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 EXCLUDE LAY OPINION TESTIMONY REGARDING DEFENDANT'S "MENTAL CONDITION" OR "SANITY" IN THIS CAPITAL CASE (D-239)

In Motion D-239, the defendant seeks the exclusion of "any testimony from lay witnesses offering opinions or conclusions on the issue of [his] 'mental condition' and/or sanity." Motion at p. 1. The prosecution asks the Court to deny the motion. Response at p. 4. For the reasons articulated in this Order, the motion is denied without a hearing as untimely and meritless.

The deadline for filing noncapital motions expired on June 3, 2013, more than a year ago. Motion D-239 was filed on October 7, 2014. Accordingly, it is denied as untimely.[1]

[1] Notwithstanding the expiration of the June 3, 2013 deadline, the defendant did not seek leave of the Court to file his motion. In the Order setting the briefing schedule on the motion, the Court ordered the defendant to explain in his reply why his motion was untimely filed. Order C-139 at

In any event, the defendant's motion is devoid of merit, as it is directly contradicted by Colorado statutory law, the Colorado Rules of Evidence, and Colorado case law. *See* § 16-8-109, C.R.S. (2014) ("In any trial or hearing in which the mental condition of the defendant is an issue, witnesses not specially trained in psychiatry or psychology may testify as to their observation of the defendant's actions and conduct, and as to conversations which they have had with him bearing upon his mental condition, and they shall be permitted to give their opinions or conclusions concerning the mental condition of the defendant"); CRE 701 (allowing lay opinion testimony if it is "(a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702"); *Dunlap v. People*, 173 P.3d 1054, 1098 (Colo. 2007) ("*Dunlap III*") (explaining that "section 16-8-109 permits lay opinion testimony regarding a defendant's 'mental condition'"). Significantly, both the Colorado Supreme Court and the Colorado Court of Appeals have "applied [section 16-8-109] to the admission of a lay witness' opinion of the defendant's sanity—i.e., the defendant's ability to understand right from wrong."

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p. 2. The defense contends in the reply that some of the issues raised in Motion D-239 "were simply overlooked" while others "were not raised . . . until now" based on "strategic decisions." Reply at p. 2. Although the Court appreciates counsel's candor, neither ground justifies the untimely filing.

Dunlap III, 173 P.3d at 1098 (citations omitted). While the defendant is free to disagree with this authority, the Court is bound by it and cannot disregard it.

Perhaps realizing that his motion flies in the face of Colorado law, the defendant halfheartedly recycles a previously advanced constitutional challenge and argues that section 16-8-109 is vague and in violation of due process of law because it fails to define "mental condition." Motion at pp. 2-3.[2] On March 7, 2013, more than 18 months ago, the Court rejected a similar challenge, finding that "mental condition," as used in the insanity statutes, is not unconstitutionally vague and, therefore, does not violate the defendant's right to due process. *See* March 7, 2013 Order at pp. 4-5. Consequently, the defendant's constitutional challenge is successive.

Further, as the defendant concedes, a similar assertion was recently rejected by the Colorado Court of Appeals in *People v. Bondurant*, 296 P.3d 200 (Colo. App. 2012). Motion at p. 3. There, the Court rejected Bondurant's contention that section 16-8-107(3)(b) "is unconstitutionally vague on its face because it is unclear whether a 'mental condition' includes only mental illnesses, or otherwise encompasses developmental disabilities and [] other mental states." *Bondurant*,

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[2] In Motion D-29, the defendant argued that "[t]he term 'mental condition' is not defined in [the insanity statutes] or elsewhere in Title 16, Article 8, and [that] the meaning and scope of the phrase is unclear." Motion D-29 at p. 3. The defendant also maintained that "[t]he phrase 'mental condition' as used in C.R.S. §§ 16-8-107(3) and 18-1.3-1201(3)(d) is unconstitutionally vague and violates due process of law." *Id.* at p. 5. Motion D-239 does little more than extend the contentions presented in Motion D-29 to section 16-8-109.

296 P.3d at 208-09. The Court also determined that, even if it assumed the statute is unconstitutionally vague for defendants with developmental disabilities or some other mental condition during the commission of the crime, it could not conclude that the statute is unconstitutionally vague with regard to defendants who allegedly suffer from a mental illness. *Id.* at 209. Since Bondurant claimed that he suffered from a mental illness at the time he committed the crimes charged, the Court "reject[ed] his contention that the statute was unconstitutional as applied to him." *Id.*[3]

Here, the defendant has failed to satisfy his burden to prove that section 16-8-109 is unconstitutional on its face because it is incomprehensible in all applications or that the statute is unconstitutionally vague as applied to him under the circumstances present in this case.[4] Therefore, his constitutional challenge fails.[5]

For all the foregoing reasons, the Court concludes that Motion D-239 is untimely and lacks merit. Accordingly, it is denied without a hearing.

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[3] Like Bondurant, the defendant alleges that he suffered from a mental illness at the time of the crimes charged against him.

[4] The Court discussed the standard of review applicable to a constitutional vagueness challenge in Order D-162 on pages three through six. That discussion is incorporated by reference here.

[5] The defendant does not specify whether his constitutional challenge is to the face of the statute or as applied to his specific circumstances. *See generally* Motion. As this Order demonstrates, the defendant's challenge fails regardless of whether it is a facial challenge or an as-applied challenge.

Dated this 15th day of October of 2014.

BY THE COURT:

Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2014, a true and correct copy of the Court's **Order Regarding Defendant's Motion to Exclude Lay Opinion Testimony Regarding Defendant's "Mental Condition" or "Sanity" in this Capital Case (D-239)** was served upon the following parties of record:

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