

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲ COURT USE ONLY ▲
PEOPLE OF THE STATE OF COLORADO v. JAMES EAGAN HOLMES, Defendant	Case No. 12CR1522 Division: 26
<p style="text-align: center;">ORDER REGARDING DEFENDANT’S MOTION FOR APPLICATION OF HEIGHTENED STANDARDS OF FAIRNESS AND RELIABILITY TO ALL ASPECTS OF THIS CAPITAL CASE (D-36)</p>	

This matter is before the Court on the defendant’s motion for application of heightened standards of fairness and reliability to all proceedings and all aspects of this capital case. The People oppose the motion. The Court held oral argument on May 13, 2013. For the reasons articulated in this Order, the motion is denied.

The defendant first argues that it is axiomatic that a heightened standard of reliability applies during the sentencing hearing of a capital case. Motion at pg. 1. The defendant is correct. However, as the People aptly point out, the Colorado Supreme Court has already determined that the Colorado Constitution’s

requirement of heightened reliability in capital sentencing hearings, which may in some circumstances exceed the Federal Constitution's heightened reliability requirement, is achieved by the provisions of the State's death penalty statute. *See Dunlap v. People*, 173 P.3d 1054, 1092 (Colo. 2007); *People v. White*, 870 P.2d 424, 438-39 (Colo. 1994); *People v. Tenneson*, 788 P.2d 786, 790-93 (Colo. 1990); *People v. Drake*, 748 P.2d 1237, 1254-57 (Colo. 1988). In *Dunlap*, the Court concluded that, “[b]y requiring that the jury find both that a statutory aggravator has been proven beyond a reasonable doubt and that mitigation does not outweigh aggravation before a defendant is even eligible to receive the death penalty, Colorado’s sentencing scheme is sufficiently reliable to pass constitutional muster.” *Dunlap*, 173 P.3d at 1092.

The defendant would have the Court impose an even higher standard of reliability than the one created by the Legislature, which the Supreme Court has found sufficient to meet the constitutionally required heightened reliability standard. The defendant does not cite any authority to support this proposition, and the Court is aware of none.

The defendant next contends that the heightened standard of reliability applicable to the sentencing phase of a capital case should extend to “to *all* proceedings and *all* aspects” of the guilt phase of the case. Motion at pg. 1 (emphasis in original). The Court disagrees.

The defendant's reliance on the United States Supreme Court's decision in *Beck v. Alabama*, 447 U.S. 625, 100 S.Ct. 2382 (1980), is misplaced. There, the Court found unconstitutional an Alabama statute which prohibited trial judges from affording capital defendants the protection provided by lesser included offense instructions to all other defendants. *Id.* at 636, 100 S.Ct. at 2389. The Court observed that, in order to ensure that the death penalty is imposed on the basis of reason rather than caprice or emotion, it had previously "invalidated procedural rules that tended to diminish the reliability of the sentencing determination." *Id.* at 638, 100 S.Ct. at 2390. The Court then concluded that "[t]he same reasoning must apply to rules that diminish the reliability of the guilt determination." *Id.* (emphasis added). *See also Murray v. Giarratano*, 492 U.S. 1, 8, 109 S.Ct. 2765, 2769 (1989) (citing *Beck* for the proposition that "the Constitution places special constraints on the procedures used to convict an accused of a capital offense . . ."). Thus, to the extent that "the unavailability of a lesser included offense instruction enhance[d] the risk of an unwarranted conviction," Alabama was "constitutionally prohibited from withdrawing that option from the jury in a capital case." *Beck*, 447 U.S. at 638, 100 S.Ct. at 2390.

During the May 13 oral argument, the Court inquired whether the defense believes that every rule, procedural and otherwise, governing this case diminishes the reliability of any guilt determination or enhances the risk of an unwarranted

conviction. Counsel candidly conceded that a heightened standard of reliability cannot be applied to all proceedings and all aspects of the case, but argued that there may be some proceedings or aspects of the case in the future that justify application of such a standard. Because the defendant's motion seeks an advisory opinion based on hypothetical situations, it fails.

The judiciary's jurisdiction is not without limitation. *See Bd. of Cnty. Comm'rs of Archuleta v. Cnty. Road Users Ass'n*, 11 P.3d 432, 439 (Colo. 2000). As relevant here, the Court "may not issue advisory opinions over cases that are not yet ripe." *Id.* (citation omitted). Nor is the Court empowered to issue opinions regarding hypothetical situations. *Bickel v. City of Boulder*, 885 P.2d 215, 234 (Colo. 1994); *see also Nat'l Inst. of Nutritional Educ. v. Meyer*, 855 P.2d 31, 32-33 (Colo. App. 1993) (authority to grant declaratory relief does not include the power to grant "advisory rulings as to hypothetical issues which may never arise; there must be an existent justiciable or legal controversy, rather than a mere possibility that at some future time such a question may arise.").

If at some point in the future, the defendant has a *good faith* basis to assert that a particular rule, such as Alabama's statute prohibiting lesser included offense instructions in capital cases, diminishes the reliability of the guilt determination or enhances the risk of an unwarranted conviction, he may advance a request for application of a heightened standard of reliability. But the Court can neither

impose a blanket heightened standard of reliability nor issue an advisory opinion that addresses hypothetical situations that may never manifest themselves.

For all the foregoing reasons, the Court concludes that the defendant's motion to impose a heightened standard of reliability to all proceedings and all aspects of this capital case lacks merit. Accordingly, it is denied.

Dated this 15th day of May of 2013.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Carlos A. Samour, Jr.', written over a horizontal line.

Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2013, a true and correct copy of **Order regarding defendant's motion for application of heightened standards of fairness and reliability to all aspects of this capital case (D-36)** was served upon the following parties of record:

Karen Pearson
Amy Jorgenson
Rich Orman
Dan Zook
Jacob Edson
Lisa Teesch-Maguire
George Brauchler
Arapahoe County District Attorney's Office
6450 S. Revere Parkway
Centennial, CO 80111-6492
(via email)

Sherilyn Koslosky
Rhonda Crandall
Daniel King
Tamara Brady
Kristen Nelson
Colorado State Public Defender's Office
1290 S. Broadway, Suite 900
Denver, CO 80203
(via email)


