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Accused theater gunman's dating website posting is evidence, judge rules

DENVER | BY [KEITH COFFMAN](#)



James Holmes sits in court for an advisement hearing at the Arapahoe County Justice Center in Centennial, Colorado June 4, 2013.
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A question once posed by accused movie theater gunman James Holmes on a dating website, asking potential love interests, "Will you visit me in prison?" can be admitted as evidence at his murder trial, a Colorado judge ruled on Thursday.

The decision was a setback, but not an unexpected one, for Holmes, who faces the death penalty if convicted in the shooting deaths of 12 moviegoers at a suburban Denver cinema last summer during a screening of the Batman film "The Dark Knight Rises."

Prosecutors have charged Holmes, 25, with multiple counts of first-degree murder and attempted murder for the rampage that also left two dozen others wounded or injured.

The former University of Colorado neuroscience graduate student has pleaded not guilty by reason of insanity. Defense lawyers said in recent court filings their client was "in the throes of a psychotic episode" when he went on the shooting spree.



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Prosecutors want to use the question Holmes posed on an online dating profile before the massacre to show that he was capable of distinguishing right from wrong, which could undermine his insanity defense.

Public defenders sought to have the prison visitation question - and other data investigators mined from two dating websites Holmes allegedly used - suppressed as irrelevant and prejudicial.

The statement should be inadmissible, they argued, because there is no way to establish what the question meant.

But Arapahoe County District Court Judge Carlos Samour Jr. agreed with prosecutors that the statement's meaning was clear.

"(A) reasonable inference may be drawn that the user of the accounts posted the question because he anticipated doing something that he was aware would warrant prison time," the judge wrote.

Samour also said a photograph Holmes posted on one of the websites with his hair dyed red was also relevant for identification purposes since he had the distinctive hair color when he was arrested after the shootings.

While the ruling on the dating site question was a blow to the defense, it is no surprise the judge denied the motion, according to longtime Colorado defense lawyer Mark C. Johnson.

"Unless it's a statement made during a police interrogation, the legal standard for relevancy is relatively low," said Johnson, who has tried more than 100 felony cases.

Nor is it surprising that Holmes' lawyers would attempt to suppress as much evidence as they can, he said.

"In death penalty litigation, you raise every conceivable legal challenge because at stake is the very life of your client," Johnson said.

Holmes' trial is scheduled to begin in February.

(Reporting by Keith Coffman in Denver; Editing by Steve Gorman and Peter Cooney)

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