SUMMARY
April 22, 2021

2021COA51

No. 14CA2506, *People v. Liggett* — Courts and Court Procedure — Witnesses — Who May Not Testify Without Consent; Criminal Law — Insanity — Waiver of Privilege

A division of the court of appeals considers whether the disclosure of communications concerning a defendant's mental condition to professionals other than physicians or psychologists — when the defendant pleads not guilty by reason of insanity — violates the defendant's statutory physician-patient/psychologist-patient privilege. The division applies *Gray v. District Court*, 884 P.2d 286 (Colo. 1994), and *People v. Herrera*, 87 P.3d 240 (Colo. App. 2003), to conclude that communications from a psychiatric nurse or a licensed professional counselor, although not specifically designated in section 13-90-107(1)(d), C.R.S. 2020, are encompassed by the waiver of confidentiality for a physician or

psychologist under section 16-8-103.6(2)(a), C.R.S. 2020. The division therefore affirms the trial court's denial of defendant's motion to quash subpoenas duces tecum requesting such records.

COLORADO COURT OF APPEALS **2021COA51**

Court of Appeals No. 14CA2506
Arapahoe County District Court No. 12CR2253
Honorable Michelle A. Amico, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Ari Misha Liggett,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE CASEBOLT*
Richman and Lipinsky, JJ., concur

Announced April 22, 2021

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2020.

¶ 1 Raising a matter involving a unique interpretation and application of section 16-8-103.6(2)(a), C.R.S. 2020 — a provision waiving confidentiality of certain statements and records of a criminal defendant when he or she pleads not guilty by reason of insanity (NGRI) — defendant, Ari Misha Liggett, appeals the judgment of conviction entered upon a jury verdict finding him guilty of first degree murder after deliberation and a crime of violence. In affirming the judgment, we hold that a psychiatric nurse and a licensed professional counselor, although not specifically designated in the waiver statute, are encompassed by the statutory waiver of confidentiality for a physician or psychologist.

I. Background

¶ 2 After Liggett and his mother were reported missing by family members, law enforcement officers conducted a search of his mother's house, where Liggett lived, and found evidence of human remains. Shortly thereafter, the officers encountered Liggett erratically driving his mother's car in the neighborhood. Liggett evaded the officers in a vehicle chase, which ultimately led to Liggett crashing the vehicle and being apprehended. A search of

the vehicle revealed several large containers filled with liquid and the mother's dismembered body.

¶ 3 Liggett was immediately arrested and taken to the sheriff's office, where he consented to an interview. After the interview began, Liggett was read his *Miranda* rights. He then asked if a public defender could be called to the station, to which the investigator replied, "no." Liggett continued to answer questions from the investigators until he was handcuffed and taken to jail.

¶ 4 Before trial, Liggett moved to suppress the statements he had made to the investigators during the interview. The prosecution conceded that a *Miranda* violation had occurred. The trial court ruled that (1) the statements were inadmissible in the prosecution's case-in-chief because of the *Miranda* violation; and (2) the statements were also involuntary. As to the latter conclusion, the prosecution filed an interlocutory appeal, and the supreme court reversed, holding that Liggett's statements were voluntary. *See People v. Liggett*, 2014 CO 72, ¶ 1.

¶ 5 After the interlocutory appeal was decided and the case was remanded, Liggett pleaded NGRI under section 16-8-103, C.R.S. 2020, and the court ordered a sanity evaluation. Liggett also

notified the trial court that he intended to introduce expert opinion testimony concerning his mental state at the time of the killing. The trial court advised him of the statutory consequences of this notice and his NGRI plea.

¶ 6 Liggett simultaneously filed a motion to declare section 16-8-107(3)(b), C.R.S. 2020, unconstitutional. Section 16-8-107(3)(b) requires a defendant who wishes to introduce expert opinion evidence regarding his mental condition first to notify the court and then to undergo a court-ordered sanity evaluation. The trial court denied Liggett's motion.

¶ 7 Dr. Hal Wortzel of the Colorado Mental Health Institute at Pueblo conducted Liggett's sanity evaluation, which included a review of Liggett's interview with law enforcement. Dr. Wortzel concluded that Liggett was legally sane at the time of the killing. Because Dr. Wortzel had relied on Liggett's suppressed but voluntary statements to law enforcement, the trial court subsequently ordered a second sanity evaluation by a different doctor, who reached the same conclusion, without knowledge or consideration of the suppressed statements.

