

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>
<b>ORDER REGARDING DEFENDANT’S MOTION REQUESTING A          FULL AND FAIR OPPORTUNITY TO LITIGATE CAPITAL MOTIONS          (D-141)</b>	

In Motion D-141, the defendant requests that the Court allow “an opportunity to fully and fairly litigate all capital motions” and that the Court “refrain from issuing premature rulings.” Motion at p. 1. The motion is denied as moot without a response from the prosecution and without a hearing. Consistent with its practice throughout this litigation, the Court will afford the defendant an opportunity to fully and fairly litigate his capital motions and will not issue premature rulings. Accordingly, the motion was unnecessarily filed.

This, however, does not mean that the defendant’s request for hearings will be granted. The Court stands by its past declarations in this case: hearings will be held only when necessary or appropriate, not simply because a party requests them.

Nor is the defendant automatically entitled to file replies in support of all his motions. Replies are appropriate only when responses are filed.

Motion D-141 is premised on a fundamental misunderstanding previously expressed in these proceedings: that the defendant has the right to file a reply brief and to have a hearing whenever he files a motion and requests a hearing, regardless of the nature of the motion or the motion's merit, and regardless of whether a response is filed by the prosecution. *See* Motion D-76a at pp. 4-5; Motion D-95a at p. 3. The defense cites no authority for this proposition, and none exists.

Contrary to the defendant's assertion, the denial of a request for a hearing on one of his motions does not mean that he is being deprived of an opportunity to fully and fairly litigate the motion or that the completeness of the record is being jeopardized. *See* Motion at p. 2. The Court incorporates by reference Order D-76a, which rejected a similar argument as devoid of merit. Order D-76a at p. 3.

The Court notes that it has been consistent in its stance on requests for hearings since the issue was first raised on April 1, 2013. During that Court appearance, defense counsel requested a hearing on "every issue" and "every motion." April 1, 2013 Tr. at p. 17. The Court denied the request, explaining that it was "not willing to stipulate ahead of time . . . to hav[ing] a hearing on all motions filed or all issues raised." *Id.* at p. 18. Instead, the Court instructed counsel that if they wanted to request a hearing on a particular motion, they should

include a request for a hearing within the motion, and “if I think I can rule without a hearing, then I will, over your objection,” but “[i]f I think a [hearing] is necessary, then I’ll have a hearing . . . .” *Id.* at p. 17. Thus, the Court’s determination as to whether to have a hearing on a motion would “just depend on the motion and the issues that come up.” *Id.* at p. 18.

The defendant avers, however, that the opportunity for a hearing is important in light of “the compressed time frame that has been placed on the filing and litigating of [capital motions] issues . . . .” Motion at pp. 2-3. The Court is unconvinced. First, the Court proposed, not imposed, the deadlines related to capital motions, and the parties and counsel accepted those deadlines. *See* June 25, 2013 Tr. at pp. 2-6. Second, the Court granted the defense’s request for an extension of the filing deadline for such motions, and, on its own, significantly extended the deadline for the replies. *See* Order D-140.

The defendant’s position is particularly unpersuasive with respect to motions on which he was the only party heard. According to the defendant, however, the fact that the People did not have an opportunity to be heard on some of his motions was improper because it obviated the need for him to file a reply. Motion at p.1. In addition to lacking standing to object on the People’s behalf, the defendant’s position is untenable.

The purpose of a reply is to allow a party to address arguments raised in the opposing party's response, but where no response is filed, there is no need for a reply and a reply is improper. Tellingly, the defendant fails to articulate what prejudice he believes he suffered as a result of being the only party heard on some of his motions. As to those motions, he had no opportunity to file a reply because the People did not file a response opposing his motions. Therefore, there were no arguments to which he could reply. It is unreasonable for the defendant to continue to maintain that the People should have been allowed to file a response *opposing* his motions just so that he could have submitted a reply.

