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 SUPPRESS AND/OR EXCLUDE STATEMENTS MADE BY MR. HOLMES ACQUIRED DIRECTLY OR INDIRECTLY FOR THE FIRST TIME FROM THE SECOND SANITY EVALUATION CONDUCTED BY DR. WILLIAM REID DURING ALL PHASES OF THIS CAPITAL CASE (D-248)

In Motion D-248, the defendant seeks "to suppress or exclude at all stages of this trial any statements made [by him] that were acquired directly or indirectly for the first time from the second sanity evaluation ordered by the Court . . . and conducted by Dr. William Reid." Motion at p. 1. The prosecution opposes the motion. *Id.* For the reasons articulated in this Order, the Court concludes that Motion D-248 is devoid of merit and almost entirely successive. Accordingly, it is denied without a hearing before briefing is completed.

Motion D-248 is essentially a rehash of Motion D-187, which the defendant submitted following the Court-ordered sanity examination completed by Dr.

Jeffrey Metzner. In fact, Motion D-248 is virtually a carbon copy of Motion D-187. The Court denied Motion D-187 in Order D-187. For the reasons set forth in that Order, Motion D-248 is denied as meritless and largely successive in summary fashion.[1] In this Order, the Court addresses only assertions that were not advanced in Motion D-187.

First, the defendant maintains that all of the statements he made to Dr. Reid must "be suppressed and/or excluded . . . because the second sanity examination never should have been ordered in the first place." Motion at p. 3 (citing Motion D-246).[2] For the reasons stated in Orders P-68, D-200, D-201, and D-202, the Court disagrees.

Second, as he did in Motion D-187, the defendant complains that "Colorado's capital sentencing statute and the insanity statute[s] interact in such a way that limitations cannot be placed on which statements acquired as a result of [his] not guilty by reason of insanity plea are admitted for consideration at sentencing." *Id.* p. 4 (emphasis omitted). The Court rejected this claim in Order D-187. *See* Order D-187 at pp. 2-9. The defendant adds, however, that pursuant to Order P-68, the second sanity examination did not assess his competency or how any mental disease or defect or the condition of mind caused by a mental disease or

[1] The defendant acknowledges that Motion D-248 "is similar to Motion D-187," but explains that he filed Motion D-248 to preserve "these issues . . . with respect to Dr. Reid's evaluation." Motion at p. 1 n.1 (emphasis omitted).

[2] The Court will address Motion D-246 in a separate Order.

defect affects any mitigating factor identified in the death penalty statutes. *See* Motion at pp. 3-4 (citing Order P-68 at pp. 49-50). According to the defendant, "it would be particularly improper for the jury to consider at sentencing any of [his] statements made to Dr. Reid during the course of his evaluation, given that the purpose of Dr. Reid's examination was limited exclusively to sanity, and that he was (ostensibly) forbidden from assessing for, or opining about, mitigating factors." *Id.* at p. 4.

The defendant conflates the limitations placed by the Court on Dr. Reid's examination and the information the jury can consider at a capital sentencing hearing. The fact that Dr. Reid did not consider, and will not opine about, mitigating factors does not mean that the jury may not consider his testimony during a capital sentencing hearing. Colorado law specifically provides that during a capital sentencing hearing the jury may consider "any evidence presented in the guilt phase of the trial," so long as "the court deems [it] relevant to the nature of the crime, and the character, background, and history of the defendant." § 18-1.3-1201(1)(b), C.R.S. (2014). And the Court remains confident that the jury will understand and follow limiting instructions. *See generally* Order D-187 at pp. 2-9.

Finally, the defendant avers, almost as an afterthought and in rather cursory and apathetic fashion, "that his statements to Dr. Reid should be excluded in their entirety for a number of [evidentiary] reasons." Motion at p. 11. More

specifically, the defendant halfheartedly maintains: (1) that some of his statements "were elicited . . . in direct violation of the attorney-client privilege;" (2) that "[o]ther statements are completely irrelevant to the issue of sanity, are not probative, and are substantially more prejudicial than probative, such as [redacted] (3) that, "despite Dr. Reid's disclaimers to the contrary," some statements "appear to be made in response to somewhat therapeutic inquires by Dr. Reid;" (4) that "[s]till other[] [statements] were made [redacted] and (5) that "other questions pertained solely to [his] competency, which Dr. Reid was ordered not to address." *Id.*

Although the defendant fails to develop these lackluster arguments, the Court resists the temptation to summarily deny them. *See, e.g., People v. Bondurant*, 296 P.3d 200, 206 n.2 (Colo. App. 2012) (refusing to address assertions raised "in a cursory fashion"). Instead, the Court attempts to address them on the merits.

The defendant cites no authority in support of his attorney-client privilege claim, and the Court's research revealed none. Nor does the defendant identify the aspects of Dr. Reid's examination which he believes violated the privilege or the reasons why he believes those aspects of the examination are problematic.

The defendant's relevance contention is similarly anemic. At any rate, the question the defendant complains about was asked by an expert witness who was appointed by the Court to assess the defendant's sanity on the date of offense. Dr. Reid obviously felt compelled to ask the question as part of his evaluation of the defendant. This is not surprising given the applicable test for insanity[3] and the evidence in the record regarding [redacted] It is difficult to understand why the defendant believes that [redacted] have no probative value or would be so unduly prejudicial as to render them inadmissible under CRE 403.

Moreover, whether the defendant [redacted] is an important issue in this litigation that will likely be hotly contested at trial; therefore, the jury will learn that [redacted] C-143 at p. 7 (emphasis added). The defendant's [redacted]

[3] The applicable test for insanity in Colorado is as follows: (1) "[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;" or (2) "[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." § 16-8-101.5(1), C.R.S. (2014). 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." *Id.*

Regardless, to the extent that the defendant believes that [redacted] is inadmissible, the proper remedy is to seek to have it redacted from the video recording of the second sanity examination. The remark does not render "Dr. Reid's examination [] fundamentally unreliable as a whole." Motion at p. 11 (emphasis omitted).

The Court does not understand the defendant's next objection—to statements he supposedly made "in response to somewhat therapeutic inquiries by Dr. Reid." *Id.* Indeed, the defendant does not even bother to identify the statements to which he refers, much less the questions he finds objectionable. It is not this Court's function to divine arguments on behalf of the litigants. Therefore, the objection is overruled.

The defendant also complains about [redacted] *Id.* He contends that the Court [redacted] and that the answer to this question [redacted] *Id.* The defendant misses the point. [redacted] In fact, Dr. Reid's lengthy report [redacted] C-143 at p. 22.

Ironically, while the defendant complains about [redacted] The Court [redacted] Absent such a motion, [redacted]

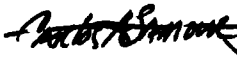
The last evidentiary challenge takes issue with questions allegedly pertaining "solely to [the defendant's] competency, which Dr. Reid was ordered not to address." Motion at p. 11. The infirmity of this challenge lies in the defendant's failure to specify the questions to which he refers. The Court cannot read the defendant's mind, only his filings. Therefore, this challenge fails.

CONCLUSION

For all the foregoing reasons, the Court concludes that Motion D-248 is meritless and almost entirely successive. Accordingly, it is denied.

Dated this 3rd day of November of 2014.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2014, a true and correct copy of the Court's Order Regarding Defendant's Motion to Suppress and/or Exclude Statements Made by Mr. Holmes Acquired Directly or Indirectly for the First Time from the Second Sanity Evaluation Conducted by Dr. William Reid During All Phases of this Capital Case (D-248) 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)

Jessica Zaegel