REDACTED

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: **201**
ORDER REGARDING DEFENDANT'S MOTION TO PREVENT DEATH QUALIFICATION OF THE JURY (D-150)	

INTRODUCTION

In Motion D-150, the defendant asks the Court "to prevent death qualification of the jury in this case on the basis that it violates his rights under . . . the United States Constitution and . . . the Colorado Constitution." Motion at p. 1. The prosecution opposes the motion. *See generally* Response. For the reasons articulated in this Order, the Court concludes that the motion is meritless. Accordingly, it is denied without a hearing.

ANALYSIS

The defendant argues that, "in large part due to the death-qualification of the jurors," "there are no guarantees that any death sentence is constitutional." Motion at p. 1. The defendant, therefore, asks the Court to prevent the death qualification

of the jury. *Id.* This request has been considered and rejected by the United States Supreme Court and the Colorado Supreme Court. The Court is bound by that authority. Thus, the defendant's motion fails.

Almost three decades ago, the United States Supreme Court held in *Lockhart v. McCree* that the United States Constitution "does not prohibit the States from 'death qualifying' juries in capital cases." 476 U.S. 162, 173, 106 S.Ct. 1758, 90 L.Ed.2d 137 (1986). The Court explained that death qualification does not violate the defendant's Sixth Amendment right to have a jury selected from a fair cross-section of the community: "[w]e have never invoked the fair-cross-section principle to . . . require petit juries, as opposed to jury panels or venires, to reflect the composition of the community at large." *Id.* (citations omitted). The Court added that, "even if [it] were willing to extend the fair-cross-section requirement to petit juries, [it] would still reject the . . . conclusion that 'death qualification' violates that requirement" because "[t]he essence of a 'fair-cross-section' claim is the systematic exclusion of a 'distinctive' group in the community," such as racial minorities or women, for reasons unrelated to their ability to carry out the duties of a juror. *Id.* at 174-75, 106 S.Ct. 1758 (quotation omitted). The Court observed that "groups defined solely in terms of shared attitudes that would prevent or substantially impair members of the group from performing one of their duties as

jurors . . . are not 'distinctive groups' for fair-cross-section purposes." *Id.* at 174, 106 S.Ct. 1758.

The Colorado Supreme Court adopted the holding in *Lockhart* in *People v. Drake*:

> Far from being impermissible, exclusion of prospective jurors solely on the basis that they are unable under any circumstances to impose the death penalty serves the state's legitimate interest in having a single jury that can consider the facts impartially and conscientiously apply the law in the case at both the guilt-innocence and sentencing phases of a capital trial. We conclude that the defendant's sixth amendment right to trial by a fair and impartial jury was not infringed.

748 P.2d 1237, 1245 (Colo. 1988) (citations omitted). Two years later, the Court addressed "the proper standard for resolving challenges for cause in capital cases" based on jurors' views of the death penalty. *People v. Davis*, 794 P.2d 159, 203 (Colo. 1990), *overruled on other grounds*, *People v. Miller*, 113 P.3d 743 (Colo. 2005). The Court turned to the decision in *Wainwright v. Witt*, 469 U.S. 412, 105 S.Ct. 844, 83 L.Ed.2d 841 (1985), for guidance and endorsed the standard announced there:

> In *Witt*, the Court determined that a juror may be excluded because of his views on capital punishment if "the juror's views would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.'" *Witt*, 469 U.S. at 424, 105 S.Ct. at 852 (footnote omitted). The Court rejected the argument that the prosecutor need show that the juror would "automatically" vote against the death penalty.

Davis, 794 P.2d at 203.

Significantly, the *Lockhart* Court rejected the assertion that empirical studies have demonstrated that the exclusion of jurors irrevocably opposed to the death penalty results in a "conviction-prone" jury. *Lockhart*, 476 U.S. at 168-73, 106 S.Ct. 1758. Further, the Court found that, even if death-qualified juries are more likely to convict, the Constitution does not require a jury composed of an exact balance of individuals of various philosophical predispositions. *Id.* at 177-79, 106 S.Ct. 1758. Rather, what the Constitution requires is a jury of individuals who indicate an ability both to set aside any preconceptions they may have and to decide the case based on the evidence presented at trial and the instructions of law provided by the Court. *Id.* As the Court eloquently observed:

> [I]f it were true that the Constitution required a certain mix of individual viewpoints on the jury, then trial judges would be required to undertake the Sisyphean task of "balancing" juries, making sure that each contains the proper number of Democrats and Republicans, young persons and old persons, white-collar executives and blue-collar laborers, and so on. Adopting [the defendant's] concept of jury impartiality would also likely require the elimination of peremptory challenges, which are commonly used by both the State and the defendant to attempt to produce a jury favorable to the challenger.

