

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 JUROR QUESTIONNAIRE (D-82-B)	

In Order D-82, the Court granted the defendant's motion to require all prospective jurors to complete a written questionnaire in Court and under oath before the verbal jury selection process commences. Order D-82 at p. 1. Thereafter, in Order D-82-A, the Court asked the parties to confer in order to attempt to agree on a juror questionnaire. Order D-82-A at p. 1. Despite the parties' good faith efforts, they were unable to reach an agreement. Accordingly, pursuant to Order D-82-A, each party submitted a separate proposed questionnaire. The Court held a hearing on the proposed questionnaires on October 7, 2013. This Order addresses each party's requests and objections.

A. Prosecution's Requests and Objections

First, the parties agree that the prosecution's proposed questionnaire includes more background questions than does the defendant's proposed questionnaire. The defendant does not object to the additional questions, but he believes they will be of little value. It is difficult for the Court to ascertain with any degree of accuracy how valuable the prosecution's background questions will be; however, without objection, the Court allows the questions.

Second, the prosecution objects to question number 29 in the defendant's proposed questionnaire because it may elicit privileged information. The defendant acknowledges that question number 29 may have been inartfully phrased; he suggests modifying it as follows: "Do you have strong opinions—good or bad—about mental health providers?" The Court adopts the defendant's revised version of question number 29.

Third, the prosecution argues that prospective jurors should not be asked to state their current address. The Court agrees. Therefore, this objection is sustained.

Fourth, the prosecution asks the Court to include an estimated trial schedule in the questionnaire. The defendant agrees with this request, but questions the accuracy of the prosecution's estimate. The Court agrees with the defendant that it is better to err on the side of overestimating the duration of the trial. Accordingly,

the Court will instruct prospective jurors that individual voir dire will last approximately two to three months and that the trial itself may last four to five months.¹ As such, they should plan to be available to serve on this case for six to eight months.

Fifth, the prosecution asks the Court to attach to the questionnaire a list of the attorneys and attorneys' staff members, and to inquire whether prospective jurors recognize any of those names. Without objection, the Court will attach such a list to the questionnaire. The parties shall provide a joint, comprehensive list of attorneys and attorneys' staff to the Court by no later than January 3, 2014. The parties must also provide a joint, comprehensive list of witnesses to be attached to the questionnaire by the same date so that prospective jurors can indicate whether they recognize any of those names.

Lastly, the prosecution notes that, while both proposed questionnaires seek information about certain biases, the defendant's proposed questionnaire omits the follow-up questions related to whether prospective jurors can set aside those biases and decide the case based solely on the evidence presented at trial and the instructions of law provided by the Court. The defendant contends that the follow-up questions should not be included because prospective jurors cannot accurately

¹ This estimate accounts for: (1) the two or three weeks it will take the Court and the parties to receive, review, and discuss questionnaires; (2) the two months the prosecution estimates it will take to present its case; (3) the three weeks the defendant estimates it may take to present his case; and (4) any capital sentencing hearing held, which could take a month or longer.

answer them without being provided additional context. While it is possible that some prospective jurors may not answer the follow-up questions in the questionnaire as completely and accurately as possible, the Court finds that the questions should nevertheless be asked.

The Court agrees with the prosecution's recitation of Colorado law on this issue. "The mere expression of some concern by a prospective juror regarding a certain aspect or issue of a case should not result in automatic dismissal of that prospective juror for cause." *People v. Arko*, 159 P.3d 713, 720 (Colo. App. 2006) (citations omitted), *rev'd on other grounds, Arko v. People*, 183 P.3d 555 (Colo. 2008) (citations omitted). Moreover, "dismissal for cause is not required merely because a prospective juror answers questions in a way that might indicate some bias, prejudice, or preconceived notion." *Id.* (citations omitted). "Rather, the decisive question is whether it is possible for the prospective juror to set aside her preconceived notions and decide the case based on the evidence and the court's instructions." *Id.* (citing *People v. Lefebre*, 5 P.3d 295, 301 (Colo. 2000), among other cases).

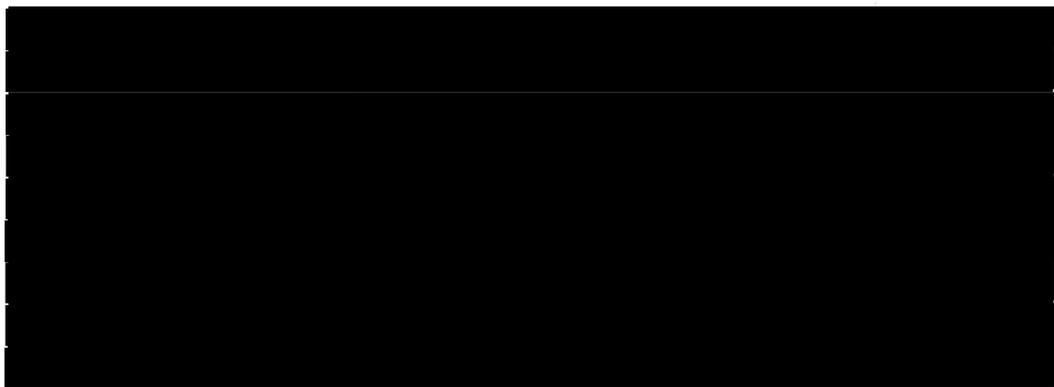
Pursuant to the applicable legal standard, the Court concludes that the follow-up questions in the prosecution's proposed questionnaire are appropriate. The Court understands the defendant's objection, but both parties will have an opportunity to question any prospective jurors who indicate they have a bias,

regardless of whether they state they can set such bias aside or not. In the event that a prospective juror indicates that he cannot set aside a particular bias, that information may allow the parties to reach a stipulation to release him without further questioning.

B. Defendant's Requests and Objections

First, although both proposed questionnaires include questions related to mental health issues, the defendant asks to have those questions appear under a "Mental Health" or "Mental Illness" subheading. The prosecution does not object to this request, and the Court finds that it has merit. Accordingly, it is granted.

Second, the defendant requests that the prospective jurors be asked whether they think that people should be able to plead not guilty by reason of insanity, a complete defense to the crime of first degree murder. The Court agrees that this is an appropriate area of inquiry. However, because the Court is concerned that prospective jurors may misunderstand the proposed question, the Court proposes amending it as follows:



[REDACTED]

[REDACTED]

Lastly, the defendant asks to have the questions in the questionnaire numbered sequentially. The Court agrees that this is the preferable method of numbering the questions in the questionnaire.

Dated this 9th day of October of 2013.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

² The parties may be heard on this proposed change at the October 10 hearing.

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2013, a true and correct copy of the **Order regarding juror questionnaire (D-82-B)** was served upon the following parties of record:

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