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**

ORDER REGARDING OBJECTION TO COURT'S RULING ON MR. HOLMES' MOTION FOR A FAIR TRIAL UNENCUMBERED BY AN UNNECESSARY DISPLAY OF COURTROOM SECURITY AND RENEWED REQUEST FOR A HEARING (D-76A)

This matter is before the Court on the defendant's "objection" to the Court's ruling on motion D-76, which sought a fair trial, unencumbered by an unnecessary display of courtroom security, and which the Court largely granted. At the outset, the Court notes that the defendant cites no legal authority that allows him to "object" to a ruling. None exists. The defendant may disagree with a ruling, may seek to reconsider a ruling, and may appeal a ruling. He has no basis to object to a ruling. Accordingly, to the extent D-76a is an objection to a ruling, the objection is rejected as improper. To the extent D-76a may be deemed an improperly titled motion to reconsider Order D-76, it is denied because it is devoid of merit.

The defendant first complains about the Court's conclusion that, given the multiple violent charges in this case, public safety requires that the defendant must remain restrained during the trial. Motion D-76a at p. 1 (referring to Order D-76 at p. 4). Preliminarily, it bears noting that the defendant did *not* ask to be unrestrained during the trial; what he sought in Motion D-76 was "an order implementing procedures" to ensure "a fair trial unencumbered by *an unnecessary display of courtroom security*." Motion D-76 at p. 1 (emphasis added). In fact, the defendant expressly acknowledged that "[t]he Court [was] obligated to strike a balance between reasonable security and a bell jar atmosphere which unconstitutionally defeats Mr. Holmes' right to ask jurors to consider statutory mitigating factors." *Id.* at p. 3.

More specifically, what the defendant requested in Motion D-76 was "not to be visibly shackled at trial." *Id.*; *see also id.* at p. 2 ("due process and the right to a fair trial will require Mr. Holmes be unshackled."). The Court *granted* that request. *See* Order D-76 at p. 4 (the defendant "will not be in handcuffs or shackles" during the trial). To the extent the defendant now asks to be unrestrained during the trial, it is a new request and it is stricken as untimely and improperly filed.

More importantly, as the Court explained in Order D-76, under Colorado law, where, as here, the defendant has been accused of multiple violent crimes,

"public safety may require that physical restraints be imposed." *Id.* at p. 3 (quoting *People v. Melanson*, 937 P.2d 826, 835 (Colo. App. 1996)). Inasmuch as the defendant is charged with 24 counts of first degree murder and 140 counts of attempted first degree murder following a shooting at two adjacent Aurora movie theaters, it is not appropriate to allow him to be unrestrained during the trial.

The defense laments that, "[a]t a minimum, the Court should have granted an evidentiary hearing on this issue . . . ." Motion D-76a at p. 2. With all due respect to counsel, the Court does not hold hearings just to hold hearings or to placate a party or an attorney. Nor does the Court automatically schedule a hearing when a request for a hearing goes unanswered and is deemed unopposed. The Court only grants hearings when they are necessary or otherwise appropriate. There is no "heightened" standard available in this case that entitles the defendant to a hearing simply because he requests it. The defendant filed approximately 90 motions, all of which requested a hearing. The Court will not automatically hold 90 hearings. Because, in its discretion, the Court determined that there were no circumstances under which it would be appropriate for the defendant to be unrestrained during the trial, and because the Court granted the defendant's request not to be visibly shackled in front of the jury, a hearing on this issue was unnecessary.

Next, the defendant argues that the Court has ordered him restrained in an "undignified and unprecedented fashion" that "shocks the conscience" and that is "reminiscent of forms of dehumanizing and humiliating punishment that have been found to offend contemporary concepts of decency, human dignity, and precepts of civilization . . . ." Motion at pp. 1, 3 (internal quotation omitted). The defendant's contention, while high on rhetoric, is low on substance, as it grossly and unfairly mischaracterizes the Court's ruling.

The Court chose the least restrictive form of restraint available and the one that could be hidden from the jury's view. The defendant's serious accusations are misguided. The record reflects that the Court is taking every precaution to ensure that the defendant receives a fair trial in this case. The "unprecedented" method the defendant criticizes has been routinely used for years in this jurisdiction in criminal trials, seemingly without objection. As members of the Public Defender's Office, defense counsel should be aware of that.

