

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲ COURT USE ONLY ▲
<b>PEOPLE OF THE STATE OF COLORADO</b>  v.  <b>JAMES EAGAN HOLMES,</b> <b>Defendant</b>	Case No. <b>12CR1522</b>  Division: <b>201</b>
<p style="text-align: center;"><b>ORDER AMENDING ORDER D-246 REGARDING DEFENDANT'S          MOTION TO STRIKE REPORT OF SECOND SANITY EXAMINER, OR          ALTERNATIVELY, TO LIMIT THE OPINIONS AND TESTIMONY OF          SECOND SANITY EXAMINER (D-246-A)</b></p>	

Trial in this matter commenced on January 20, 2015. Opening statements occurred on April 27. Dr. William Reid, one of the two Court-appointed sanity examiners, is currently testifying on direct examination. Given an objection raised during the first part of his direct examination, the Court reviewed multiple Orders concerning mental health evidence, including Order D-246. This Order amends Order D-246.

One of the arguments addressed in Order D-246 is that Dr. Reid's report reflects a misunderstanding of part (b) of the insanity test—whether the defendant suffered from a condition of mind caused by a mental disease or defect that prevented him from forming a culpable mental state that is an element of a crime

charged. *See* Order D-246 at pp. 13-19.<sup>1</sup> The defendant's contention was based on part of a sentence included on page 20 of Dr. Reid's lengthy report: "there is little or no reasonable psychiatric evidence to suggest that [the defendant's] symptoms affected his ability to form the requisite 'culpable mental state' as I understand that phrase in Colorado (knowing and appreciating legal, social, and moral aspects of his acts)." *Id.* at p. 14.<sup>2</sup> The Court stated that issues relating to criminal culpability involve moral, legal, and medical considerations or judgments. *Id.* at p. 16 (citing *Hendershott v. People*, 653 P.2d 385, 395 (Colo. 1982)); *see also* *King v. United States*, 372 F.2d 383, 389 (D.C. Cir. 1966) (cited in *Hendershott*; discussing "the complicated nature of the decision to be made" regarding an accused's mental condition, which includes "intertwining moral, legal, and medical judgments"). However, upon further review of the sentence at issue, the Court is not sure it correctly understood Dr. Reid or that it properly assumed that Dr. Reid considered moral, legal, and social components in reaching his opinion on the defendant's capacity to form the culpable mental states required by the offenses charged.

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<sup>1</sup> The prosecution's response was deficient and failed to address this assertion. *See also* Order D-246 at p. 11 (noting that it was "puzzling that the prosecution chose to ignore" a case on point cited by the defense in support of a separate argument).

<sup>2</sup> The defendant also took issue with Dr. Reid's reference to the "'voluntariness'" of [the defendant's] actions." Motion D-246 at pp. 9-10. The Court did not read this phrase as referring to a "voluntary act," as that term is defined by Colorado law. § 18-1-501(9), C.R.S. (2014). Nor did the Court understand this comment to reflect Dr. Reid's understanding that "Colorado's insanity statute requires an assessment of whether a defendant's mental disease or defect impacted the 'voluntariness' of his actions." Motion D-246 at pp. 9-10. The rest of Dr. Reid's report does not support this conclusion.

Regardless of what Dr. Reid meant, and because the Court may have misinterpreted the sentence in question on page 20 of his report, the Court amends Order D-246 while Dr. Reid is still testifying on direct examination.<sup>3</sup> A defendant's incapacity to form a culpable mental state that is an element of an offense charged refers to a defendant's cognitive inability, due to a condition of mind caused by a mental disease or defect, to form that culpable mental state.<sup>4</sup>

In this case, there are two culpable mental states involved: "after deliberation and with intent" and "knowingly." Therefore, "culpable mental state" in this case for some offenses means "after deliberation and with intent," while for other offenses means "knowingly." *See* § 18-1-501(4), C.R.S. (2014). Each of these terms is defined by Colorado law. *See* § 18-3-101(3), C.R.S. (2014) (defining "after deliberation" as "not only intentionally but also that the decision to commit the act has been made after the exercise of reflection and judgment concerning the act. An act committed after deliberation is never one which has been committed in a hasty or impulsive manner"); § 18-1-501(5) (stating that "[a] person acts 'intentionally' or 'with intent' when his conscious objective is to cause

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<sup>3</sup> The defendant appears to have read the statement the same way the Court did. *See* Motion D-246 at pp. 9-10.

<sup>4</sup> In *People v. Serravo*, 823 P.2d 128, 138-39 (Colo. 1992), the Supreme Court equated "incapable," as used in the phrase "incapable of distinguishing right from wrong" to "a person's cognitive inability." The Court concluded "that, as related to the conduct charged as a crime, the phrase 'incapable of distinguishing right from wrong,'" as used in part (a) of the insanity test, "refers to a person's cognitive inability, due to a mental disease or defect, to distinguish right from wrong . . ." *Id.*

the specific result proscribed by the statute defining the offense. It is immaterial . . . whether or not the result actually occurred”); § 18-1-501(6) (stating that “[a] person acts ‘knowingly’ or ‘willfully’ with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists. A person acts ‘knowingly’ or ‘willfully,’ with respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result”).

The Court is satisfied that elsewhere in his report, Dr. Reid demonstrated that he correctly understands part (b) of the legal test for insanity in Colorado. *See* C-143 at pp. 1-2 (quoting the legal standard under part (b) of the insanity test), p. 2 (“As of July 20, 2012, the defendant, James Holmes, did not suffer from a mental disease or defect, or from a condition of mind caused by a mental disease or defect, that prevented him from forming the culpable mental state that is an essential element of the crimes charged”), p. 5 (“the evidence is overwhelming that [the defendant] was not prevented from forming the culpable mental state that is an essential element of the crimes charged”), p. 5 (“[n]one of the diagnoses considered by any clinician is *per se* indicative of inability to form the requisite culpable mental state”). The report also shows that Dr. Reid generally referred to the defendant’s knowledge and appreciation of the illegality and immorality (including under societal standards) of the defendant’s conduct when Dr. Reid

discussed part (a), but not part (b), of the insanity test. *See generally* C-143. This is consistent with Colorado law. *See Serravo*, 823 P.2d at 138-39 (clarifying that the “wrong” in part (a) of the insanity test refers to a “moral wrong, not simply legal wrong,” and that it is measured by a societal standard of morality).<sup>5</sup>

Dated this 1<sup>st</sup> day of June of 2015.

BY THE COURT:



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Carlos A. Samour, Jr.  
District Court Judge

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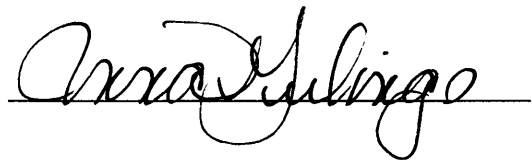
<sup>5</sup> Given the ambiguity surrounding the sentence in question in Dr. Reid’s report, and given further the rest of the report, the Court should have addressed the defendant’s argument in Motion D-246 as it has done in this Order. Since the Court previously asked the prosecution to review Order D-246 with Dr. Reid, the prosecution is ordered to show this Order to Dr. Reid as well.

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2015, a true and correct copy of the Court's **Order Amending Order D-246 Regarding Defendant's Motion to Strike Report of Second Sanity Examiner, or Alternatively, to Limit the Opinions and Testimony of Second Sanity Examiner (D-246-A)** was served upon the following parties of record:

Karen Pearson  
Christina Taylor  
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A handwritten signature in black ink, appearing to read "Anna Gulingo", is written over a horizontal line.