¶ 8 Liggett then moved to preclude the use of Dr. Wortzel's testimony and evaluation during trial. The trial court ruled that the prosecution could not use Dr. Wortzel's testimony or evaluation in its case-in-chief but could use them to rebut evidence of Liggett's insanity during the killing, should he choose to present such evidence. In the end, Liggett did not present any expert evidence concerning his sanity or mental condition, nor did he or Dr. Wortzel testify at trial.

¶ 9 Before trial, the prosecution served subpoenas duces tecum on several agencies, requesting "all records of [Liggett's] psychiatric or psychological treatment or evaluation." Liggett moved to quash the subpoenas. Finding the subpoenas overly broad, the trial court granted the motion. However, the court permitted the prosecution to reissue the subpoenas, provided that the new subpoenas "strictly adhere[d] to the statutory language in [section] 16-8-103.6" by requesting only communications made by Liggett "to a physician or psychologist."

¶ 10 After the prosecution reissued the subpoenas, Liggett renewed his motion to quash. At a hearing on the motion, the trial court revised its prior decision, citing the broad waiver of privilege

established in *Gray v. District Court*, 884 P.2d 286 (Colo. 1994), and subsequently followed in *People v. Herrera*, 87 P.3d 240 (Colo. App. 2003). The trial court permitted the disclosure of statements by Liggett "concerning his mental condition to medical professionals, including but not limited to physicians, psychologists, nurses, social workers and therapists, all records of medications prescribed and treatment provided for mental conditions, and all records of behavioral observation."

¶ 11 A jury convicted Liggett as charged. Before sentencing, Liggett asserted that he was not competent to proceed, but he withdrew the motion at the sentencing hearing. The trial court then sentenced Liggett to life in prison without parole.

¶ 12 Liggett timely filed a notice of appeal. His appellate counsel then requested a limited remand to determine Liggett's mental competence. After a motions division of this court granted Liggett's request for a limited remand, the trial court entered an order finding Liggett incompetent to proceed and incompetent to make a knowing, voluntary, and intelligent waiver of his rights to counsel and to appeal.

¶ 13 In *People v. Liggett*, 2018 COA 94M, another division of this court held that the appeal should not be stayed indefinitely even though the trial court had found Liggett to be legally incompetent after the notice of appeal had been filed. The division also held that it had authority to bifurcate the direct appeal and to grant a limited remand for competence restoration proceedings while the appeal proceeded. *Id.* at ¶¶ 3-4.

¶ 14 In this now-ripe direct appeal, Liggett challenges the trial court's denials of (1) his motion to quash the prosecution's subpoenas duces tecum; (2) his motion to preclude Dr. Wortzel's testimony and sanity evaluation; and (3) his motion to declare section 16-8-107(3)(b) unconstitutional. We address and reject each of Liggett's contentions in turn.

II. Motion to Quash the Subpoenas Duces Tecum

¶ 15 Liggett contends that the trial court erred by denying his motion to quash the prosecution's subpoenas duces tecum because the court's ruling unlawfully expanded the waiver of the physician-patient/psychologist-patient privilege under section 16-8-103.6(2)(a). He argues that the court erroneously permitted the disclosure of records from persons other than physicians or

psychologists, including nurses, social workers, and therapists. We are not persuaded.

A. Standard of Review and Preservation

¶ 16 We review a trial court's ruling on a motion to quash for abuse of discretion. *People v. Spykstra*, 234 P.3d 662, 666 (Colo. 2010). A trial court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair, or when it is based on a misapplication of the law. *People v. Elmarr*, 2015 CO 53, ¶ 20.

¶ 17 The People contend Liggett did not provide a sufficient appellate record for us to decide this issue because the subpoenaed materials are not part of the record. They argue that Liggett's claim should fail because, without the subpoenaed records, we will be unable to determine if the contents of the records violated section 16-8-103.6(2)(a) and whether Liggett suffered any prejudice as a result.

¶ 18 Colorado authority is clear that "it is the duty of the party asserting error to present a record demonstrating that error," and, "[i]f the appealing party fails to provide us with such a complete record, we must presume the correctness of the trial court's proceedings." *People v. Ullery*, 984 P.2d 586, 591 (Colo. 1999).

Here, however, the prosecution presented testimony at trial from a psychiatric nurse and a licensed professional counselor, both of whom testified to their observations of and statements by Liggett. The appellate record includes transcripts of their testimony, which gives us sufficient information to decide this issue.

