

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> TO          PRECLUDE PROSECUTORS AND WITNESSES FROM IMPROPERLY          IMPUGNING MR. HOLMES’S CHARACTER AND OPINING ABOUT          HIS VERACITY AND CREDIBILITY (D-241)</b>	

**INTRODUCTION**

In Motion D-241, the defendant seeks “an order prohibiting the prosecution and/or witnesses from (a) improperly impugning [his] character [REDACTED] [REDACTED] and (b) opining about his truthfulness, credibility, or veracity, and to instruct the prosecution and witnesses accordingly prior to any testimony during trial.” Motion at p. 1. 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 lacking merit.

## ANALYSIS

### *A. The Motion is Untimely*

In support of his motion, the defendant relies on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Motion D-241 was filed on October 7, 2014, more than 8 months later and only 2 months before trial. Accordingly, it is denied as 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*

The defendant's motion conflates two different issues: (1) the general rule prohibiting [REDACTED] [REDACTED] and (2) the general rule prohibiting [REDACTED]

[REDACTED] The defendant asks the Court for an Order prohibiting witnesses and prosecutors from

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<sup>1</sup> 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-241 “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.

engaging in all of this conduct. The defendant's request is unnecessarily sweeping and lacks merit.

**1. Witness Testimony Regarding the Defendant's Veracity**

Relying on [REDACTED] the defendant argues that the prosecutors should be prohibited from eliciting opinion testimony from witnesses, including expert witnesses, regarding [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

However, "opinion testimony [REDACTED] may be appropriate where, as here, "[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Delaware Supreme Court's decision in [REDACTED] is instructive [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] On appeal, the defendant maintained [REDACTED]

[REDACTED]

[REDACTED] The Delaware Supreme

Court disagreed. The Court concluded that, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Court added that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] “Thus, evidence [REDACTED]

[REDACTED]

The Court [REDACTED] noted that [REDACTED]

[REDACTED]

[REDACTED] According to the Court, [REDACTED]

[REDACTED]

[REDACTED] Therefore, [REDACTED]

[REDACTED]

[REDACTED] The Court  
acknowledged that [REDACTED]

[REDACTED]

[REDACTED] Nevertheless, the Court found the testimony admissible because it

[REDACTED]

[REDACTED] The Court reasoned as follows:

[REDACTED]

[REDACTED]

The decision in [REDACTED]  
provides further guidance. In [REDACTED] the defendant's convictions on two counts of  
manslaughter [REDACTED]

[REDACTED] On appeal the  
defendant claimed that the trial court erred in permitting [REDACTED]

[REDACTED] The Court  
rejected the contention:

[REDACTED]

[REDACTED]

[REDACTED]

Here, the Court is aware that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Furthermore, the prosecution may elicit testimony that the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Contrary to the defendant's contention, none of this

questioning would be improper. So long as such questioning is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In any event, the Court will entertain a request

from the defendant for an appropriate cautionary jury instruction like the one referenced in [REDACTED]

**2. Prosecution Remarks Regarding the Defendant's Veracity**

The defendant asserts that any statements of opinion by prosecutors related to his "truthfulness, credibility, or veracity" would be improper. Motion at p. 1. Like the prosecution, the Court does not take issue with this general principle. *See generally* Response. However, the Court declines to enter the order requested by the defendant, because, as the Colorado Supreme Court has acknowledged, it is unwise to address the concern expressed by the defendant without the proper context of the trial.

At the outset, the Court notes that it agrees with the defendant that [REDACTED]

[REDACTED]

[REDACTED] As the defendant aptly notes, in

[REDACTED] the Colorado Supreme Court ruled that [REDACTED]

[REDACTED]

[REDACTED] The holding in

[REDACTED] focused on [REDACTED] because the Court determined that:

[REDACTED]

[REDACTED]

[REDACTED]

The Court in [REDACTED] also disapproved [REDACTED]

[REDACTED]

[REDACTED] Thus, for example, telling the jury that [REDACTED]

[REDACTED]

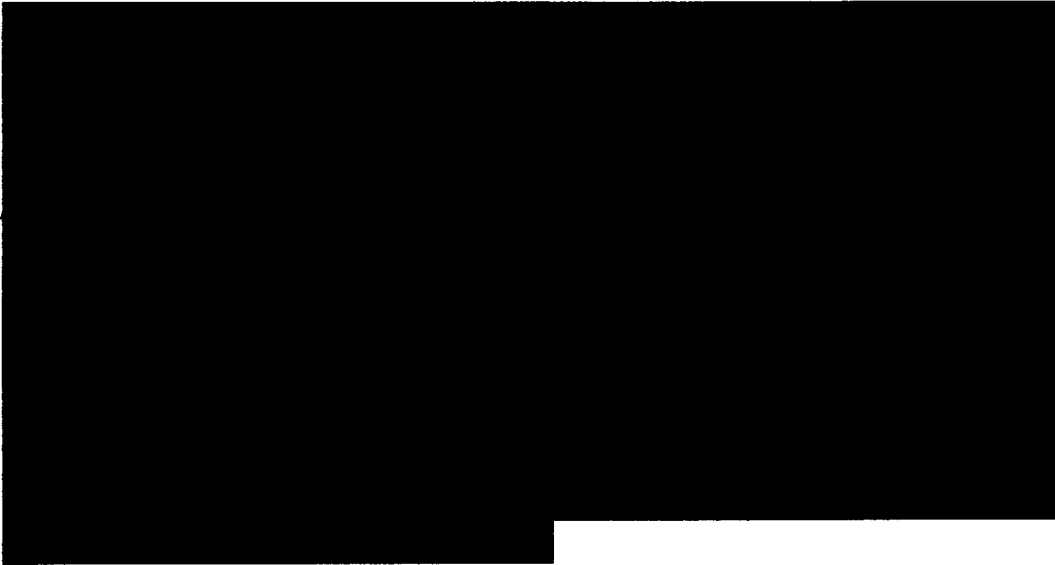
However, the Court in [REDACTED] expressly observed that [REDACTED]

