

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: 202
ORDER AMENDING ORDER D-154-a (D-154-a-3)	

In Order D-154-a, over the defendant’s objection, the Court limited “each party’s individual *voir dire* questions to 20 minutes per prospective juror.” Order D-154-a at p. 3.¹ The Court further ruled that, “[b]ased on this 20-minute time limitation,” it would “schedule 12 prospective jurors per day for individual questioning (six in the morning and six in the afternoon).” *Id.* For the reasons articulated in this Order, the Court *sua sponte* reconsiders these decisions. Therefore, Order D-154-a is modified in accordance with this Order.

While working on its introductory remarks for prospective jurors and its subsequent video recorded remarks for individual *voir dire*, the Court reviewed

¹ The Court did not place time limits on arguments related to challenges for cause or hardship. *See* Order D-154-a at p. 3 n.1. However, the Court put the parties on notice that they must be efficient in order to avoid time limits on such arguments. *Id.*

some of the jury selection Orders it has issued in this case. For multiple reasons, the Court concludes that it should amend Order D-154-a. Instead of 20 minutes, each party shall have 10 minutes with each prospective juror during individual *voir dire*, and instead of 12 prospective jurors, the Court will plan to bring in 18 prospective jurors per day (nine in the morning and nine in the afternoon).

First, the Court's videotaped remarks will extensively educate the prospective jurors about the law, relieving counsel of that task.

Second, the Court has decided it will question prospective jurors when they first enter the courtroom, after they have watched its videotaped remarks. This should cut down on the need for the parties to ask certain questions.

Third, and perhaps more importantly, in other serious cases, such as non-capital first degree murder cases, on average, counsel have a little more than one minute to speak to each prospective juror during jury selection. The Court understands that the defendant is facing the death penalty, but defendants charged with first degree murder in non-capital cases also face a severe sentence—mandatory life imprisonment without the possibility of parole. Here, counsel are getting almost 10 times the amount of time they would have in a non-capital first degree murder case. Of course, counsel will also have another opportunity to speak to prospective jurors during group questioning, albeit about other topics than those covered in individual *voir dire*. Moreover, whereas the Court uses a one-

page questionnaire in most non-capital first degree murder cases, here, the Court is using an extensive 18-page questionnaire. Therefore, counsel will have much more information about each prospective juror before questioning than they would have in a non-capital first degree murder case.

While Crim. P. 24(a)(3) affords counsel “the opportunity to voir dire prospective jurors, the trial judge can limit the extent and nature of the questioning.” *People v. Lefebre*, 5 P.3d 295, 301 (Colo. 2000) (citation omitted), *overruled on other grounds*, *People v. Novotny*, 320 P.3d 1194 (Colo. 2014); *see also People v. O’Neill*, 803 P.2d 164, 169 (Colo. 1990) (“unlike the federal system, rule 24 provides counsel the right to question jurors, although the scope and extent of that right may be limited within the discretion of the trial court”). “The right to an impartial jury does not [] require that counsel be granted unlimited voir dire examination.” *People v. Rodriguez*, 914 P.2d 230, 260 (Colo. 1996) (quotation omitted). “Nor is counsel entitled to voir dire the jury as a matter of constitutional law.” *Id.* (quotation omitted).

The Court recognizes that counsel would like to spend as much time as possible with each prospective juror. But that is not feasible—in this case or in any other case. If the rule were as the defendant urges, trials could drag on for weeks, months, or years.

Not surprisingly, counsel in non-capital first degree murder cases ask for as much *voir dire* time as possible too. However, as indicated, they are typically allotted little more than a minute per prospective juror. Significantly, this is the case even when the trial involves complicated, controversial, or sensitive issues, such as Rule 404(b) evidence, self-defense, the insanity defense, flight evidence, immigration, sexual orientation, race or gender discrimination, etc.

Under the totality of the circumstances in this case, the Court is satisfied that allowing each side 10 minutes to question each prospective juror about the four topics to be covered during individual *voir dire* is sufficient.² Therefore, Order D-154-a is amended in accordance with this Order.

Dated this 29th day of October of 2014.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

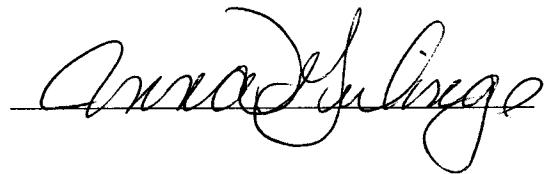
² Given that the questionnaire and the Court's questions will likely elicit all of the necessary information about hardship, the parties will have approximately three minutes to discuss each of the remaining topics: insanity, the death penalty, and publicity. To the extent that the questionnaire and the Court's questions elicit all the necessary information regarding publicity, the parties will be able to devote all ten minutes to insanity and the death penalty.

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2014, a true and correct copy of the Court's **Order Amending Order D-154-a (D-154-a-3)** was served upon the following parties of record:

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A handwritten signature in black ink, appearing to read "Anna D. Inigo", written over a horizontal line.