B. Applicable Law

¶ 19 Under section 13-90-107(1)(d), C.R.S. 2020, communications between a patient and certain health care professionals are privileged. The statute states in relevant part as follows:

> A physician, surgeon, or registered professional nurse duly authorized to practice his or her profession pursuant to the laws of this state or any other state shall not be examined without the consent of his or her patient as to any information acquired in attending the patient that was necessary to enable him or her to prescribe or act for the patient.

Id.

¶ 20 These privileges prohibit both testimonial disclosures and "pretrial discovery of information within the scope of the privilege." *Zapata v. People*, 2018 CO 82, ¶ 33 (quoting *Clark v. Dist. Ct.*, 668 P.2d 3, 8 (Colo. 1983)).

¶ 21 But, a defendant who places his or her mental condition at issue by pleading NGRI "waives any claim of confidentiality or privilege as to communications made by [him] to a physician or psychologist in the course of an examination or treatment for the mental condition for the purpose of any trial or hearing on the issue of the mental condition." § 16-8-103.6(2)(a).

¶ 22 The supreme court has interpreted section 16-8-103.6 to mean that a defendant who pleads NGRI "consents to disclosure of pre- or post-offense information concerning the defendant's medical condition." *Gray*, 884 P.2d at 293. The *Gray* court said,

> Based on a plain reading of the statute, section 16-8-103.6 indicates that the legislature has created a *statutory* waiver to *any* claim of confidentiality or privilege, which includes the attorney-client and physician/psychologist-patient privileges. The defendant waives the protection to communications, including medical records, that pre-date and post-date the criminal offense, made by a defendant to a physician or psychologist in the course of examination or treatment.

Id.

¶ 23 In *Gray*, the supreme court reasoned that, in the interest of discerning the truth regarding a defendant's mental state at the time the crime was committed, "both prosecution and defense

counsel need full access to reports concerning defendant's medical history as well as a diagnostic assessment by psychiatric witnesses who treated or examined the defendant before or after the crime concerning the mental condition." *Id.* at 296; *see People v. Ullery*, 964 P.2d 539, 541-42 (Colo. App. 1997) ("As the *Gray* court determined, the legislative history of this section demonstrates that the General Assembly intended to allow for full disclosure of medical and mental health records concerning a mental condition that the defendant places in issue in a criminal case."), *aff'd in part and rev'd in part on other grounds*, 984 P.2d 586 (Colo. 1999). And discovery is not limited only to an expert's written reports; rather, the statute explicitly requires disclosure of all communications made by the defendant to a physician or psychologist in the course of treatment or evaluation. *Id.* at 543.

C. Interpretation and Application

¶ 24 We interpret the *Gray* court's broad statement to contemplate a waiver not only of a privilege between a physician or psychologist and the patient, but also as to *any* claim of confidentiality or privilege that relates to the course of an examination or treatment for a mental condition and to medical records concerning such a

condition. *See Herrera*, 87 P.3d at 248 ("The [*Gray*] court thus concluded that the statute requires disclosure of *all information, pre-or post-offense, concerning a defendant's mental condition*.") (emphasis added).

¶ 25 Asserting a plain language construction, Liggett contends that the statute only waives a claim of confidentiality or privilege as to communications made by the defendant "to a physician or psychologist," and not to nurses, professional counselors, family therapists, social workers, or other health care professionals. We disagree.

¶ 26 Absent the broad language in *Gray* and subsequent cases interpreting and applying it, Liggett's claim that the statute means only what it says would hold significant weight. *See Cowen v. People*, 2018 CO 96, ¶ 12 ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." (quoting *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992))).

¶ 27 But we conclude that *Gray* abjured such a strict interpretation for this particular statute. Accordingly, by permitting disclosure of records concerning Liggett's mental condition from medical

professionals generally, the trial court correctly applied the broad waiver of privilege contemplated by *Gray* and *Herrera*. To restrict the disclosure to statements made only to Liggett's physicians or psychologists would contradict the holdings in *Gray* and *Herrera*, as well as short-circuit the public policy supporting them. *See Herrera*, 87 P.3d at 249 (noting that full disclosure of medical and mental health records concerning the mental condition that a defendant places in issue is necessarily in the public interest for the ascertainment of the truth (citing *Gray*, 884 P.2d 286)).

