

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<p style="text-align: center;"><b>Filed</b></p> <p style="text-align: center;">JUN 11 2013</p> <p style="text-align: center;">CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO</p> <p style="text-align: center;">σ COURT USE ONLY σ</p>
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  <b>JAMES HOLMES,</b> Defendant	
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Tamara A. Brady (No. 20728) Chief Trial Deputy State Public Defenders 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: <a href="mailto:state.pubdef@coloradodefenders.us">state.pubdef@coloradodefenders.us</a>	Case No. <b>12CR1522</b>         Division 26
<b>REPLY TO PROSECUTION'S RESPONSE TO MOTION FOR COURT ORDER          REQUIRING CLERK TO FURNISH RESULTS AND WRITTEN          REPORT OF EXAMINATION CONDUCTED PURSUANT TO          C.R.S. § 16-8-106 TO DEFENSE COUNSEL IN ADVANCE OF ANY SUBSEQUENT          DISCLOSURE TO THE PROSECUTION [D-093]</b>	

Mr. Holmes submits the following in reply to the prosecution's response to his Motion for Court Order Requiring Clerk to Furnish Results and Written Report of Examination Conducted Pursuant to C.R.S. § 16-8-106 to Defense Counsel in Advance of Any Subsequent Disclosure to the Prosecution:

1. The prosecution's sole response to Mr. Holmes' motion is that his request is precluded by the plain language of C.R.S. § 16-8-106(4), which states:

A written report of the examination shall be prepared in triplicate and delivered to the clerk of the court which ordered it. The clerk shall furnish a copy of the report both to the prosecuting attorney and the counsel for the defendant.

2. The prosecution alleges that this provision requires the clerk to furnish copies of the report to the prosecution and defense *simultaneously*, even though that word appears nowhere in the statute.

3. The prosecution's interpretation of § 16-8-106(4) would require this Court to supply an additional term in the statute, which is contrary to the basic principle of statutory construction that, "in interpreting a statute, [a court] must accept the General Assembly's choice

of language and not add or imply words that simply are not there.” *People v. Benavidez*, 222 P.3d 391, 393-94 (Colo. App. 2009); *People v. Guenther*, 740 P.2d 971, 976 (Colo. 1987) (“It must be presumed that the legislature has knowledge of the legal import of the words it uses.”).

4. There is nothing in the plain language of § 16-8-106(4) that precludes this Court from furnishing a copy of the report of the sanity examination to the defense in advance of providing a copy to the prosecution. Moreover, to the extent that the statute is ambiguous, the rule of lenity requires this Court to interpret the statute in favor of the defendant. *People v. Thoro Products Co., Inc.*, 70 P.3d 1188, 1198-99 (Colo. 2003) (“On numerous occasions, this court has found a genuine ambiguity in a criminal statute and adopted the interpretation which favors the accused.”).

5. The defense is simply requesting, pursuant to Mr. Holmes’ state and federal constitutional right to present a defense, that it be furnished with a copy of the examination report *first*, and that the clerk hold the prosecution’s copy of the report until the defense confirms with the Court, after reviewing the report, that it intends to continue to proceed with the defense of not guilty by reason of insanity.

6. The defense is not seeking to permanently bar the prosecution from accessing the report, unless it ultimately elects to abandon its NGRI defense, in which case the prosecution would be precluded from using the contents of the report at trial anyway and would have no need to know of its contents.

7. Moreover, the defense’s request is in harmony with the underlying purpose of the statute, which is to allow use of a defendant’s statements *only* for the purposes of sanity and not for the purposes of guilt. *See Martin v. People*, 27 P.3d 846 (Colo. 2001) (“In interpreting a comprehensive legislative scheme, we must construe each provision to further the overall legislative intent behind the statutes.”); *Gray v. District Court of Eleventh Judicial Dist.*, 884 P.2d 286 (Colo. 1994) (purpose of insanity statute is to allow both parties access to information in order to enhance truth-seeking process concerning defendant’s mental condition when it is primary issue in case). If the issue of sanity is ultimately not injected into the trial, then it serves no purpose for the prosecution to have access to the results of a sanity examination.

8. Finally, the prosecution’s citation of *Lewis v. Thulemeyer*, 538 P.2d 441, 444 (Colo. 1975), in support of its response is misplaced for two reasons.

9. First, the case is distinguishable on its facts. In *Lewis*, the district court redacted statements made by the defendant during the sanity examination from the prosecutor’s copy of the report that it believed were self-incriminating with the intention of preventing the prosecution from having knowledge of those statements. In contrast, as explained above, in D-093, defense counsel is simply asking the Court to delay the timing of the disclosure of the report to the prosecution until they can review the report and decide whether to proceed with an NGRI defense.

10. Second, the holding of *Lewis* is not, as the prosecution suggests, that the district court violated the plain language of C.R.S. § 16-8-106(4) by redacting the government’s copy of

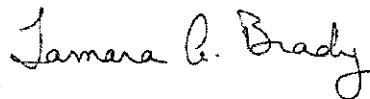
the report. Rather, the Supreme Court's holding in *Lewis* was that the district court's redactions were unwarranted because "[t]he general assembly limited the use of 'confessions and admissions' and 'statements and reactions' to trials or hearings where the issue of defendant's sanity is the issue," and therefore the Fifth Amendment was not implicated. *Id.* at 141. Thus, the central holding of *Lewis* is inapplicable to this issue.

Mr. Holmes files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution.



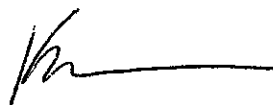
---

Daniel King (No. 26129)  
Chief Trial Deputy State Public Defender



---

Tamara A. Brady (No. 20728)  
Chief Trial Deputy State Public Defender



---

Kristen M. Nelson (No. 44247)  
Deputy State Public Defender

Dated: June 11, 2013

I hereby certify that on June 11, 2013, I

mailed, via the United States Mail,  
 faxed, or  
 hand-delivered

a true and correct copy of the above and foregoing document to:

George Brauchler  
Jacob Edson  
Rich Orman  
Karen Pearson  
Office of the District Attorney  
6450 S. Revere Parkway  
Centennial, Colorado 80111  
Fax: 720-874-8501

AKS