

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: 26
<p align="center">ORDER REGARDING DEFENDANT’S MOTION FOR COURT ORDER REQUIRING CLERK TO FURNISH RESULTS AND WRITTEN REPORT OF SANITY EXAMINATION TO DEFENSE COUNSEL IN ADVANCE OF ANY DISCLOSURE TO THE PROSECUTION (D-93)</p>	

This matter is before the Court on motion D-93, which seeks an Order requiring this division’s clerk to furnish the written report of the defendant’s sanity examination (“the report”) to defense counsel before it is provided to the prosecution. The prosecution opposes the motion. At the June 4 hearing, the defendant indicated that, as long as the Court afforded him an opportunity to file a reply brief, he did not request a hearing on this motion. The Court granted the defendant leave to file a reply brief, and the defendant did so yesterday. For the reasons articulated in this Order, motion D-93 is denied.

On June 4, after accepting the defendant’s plea of not guilty by reason of insanity, the Court ordered him committed to the Colorado Mental Health Institute

at Pueblo for a sanity examination. The parties agree that under section 16-8-106(4), C.R.S. (2012), “[a] written report of the [sanity] examination shall be prepared in triplicate and delivered to the clerk of the court which ordered it,” and that the clerk “shall furnish a copy of the report both to the prosecuting attorney and the counsel for the defendant.”

The defendant asks the Court to direct its division clerk to furnish a copy of the report to his attorneys first because it is possible he may withdraw his not guilty by reason of insanity plea, in which case “there would be no legitimate purpose for the prosecution to have access to the results of the examination” Motion at p. 2 (citing § 16-8-107(1)(a), C.R.S. (2012), which states that “no evidence acquired directly or indirectly for the first time from a communication derived from the defendant’s mental processes during the course of a court-ordered examination . . . is admissible against the defendant on the issues raised by a plea of not guilty, if the defendant is put to trial on those issues”). The People counter that section 16-8-106(4) requires the Court’s division clerk to simultaneously distribute the report to both parties, regardless of whether its contents may be rendered inadmissible under section 16-8-107(1)(a). Response at p. 1. In his reply brief, the defendant argues that the People’s interpretation improperly adds the word “simultaneously” to section 16-8-106(4). Reply at ¶ 2.

When construing a statute, the Court's "primary objective is to effectuate the intent of the General Assembly by looking to the plain meaning of the language used, considered within the context of the statute as a whole." *Fifield v. Pitkin Cnty. Bd. Of Comm'rs*, 292 P.3d 1207, 1208 (Colo. App. 2012); *see also People v. Morales*, 298 P.3d 1000, 1001 (Colo. App. 2012) ("we must give [statutory] phrases their ordinary and plain meaning"); *People v. Zwegardt*, 298 P.3d 1018, 1022 (Colo. App. 2012) (the Court must "give effect to the plain meaning of each and every word and phrase" of a statute "unless the result is ambiguous or nonsensical"). The Court must avoid interpretations that would result in absurd or illogical results. *In re Miranda*, 289 P.3d 957, 960 (Colo. 2012); *Sidman v. Sidman*, 240 P.3d 360, 362 (Colo. App. 2009).

Although the Court agrees with the defendant that the statute does not contain the word "simultaneously," it disagrees with him that the plain and ordinary meaning of the language used by the legislature grants the Court the authority to delay the disclosure of the report to the prosecution if the defendant changes his plea. Moreover, the only reason the defendant asks the Court to delay the production of the report to the prosecution is because he believes that a change of plea would justify altogether withholding the report from the People. There is no basis to construe the statute as giving the Court the discretion to do so. To the contrary, pursuant to the plain and common meaning of the statutory words, the

division clerk is *required* to furnish a copy of the report “both to the prosecuting attorney and the counsel for the defendant.” Accordingly, motion D-93 fails.

Upon receipt of the report, the Court will direct its division clerk to furnish a copy of it to both the prosecution and defense counsel. Of course, in the event the defendant changes his plea, he may file any motion he deems appropriate related to the contents of the report.

Dated this 12th day of June of 2013.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Carlos A. Samour, Jr.', written in a cursive style with a large, sweeping flourish at the end.

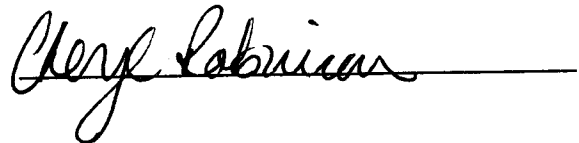
Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2013, a true and correct copy of **Order regarding defendant's motion for court order requiring clerk to furnish results and written report of sanity examination to defense counsel in advance of any disclosure to the prosecution (D-93)** was served upon the following parties of record:

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A handwritten signature in cursive script, reading "Cheryl Labrion", is written over a horizontal line.