¶ 28 In that regard, we note that section 13-90-107, the statute creating privileges, also states specifically in subsection (1)(g) that there is a privilege preventing disclosure of communications between a person and a licensed or unlicensed psychologist, professional counselor, marriage and family therapist, social worker, addiction counselor, and secretary, stenographer, or clerk employed thereby. So if, as here, there is a claim to confidentiality by a person who pleads NGRI, applying the *Gray* and *Herrera* reasoning, there is a waiver of confidentiality as to persons identified in section 13-90-107(1)(g) in addition to those identified in section 16-8-103.6.

¶ 29 If we were to accept Liggett's plain language contention, then we would be forced to conclude that a licensed registered nurse, specifically mentioned in section 13-90-107(1)(d) as being covered by the privilege, would nevertheless not be within a waiver of that privilege in section 16-8-103.6(2)(a) because a nurse is not included within the category of a "physician or psychologist." Such a conclusion would defy common sense. Surely, examining physicians and psychologists would want and need to consider information communicated to nurses and other persons identified in section 13-90-107(1)(g) by the person claiming NGRI, as well as records obtained from counselors and other persons identified in that subsection.

¶ 30 Accordingly, the testimony at trial from a psychiatric nurse and a licensed professional counselor did not run afoul of Liggett's privilege, nor did the documents requested by the subpoenas.

D. Separation of Powers

¶ 31 To the extent Liggett contends that the trial court's ruling violated the separations of powers doctrine, we disagree.

¶ 32 Article III of the Colorado Constitution prevents one branch of government from exercising powers that the constitution makes the

exclusive domain of another branch. *Dee Enters. v. Indus. Claim Appeals Off.*, 89 P.3d 430, 433 (Colo. App. 2003). The separation of powers doctrine "does not require a complete division of authority among the three branches, however, and the powers exercised by different branches of government necessarily overlap." *Id.*

¶ 33 Liggett asserts that the General Assembly specifically limited the waiver of privilege in section 16-8-103.6(2)(a) to psychiatrists and psychologists, and the trial court improperly expanded the waiver beyond that which the legislature chose. But separation of powers questions generally concern conflicts between statutes and court rules, and Liggett has not identified such a conflict. The trial court's ruling does not constitute a "court rule." Liggett's claim involves the alleged impropriety of the trial court's ruling based on its interpretation and application of section 16-8-103.6(2)(a). But interpretation and application of a statute is a matter that is "peculiarly the province of the judiciary." *Colo. Gen. Assembly v. Lamm*, 704 P.2d 1371, 1378 (1991) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)).

¶ 34 We thus conclude that the trial court did not abuse its discretion by denying Liggett's motion to quash the subpoenas duces tecum.

III. Admissibility of Liggett's Voluntary Statements to Law Enforcement

¶ 35 Liggett next contends that the trial court erred by ruling that the prosecution could use his voluntary but unwarned statements — through Dr. Wortzel's testimony and sanity opinion — to rebut any evidence he might present that he was legally insane or suffered from a mental condition at the time of the killing. He asserts that the ruling chilled his presentation of evidence. We disagree.

A. Standard of Review

¶ 36 We review a trial court's rulings on evidentiary issues for an abuse of discretion. *Dunlap v. People*, 173 P.3d 1054, 1097 (Colo. 2007). A trial court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair, or when it is based on a misapplication of the law. *Elmarr*, ¶ 20.

B. Applicable Law

¶ 37 When a defendant pleads NGRI, he places his mental capacity at issue, § 16-8-103.6, and undergoes a court-ordered mental health evaluation, § 16-8-105.5, C.R.S. 2020. As to the defendant's statements to the evaluator, a failure to adequately advise the defendant under *Miranda* precludes the prosecution from using the statements as substantive evidence in its case-in-chief. *People v. Branch*, 805 P.2d 1075, 1083 (Colo. 1991). But if the defendant subsequently presents evidence of his mental condition, the prosecution may rebut this presentation with evidence from the court-ordered evaluation, including his unwarned statements, so long as they were voluntary. *Dunlap*, 173 P.3d at 1096 (citing *Branch*, 805 P.2d at 1083 & n.4).

C. Analysis

¶ 38 In the trial court's ruling permitting Dr. Wortzel to testify as a rebuttal witness, the court concluded the following:

> The People may use the Defendant's voluntary post-*Miranda* statements to impeach the Defendant if he elects to testify in his own defense *and to rebut any evidence presented that the Defendant was insane at the time of the alleged offense*. These are the only two areas in which this evidence may be used. *The*

> *People cannot call Dr. Wortzel in their case-in-chief, but rather must wait until the Defendant has put his mental health at issue, i.e. presents evidence that he was insane at the time of the alleged offense*. At that time, the People may then call Dr. Wortzel in rebuttal to opine on the Defendant's sanity, noting that Dr. Wortzel's opinion is based in part upon the Defendant's post-*Miranda* statements to law enforcement which have now been ruled voluntary by the Colorado Supreme Court.

