

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
ORDER SUBMITTING FINAL ADVISEMENT FORM AND IDENTIFYING REVISIONS (C-40)	

The defendant has tendered a plea of not guilty by reason of insanity. Before accepting the plea, the Court is required, pursuant to § 16-8-103(4), C.R.S. (2012), to advise him of the effect and consequences of entering such a plea. An advisement hearing is scheduled to take place on June 4, 2013. Attached is the final advisement form the Court intends to use during the hearing. This form reflects the changes the Court informed the parties about during the March 13 hearing: the commas after the word “insanity” in paragraphs 10 and 11 were deleted. The final advisement form contains the following additional revisions:

- In paragraph 7, the Court added “those results” after “insofar,” and deleted “your” before “statements.”

- In paragraph 7, the Court deleted the phrase, “‘eligibility for release,’ as that term is defined at the end of this paragraph.” At the end of the same paragraph, the Court also deleted the parenthetical setting forth the definitions of “[e]ligibility for release” and “ineligible for release.”

- In paragraph 10, the Court deleted the comma between “mental condition” and “including.”

- In paragraph 13, the Court changed the placement of the phrase, “for the purpose of any trial, hearing on the issue of such mental condition, or at any capital sentencing hearing held pursuant to section 18-1.3-1201, C.R.S.”

- Every time there is a reference in paragraphs 14 and 15 to evidence “acquired directly or indirectly for the first time from a communication derived from your mental processes during the course of a Court-ordered examination,” the Court added a reference to evidence “acquired pursuant to paragraph 13.”

- There are other changes as to form in paragraph 14.

- In paragraph 16, the Court deleted the reference to “ineligible for release.”

- The Court deleted the quotation marks around the word “insanity” in paragraph 16. In the same paragraph, the Court also deleted the phrase, “as those terms have been defined in paragraphs 1 and 7 of this advisement respectively.”

- The Court added paragraph 18.¹
- The Court replaced all of the “C.R.S.” references throughout the advisement to “Colorado Revised Statutes” references.
- For the reasons the Court will articulate from the bench at the June 4 hearing, the Court deleted the Acknowledgements and Representations pages. Although the Court continues to disagree with some of the assertions advanced in the April 29 response to C-33, after reviewing the response again, conducting additional research, and thinking about the issue at length, the Court has been persuaded by defense counsel that the Acknowledgments and Representations are neither required nor necessary. Nevertheless, as the Court indicated in previous Orders, it will afford the parties an opportunity to object to this aspect of the final advisement form at the June 4 hearing.

Dated this 3rd day of June of 2013.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

¹ In drafting paragraph 18, the Court realized that the May 29 Order incorrectly cited to § 16-8-101(1), C.R.S. (2012), for the “applicable test of insanity.” See May 29, 2013 Order at p. 39. The Court meant to cite § 16-8-101.5(1), (2). The May 29 Order is hereby corrected.

**ADVISEMENT REGARDING PLEA OF NOT GUILTY BY REASON OF
INSANITY**

THE PEOPLE OF THE STATE OF COLORADO

v.

JAMES EAGAN HOLMES

Because you have tendered a plea of not guilty by reason of insanity, the Court must advise you of the following possible effects and consequences of such a plea:

1. The applicable test for insanity shall be:

(a) A person who is so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act is not accountable. However, care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions, for, when the act is induced by any of these causes, the person is accountable to the law;

OR

(b) A person who suffered from a condition of mind caused by mental disease or defect that prevented the person from forming a culpable mental state that is an essential element of a crime charged. However, care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions, because, when the act is induced by any of these causes, the person is accountable to the law.

“Diseased or defective in mind” does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

“Mental disease or defect” includes only those severely abnormal mental conditions that grossly and demonstrably impair a person’s perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance but does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

2. The Court will forthwith commit you for a “sanity examination,” specifying the place and period of commitment. A “sanity examination” is a Court-ordered examination of a defendant who has entered a plea of not guilty by reason of insanity, directed to developing information relevant to determining the sanity or insanity of the defendant at the time of the commission of the act with which he is charged and also his competency to proceed.

