

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 8011	▲ COURT USE ONLY ▲
PEOPLE OF THE STATE OF COLORADO v. JAMES EAGAN HOLMES, Defendant	Case No. 12CR1522 Division: 201
ORDER REGARDING DEFENDANT’S MOTION FOR A BILL OF PARTICULARS (D-130)	

The defendant is charged with shooting, and killing or injuring, numerous people inside two adjacent Aurora movie theatres during the early morning hours of July 20, 2012. This matter is before the Court on the defendant’s motion for a bill of particulars. The People object. For the reasons articulated in this Order, the motion is denied without a hearing.

As an initial matter, the Court denies the motion as untimely because it was filed more than 14 days after the March 12, 2013 arraignment. *See* Crim. P. 7(g). Rule 7(g) provides, in pertinent part, that “[a] motion for a bill of particulars may be made only within 14 days after arraignment or at such other time before or after arraignment as may be prescribed by rule or order.” Motion D-130 was filed on June 3, long after the 14-day deadline expired.



The defendant concedes that his motion was filed more than 14 days after the March 12 arraignment. However, he urges the Court to nevertheless deem it timely because it was submitted by the June 3 deadline to file noncapital motions. That request is denied.

When the Court set the noncapital motions deadline on April 1, more than 14 days had already elapsed since the arraignment.¹ As such, the defendant may not rely on the June 3 deadline to support his timeliness contention. In setting the noncapital motions deadline, the Court did not intend to resuscitate any expired deadlines. Rather, June 3 was selected as the deadline by which noncapital motions that could still be *timely filed* were to be submitted.

In any event, motion D-130 fails on the merits. Thus, even if it were timely, it still would be denied.

The defendant contends that a bill of particulars is necessary because “[t]he charging document in this case is constitutionally deficient with respect to the 70 charged counts of attempted extreme indifference murder.” Motion at p. 3. The Court disagrees.

In ruling on a motion for a bill of particulars, the Court “should consider whether the requested information is necessary for the defendant to prepare his

¹ The 14-day deadline expired on March 26, 2013. Six days later, during the April 1 hearing, the Court scheduled May 31, 2013 as the deadline for all noncapital motions. However, at the defendant’s request during a subsequent hearing, the Court changed the deadline to June 3, 2013.

defense or to protect against subsequent prosecution.” *People v. Whitman*, 205 P.3d 371, 385 (Colo. App. 2007) (quotation omitted); *see also People v. Lewis*, 671 P.2d 985, 989 (Colo. App. 1983) (“A bill of particulars must provide such information requested by defendant as is ‘necessary for the defendant to prepare his defense and to avoid prejudicial surprise’”) (quoting *People v. District Court*, 198 Colo. 501, 603 P.2d 127, 129 (Colo. 1979)). “A bill of particulars forecasts ‘the facts that the prosecution intends to prove and limits the proof at trial to those areas described in the bill of particulars.’” *Erickson v. People*, 951 P.2d 919, 921 (Colo. 1998) (quoting *District Court*, 603 P.2d at 129). The purpose of a bill of particulars has been described by the Colorado Supreme Court as follows:

to enable the defendant to properly prepare his defense in cases where the indictment, although sufficient to advise the defendant of the charges raised against him, is nonetheless so indefinite in its statement of a particular charge that it does not afford the defendant a fair opportunity to procure witnesses and prepare for trial. When addressing such motions, the trial judge should consider whether the requested information is necessary for the defendant to prepare his defense and to avoid prejudicial surprise.

District Court, 603 P.2d at 129 (citations omitted).

“[A] defendant is not necessarily entitled to receive all the information requested for a bill of particulars.” *Lewis*, 671 P.2d at 989. Indeed, the prosecution is not required to “disclose in detail all evidence upon which it intends to rely.” *Id.* (citation omitted).

Significantly, Colorado's appellate courts have made it clear that "at least in most instances the defendant can obtain adequate information to prepare a defense through the charging document, the preliminary hearing, and the discovery process." *Thomas v. People*, 803 P.2d 144, 154 (Colo. 1990) (citation omitted). And "[w]here the defendant can obtain adequate information through the charging document, preliminary hearing, and discovery process, a bill of particulars is not necessary." *People v. Pineda*, 40 P.3d 60, 66 (Colo. App. 2001) (citation omitted).