Because this is an argument that has been previously submitted and denied as meritless, it is denied as such again. *See* Motions D-76a at pp.3-4 and D-95a at pp. 2-3; Orders D-76a at pp. 6-7, and D-95a at pp. 2-3 n.1. The relevant portions of Orders D-76a and D-95a are incorporated by reference.

The defendant implies that, to the extent the Court has ruled on any of his motions without a response from the prosecution, it has issued "premature rulings." Motion at p. 1. The defendant is mistaken. The Court has not issued any premature rulings, and the record so reflects. Notably, some of the Orders which the defendant criticizes as "premature" actually granted the relief he requested. Additionally, the defendant chose not to file a reply on some of the motions as to which the prosecution filed responses. If the Court must necessarily review the

defendant's replies before ruling on his motions in order to avoid prejudice to him, the defendant presumably would have filed replies in support of all the motions to which the People responded. Moreover, the defendant submitted specific objections with respect to two Orders that resolved a motion without a response from the prosecution—and, therefore, without a reply from him—and in each instance, he filed an additional brief, which the Court treated as a request to reconsider. *See generally* Motions D-76a and D-95a; Orders D-76a and D-95a. In fact, with respect to Motion D-76, he submitted three additional filings: Motion D-76a, Motion D-135, and Motion D-135a.

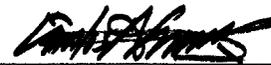
As an extension of his objection to rulings before the prosecution's responses were filed, the defendant implies that such rulings could be viewed as indicative of partiality. Motion at p. 1. As the Court understands it, the defendant's argument goes something like this: (1) the Court ruled on some of the defendant's motions without allowing the prosecution to be heard on them; (2) as a result of no responses being filed by the prosecution, the Court could not consider the defendant's "reply . . . before it rule[d] on those motions;" 3) therefore, the Court may have violated its role as an "impartial arbiter" and may have prejudiced

him. *See id.* This is a logical *non sequitur*, and the fact that it continues to be raised does not make it less so.<sup>1</sup>

For all the foregoing reasons, the Court concludes that Motion D-141 was unnecessarily filed and is, therefore, moot. Accordingly, it is denied. The defendant's request for a hearing on this motion is also denied, as is his request to allow the prosecution to file a response.<sup>2</sup>

Dated this 3<sup>rd</sup> day of September of 2013.

BY THE COURT:



Carlos A. Samour, Jr.  
District Court Judge

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<sup>1</sup> As the Court explained in Order D-95a, the defendant's position incorrectly assumes that the Court is restricted in any ruling denying a defense motion to the analysis presented by the prosecution, and if the Court's analysis is different than that contained in the prosecution's filing, it acts with partiality in favor of the prosecution. *See* Order D-95 at pp. 2-3 n.1. There already have been a few occasions in this case in which the Court has found that neither party presented the most applicable authority or the correct legal analysis. In other cases, the Court has sided with a party, but on different grounds than those advanced by that party. While the Court may not raise *issues* on its own—and it has not done so—it has a responsibility to independently research every request submitted by the parties, regardless of who submits it, and to do its utmost to resolve it correctly on the merits by faithfully applying the law based on the record and the relevant circumstances. As to the motions the Court decided without a response or a reply, only two of which were substantive—one which the Court viewed as a motion to reconsider and the other which conceded it was inconsistent with Colorado case law—it did just that, and it would have done the same if a response had been deemed necessary and a reply had thereafter been filed.

<sup>2</sup> The Court does not intend to rule on any of the capital motions before the deadline for the People's responses expires and, therefore, before the defendant's replies are filed. As indicated in a previous Order, the Court was very selective in deciding which non-capital motions should be resolved without a response. *See* Order D-76a at p. 7. In terms of the defendant's request for hearings, the Court notes that it has already concluded that hearings are appropriate on Motions D-151, D-152, and D-154. *See* Order C-54 at p. 2. The Court will determine whether to grant hearings on the rest of the parties' capital motions after it has carefully reviewed them.

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2013, a true and correct copy of the **Order regarding defendant's motion requesting a full and fair opportunity to litigate capital motions (D-141)** was served upon the following parties of record:

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