Id. at 178-79, 106 S.Ct. 1758.

Relying on the Capital Jury Project ("CJP"), however, the defendant avers that more recent "ground-breaking social science research" shows that "the theories underlying the current death machinery with regard to the sentencing jurors do not actually manifest in reality." Motion at p. 1. According to the

defendant, this research proves "that death qualification produces juries that are both partial to the prosecution and prone to convict," "that those prone to convict are also likely to reach a premature decision that a death sentence should be imposed," and that "the death qualification process [] strongly influences potential jurors to become predisposed in ways that are prejudicial to the rights and interests of capital defendants." *Id.* at p. 2. The Court addressed the CJP research in Order D-149. For all the reasons articulated in that Order, the Court is not persuaded by the CJP research. *See generally* Order D-149.

Apparently realizing the binding effect of *Lockhart* and its Colorado progeny, the defendant maintains that those cases are inapposite because they did not address the "specific issues raised by [his] pleading regarding the impact that death-qualification has upon a defendant's right to a fair and impartial jury at ***sentencing***." Reply at p. 1 (emphasis in original). The defendant notes that *Lockhart* "addressed only the issue that death-qualified jurors were more likely to ***convict***." Motion at p. 2 (emphasis added). The defendant also contends that *Lockhart* is distinguishable because it was "decided exclusively on Sixth Amendment grounds and did not address . . . [the defendant's] Eighth Amendment and due process claims." Reply at p. 1; *see also* Motion at pp. 6-7 (mentioning, in addition, the defendant's right to equal protection of the law). The defendant cites no authority in support of these propositions. None exists. No case, either at the

federal level or at the state level, has interpreted the holding in *Lockhart* as narrowly as the defendant does. Nor has any court determined that the Eighth Amendment, the right to equal protection, or the Due Process Clause renders the decision in *Lockhart* obsolete.

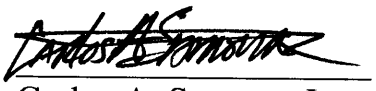
Because the Court disagrees with the defendant "that death-qualification of capital juries violates the [United States and Colorado Constitutions]," it need not consider his proposed "procedures that are alternative to those set forth in Colorado's capital sentencing statute." Reply at p. 2. In any case, the defendant's alternative suggestions lack merit. The first "alternative" is not an alternative at all; it is a restatement of the defendant's primary position—the defendant "moves this Court to . . . [p]revent any death qualification of the jury in this case and in fact mandate life qualification." Motion at p. 7. The remaining two alternatives involve empanelling two separate juries, *id.* at p. 8, which is inconsistent with Colorado law. *See* § 18-1.3-1201(1)(a), C.R.S. (2013) ("The [sentencing] hearing shall be conducted by the trial judge ***before the trial jury*** as soon as practicable") (emphasis added).

CONCLUSION

For all the foregoing reasons, the Court concludes that Motion D-150 lacks merit. Accordingly, it is denied without a hearing.

Dated this 22nd day of April of 2014.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2014, a true and correct copy of the Court's **Order Regarding Defendant's Motion To Prevent Death Qualification Of The Jury (D-150)** was served upon the following parties of record:

Karen Pearson
Amy Jorgenson
Rich Orman
Dan Zook
Jacob Edson
Lisa Teesch-Maguire
George Brauchler
Arapahoe County District Attorney's Office
6450 S. Revere Parkway
Centennial, CO 80111-6492
(via email)

Sherilyn Koslosky
Rhonda Crandall
Daniel King
Tamara Brady
Kristen Nelson
Colorado State Public Defender's Office
1290 S. Broadway, Suite 900
Denver, CO 80203
(via email)