

DISTRICT COURT ARAPAHOE COUNTY, COLORADO Court Address: Arapahoe County Justice Center 7325 S. Potomac St., Centennial, CO 80112	<b>Filed</b>  NOV 7 2014  <small>CLERK OF THE COMBINED COURT                  ARAPAHOE COUNTY, COLORADO</small>
THE PEOPLE OF THE STATE OF COLORADO vs. Defendant:  <b>JAMES EAGAN HOLMES</b>	COURT USE ONLY
Attorney: GEORGE H. BRAUCHLER, 18 <sup>th</sup> Judicial District Attorney 6450 S. Revere Pkwy. Centennial, CO 80111 Phone: (720) 874-8500 Atty. Reg. #: 25910	Case Number: <b>12CR1522</b>  Division/Ctrm: <b>202</b>
<b>PEOPLE'S RESPONSE TO MOTION D-250</b>	

This response is filed by the District Attorney for the 18<sup>th</sup> Judicial District.

1. The defendant has filed a MOTION TO PROHIBIT STATEMENTS AND/OR TESTIMONY IMPROPERLY UNDERMINING CREDIBILITY OF FIRST SANITY EXAMINER AND TO PRECLUDE ALL REFERENCE TO LITGATION SURROUNDING MOTION P-68 AT TRIAL [D-250].
2. The defendant requests the Court to refrain from conveying opinions about the credibility of Dr. Metzner, Dr. Reid, Dr. Mohandie, or Dr. Resnick during the trial. The People cannot envision a circumstance where the Court would offer its opinions about the examiners or any experts to the jury, except perhaps to rule on a request by one party or the other allowing the expert to testify as an expert witness. Motion D-250 conflates the court's ruling at a pre-trial hearing with the court's statements in front of a jury at trial. The defendant also requests that testimony be prohibited about the particular areas of Dr. Metzner's report that were found to be deficient.
3. The People would anticipate that at trial the reports would be referenced as "Dr. Metzner's report" and "Dr. Reid's report". The People would also anticipate that if any of the doctors is questioned about prior testimony that it would be phrased something like "at a prior hearing."
4. The defendant does acknowledge that experts can disagree with each other and the People would expect that various experts may provide opinions that reference another expert's




findings and may well disagree with them. This can be done without referencing the litigation surrounding P-68.

5. However, the defendant's request that testimony about deficiencies in Dr. Metzner's report be prohibited would be inconsistent with allowing experts to opine about another expert's report. It is possible that Dr. Reid, Dr. Resnick, Dr. Mohandie, or an expert employed by the defense might attack certain findings or opine that something was deficient or unclear in Dr. Metzner's report or testimony. This can occur without anyone discussing the litigation surrounding P-68, but if the defendant is requesting that no witness be allowed to comment on what they view as deficiencies in another expert's report, conclusion, or testimony, then the People object.

6. An expert can discuss and be questioned about what he reviewed to form an opinion. See C.R.E. 703. An expert can be cross examined about the basis of his opinion. *People v. Alward*, 654 P.2d 327 (Colo.App. 1982). An expert can base his opinion on an independent examination of the available materials. *People v. District Court of Fifth Judicial District in and for Clear Creek County*, 647 P.2d 1206 (Colo. 1982). While the People agree that it is not necessary to comment on the litigation surrounding P-68, the People maintain that the parties' experts can be questioned about what they view as inconsistencies, deficiencies or other aspects of Dr. Metzner or Dr. Reid's reports, or any other report or testimony of an expert sharing their field of expertise.

7. The People request the Court rule without a hearing.

George H. Brauchler, District Attorney

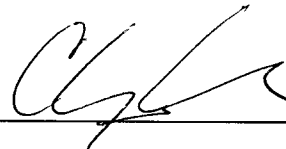
By   
Deputy District Attorney  
Registration No. 26208

### 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.  
KRISTEN NELSON, ESQ.  
OFFICE OF THE PUBLIC DEFENDER

Dated: 11/7/14

By 

DISTRICT COURT  
ARAPAHOE COUNTY, COLORADO  
Court Address: Arapahoe County Justice Center  
7325 S. Potomac St., Centennial, CO 80112

THE PEOPLE OF THE STATE OF COLORADO vs.  
Defendant:  
**JAMES EAGAN HOLMES**

COURT USE ONLY

Case Number:

**12CR1522**

Division/Ctrm:

**202**

**COURT ORDER RE: DEFENSE MOTION D-250**

THE COURT, being fully advised, and being duly apprised of the relevant facts and law, hereby DENIES defense motion D-250.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014

BY THE COURT

\_\_\_\_\_  
District Court Chief Judge Carlos A. Samour