

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 <i>IN LIMINE</i>          REQUESTING COURT AND PROSECUTION TO REFRAIN FROM          REFERRING TO THE TWO PHASES OF THIS CAPITAL TRIAL AS          THE “GUILT PHASE” AND/OR THE “DEATH PHASE” (D-237)</b>	

### INTRODUCTION

In Motion D-237, the defendant requests that the Court and the prosecution “refrain, at any time during this case, from referring to the two phases of this capital proceeding in terms such as ‘guilt phase’ and ‘death phase’ in the presence of the jury.” Motion at p. 1. Instead, the defendant suggests that the first phase of the proceeding be referred to as the “merits phase” or “culpability phase,” and that the second phase of the proceeding, if it occurs, be referred to as the “sentencing phase.” *Id.* at p. 3. The prosecution asks the Court to deny the motion. Response at p. 3. For the reasons articulated in this Order, the motion is denied without a hearing as untimely and meritless.

## ANALYSIS

### *A. The Motion is Untimely*

The deadline for filing capital motions expired on August 30, 2013, more than a year ago. *See* Order D-140. Motion D-237 was filed on October 7, 2014. Accordingly, it is untimely.<sup>1</sup> In any event, as the Court explains below, the motion lacks merit. Therefore, even if the motion had been timely filed, it would nevertheless fail.

### *B. The Motion Lacks Merit*

#### **1. “Guilt Phase”**

The defendant objects to the term “guilt phase,” arguing that it is “problematic” because “it wrongly implies that the only issue to be decided . . . is [the] defendant’s ‘guilt’ or innocence, when in fact a jury is frequently tasked with determining a defendant’s degree of criminal culpability.” Motion at p. 2. The defendant appears to be overthinking this issue. It is extremely unlikely that any juror will understand “guilt phase” to exclude any determination related to degree of criminal culpability. In fact, jurors are unlikely to be thinking about degree of culpability until the Court instructs them on the applicable law after the close of

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<sup>1</sup> Notwithstanding the expiration of the August 30, 2013 deadline, the defendant did not seek leave of the Court to file his motion. In the Order setting the briefing schedule on the motion, the Court ordered the defendant to explain in his reply why his motion was filed untimely. *See* Order C-139 at p. 2. The defense contends in the reply that some of the issues raised in Motion D-237 “were simply overlooked” while others “were not raised . . . until now” based on “strategic decisions.” Reply at p. 2. Although the Court appreciates counsel’s candor, neither ground justifies the untimely filing.

the evidence. And there is no basis to believe that jurors will ignore or will be unable to follow the instructions related to degree of criminal culpability simply because there have been references to “guilt phase” throughout the trial.

The defendant also avers that “guilt phase” will “needlessly confuse the jury” because he has pled not guilty by reason of insanity. *Id.* On multiple occasions throughout the trial, the Court will explain legal concepts surrounding the defendant’s plea and the two phases of the trial. At a minimum, the Court plans to do so in its introductory remarks to prospective jurors, the juror questionnaire, the video advisement shown prior to individual *voir dire*, group *voir dire*, and the jury instructions following the close of all the evidence. Therefore, the defendant’s concern rings hollow.

The defendant nevertheless posits that “repeated reference to the term ‘guilt phase’ would violate [his] constitutional rights,” including his right to be presumed innocent and to require the prosecution to prove every element of each offense charged beyond a reasonable doubt. *Id.* at pp. 2-3. The defendant fails to explain why he believes that references to the challenged terms will deprive him of his constitutional rights. More importantly, the defendant cites no authority in support of this assertion, and none exists.

The Court disagrees with the defendant that “merits phase” and “culpability phase” are “more accurate[]” and neutral descriptors than “guilt phase.” *Id.* at p. 3.

As relevant here, the term “merits” is defined as “the substance of a legal case apart from matters of jurisdiction, procedure or form.” *Merits, Merriam-Webster*, [www.merriam-webster.com/dictionary/merit](http://www.merriam-webster.com/dictionary/merit) (last visited October 14, 2014). As such, “merits” has equal application to both phases of the proceeding. Accordingly, the term is not appropriately descriptive of the first phase of the proceeding. Given its lack of specificity, “merits phase” risks confusing jurors.

The defendant’s request to use “culpability phase” is also unconvincing. The word “culpability” is defined as “meriting condemnation or blame especially as wrong or harmful,” and it is synonymous with “guilt.” *Culpability, Merriam-Webster*, [www.merriam-webster.com/dictionary/culpable](http://www.merriam-webster.com/dictionary/culpable) (last visited October 14, 2014). That “culpability” and “guilt” are synonymous undercuts the defendant’s argument that the former is prejudicial, but the latter is not.

Moreover, “guilt phase” is more common and easier for lay people to understand than “merits phase” or “culpability phase.” As the prosecution aptly notes, terms such as “merits phase” and “culpability phase” may be meaningful to lawyers, but will likely “serve to confuse jurors.” Response at pp. 1-2.

To the extent that the defendant seeks an order precluding terms “such as ‘guilt phase,’” Motion at pp. 1-2, the request is denied. An order prohibiting the use of terms “such as ‘guilt phase’” would be ambiguous and unenforceable.

In sum, the Court disagrees with the defendant's contention that the term "guilt phase" is problematic. Accordingly, his request to have the Court and the prosecution refrain from using the term in front of the jury, and to use "merits phase" or "culpability phase" instead, is denied. The defendant's request to preclude terms "such as 'guilt phase'" is denied as calling for an ambiguous and unenforceable order.

## 2. "Death Phase"

The Court notes that it has never used the term "death phase" in this case. Nor does it recall the prosecution or anyone else ever doing so. The prosecution represents that it does not intend to use the term during the trial. Response at p. 2. Given this representation, the defendant's request for an order precluding references to "death phase" is moot.

The Court concurs with the parties that "sentencing phase" is a better term. The prosecution's alternative suggestion—"penalty phase"—is also acceptable. *Id.*<sup>2</sup> However, this Order should not be understood as restricting the parties to these terms. There may be other terms that are equally appropriate to describe the second phase of the proceeding.

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<sup>2</sup> The prosecution also suggests that "perhaps 'death penalty phase'" is an appropriate term. Response at p. 2. This term is similar to "death phase," which the parties have agreed to avoid.

The defendant's request to preclude terms "such as . . . 'death phase'" fails. Motion at p. 1. An order precluding terms "such as . . . 'death phase'" would be ambiguous and unenforceable.

### CONCLUSION

For all the foregoing reasons, the Court concludes that Motion D-237 is untimely and meritless. Therefore, it is denied without a hearing.

Dated this 15<sup>th</sup> day of October of 2014.

BY THE COURT:



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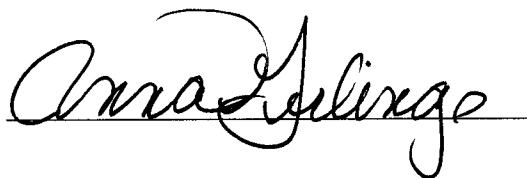
Carlos A. Samour, Jr.  
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2014, a true and correct copy of the Court's **Order Regarding Defendant's Motion *In Limine* Requesting Court and Prosecution to Refrain From Referring to the Two Phases of this Capital Trial as the "Guilt Phase" and/or the "Death Phase" (D-237)** was served upon the following parties of record:

Karen Pearson  
Christina Taylor  
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A handwritten signature in black ink, appearing to read "Anna Delinger", written over a horizontal line.