(Emphasis added.)

¶ 39 The trial court's ruling is precisely in line with *Dunlap* and *Branch*. Although Liggett's statements to investigators were made without *Miranda* warnings, the supreme court ruled that they were voluntary. *See Liggett*, 2014 CO 94, ¶ 1.

¶ 40 Therefore, if Liggett were to have presented evidence of his insanity at trial, the prosecution would have been permitted to use his statements as rebuttal evidence. *Dunlap*, 173 P.3d at 1096 ("[W]hen a defendant places his mental capacity at issue the prosecution may rebut the defense with psychological evidence, even if that evidence includes defendant's statements not taken in compliance with *Miranda*." (citing *Branch*, 805 P.2d at 1083 & n.4)).

¶ 41 Nevertheless, Liggett attempts to distinguish his case from *Dunlap* and *Branch*, relying primarily on *People v. Trujillo*, 49 P.3d

316 (Colo. 2002). Liggett's reliance on *Trujillo*, however, is misplaced.

¶ 42 Expressly at issue in *Trujillo* was whether the defendant's statements to law enforcement, which were voluntary but not taken in compliance with *Miranda*, could be introduced to challenge the theory of defense or to impeach a defense witness when the defendant does not testify. *Id.* at 317. The supreme court held that unwarned, voluntary custodial statements may be admissible at trial only to impeach the defendant. *Id.* at 321. Based on authority from other jurisdictions, the court also found "two narrow exceptions" to its holding but concluded they were not applicable to Trujillo's case:

> The first occurs when a psychiatric or other expert testifies about her opinion which is based on what the defendant told her, and the defendant's unwarned custodial statements would lead to a different opinion. The second occurs when a defense witness testifies specifically about what the defendant told her, i.e., the defendant's hearsay is admitted, and he may then be impeached as a hearsay declarant with his own unwarned custodial statements.

Id. at 325 (citation omitted).

¶ 43 We conclude that neither the holding nor the two exceptions from *Trujillo* apply to Liggett's case. The issue in this case is whether the trial court's ruling would have improperly permitted the use of Liggett's unwarned, voluntary statements *as rebuttal evidence if he were to present evidence of his insanity or mental condition*. *Dunlap* and *Branch* permit such use, but *Trujillo* does not address that particular issue. Rather, *Trujillo* deals strictly with the use of those statements to impeach a defense witness when the defendant does not testify — factual circumstances not present in Liggett's case. *See Dunlap*, 173 P.3d at 1096 n.50 ("We have held that a defendant's voluntary statements taken in violation of *Miranda* may only be used by the prosecution to impeach the testimony of the defendant if he testifies, and not to impeach the testimony of any other defense witness or to generally rebut a defense theory. In *Trujillo*, however, we recognized that an exception to this rule occurs when the defendant has raised a mental health defense. *Trujillo* thus does not alter our conclusion in this case.") (citations omitted).

¶ 44 For these reasons, we conclude that the trial court did not abuse its discretion by ruling that the prosecution could use Dr.

Wortzel's testimony and sanity opinion — partially based on Liggett's unwarned but voluntary statements to law enforcement — to rebut any psychiatric evidence Liggett might present to demonstrate his insanity at the time of the killing.

IV. Constitutionality of Section 16-8-107(3)(b)

¶ 45 Finally, Liggett contends that the trial court erred by denying his motion challenging the constitutionality of section 16-8-107(3)(b) facially and as applied. We disagree.

A. Standard of Review

¶ 46 Whether a statute is constitutional is a question of law that we review de novo. *People v. Bondurant*, 2012 COA 50, ¶ 11 (citing *City of Greenwood Village v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 440 (Colo. 2000)). We presume statutes are constitutional, and the burden is on the party challenging the statute to demonstrate unconstitutionality beyond a reasonable doubt. *Id.* at ¶¶ 11-12; *see Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 30 (reaffirming this test).