[REDACTED] He just cannot [REDACTED]

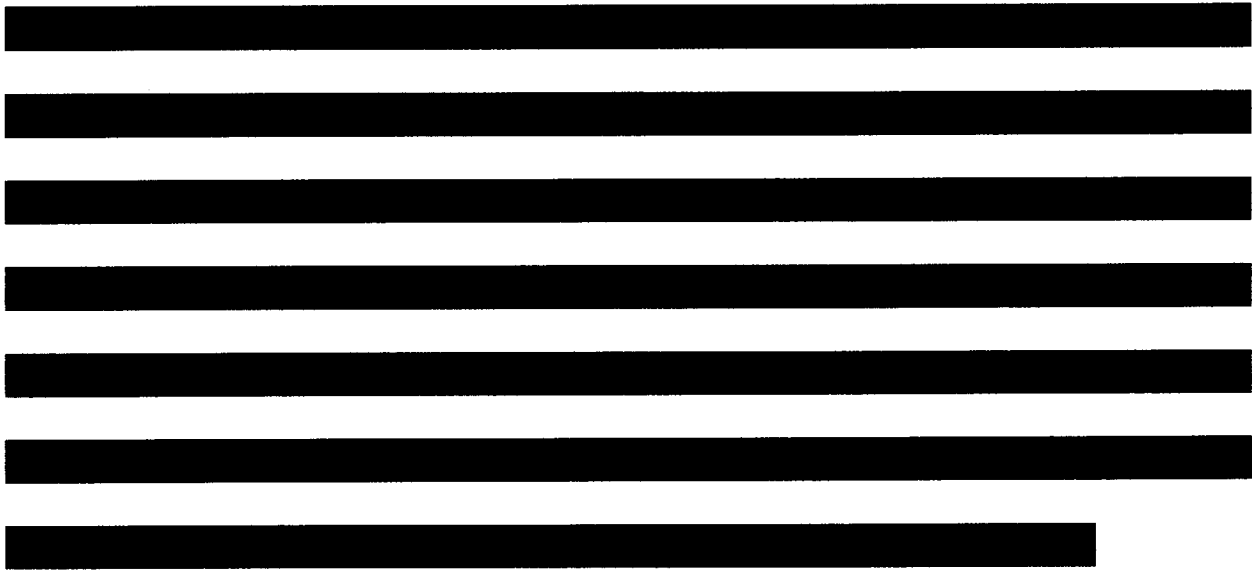
[REDACTED] This inevitably leads to the question of what words are appropriate for a prosecutor to use in [REDACTED]

[REDACTED] Not surprisingly, the Colorado Supreme Court expressly declined to answer this question in a vacuum. The Court reasoned as follows:





[REDACTED] The Court went on to point out that it [REDACTED]



Notably, the Court in [REDACTED] found that the prosecutor's remarks to the jury that [REDACTED]



[REDACTED] However, the

Court emphasized that [REDACTED]

[REDACTED]

[REDACTED] Therefore, although [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Here, this case is likely to turn on [REDACTED]

[REDACTED] Therefore, the Court follows the Supreme Court's

lead and declines the defendant's invitation to identify before trial the specific

words the prosecution may or may not use to [REDACTED]

[REDACTED]<sup>2</sup> The People represent

that they are familiar with the decision in [REDACTED] and that they have

every intention of strictly adhering to it. Response at p. 2. The Court accepts their

representation. Nevertheless, the Court stresses the importance of proceeding with

caution in this area. If the prosecution is uncertain about [REDACTED], the

most prudent course of action would be to avoid using it or to seek a ruling from

the Court outside the presence of the jury.

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<sup>2</sup> [REDACTED]

[REDACTED] For the reasons set forth in this Order, the Court declines to pass judgment on this assertion at this time.

## CONCLUSION

For all the foregoing reasons, the Court concludes that Motion D-241 is untimely and lacks merit.<sup>3</sup> Accordingly, 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

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<sup>3</sup> In light of the rulings in this Order, the defendant's request for an instruction to witnesses and prosecutors fails.

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* to Preclude Prosecutors and Witnesses From Improperly Impugning Mr. Holmes's Character and Opining About His Veracity and Credibility (D-241)** was served upon the following parties of record:

Karen Pearson  
Christina Taylor  
Rich Orman  
Jacob Edson  
Lisa Teesch-Maguire  
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A handwritten signature in black ink, appearing to read "Anna Gulingo", written over a horizontal line.