

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>26</b>
<b>ORDER REGARDING DEFENDANT’S MOTION FOR A FAIR TRIAL          UNENCUMBERED BY AN UNNECESSARY DISPLAY OF          COURTROOM SECURITY (D-76)</b>	

This matter is before the Court on the defendant’s motion D-76. To the extent the motion seeks “a fair trial, unencumbered by an unnecessary display of courtroom security,” *see* Motion at p. 1, it is granted. However, the Court disagrees with one of the objections raised in the motion.<sup>1</sup>

The defendant complains about different security measures that have been in place at the courthouse and in the courtroom during previous proceedings in this case. Specifically, he opposes: (1) the presence of law enforcement at the

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<sup>1</sup> The defendant requested a hearing on this motion. The Court resolves the motion without a hearing for the following reasons: (1) a hearing is unnecessary; (2) the Court has substantial discretion in determining necessary security procedures at the courthouse and in the courtroom; (3) the defendant was the only party heard on this motion, as the deadline for the People’s response will not expire until next week; and (4) the Court largely grants the motion.

courthouse, including armed security on the roofs of the buildings and uniformed law enforcement personnel in the parking lots and grounds surrounding the courthouse; (2) the use of shackles on his person while in the courtroom; (3) the presence of eight uniformed Sheriff's deputies in the courtroom; and (4) the proximity of the Sheriff's deputies to the defense table during hearings.

The defendant argues that “[t]he extraordinary and unnecessary display of security if continued at trial would be prejudicial” to him. *Id.* at p. 2 (emphasis omitted). In addition, the defendant asserts that the display of security at the upcoming motions hearings will be troubling to the extent it deprives him of the opportunity to confer confidentially with his lawyers. *Id.* at p. 1. The defendant's concerns are valid. However, they must be balanced against concerns related to safety and security.

“The presumption of innocence requires that every defendant be brought before the court with the appearance, dignity, and self-respect of a free and innocent person, except as is otherwise required for the safety and decorum of the court.” *People v. Melanson*, 937 P.2d 826, 835 (Colo. App. 1996). When a defendant is required to appear before the jury in visible restraints, it directly undermines the presumption of innocence. *People v. Knight*, 167 P.3d 147, 153 (Colo. App. 2006); *see also People v. James*, 40 P.3d 36, 41 (Colo. App. 2000) (“compelling a defendant to stand trial wearing identifiable prison clothing violates

the right to wear the ‘garb of innocence’”). Such a practice is “inherently prejudicial.” *Holbrook v. Flynn*, 475 U.S. 560, 568, 106 S.Ct. 1340, 1345-46, 89 L.Ed.2d 525 (1986). Therefore, the only restraints permitted are those which the Court “determines, in its discretion, are necessary to ensure that defendant remains in custody, will not endanger court personnel or others in the courtroom, and will not disrupt the trial.” *Melanson*, 937 P.2d at 835; *see also Knight*, 167 P.3d at 153 (“the court may deny a defendant’s request to appear unrestrained and in street clothes only when necessary for physical security, prevention of escape, or courtroom decorum”); *James*, 40 P.3d at 41 (reversible error occurs only if the defendant is forced to appear “manacled or restrained” before the jury even though the restraints are unnecessary and prejudicial).

Where, as here, the defendant has been accused of multiple violent crimes, “public safety may require that physical restraints be imposed.” *Melanson*, 937 P.2d at 835. In such instances, however, the Court must undertake “reasonable efforts . . . to prevent jurors from seeing the restraints.” *Id.* Further, the Court “should pursue the least restrictive means available.” *Id.*

Consistent with the defendant’s presumption of innocence, the Court orders that the procedures set forth in this Order be followed during the trial. The Court notes that the Sheriff has agreed to these procedures.

First, given the multiple violent charges in this case, public safety requires that the defendant must remain restrained during the trial. However, he will not be in handcuffs or shackles. Instead, he will wear a harness under his clothing which will not be visible to the jury. The harness will have a cable which will be anchored to the floor. Although the cable may be visible, its color and appearance will allow it to be masked by computer cables at defense counsel's table.

Second, the Sheriff has agreed to have all but four of his deputies in the courtroom dressed in civilian clothes during the trial.

Third, the Sheriff's deputies assigned to the courtroom will keep a reasonable distance from defense counsel's table during the trial to allow the defendant and his attorneys to confer confidentially. The defendant's constitutional rights to counsel and due process warrants extending this procedure to the motions hearings. Further, if at any point, defense counsel feel that more privacy is necessary, they may raise the issue with the Court. The Court will do its best to accommodate their request.


These procedures are obviously subject to change based on the need for additional security. The Court trusts the Sheriff's expertise on security and safety issues and will continue to be guided by his judgment.

The objection to the presence of law enforcement at the courthouse, including armed security on the roofs of the buildings and uniformed law

enforcement personnel in the parking lots and grounds surrounding the courthouse, is overruled. After speaking with the Sheriff, the Court is convinced that these measures are absolutely necessary to ensure the safety of the public and the participants, including the defendant. The deputies assigned to these areas of the courthouse and the surrounding grounds act as “the eyes and ears” of the Sheriff and are essential to allow him to discharge his awesome responsibilities effectively. To alleviate defense counsel’s concern, the Court is open to providing an instruction or admonishment to prospective jurors and seated jurors related to these and other safety measures.

Dated this 27<sup>th</sup> day of June of 2013.

BY THE COURT:



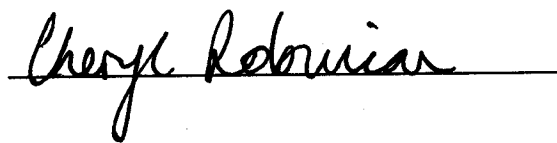
Carlos A. Samour, Jr.  
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2013, a true and correct copy of **Order regarding defendant's motion for a fair trial unencumbered by an unnecessary display of courtroom security (D-76)** was served upon the following parties of record:

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