¶ 47 Generally, a statute is facially unconstitutional only "if the complaining party can show that the law is unconstitutional in all its applications." *Id.* at ¶ 14 (quoting *Dallman v. Ritter*, 225 P.3d

610, 625 (Colo. 2010)). And a facially constitutional statute may be unconstitutional as applied under the circumstances in which the party has acted or proposes to act. *Id.*

B. Applicable Law

¶ 48 Section 16-8-107(3)(b) provides that a defendant who intends to offer expert opinion evidence concerning his mental condition — regardless of whether the defendant pleads NGRI — may offer such evidence at trial only if he notifies the court and the prosecution of this intent and undergoes a court-ordered examination pursuant to section 16-8-106. A defendant giving such notice waives the privilege against self-incrimination as to statements pertaining to his mental condition. *See* § 16-8-103.6; *Bondurant*, ¶¶ 44-46.

C. Analysis

¶ 49 Liggett argues that section 16-8-107(3)(b) is unconstitutional on its face because it forces a defendant to undergo and cooperate with a court-ordered sanity examination to rebut the prosecution's proof of mens rea. In making this argument, Liggett asserts that the statute forces a defendant to choose between his Fifth Amendment privilege against self-incrimination and concomitant right to remain silent, and his right to present a defense. He

maintains that the statute forces a defendant to make involuntary, unprivileged statements about his mental condition during the court-ordered evaluation, which violates his privilege against self-incrimination. And, Liggett continues, if the defendant does not cooperate with the examination, this constitutional privilege is further violated because evidence of his noncooperation may be admissible at trial to rebut any evidence he presents concerning his mental state, and his right to present a defense is violated because he is then prohibited from presenting any expert evidence concerning his mental condition, which thereby lowers the prosecution's burden of proof. *See* § 16-8-106(2)(c), C.R.S. 2020.

¶ 50 Similarly, Liggett contends that section 16-8-107(3)(b) is unconstitutional as applied to him because he "was put in the untenable position of having to submit to an evaluation simply to challenge the prosecution's ability to prove mens rea beyond a reasonable doubt." He goes on to claim that through the court-ordered evaluation he "was compelled to provide otherwise unavailable evidence to the prosecution," which was "then used directly and indirectly to assist the prosecution in building its case."

¶ 51 Several other divisions of this court have addressed and rejected these exact arguments. *See People v. Herdman*, 2012 COA 89, ¶¶ 36-38 (holding that the admission of expert rebuttal evidence concerning defendant's mental condition, obtained through court-ordered evaluations, did not violate the defendant's privilege against self-incrimination); *Bondurant*, ¶¶ 41-52 (concluding that "a defendant raising his or her mental condition as a defense cannot be compelled to make involuntary statements in the compulsory examination," and, therefore, section 16-8-107 does not violate a defendant's privilege against self-incrimination; nor does section 16-8-107 violate a defendant's right to present a defense by prohibiting him from calling witnesses); *Herrera*, 87 P.3d at 245-48 (finding that "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," and use of a defendant's statements during a court-ordered sanity evaluation does not force him to choose between self-incrimination or loss of the right to present a defense); *People v. Roadcap*, 78 P.3d 1108, 1111-13 (Colo. App. 2003) (holding that the admission of expert rebuttal testimony regarding a

defendant's mental condition did not prevent the defendant from presenting a defense or force him to choose between asserting a defense and asserting his privilege against self-incrimination).

¶ 52 Liggett has not demonstrated that these holdings are inapplicable to his case or that section 16-8-107(3)(b) has otherwise deprived him of his constitutional rights. Furthermore, we agree with the reasoning and analysis in these cited cases and perceive no reason to depart from this well-established authority.

¶ 53 As he did in his trial court motion, on appeal Liggett makes several additional but cursory constitutional challenges to section 16-8-107(3)(b). In passing, he discusses an equal protection challenge but does so without sufficient development of the argument for us to decide the issue. *See Antolovich v. Brown Grp. Retail, Inc.*, 183 P.3d 582, 604 (Colo. App. 2007) (appellate courts do not address undeveloped arguments). And, while at trial Liggett challenged section 16-8-107(3)(b) as violative of his right to effective assistance of counsel, he does not reassert the argument on appeal and has therefore abandoned it. *See People v. Osorio*, 170 P.3d 796, 801 (Colo. App. 2007).

¶ 54 Accordingly, we reject Liggett's contentions that section 16-8-107(3)(b) is unconstitutional on its face or as applied.

V. Conclusion

¶ 55 We affirm Liggett's judgment of conviction.

JUDGE RICHMAN and JUDGE LIPINSKY concur.