3. Any period of delay caused by the Court-ordered examination and the report prepared following the examination shall be excluded from the time within which you must be brought to trial.

4. The examination ordered by the Court shall be accomplished by the entry of an order of the Court specifying the place where such examination is to be conducted and the period of time allocated for such examination. You may be committed for such examination to the Colorado psychiatric hospital in Denver, the Colorado Mental Health Institute at Pueblo, the place where you are in custody (the Arapahoe County Jail), or such other public institution as designated by the Court. In determining the place where the Court-ordered examination is to be conducted, the Court shall give priority to the place where you are in custody, unless the nature and circumstances of the examination require designation of a different facility.

5. You shall be observed and examined by one or more psychiatrists during such period as the Court directs. For good cause shown, upon your motion or motion by the prosecution, or upon the Court’s own motion, the Court may order such further or other examination, including services of psychologists, as is advisable under the circumstances. Nothing in this section shall abridge your right to obtain a psychiatric examination as provided in section 16-8-108 of the Colorado Revised Statutes, which states in relevant part that if, following the Court-ordered examination, you file a timely request to be examined by a psychiatrist, psychologist, or other expert of your choice, the Court must order that the examiner of your choice be given a reasonable opportunity to conduct an examination of you. A copy of any report of an examination of you made at your request shall be furnished to the prosecution a reasonable time in advance of trial.

6. To aid in forming an opinion as to your mental condition, it is permissible in the course of the examination to use your confessions and admissions and any other evidence of the circumstances surrounding the commission of the offenses charged, as well as your medical and social history, in questioning you.

7. It shall also be permissible to conduct a narcoanalytic interview of you with such drugs as are medically appropriate, and to subject you to a polygraph examination. The Court further advises you about these procedures as follows: in any trial or hearing on the issue of your sanity, and in any capital sentencing hearing held pursuant to section 18-1.3-1201 of the Colorado Revised Statutes, the physicians and other personnel conducting the examination may testify to the results of any such procedures and your statements and reactions insofar as those results, statements, and reactions entered into the formation of their opinions as to your mental condition both at the time of the commission of the alleged offenses and at the present time.

8. In any trial or hearing concerning your mental condition, physicians and other experts may testify as to their conclusions reached from their examination of hospital records, laboratory reports, x-rays, electroencephalograms, and psychological test results, if the material which they examined in reaching their conclusions is produced at the time of trial or hearing.

9. You shall cooperate with psychiatrists and other personnel conducting any examination ordered by the Court. Statements you make in the course of such examination shall be protected as provided in this advisement.

10. If you do not cooperate with psychiatrists and other personnel conducting the examination, the Court shall not allow you to call any psychiatrist or other expert witness to provide evidence at your trial concerning your mental condition including, but not limited to, providing evidence on the issue of insanity or at any capital sentencing hearing held pursuant to section 18-1.3-1201 of the Colorado Revised Statutes.

11. In addition, the fact of your noncooperation with psychiatrists and other personnel conducting the examination may be admissible in your trial to rebut any evidence you introduce with regard to your mental condition including, but not limited to, the issue of insanity and in any capital sentencing hearing held pursuant to section 18-1.3-1201 of the Colorado Revised Statutes.

12. Further, if you are non-cooperative with psychiatrists and other personnel conducting the examination, an opinion of your mental condition may be rendered by

such psychiatrists or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offenses charged, as well as your known medical and social history, and such opinion may be admissible into evidence at trial and in any capital sentencing hearing held pursuant to section 18-1.3-1201 of the Colorado Revised Statutes.

13. By pleading not guilty by reason of insanity, you place your mental condition at issue and thereby waive, for the purpose of any trial, hearing on the issue of such mental condition, or at any capital sentencing hearing held pursuant to section 18-1.3-1201 of the Colorado Revised Statutes, any claim of confidentiality or privilege as to communications you made to a physician or psychologist in the course of an examination or treatment for such mental condition. The Court will order both you and the prosecution to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated you for such mental condition.

