

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 REGARDING DEFENDANT’S REQUEST TO CONTINUE TRIAL (D-245-B)	

INTRODUCTION

In Motion D-245, the defendant seeks a postponement of the trial in this case. *See generally* Motion and Reply. The People acknowledge “that it is reasonable” for the defendant to request a “limited amount of additional time” to address any issues he may raise with respect to the second Court-ordered sanity examination, which was performed by Dr. William Reid and documented in a report filed on October 15, 2014. Response at p. 1. Therefore, the People do not object to “a brief continuance” of the trial until “the third week of January of 2015 . . . but do object to a lengthier continuance.” *Id.* at p. 2. In his reply, the defendant does not specify how much additional time he needs or when he believes the trial should start. *See generally* Reply. Instead, he simply requests a lengthy

continuance, arguing that a “short amount of additional time” is inadequate. *Id.* at p. 1.

RULING

On October 7, 2014, the Court informed the parties that it intended to tell prospective jurors that individual *voir dire* was “scheduled” to take place between late January and late May, and that the Court and the parties anticipated “that the trial [would] start in June.” Order C-138 Attachment at p. 13.¹ The Court has been adamant throughout these proceedings that it will not allow unnecessary delays. Consistent with its repeated declarations to avoid inappropriate delays, the Court continues to plan on opening statements taking place in early June. Accordingly, the defendant’s request for a continuance is largely denied.

Nevertheless, the Court rearranges the scheduled events in November, December, and January to allow the defendant additional time to litigate any issues he may raise with respect to Dr. Reid’s examination and to afford his attorneys ample time and opportunity to effectively represent him at trial. In doing so, the

¹ Individual *voir dire* may well take as long as the trial itself because the Court and counsel must individually question hundreds of prospective jurors in order to find 100 to 120 prospective jurors who: (1) are willing to impose the death penalty if warranted by the evidence and the law; (2) are available to serve on this jury for 4 to 5 months; (3) have not learned too much about the case from the media coverage it has received; and (4) can be fair and impartial in a case in which the defendant has entered a not guilty by reason of insanity plea. Once the Court finds 100 to 120 such prospective jurors, it will ask them to return for group jury selection, which is expected to take 1 to 2 days.

Court ensures that the defendant will not be prejudiced by the denial of his request for a lengthy continuance, while at the same time averting a delay in the case.

APPLICABLE LEGAL STANDARD

“Whether to grant a motion to continue a trial ‘is addressed to the sound discretion of the trial court.’” *People v. Alley*, 232 P.3d 272, 274 (Colo. App. 2010) (quoting *People v. Hampton*, 758 P.2d 1344, 1353 (Colo. 1988)). “A trial court’s decision to grant or deny a continuance is entitled to deference and may not be reversed on appeal absent a gross abuse of discretion.” *People v. Cruthers*, 124 P.3d 887, 888 (Colo. App. 2005) (citation omitted). An abuse of discretion occurs if the denial of a motion to continue is “manifestly arbitrary, unreasonable, or unfair” under the totality of the circumstances. *People v. Mandez*, 997 P.2d 1254, 1265 (Colo. App. 1999) (citation omitted); *see also Miller v. People*, 178 Colo. 397, 399-400, 497 P.2d 992, 993 (Colo. 1972) (the totality of the circumstances must be considered when determining whether the trial court abused its discretion in denying a motion to continue).

In resolving a motion to continue, the trial court is required to “consider the peculiar circumstances of each case and balance the equities on both sides.” *People v. Fleming*, 900 P.2d 19, 23 (Colo. 1995) (citation omitted). The trial court must also take into account the “prejudice to the moving party if the continuance is denied and whether that prejudice could be cured by a continuance, as well as the

prejudice to the opposing party if the continuance is granted.” *People in the Interest of D.J.P.*, 785 P.2d 129, 132 (Colo. 1990) (citation omitted). A trial court does not abuse its discretion in denying a defendant’s motion to continue if delay of the trial would be against the interest of justice. *See People v. Ellis*, 148 P.3d 205, 211 (Colo. App. 2006).

ANALYSIS

The defendant fails to disclose how long of a continuance he is seeking or when he believes the trial should start. *See generally* Motion and Reply. Instead, he asks the Court to set “a status hearing” in January 2015 to select a new trial date—apparently as late as the Spring of 2015. Reply p. 3.² The Court refuses to unnecessarily delay this case.

