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 SPECIFIC DISCOVERY—WITNESS/VICTIM STATEMENTS MADE TO LISA TEESCH-MAGUIRE (D-47)

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. In Motion D-47 he asks that "all statements made by victims and/or witnesses be disclosed to the defense." Motion at p. 2. The People oppose the motion. For the reasons articulated in this Order, the motion is denied without a hearing.

The defendant first argues that Rule 16 of the Colorado Rules of Criminal Procedure "clearly entitle[s]" him to "all statements made by victims and/or witnesses." *Id.* The Court disagrees.

Rule 16 requires neither the disclosure of all oral statements nor the reduction of all oral statements to writing. *People v. Knight*, 167 P.3d 147, 155 (Colo. App. 2006) ("[t]he prosecution was not required to reduce the officer's oral statement to writing or furnish the substance of her anticipated testimony") (citation omitted); *People v. Graham*, 678 P.2d 1043, 1047 (Colo. App. 1983) ("there is no duty of the prosecution to reduce oral interviews with witnesses to writing and to provide the same to defense counsel") (citation omitted). Rule 16 "specifically requires disclosure *only* of the substance of oral statements made by the accused, or, if a joint trial is to be held, by a co-defendant." *People v. Garcia*, 627 P.2d 255, 259 (Colo. App. 1980) (emphasis added). This restriction "suggests that, aside from the[] specified situations, additional disclosure is not mandated." *Id.*

Further, unless a witness's statement is exculpatory, there is no requirement to reduce it to writing and to discover it. *Knight*, 167 P.3d at 155 ("[b]ecause the [oral] statement was not exculpatory, disclosure was not required"). Thus, the only witness statements that must be discovered are those that are exculpatory or recorded. As the Court explained in *People v. Denton*, 91 P.3d 388, 391 (Colo. App. 2003):

> In our view, the current Crim. P. 16(I)(a)(1)(I) only requires the prosecution to provide the defense with the written statements of witnesses or any written reports that quote or summarize oral statements made by witnesses. If the supreme court had intended the

> amendment of Crim. P. 16(I)(a)(1)(I) to require the disclosure of unrecorded oral statements, then it would have so specified as it did elsewhere in Crim. P. 16. *See, e.g.*, Crim. P. 16(I)(a)(1)(VIII) (the prosecuting attorney shall make available "the substance of any oral statements made to the police or prosecution by the accused or by a codefendant, if the trial is to be a joint one").

Accordingly, the defendant's motion is denied to the extent that it requests the discovery of witness statements that are not exculpatory or recorded.

To the extent that the motion requests statements that are exculpatory or recorded, and therefore mandatorily discoverable, it is rejected as improperly filed pursuant to Rule 16(V)(a). Rule 16(V)(a) provides that motions for discovery should not be filed with respect to information that the prosecution is already required to disclose under Rule 16(I)(a).

The defendant next appears to contend that if the discovery sought is not required under Rule 16(I)(a)(1)(I), it should be ordered in the Court's discretion pursuant to Crim. P. 16(I)(d)(1). Reply at p. 2 (incorporating by reference part of his Motion D-71 Reply). This contention is untimely because it was raised for the first time in the reply. More importantly, it is unpersuasive.

Rule 16(I)(d)(1) vests the Court with discretion to "require disclosure . . . of relevant material and information" not covered by Rule 16(I)(a) "upon a showing by the defense that the request is reasonable." To make this showing, however, "the defense must demonstrate that the information sought is: (1) relevant to the conduct of the defense, and (2) unavailable from any source other than the

prosecution." *People v. Vlassis*, 247 P.3d 196, 198 (Colo. 2011). Here, the defendant has not asserted, much less demonstrated, that the disclosure sought is relevant to the conduct of the defense.

The Court notes that the People represent that they "have already provided written statements of the victims and witnesses to the defense in discovery." Response at p. 1. Further, according to the People, they understand that oral statements containing exculpatory information must be reduced to writing and discovered. *Id.* at p. 2. The People add that "[e]very written victim and/or witness statement that has exculpatory information or information about the crimes alleged in this case has been or will be provided to the defense through discovery." *Id.* at p. 3. The People also assure the Court that they "are fully aware" of their discovery obligations, and that they have complied with those requirements and plan to continue to do so. *Id.* at p. 1.

Although the defendant does not directly dispute the People's representations, he questions their credibility for two reasons: (1) he "finds it difficult to believe that no victim or witness has made any sort of statement, or had any kind of conversation with [the prosecution], in which a victim or witness has expressed, for example, a desire for the prosecution not to seek the death penalty, or a desire to bring this case to a swift resolution without a capital trial[;]" and (2) he claims that the prosecution's office has committed discovery violations in other

death penalty cases. Reply at pp. 2-3 (incorporating by reference part of his Motion D-71 Reply). The defendant urges that "this Court cannot simply rely on the prosecution's" representations and assurances. Motion D-71 Reply at p. 1. The Court cannot do otherwise.

Even if it wanted to do so, and even if such were appropriate, the Court cannot review every discovery decision made by the prosecution because the Court does not have access to the discovery, the evidence, or the witnesses. The Court also does not have the time to carry out such a labor-intensive task. Ultimately, at least to a large extent, both the Court and the defense in every criminal case must trust that the prosecution will discharge its discovery obligations in accordance with the law and its ethical duties. As the Colorado Supreme Court has explained, in the typical case, the trial court becomes involved in discovery issues "only after the defense learns that exculpatory evidence has been withheld and brings it to the court's attention." *People v. Dist. Court*, 790 P.2d 332, 338 (Colo. 1990). Absent such a dispute, the automatic disclosure provisions of Rule 16 "minimize[] the need for supervision of basic discovery by the trial court." *Id.* at 337 (citations omitted).

The Court is also unpersuaded that the order requested by the defendant is warranted. The defendant relies in part on conjecture to raise suspicions about the veracity of the People's representations. He speculates that he must be missing

discovery given that "witnesses are reporting to defense investigators that the prosecution has had extensive and repeated contact with them." Reply at p. 1. Simply because witnesses are having a lot of contact with the prosecution does not mean that they are making exculpatory statements that must be reduced to writing and discovered or that they are recording additional statements that must be disclosed.

The other basis of the defendant's skepticism is the alleged history of discovery violations by the prosecution's office. To the extent that the defendant's claim is accurate, the Court does not understand how the situation would be ameliorated through an order. The Court cannot issue an order which magically accomplishes that which Rule 16 and the case law cannot. The issue is not the lack of discovery mandates or requirements—whether through Rule 16, the case law, or an order. The issue is whether the prosecution complies with those mandates or requirements. Simply because the Court lists them in an order does not make compliance more likely. Nor would it be wise for the Court to attempt to issue an all-inclusive Order that contains every single discovery requirement with which the prosecution must comply.

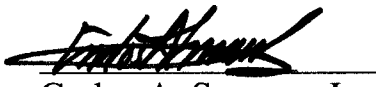
The prosecutors handling this case are experienced and are presumed and expected to be familiar with all of their discovery obligations and to fully comply with them. The record in this case does not reflect a single discovery violation as

of the date of this Order. The Court cannot issue orders in this case based on discovery violations purportedly committed in unrelated cases.

For all the foregoing reasons, the Court concludes that Motion D-47 lacks merit. Accordingly, it is denied without a hearing.

Dated this 16th day of August of 2013.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2013, a true and correct copy the **Order regarding defendant's motion for specific discovery – witness/victim statements made to Lisa Teesch-Maguire (D-47)** was served upon the following parties of record:

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