

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 RESOLVING DEFENDANT’S MOTION TO EXCLUDE UNRELIABLE HEARSAY TESTIMONY REGARDING ALLEGED “STATEMENT” OF DEFENDANT (D-238)	

The defendant is charged with shooting, and killing or injuring, numerous people inside auditoriums 8 and 9 of the Century 16 Theatres in Aurora, Colorado, on July 20, 2012, during the midnight premiere of “The Dark Knight Rises.” He is also charged with possession of multiple explosive and incendiary devices found in his booby-trapped apartment hours after the shooting. The defendant has pled not guilty by reason of insanity.

In Motion D-238, the defendant seeks to preclude “all testimony at trial making reference to [his] alleged ‘statement’ . . . the gist of which is [REDACTED]

[REDACTED]

[REDACTED] The prosecution claims that the defendant made

the statement to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] 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 devoid of merit.

The defendant has been aware of [REDACTED] his alleged statement since September 6, 2013. Motion D-238 was filed on October 7, 2014, more than a year later and only two months before trial. Accordingly, it is denied as untimely.²

¹ [REDACTED]

² 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-238 “were simply overlooked” while others “were not raised . . . until now” based on “strategic decisions.” Reply at p. 4. Although the Court appreciates counsel’s candor, neither ground justifies the untimely filing.

In any event, the defendant's motion is meritless because it is premised on a misunderstanding of the Colorado Rules of Evidence [REDACTED]

[REDACTED] Therefore, even if it had been timely filed, it would still fail.

The defendant avers that [REDACTED]

[REDACTED] contain[s] multiple levels of hearsay and should be excluded from evidence [REDACTED] The defendant is mistaken. [REDACTED]

[REDACTED]

[REDACTED]

Significantly, the defendant concedes that the purported statement [REDACTED]

[REDACTED]

[REDACTED]

Under these circumstances, the alleged statement is not hearsay, much less hearsay within hearsay, as the defendant urges.

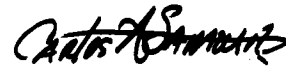
[REDACTED]

³ The defendant’s request for a “closed, in camera evidentiary hearing to determine whether the prosecution can satisfy the statutory foundation elements,” Reply at p. 4, is denied. The Court has before it an adequate “offer of proof to establish the statutory foundation requirements.” [REDACTED] However, the alleged statement may not be solicited until all of the statutory foundational requirements have been established. The defendant may object if he believes that the foundation laid by the prosecution is insufficient.

For all the foregoing reasons, the Court concludes that Motion D-238 is untimely and devoid of merit. Accordingly, it is denied without a hearing.

Dated this 15th day of October of 2014.

BY THE COURT:



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 Resolving Defendant's Motion to Exclude Unreliable Hearsay Testimony Regarding Alleged "Statement" of Defendant (D-238)** was served upon the following parties of record:

Karen Pearson
Christina Taylor
Rich Orman
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A handwritten signature in cursive script, appearing to read "Amanda Gulings", is written over a horizontal line.