The defendant notes that on February 27, 2014, the Court initially set aside three months between the date when the second examiner’s report was due and the trial date. Motion at p. 2.³ In urging the Court to grant him a lengthy continuance

² The defense “anticipate[s] requiring until early January to file motions pertaining to the second sanity examination.” Reply at p. 2. The motions would then “need to be briefed.” *Id.* The defense also indicates that it “may need additional time to conduct further testing or evaluation of Mr. Holmes.” *Id.* at p. 3. Of course, after the motions have been briefed, the Court will need time to rule on them.

³ Dr. Reid had not yet been appointed as the second examiner on February 27, but the July 11, 2014 deadline for the second sanity examination report had already been set. Based in part on that due date, the Court scheduled the trial on October 14, 2014, three months and three days (or 95 days) after July 11. *See 2/27/14 Tr.* at p. 4. Because Dr. Reid subsequently requested an extension of the deadline until October 15, 2014, the Court moved the trial date to December 8, 2014. *See 7/22/14 Tr.* at p. 194.

of the trial, the defendant complains that there are only seven weeks between October 15, the date Dr. Reid filed his report, and December 8, the current trial date. *Id.* at pp. 3, 8.⁴ The prosecution opposes a lengthy continuance, but does not object to postponing the trial for a brief period of time until the third week in January. Response at p. 2. In fact, the prosecution informs the Court that some of the victims would actually prefer to start the trial in January in order to avoid having court proceedings during the holiday season. *Id.* at pp. 1-2. One particular victim opined that “after the holidays is better for everyone, jurors included.” *Id.* at p. 2.⁵ The majority of the victims, however, object to any delay of the case. *Id.* at p. 1.

In this Order, the Court strikes an appropriate balance among the competing interests involved: (1) the defendant’s request for a lengthy continuance to litigate any issues he may raise with respect to Dr. Reid’s examination and to allow his attorneys more time to prepare for trial; (2) the prosecution’s position that only a limited amount of additional time is reasonable to address the concerns raised in Motion D-245; (3) the desire by some victims “to get passed the holidays” before trial, *id.* at p. 1; (4) the objection by the majority of the victims to any continuance of the trial; and (5) the Court’s responsibility to avoid unnecessary delays. The

⁴ Seven weeks equals 49 days. There are actually 54 days between October 15, 2014, and December 8, 2014.

⁵ It is possible that as a result of holiday plans, including travel plans, a lower number of prospective jurors may respond to their jury summonses in December than in January.

Court will continue to plan on opening statements taking place in early June, thereby avoiding a delay of the presentation of the evidence at trial. However, to accommodate the interests of the parties and the victims, the Court modifies the scheduled events in November, December, and January.

First, the November 3 date will now be used only to address: (1) the defendant's Motion D-98, which seeks to limit inflammatory images shown to jurors;⁶ (2) any issues related to redactions of audio or video recordings (other than the videotaped recordings provided by Dr. Reid, which must be addressed in the motions due on October 29); and (3) the logistics related to the storage of evidence, including biohazard materials, that may be introduced during the trial. Second, the December 8 date will be converted to a pretrial status hearing date, during which the Court will address all of the other issues it had intended to discuss on November 3. Third, the Court will defer the introductory *voir dire* sessions until January 20, 2015.⁷ Fourth, the Court will start individual *voir dire* on February 5. Fifth, based on this schedule, the Court anticipates that group *voir dire* will take place on June 1 and will last one or two days. Finally, counsel should be prepared to make their opening statements on June 3. As before, this is based on the Court's

⁶ If there is no objection from the defendant, the prosecution should submit the images in dispute in advance of the hearing for the Court's review.

⁷ Pursuant to section 18-1-405(6)(f), C.R.S. (2014), the period of time between December 8, 2014 and January 20, 2015 will be excluded from the computation of the time within which the defendant must be brought to trial as provided in subsection (1) of that statute.

and the parties' best estimate that individual *voir dire* will take approximately 4 months. *See* Order C-138 Attachment at p. 13.

By reshuffling the scheduled events in November, December, and January, the Court avoids delaying the case while allowing the defendant 3 months and 5 days (or 97 days) between the date when he received Dr. Reid's report and the first introductory *voir dire* session. The Court recognizes that there are five holidays in that timeframe. However, the defendant will have two more days than he had when the report's due date was July 11 and the trial date was October 14.⁸ Significantly, although the defendant objected at the February 27, 2014 hearing to setting a new trial date, he did not lodge a specific objection to October 14, 2014 being selected as the trial date, even though he knew that it would only leave 3 months and 3 days between the second examiner's report and the trial. 2/27/14 Tr. at pp. 9-12.

The Court understands that the defendant now argues that he needs more than 3 months to litigate any issues he may raise related to Dr. Reid's examination and to prepare for trial. Reply at p. 1. However, the Court is unpersuaded.

