

DISTRICT COURT, ARAPAHOE COUNTY STATE OF COLORADO Arapahoe County Justice Center 7325 S. Potomac Street Centennial, Colorado 80112	Filed JUN - 4 2013 <small>CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO</small>
THE PEOPLE OF THE STATE OF COLORADO vs. Defendant(s): JAMES EAGAN HOLMES	COURT USE ONLY
Attorney: GEORGE H. BRAUCHLER 18 th Judicial District Attorney 6450 S. Revere Pkwy Suite 100 Centennial, CO 80111 Phone: (720) 874-8500 Atty. Reg. #: 25910	Case Number: 12CR1522 Division 26

RESPONSE TO DEFENSE MOTION D-93

This pleading is filed by the District Attorney for the 18th Judicial District.

INTRODUCTION

1. The Defendant has filed Motion D-093, titled "MOTION FOR COURT ORDER REQUIRING CLERK TO FURNISH RESULTS AND WRITTEN REPORT OF EXAMINATION CONDUCTED PURSUANT TO C.R.S. § 16-8-106 TO DEFENSE COUNSEL IN ADVANCE OF ANY SUBSEQUENT DISCLOSURE TO THE PROSECUTION."
2. The Motion seeks to have this court order that defense counsel will receive a copy of any report generated by virtue of the defendant's plea of not guilty by reason of insanity prior to the prosecution receiving a copy.
3. The relief requested by the defendant is contrary to Colorado law. C.R.S. § 16-8-106(4) provides: "A written report of the examination shall be prepared in triplicate and delivered to the clerk of the court which ordered it. The clerk shall furnish a copy of the report both to the prosecuting attorney and the counsel for the defendant." Thus, the language of the statute mandates that the clerk of the court simultaneously transmit copies of the report to both the prosecution and to defense counsel.
4. Courts do not have discretion to deviate from the statutory mandate. *Lewis v. Thulemeyer*, 538 P.2d 441, 442 (Colo. 1975) (District Court had redacted portions of the report that the district court judge deemed contained inculpatory statements made by the

defendant in the course of the examination, and prosecutor initiated a Rule 21 appellate proceeding seeking a mandamus reversing the district court's decision. The Supreme Court found that the district court's actions were at variance with statute and made the rule absolute).

5. C.R.S. § 16-8-106(4) is unambiguous and forecloses the relief sought by the defendant. The defendant has not alleged any constitutional infirmity with regard to C.R.S. § 16-8-106(4), nor does the defendant allege that C.R.S. § 16-8-106(4) is ambiguous. The defendant simply requests relief that is contrary to the plain language of the statute, and provides no appellate precedent, either from Colorado or from a foreign jurisdiction, that would support his request for relief.
6. The motion should be denied without a hearing.

GEORGE H. BRAUCHLER, District Attorney

By 

Deputy District Attorney

Registration No. 20035

Dated 6/3/13.

CERTIFICATE OF MAILING

I hereby certify that I have deposited a true and correct copy of the foregoing in the Public Defender's Mailbox located at 6450 S Revere Pkwy Centennial CO 80111, addressed to:

TAMARA BRADY, ESQ.
DANIEL KING, ESQ.
OFFICE OF THE PUBLIC DEFENDER

Dated: 6/3/13

By 

Certifying Secretary