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: **26**

ORDER REGARDING DEFENDANT'S MOTION ADVISING OF CHALLENGE TO VENUE ON COUNT 141 (D-95)

The defendant is charged with shooting, and killing or injuring, numerous people inside an Aurora movie theatre ("the theatre") during the early morning hours of July 20, 2012. Through motion D-95, the defendant challenges venue with respect to count 141, which charges him with possession of explosive or incendiary devices, pursuant to section 18-12-109(2), C.R.S. (2012). According to the defendant, the offense alleged in this count has been improperly filed in Arapahoe County because it occurred in Adams County. The People oppose the motion. For the reasons articulated in this Order, the motion is denied without a hearing.[1]

[1] In denying the defendant's request for a hearing, the Court considers the following factors: (1) he is the only party who was heard on motion D-95, as the time allotted for the People's

Section 18-1-202(11) provides that "[a]ny challenge to the place of trial . . . shall be made by motion in writing no later than twenty-one days after arraignment, except for good cause shown." Further, "[f]ailure to challenge the place of trial as provided in [] subsection (11) shall constitute a waiver of any objection to the place of trial."

Here, the defendant did not move to change venue with respect to count 141 within twenty-one days of the March 12, 2013 arraignment. In fact, motion D-112 was not filed until June 3, more than two months after the arraignment. Moreover, the motion does not assert, much less show, good cause for its untimely filing. Accordingly, pursuant to section 18-1-202(11), the defendant has waived any venue objection regarding count 141.

Even if the motion had been timely filed, however, it would nevertheless fail because it lacks merit.[2] Under section 18-1-202(7)(a), the specific statutory provision on which the Court relied at the end of the preliminary hearing to find that Arapahoe County is the proper venue for all the charges in this case, *see* Order C-19 at p. 4, "[w]hen multiple crimes are based upon the same act or series of acts arising from the same criminal episode and are committed in several counties, the

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response will not expire for a couple of weeks; and (2) the Court already concluded that Arapahoe County is the proper venue for all the charges in this case. *See* Order C-19 at p. 4.

[2] This case proceeded to a preliminary hearing in January of this year. The defendant did not raise a venue challenge with respect to any count at that hearing. At the end of the hearing, the Court determined that venue was "proper" in Arapahoe County, pursuant to section 18-1-201(7)(a). *See* Order C-19 at p. 4.

offender may be tried in any county in which any one of the individual crimes could have been tried, regardless of whether or not the counties are in the same judicial district."

In *People v. Rogers*, 742 P.2d 912, 918 (Colo. 1987), the Colorado Supreme Court observed, in the context of a compulsory joinder issue, that the "same criminal episode" includes "offenses connected in such a manner that prosecution of the offenses will involve substantially interrelated proof." The Court added that crimes involving interrelated proof are "[c]rimes that are committed simultaneously or in close sequence, crimes that occur in the same or closely related place, and acts that form part of the schematic whole." *Id.* at 919.

Relying on *Rogers*, the Court of Appeals in *People v. Richardson*, 181 P.3d 340 (Colo. App. 2007), rejected the defendant's contention that Park County was not the proper venue in which to prosecute the possession of forgery devices and possession of journal or seal charges. There, the defendant appealed the judgments of convictions imposed upon jury verdicts finding him guilty of violation of a restraining order, harassment by stalking, offering a false instrument for recording, forgery, possession of forgery devices, and wrongful possession of a journal or seal. *Id.* at 343. The case was prosecuted in Park County even though some of the charged acts, including those underlying the charges for wrongfully possessing forgery devices and a journal or seal, occurred elsewhere. *Id.* The latter charges

were premised on the defendant's possession of computer disks containing the scanned signature of the victim and digitalized notary seals. *Id.* at 345. The disks had been recovered from the defendant in a search incident to an arrest for a parole violation in Arapahoe County. *Id.*

Discerning no error in the trial court's decision to allow the prosecution of the offenses committed in Arapahoe County, the Court reasoned as follows:

> In this case, the computer disks were seized from defendant only a little more than a week after the date on which it was alleged in count six that he filed a fraudulent document in Park County. Because these circumstances permit a reasonable inference that defendant had used those disks in committing the Park County offense listed in count six, Park County was a proper venue to try the challenged counts. *See People v. Reed*, 132 P.3d 347, 351 (Colo. 2006) (illegal possession of an item at the time of a defendant's arrest "may have circumstantial value in establishing possession during the earlier episode").

Id. at 346.

Here, at the preliminary hearing, the prosecution presented evidence that the theater is located at 1430 East Alameda Avenue in Aurora, which is less than ten miles away from the defendant's apartment at 1690 Paris Street in Aurora. Furthermore, the prosecution introduced evidence that before leaving his apartment to go to the theater, just minutes or hours before the shooting, the defendant "rigged his apartment" through multiple ignition systems so that it would "explode or catch fire." Jan. 8, 2013 Tr. at p. 47. According to a law enforcement agent, after his arrest, the defendant stated that his goal was "to send [law enforcement]

resources to his apartment instead of the theater." *Id.* More specifically, the defendant allegedly stated that "prior to leaving his [residence], he put his computer on a 25-minute delay," at which time "loud music was going to start playing," and that he hoped that the noise "would cause a disturbance and that someone would call the police and that police would respond to his apartment." *Id.*

The People explained that they intend to show at trial that the defendant "set up this situation in the apartment to act as a distraction for the police so that they would respond to the apartment and would then be delayed in responding to the theater" shooting. *Id.* at 43. The People added that they believe that evidence of the explosive and incendiary devices seized from the defendant's apartment "and why [he] set them up that way" is evidence "of his deliberation and premeditation" in committing the numerous crimes of murder and attempted murder charged. *Id.*

Moreover, the prosecution presented evidence at the preliminary hearing that inside the defendant's apartment law enforcement found aqua duct tape and picnic table clips of the same type collected after the shooting in the defendant's vehicle, on the defendant's person, and at the theater. Jan. 9, 2013 Tr. at p. 28. The prosecution also showed a photograph from the defendant's cell phone depicting, inside of his apartment, a number of items recovered from or near the theater, including ballistic gear, a number of magazines for a .223 rifle and for a Glock

handgun, a Glock handgun, an assault rifle, a pump action shotgun, and a carryall bag. *Id.* at 44:18–25. The photograph was taken on July 19, 2012, at 5:17 p.m., just hours before the shooting. *Id.*

Based on the record before it, the Court's finding at the end of the preliminary hearing related to venue stands. *See* Order C-19 at p. 4. The Court concludes that the crime charged in count 141 and the crimes charged in the remaining counts involve substantially interrelated proof because they allegedly were committed in close sequence, occurred in closely related places, and form part of the schematic whole. Even if the pending motion to suppress the defendant's statements is granted, the remaining evidence in support of count 141 is nevertheless admissible as to the other counts because it may allow the jury to draw reasonable inferences related to his state of mind. Additionally, the People may rely on the evidence collected in the defendant's apartment, including the explosive and incendiary devices that form the basis of count 141, to attempt to tie him to the shooting.

For all the foregoing reasons, the Court rules that the crime charged in count 141 and the other crimes are based upon "the same . . . series of acts arising from the same criminal episode" for purposes of section 18-1-202(7)(a). Accordingly, the motion for a change of venue as to count 141 is denied.

Dated this 14th day of June of 2013.

BY THE COURT:

Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2013, a true and correct copy of **Order regarding defendant's motion advising of challenge to venue on Count 141 (D-95)** was served upon the following parties of record:

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