14. Except as otherwise provided in this paragraph, no evidence acquired pursuant to paragraph 13 or acquired directly or indirectly for the first time from a communication derived from your mental processes during the course of a Court-ordered examination is admissible against you on the issues raised by a plea of not guilty, if you are put to trial on those issues, unless such evidence: (1) is used to rebut evidence you have introduced of your mental condition to show incapacity to form a culpable mental state, and (2) is considered by the trier of fact only as bearing upon the question of capacity to form a culpable mental state, and the jury, at the request of either party, is so instructed. Evidence acquired pursuant to paragraph 13 or acquired directly or indirectly for the first time from a communication derived from your mental processes during the course of a Court-ordered examination is admissible at any capital sentencing hearing held pursuant to section 18-1.3-1201 of the Colorado Revised Statutes only to prove the existence or absence of any mitigating factor. If you testify on your own behalf upon the trial of the issues raised by the plea of not guilty or at a capital sentencing hearing held pursuant to section 18-1.3-1201 of the Colorado Revised Statutes, the provisions of this paragraph shall not bar any evidence used to impeach or rebut your testimony.

15. Except as otherwise provided in this paragraph, evidence acquired pursuant to paragraph 13 or acquired directly or indirectly for the first time from a communication derived from your mental processes during the course of a Court-ordered examination is admissible only as to the issues raised by your plea of not guilty by reason of insanity, and the jury, at the request of either party, shall be so instructed. Evidence acquired pursuant to paragraph 13 or acquired directly or indirectly for the first time from a communication derived from your mental processes during the course of a Court-ordered

examination is admissible at any capital sentencing hearing held pursuant to section 18-1.3-1201 of the Colorado Revised Statutes only to prove the existence or absence of any mitigating factor. If you testify on your own behalf, the provisions of this paragraph shall not bar any evidence used to impeach or rebut your testimony.

16. When you have undergone the Court-ordered examination, a report of the examination must be prepared. The report of the examination shall include, but not be limited to, the following items: (a) the name of each physician or other expert who examined you; (b) a description of the nature, content, extent, and results of the examination and any tests conducted; (c) a diagnosis and prognosis of your physical and mental condition; (d) an opinion as to whether you suffered from a mental disease or defect or from a condition of mind caused by mental disease or defect that prevented you from forming the culpable mental state that is an essential element of any crime charged; and, if so, (e) separate opinions as to whether you were insane, and, because this case involves class 1 felony charges, an opinion as to how the mental disease or defect or the condition of mind caused by mental disease or defect affects any mitigating factor. The nature of the opinions required depends upon the type of examination ordered by the Court.

17. Upon your motion and proof that you are indigent and without funds to employ physicians, psychologists, or attorneys to which you are entitled, the Court shall appoint such physicians, psychologists or attorneys for you at State expense. Indeed, you are currently represented by Court-appointed counsel because the Court previously concluded that you are indigent and without funds to employ an attorney to represent you in this case.

18. A plea of not guilty by reason of insanity includes the plea of not guilty. Further, the issues raised by a plea of not guilty by reason of insanity are treated as an affirmative defense and are tried at the same proceeding and before the same trier of fact as the charges to which the plea of not guilty by reason of insanity is offered as a defense. Every person is presumed to be sane; but, once any evidence of insanity is introduced, the prosecution has the burden of proving sanity beyond a reasonable doubt. If the trier of fact finds you not guilty by reason of insanity, the Court shall commit you to the custody of the Department of Human Services until such time as you are found eligible for release. A defendant is "ineligible for release" if he is suffering from a mental disease or defect which is likely to cause him to be dangerous to himself, to others, or to the community, in the reasonably foreseeable future, if he is permitted to remain at liberty.

Dated this _____ day of June of 2013.

BY THE COURT:

Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on June 3 , 2013, a true and correct copy of **Order Submitting Final Advisement Form and Identifying Revisions (C-40)** was served upon the following parties of record:

Karen Pearson
Amy Jorgenson
Rich Orman
Dan Zook
Jacob Edson
Lisa Teesch-Maguire
George Brauchler
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A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read "John A. [unclear]".