personality testing tool was not useful, necessary, or important, given that the Institute tried unsuccessfully at least three times to administer this test. *See* Renewed Notice at 19.