First, as indicated, the defendant has previously implied, and arguably implies in his motion, that 3 months is a sufficient amount of time. *Id.*; Motion at pp. 2, 8. Second, as the Court stated in Order D-245-A, the defendant has multiple

⁸ There were two holidays between July 11 and October 14, 2014.

experienced attorneys working on this case, and his counsel's office has devoted seemingly unlimited resources, including considerable manpower, to this litigation. *See* Order D-245-A at pp. 1-2. Third, although Dr. Reid's report and videotaped recordings were not filed until October 15, the defense has represented that it has retained eminently qualified experts, and the Court is confident that they possess the skills and experience required to expeditiously review and analyze the materials submitted by Dr. Reid and to supplement or revise their opinions if necessary. Fourth, there is no dispute that the defendant and his experts have been aware of the December trial date since July, and the defendant concedes that his experts have been "aware that Dr. Reid's report [and DVDs] would be disseminated to the parties in mid-October and made efforts to adjust their schedules accordingly." Motion at p. 6. Fifth, this case has been pending for twenty-seven months, much of which has been "idle time," *see* Order D-245-A at p. 3 n.3, giving counsel, their staff, and experts ample time and opportunity to prepare for trial. Sixth, considering how long individual *voir dire* may take, counsel, their staff, and experts will have until at least June 2015 to continue to prepare for trial. Finally, it would not be in the interest of justice to significantly delay the trial.

The defendant grouses that the prosecution took "nearly two months" after receiving the report from the first Court-ordered sanity examination to request a

second sanity examination, but he “is now essentially being asked to perform a similar task in just two weeks.” Motion at p. 8. This is an apples-to-oranges comparison. When the first sanity examination report was filed, the trial was not scheduled to start for five months. Moreover, whereas the prosecution objects to a lengthy continuance to litigate motions related to Dr. Reid’s examination, the defendant did “not object to the timeliness” of the prosecution’s request for a second sanity examination. Motion P-67 Response at p. 1. The defendant cannot be heard to complain now that since, without objection, the prosecution took two months to file a motion related to the first sanity examination, he must be afforded the same amount of time to file motions regarding the second sanity examination.⁹ In any event, the defendant has not informed the Court that he intends to request another Court-ordered sanity examination, as the prosecution did following the first sanity examination.

The defendant also implies that a lengthy continuance of the trial is warranted because there are only seven weeks between the date Dr. Reid filed his report and the December 8 trial date, but there were 5 months between the submission of the first examiner’s report and the February 3, 2014 trial date that was set at that time. Motion at p. 8. This is a fallacy. As the defendant is aware, the Court did not set the February 3 trial date based on the deadline for the first

⁹ The defendant filed motions related to the first sanity examination just a week before the prosecution did. See Motions D-185, D-186, D-187, D-188.

sanity examiner's report, much less to allow the parties 5 months to file motions related to it.

Further, the two Court-ordered sanity examinations were performed at drastically different stages of the proceedings. When the first examiner's report was submitted, the Court had not yet held any hearings on the non-capital motions and the parties were still briefing the capital motions. Thus, there was a lot of work—unrelated to the first Court-ordered sanity examination—that needed to be completed before trial. Indeed, the Court spent the better part of the month of October 2013 in hearings on the non-capital motions and months thereafter ruling on the capital motions. In sharp contrast, when Dr. Reid submitted his report, all but one of the hundreds of motions filed in this litigation had already been resolved. The only outstanding motion was Motion D-98, which the Court discussed earlier.

Under the totality of the circumstances, the Court finds that the defendant's request for a lengthy continuance lacks merit. Accordingly, it is denied. The Court is comfortable that this Order affords the defendant and his attorneys ample time and opportunity to litigate any issues related to Dr. Reid's examination and to prepare for trial. The schedule, as modified in this Order, ensures that the defendant will not be prejudiced by the denial of his request for a lengthy continuance, while at the same time warding off a delay in the case.

CONCLUSION

For all the foregoing reasons, the defendant's request for a continuance is largely denied. The Court refuses to unnecessarily delay this case. However, the Court adjusts the schedule for November, December, and January to allow the defendant additional time to litigate any issues he raises with respect to Dr. Reid's examination and to afford his attorneys ample time and opportunity to prepare for trial.

Dated this 27th day of October of 2014.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2014, a true and correct copy of the Court's **Order Regarding Defendant's Request to Continue Trial (D-245-B)** was served upon the following parties of record:

Karen Pearson
Christina Taylor
Rich Orman
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A handwritten signature in black ink, appearing to read "Amanda M. King", written over a horizontal line.