

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: 202
ORDER REGARDING DEFENDANT'S MOTION TO PROHIBIT STATEMENTS AND/OR TESTIMONY IMPROPERLY UNDERMINING CREDIBILITY OF FIRST SANITY EXAMINER AND TO PRECLUDE ALL REFERENCE TO LITIGATION SURROUNDING MOTION P-68 AT TRIAL (D-250)	

INTRODUCTION

In Motion D-250, the defendant moves to prohibit: (1) references to Motion P-68 and the Orders related to it; (2) “statements and/or testimony conveying to the jury the reasoning or purpose behind the Court’s decision to order a second sanity examination;” and (3) references to the Court’s credibility findings with respect to Dr. Jeffrey Metzner, the psychiatrist who conducted the first Court-ordered sanity examination. Motion at pp. 1-2. The prosecution partially opposes the motion. *See generally* Response. For the reasons articulated in this Order, the motion is granted in part and denied in part without a hearing.

BACKGROUND

On June 4, 2013, following the defendant's plea of not guilty by reason of insanity, the Court ordered a sanity examination at the Colorado Mental Health Institute at Pueblo ("CMHIP"). Dr. Jeffrey Metzner performed the examination on behalf of CMHIP and filed his report on September 6, 2013. Thereafter, in Motion P-68, the prosecution requested further examination, arguing that Dr. Metzner's examination was inadequate and unfair. *See generally* Motion P-68. The Court held a four-day hearing starting on January 27, 2014, during which Dr. Metzner, one defense expert witness, and two prosecution expert witnesses testified. On February 19, 2014, the Court granted the prosecution's motion, concluding that Dr. Metzner's examination was incomplete and inadequate. Order P-68 at p. 2. In Orders D-200, D-201, and D-202, the Court largely denied the defendant's requests to reconsider, clarify, and/or modify Order P-68. All four of the Court's Orders related to Motion P-68 discussed the credibility of the witnesses who testified at the hearing. Orders P-68 and D-200 did so at length.

Dr. William Reid was assigned by the Court to conduct the second sanity examination. He filed his report on October 15, 2014.

ANALYSIS

Motion D-250 is confusing because its title and the requests for relief in the first paragraph appear to be narrower in scope than the rest of the motion. The

Court does its best in this Order to address all of the requests advanced throughout the motion.

First, the defendant asks the Court to “refrain from providing jurors with information that would convey the Court’s opinions about the credibility of the experts involved . . . or that would otherwise create an appearance of partiality.” Motion at p. 2. The Court is baffled by this request. As the defendant acknowledges, in Orders P-68, D-200, D-201, and D-202, “[t]he Court had an obligation to resolve the issues presented” in the parties’ motions. *Id.* at p. 3. Therefore, the Court was required to make and discuss credibility determinations. At the risk of stating the obvious, the Court does not intend to inform the jury about any of its credibility findings or create an appearance of partiality. Indeed, the Court cannot fathom a single scenario in which this would be an issue. Why this is a concern for the defendant is not readily apparent.

Second, the defendant requests that the prosecution be “likewise prohibit[ed]” from informing the jury about the Court’s credibility findings in Orders P-68, D-200, D-201, and D-202. *Id.* at p. 2. The prosecution does not appear to oppose this request, *see generally* Response, and the Court agrees that it has merit. Hence, it is granted.

Third, the defendant appears to seek a ruling precluding any reference to Motion P-68 and the litigation surrounding it. Motion at p. 3. This request is also

granted without objection. *See generally* Response. Therefore, the jury will not learn why a second sanity examination was ordered and completed. Further, if any witness who testified at the hearing on Motion P-68 is impeached with his prior testimony, counsel will refer to that testimony simply as having been provided at a prior hearing. Likewise, references to affidavits previously submitted by those witnesses will be referred to as “affidavits,” “prior affidavits,” or similar neutral terms.

Fourth, the defendant asks that the parties’ witnesses be instructed about this Order. Motion at p. 4. The prosecution does not appear to oppose this request either. *See generally* Response. The request is granted. The parties must admonish their witnesses carefully so that they may adhere to this Order.

Fifth, the defendant avers that “the Court should prohibit testimony about the particular areas of Dr. Metzner’s report the Court found to be deficient or requiring further exploration.” Motion at p. 4 (emphasis omitted). This is an inartfully crafted argument, as it may be interpreted multiple ways, including as asking the Court to prohibit the testimony of Dr. Metzner.

It appears that the prosecution misunderstands the motion as seeking a ruling precluding the testimony of witnesses other than Dr. Metzner about the deficiencies identified by the Court in Dr. Metzner’s examination. Response at p. 2; Reply at p. 1. The defendant concedes in his reply that “the various experts . . .

are . . . free to disagree with one another and to opine about the quality and sufficiency of the sanity examinations that have been conducted in this case.”

Reply at p. 1.

What the defendant is asking the Court to exclude is testimony by any expert about the Court’s findings regarding inadequacies in Dr. Metzner’s examination. *Id.* at pp. 1- 2. The defendant contends that it would be improper for any expert to reveal “to the jury the Court’s opinion about the[] examinations, including the fact that the Court agreed with the prosecution’s experts that certain, specific areas of Dr. Metzner’s [examination] were deficient or required further exploration.” *Id.* (emphasis omitted). Although the Court agrees, this does not render Dr. Reid’s report inadmissible. Rather, in the event Dr. Reid’s report is admitted, it must be redacted in accordance with this Order.

Finally, the defendant maintains that “Dr. Reid should be prohibited from informing the jurors that he was asked by the Court to address any specific questions or areas of inquiry.” Motion at p. 4. The Court concurs. Otherwise, the jury could infer that the Court found Dr. Metzner’s examination inadequate and incomplete. Dr. Reid may testify about specific areas of inquiry he explored as a result of Order P-68, but he may not mention that the Court identified those areas or asked him to address them in his examination. Again, if Dr. Reid’s report is admitted, it may be necessary to redact it.

Dated this 13th day of November of 2014.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2014, a true and correct copy of the **Order Regarding Defendant's Motion to Prohibit Statements and/or Testimony Improperly Undermining Credibility of First Sanity Examiner and to Preclude All Reference to Litigation Surrounding Motion P-68 at Trial (D-250)** was served upon the following parties of record:

Karen Pearson
Christina Taylor
Rich Orman
Jacob Edson
Lisa Teesch-Maguire
George Brauchler
Arapahoe County District Attorney's Office
6450 S. Revere Parkway
Centennial, CO 80111-6492
(via e-mail)

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 e-mail)


