

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>202</b>
<b>ORDER REGARDING DEFENDANT'S MOTION TO RECONSIDER          COURT'S IMPLEMENTATION OF TIME AND SUBJECT MATTER          LIMITATIONS ON GENERAL VOIR DIRE (D-228)</b>	

In Order D-78, the Court allowed individual *voir dire* on the topics of death qualification and publicity. Order D-78 at p. 2. At the prosecution's request and with the defendant's agreement, the Court subsequently added undue hardship to the list of individual *voir dire* topics. Order D-78a at pp. 1-2. Months later, over the prosecution's objection, the Court granted the defendant's request to include the issue of insanity during individual *voir dire*. Order D-154a at p. 1. In Order D-154a, the Court noted that it would preclude the parties from questioning prospective jurors during general *voir dire* about the issues included in individual *voir dire*. *Id.* at p. 4. Accordingly, the Court concluded that 75 minutes was sufficient for each party to conduct general *voir dire*. *Id.*

In Motion D-228, the defendant asks the Court to reconsider both of the general *voir dire* limitations articulated in Order D-154a: the limitation on the subject matters that may be discussed and the time limitation. Motion at pp. 1-2. The motion is denied without a hearing.

First, the defendant asks the Court to allow him to question prospective jurors during general *voir dire* about the select topics on which the Court has permitted individual *voir dire*. See Orders D-78, D-78a, and D-154a. The primary reason the Court has allowed some individual *voir dire* is that it recognizes that there are topics that are sensitive and risk eliciting answers that may taint the rest of the panel. Indeed, it was the defendant who first raised this point: “[p]rospective jurors may be disinclined to give forthright or complete answers to questions involving sensitive and/or personal questions knowing that their neighbors and other community members are privy to the information disclosed.” Motion D-78 at p. 1. In Motion D-78, the defendant contended that “[r]equiring jurors to answer questions that may involve sensitive topics in the presence of others” creates “the grave potential to taint the entire panel,” thereby “jeopardiz[ing] the ability of this Court and counsel to select and swear in a fair and impartial jury,” in violation of his “fundamental rights.” *Id.* at p. 2. Now the defendant claims just the opposite: the Court must allow general *voir dire* on these and all other topics “in order to ensure that [his] state and federal constitutional

rights to a fair trial by an impartial jury and a fair and reliable sentencing proceeding are fully vindicated.” Motion at p. 3 (citations omitted).

In other words, according to the defendant, if the Court allows general *voir dire* on the topics selected for individual *voir dire*, it violates his constitutional rights. But if the Court fails to allow general *voir dire* on the topics selected for individual *voir dire*, it also violates his constitutional rights.

The defendant cannot have it both ways. As the old adage goes, “you can’t have your cake and eat it too.” Either the subject matters set aside for individual *voir dire* are suitable for general *voir dire*, in which case individual *voir dire* is unnecessary, or they are not, in which case, they should not be included in general *voir dire*. If the defendant wishes to withdraw his request for individual *voir dire*, the Court will accept it and will hold only general *voir dire*. In fact, the Court will grant each party two weeks of general *voir dire*. Otherwise, the defendant should not seek reconsideration of an Order he specifically requested.<sup>1</sup>

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<sup>1</sup> If the defendant does not submit a motion to withdraw his request for individual *voir dire*, the Court will instruct the prospective jurors at the beginning of general *voir dire* that counsel are not allowed to discuss with them the subject matters covered during individual *voir dire*. The Court will further give the prospective jurors an opportunity to indicate whether there is anything they wish to talk about before general *voir dire*, including additional pertinent thoughts they may have had since individual *voir dire*, whether they have changed their mind or have had a change of heart about any of the discussion during individual *voir dire*, whether they wish to amend or supplement any answers provided during individual *voir dire*, and whether they are having second thoughts about the commitments made during individual *voir dire*. If anyone answers any such questions in the affirmative, the Court will ask follow-up questions outside the presence of the other prospective jurors.

Second, the defendant asks the Court to reconsider the 75-minute time limitation placed on general *voir dire*. Motion at p. 1 (citing Order C-154a at p. 3). 75 minutes should be ample time to conduct general *voir dire* considering the lengthy questionnaire the Court will use, as well as the months-long individual *voir dire*. By the time general *voir dire* occurs, counsel will have extensive information about each of the prospective jurors in the courtroom. Therefore, the defendant's request for no time limit is unwarranted.<sup>2</sup>

The defendant maintains that “[i]t will be a monumental task to adequately inquire of all [the] prospective jurors” to be questioned during general *voir dire*. If general *voir dire* constituted the entire jury selection process, the defendant may have a point. Because general *voir dire* is actually only a small part of the elaborate jury selection process the Court will utilize in this case, the defendant's contention lacks merit.

Dated this 29<sup>th</sup> day of August of 2014.

BY THE COURT:



Carlos A. Samour, Jr.  
District Court Judge

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<sup>2</sup> In the Court's experience, setting no time limits on counsel is generally not a wise idea if the Court wishes to keep proper control of the proceedings.

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2014, a true and correct copy of the **Order regarding Defendant's motion to reconsider Court's implementation of time and subject matter limitations on general voir dire (D-228)** was served upon the following parties of record:

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