

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: 201
ORDER SUPPLEMENTING ORDER C-200 (C-200-A)	

The Court started selecting a jury in this case on January 20, 2015. A jury was selected on April 14, and opening statements occurred on April 27. The prosecution rested on June 19 and the defense began presenting its case on June 25.

On May 5, the Court issued an Order supplementing its rulings related to evidence of the nature, character, extent, and severity of the surviving victims' injuries. *See generally* Order C-200. In Order C-200, the Court addressed the reasons why some evidence of the nature, character, extent, and severity of the surviving victims' injuries has probative value in this trial under Rule 401. *Id.* at pp. 5-20. The Court also set parameters around the admissibility of such evidence under Rule 403. *Id.* at pp. 21-22. This Order supplements that Order.

In working on the jury instructions earlier this week, the Court realized that there is an additional reason why the evidence discussed in Order C-200 is probative and admissible. The evidence is relevant and admissible to prove the allegation in Count 142.

In Count 142, a sentence-enhancing crime of violence count, the prosecution alleges that, in committing all of the murders and attempted murders charged in this case, the defendant “used, or possessed and threatened the use of, a deadly weapon, namely: Assault Weapon, Shotgun, and Handgun.” Pleading P-100 at p. 29. “Deadly weapon” in Colorado is defined as: “(I) [a] firearm, whether loaded or unloaded; or (II) [a] knife, bludgeon, or any other weapon, device, instrument, material, or substance, whether animate or inanimate, that, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury.” § 18-1-901(3)(e), C.R.S. (2014). “Serious bodily injury,” in turn, is defined as “bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.” § 18-1-901(3)(p).

In *Montez v. People*, the Colorado Supreme Court analyzed the former definition of “deadly weapon.” 269 P.3d 1228 (Colo. 2012).¹ The Court explained that the General Assembly had not classified firearms as per se deadly weapons for purposes of the first degree burglary statute. *Id.* at 1229-32. The Court added that the legislature had not intended theft of a firearm from a building to constitute first degree burglary regardless of the manner the burglar used or intended to use the firearm. *Id.* at 1231. The Court concluded that, based on the language in the definition of “deadly weapon” in effect at the time, a firearm could only fall within the scope of the definition of a deadly weapon if the manner in which it was used or intended to be used rendered it capable of producing death or serious bodily injury. *Id.* at 1231-32.

Following the decision in *Montez*, the legislature amended the definition of “deadly weapon” in 2013. COLJI-Crim. F:88, Comment 4 (2014). Under the current definition, “a firearm, whether loaded or unloaded” is a per se deadly weapon. § 18-1-901(3)(e)(I). A firearm includes “any handgun, automatic, revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges.” § 18-1-901(3)(h).

¹ The definition of deadly weapon at that time read as follows: “(I) [a] firearm, whether loaded or unloaded; (II) [a] knife; (III) [a] bludgeon; [or] (IV) [a]ny other weapon, device, instrument, material, or substance, whether animate or inanimate” which “in the manner it is used or intended to be used is capable of producing death or serious bodily injury.” *Montez*, 269 P.3d at 1230 (emphasis in original).

Here, in Count 142, the prosecution has alleged that the defendant used, or possessed and threatened the use of, “a deadly weapon, namely: Assault Weapon, Shotgun, and Handgun.” Pleading P-100 at p. 29. While each of these items is arguably a firearm that falls within the first part of the definition of a deadly weapon, each also arguably falls within the second part of the definition of a deadly weapon because it is a weapon that, “in the manner it is used or intended to be used, is capable of producing death or serious bodily injury.” § 18-1-901(3)(e)(II). Given the broad language in Count 142, the prosecution is not limited to the first part of the definition of deadly weapon. The prosecution may argue that it has satisfied its burden of proof with respect to Count 142 because the weapons in question fall within either or both parts of the definition.²

The Court acknowledges that the current statutory definition does not require that a weapon actually cause serious bodily injury to be deemed a deadly weapon; as relevant here, what is required is that it be “capable of producing” such an injury. *Id.* However, evidence that a weapon actually produced serious bodily injury (or any serious injury) is evidence that the weapon, in the manner it was used or intended to be used, was capable of producing serious bodily injury. Therefore, evidence related to the nature, character, extent, and severity of the

² “[S]entence enhancement factors,” such as the one alleged in Court 142, must be proven by the prosecution “beyond a reasonable doubt.” *People v. Whitley*, 998 P.2d 31, 33-34 (Colo. App. 1999).

injuries sustained by the surviving victims is relevant to establish the allegation in Count 142: that the defendant used, or possessed and threatened the use of, a deadly weapon during the commission of the murders and attempted murders charged in this case or during the immediate flight therefrom.³

Dated this 26th day of June of 2015.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

³ The Court wants to be clear that it did not rely on the analysis in this Order in Order C-200 or in ruling on any contemporaneous objections regarding the nature, extent, character, and severity of the injuries incurred by the surviving victims. The same is true for contemporaneous objections the Court has resolved related to evidence of the weapons alleged to have been used during the shooting, including testimony about visual and auditory observations made by the surviving victims and others with respect to those weapons. The Court stands by all those rulings, including Order C-200. Nevertheless, the Court felt it was important to supplement the record with this Order.

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2015, a true and correct copy of the Court's **Order Supplementing Order C-200 (C-200-A)** was served upon the following parties of record:

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A handwritten signature in cursive script, appearing to read "Anna J. King", written over a horizontal line.