There is nothing inhumane, undignified, or dehumanizing about the method of restraint ordered by the Court. It is not "a leash" that "chains" the defendant "to the floor." It is a minimally invasive restraint—the least obtrusive restraint the Court is aware of—which is necessary for public safety and which will blend with computer cables at counsel's table so as to be concealed from the jury. In short, the restraint is a commonly used security procedure in this courthouse that will not

undermine the defendant's presumption of innocence or right to a fair trial. Nor has the defendant suggested any alternative means of restriction.

The defendant's claim that "the Court's decision not to suppress" Order D-76 has prejudiced the prospective jury pool, *see* Motion at p. 3, is equally specious. The Court did not "decide" any issues related to suppression because no request to suppress was advanced.

Ironically, the defendant fails to acknowledge that *he* chose not to suppress or even redact motion D-76 when he filed it. In that motion, the defendant discussed that "there has been a visible law enforcement presence on the grounds of the courthouse each time there is a hearing . . . including visible armed security on the roofs of the buildings and uniformed law enforcement personnel in the parking lots and grounds surrounding the courthouse." Motion D-76 at p. 1. Further, he specifically mentioned that during all of the pretrial hearings, he has been "in shackles and remained in shackles throughout the proceedings," and that security has typically included "eight sheriff deputies" who have been in uniform. *Id.* The defendant predicted that, unless his motion was granted, jurors would observe "uniformed rooftop snipers" and a "gauntlet of permanent and handheld metal detectors." *Id.* at p. 3. Given these detailed assertions in the defendant's motion D-76, suppressing Order D-76 would have been as useful as "replac[ing] the proverbial screen door on a submarine with a water tight hatch," *State v.*

Johnson, 184 Wis.2d 324, 352, 515 N.W.2d 463, 473 (Wis. App. 1994) (Anderson, J., concurring).

In any event, the defendant requested a hearing on motion D-76 and now bemoans the Court's denial of that request. Had a hearing been held, the information contained in Order D-76 would have been made available to the public and the media at that time.

Finally, the defense complains about the Court issuing Order D-76 before the prosecution's deadline to respond expired. Defense counsel lack standing to raise objections on the prosecution's behalf. The prosecutors in this case have demonstrated that they can speak for themselves and do not need defense counsel to advocate for them. Furthermore, there is absolutely nothing unfair about being the only party who is heard on an issue. The defendant would have been allowed an opportunity to file a second brief on motion D-76 only to reply to the prosecution's response. But where no response is filed, no reply is allowed because there is nothing to reply to.

Without any page limitation whatsoever, the Court gave the defendant an opportunity to file as many non-capital motions as he wished. The defendant filed approximately 90 motions, including D-76. The Court reviewed motion D-76, considered the issues raised therein carefully, researched those issues thoroughly, thought about the defendant's contentions extensively, exercised its discretion to

the best of its ability, and ruled on the motion without anyone else being heard. The unfairness of this process to the defendant escapes the Court.

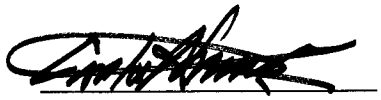
The record belies the defendant's allegation that the Court decided motion D-76 and other motions "in its haste to resolve the issues in this case and push the case forward to trial." Motion D-76a at p. 4. The Court was very selective in the motions it resolved without a response. As to those motions, as with all other motions, the Court attempted to issue thorough and thoughtful orders that are based on the law and the record. The Court stated on April 1 that it is responsible for ensuring that this case is handled properly, and the Court has done its best to accomplish that goal. But the Court also informed counsel that day that it intends to be efficient and to ensure this case is litigated expeditiously, and the Court has done its best to accomplish that goal as well. Contrary to the defendant's implication, these goals are not mutually exclusive.

The Court stands by Order D-76. The Court also stands by its denial of the defendant's request for a hearing. To the extent that the defendant "objects" to the Court's ruling, the objection is rejected as improper. To the extent the defendant seeks reconsideration of Order D-76, the request is denied without a hearing because it lacks merit. Despite the defense's demurrers, the Court is doing its utmost to enforce the defendant's constitutional rights, including his right to a fair

trial. The Court remains confident that Order D-76 will in no way interfere with any of the defendant's constitutional rights.

Dated this 10th day of July of 2013.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

REDACTED

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2013, a true and correct copy of the Court's **Order Regarding Objection to Court's Ruling on Mr. Holmes' Motion for a Fair Jury Trial Unencumbered by an Unnecessary Display of Courtroom Security and Renewed Request for a Hearing (D-76A)** was served upon the following parties of record:

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