A motion for a bill of particulars must be denied when it "calls for conclusions of law or the legal theories behind the prosecution's case" *Kogan v. People*, 756 P.2d 945, 952 (Colo. 1988), *abrogated on other grounds, Erickson*, 951 P.2d 919. Nor is the defendant entitled to receive "discovery of the evidence upon which the prosecution will rely at trial." *Id.* (citing, among other cases, *District Court*, 603 P.2d at 129).

Here, the defendant seeks the following information with respect to each of the 70 counts of attempted extreme indifference murder: "the factual circumstances" showing that his conduct posed "a real and proximate risk of death" to the victim, which he claims "is the element that distinguishes attempted extreme indifference murder from first-degree extreme indifference assault."

Motion at p. 3.² The defendant's motion is inherently flawed because posing a real and proximate risk of death to the victim is not the only difference between attempted extreme indifference murder and extreme indifference assault. *See* Order D-129.

More importantly, what the defendant asks the prosecution to identify are the facts that demonstrate why his conduct warrants charges of attempted extreme indifference murder instead of the lesser offense of extreme indifference assault. Motion at p. 3.³ This is not an appropriate basis on which to request a bill of particulars. Although dressed as a request for factual information, motion D-130 improperly seeks a conclusion of law. *See Kogan*, 756 P.2d at 952. The defendant already has the "factual circumstances" that the People allege support the 70 charges in question. Through the voluminous discovery (now totaling more than

² The defendant cites *People v. Castro*, 657 P.2d 932 (Colo. 1983), for the proposition that the only difference between attempted extreme indifference murder and extreme indifference assault is that the former requires "a real and proximate risk of death." Motion at p. 3. The defendant's reliance on *Castro* is misplaced. As the defendant acknowledges in his reply in support of a separate motion, "the current version of the [extreme indifference murder] statute includes . . . a significant new phrase that was not present in the version considered by *Castro*: 'evidencing an attitude of universal malice.'" D-128 Reply at p. 1 (quoting *People v. Jefferson*, 748 P.2d 1223, 1231 (Colo. 1988)). Indeed, the defendant criticizes the prosecution in that reply brief for relying on *Castro*'s interpretation of the predecessor to the current extreme indifference murder statute. *Id.*

³ The Colorado Court of Appeals rejected the assertion that the offenses of attempted extreme indifference murder and extreme indifference assault are indistinguishable more than a decade ago. *See People v. Ellis*, 30 P.3d 774, 782 (Colo. App. 2001). This Court denied a similar claim in an extensive Order issued on July 29. *See* Order D-129 (ruling that attempted extreme indifference murder and attempted extreme indifference assault are sufficiently distinguishable to allow disparate penalties).

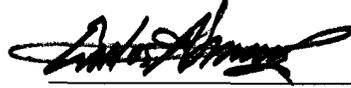
40,000 pages), extensive preliminary hearing (which lasted three days), and the lengthy complaint filed, he is in possession of the facts that the prosecution intends to prove at trial to establish these counts.

In his reply, the defendant avers that “the prosecution has failed to specify what factual circumstances, with respect to each of the attempted extreme indifference murder counts, demonstrates [the requisite] substantial step” toward a “killing.” Reply at p. 1. Contrary to the defendant’s contention, he is not lacking the information necessary to defend against the 70 charges in question. Rather, he disagrees that the facts already discovered suffice to establish a substantial step toward causing a death, “as opposed to just ‘injuring’” another person. *Id.* The jury will ultimately decide whether the prosecution’s evidence is adequate to find the defendant guilty beyond a reasonable doubt on each of the 70 counts at issue. The parties’ disagreement, while understandable, does not entitle the defendant to a bill of particulars. *District Court*, 603 P.2d at 129.

For all the foregoing reasons, the Court concludes that the charging document does not lack specificity with respect to the 70 attempted extreme indifference murder counts. Because the defendant’s motion merely asks for a conclusion of law and challenges the sufficiency of the evidence to obtain a conviction on each of these counts, it fails. *See Kogan*, 756 P.2d at 952; *District Court*, 603 P.2d at 129. Accordingly, it is denied without a hearing.

Dated this 1st day of August of 2013.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Carlos A. Samour, Jr.", written over a horizontal line.

Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2013, a true and correct copy of the Court's **Order Regarding Defendant's Motion for a Bill of Particulars (D-130)** was served upon the following parties of record:

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A handwritten signature in black ink, appearing to read "Kara King", is written over a horizontal line.