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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	FILED JUN - 3 2015 CLERK OF THE DISTRICT COURT ARAPAHOE COUNTY, COLORADO σ COURT USE ONLY σ
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Tamara A. Brady (No. 20728) Chief Trial Deputy State Public Defenders 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: state.pubdef@coloradodefenders.us	Case No. 12CR1522 Division 26
MOTION FOR SPECIFIC DISCOVERY – THREATENING EMAIL TO CENTURY 16 THEATER [D-043]	

CERTIFICATE OF CONFERRAL

The District Attorney states that they object to the motion, and that they will file a response.

Mr. Holmes, through counsel, moves for specific discovery of the following information:

1. On page 18032 of discovery, it is reported that on July 24, 2012, an email was sent to the Century 16 Theater email account which read: “I am coming over to finish his job. The master demands it.” The email was forwarded to the Aurora Police Department Intel unit to investigate.
2. Mr. Holmes requests discovery of information related to the investigation into this email. Mr. Holmes requests discovery of any reports, notes, and documentation produced as a result of that investigation.
3. Material in the possession of *all* law enforcement agencies that have participated in the investigation or provided reports concerning the case, is constructively in the “possession or control” of the prosecuting attorney under Crim. P. 16(I)(a)(1). *See Chambers v. People*, 682 P.2d 1173, 1180 n.13 (Colo. 1984); *Ortega v. People*, 426 P.2d 180 (1967); *People v. Lucero*, 623 P.2d 424 (Colo. App. 1980); Crim. P. 16(I)(c). The prosecution must make efforts to locate and deliver copies of this material to the defense and “[i]t is incumbent upon the prosecutor to promulgate and enforce rigorous and systematic procedures designed to preserve all discoverable

evidence gathered in the course of the criminal investigation.” *People v. District Court*, 793 P.2d 163 (Colo. 1990) (Rule 16 violated where prosecutor had no actual knowledge of exculpatory information possessed by police about a witness-informant).

4. An accused in a criminal case must be given an opportunity for effective confrontation and effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Merritt v. People*, 842 P.2d 162, 166 (Colo. 1992); *People v. Pate*, 625 P.2d 369, 370 (Colo. 1981); U.S. Const., amends. V, VI, XIV; Colo. Const., art. II, §§ 16, 18, 25. *See also* ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases 10.8, commentary p. 89, rev. ed. 2003 (“Because of the possibility that the client will be sentenced to death, counsel must be significantly more vigilant about litigating all potential issues at all levels in a capital case than in any other case.”).

5. Mr. Holmes has an absolute due process right to investigate, develop and present a complete defense to the allegations. *Holmes v. South Carolina*, 126 S. Ct. 1727, 1731, 1734-1735 (2006); *People v. Hampton*, 696 P.2d 765 (Colo. 1985); U.S. Const. amends. V, XIV; Colo. Const., art. II, § 25. It is the duty of both the prosecution and this Court to ensure that no evidence in the possession of the state that might tend to prove Mr. Holmes’ innocence is withheld from the defense. *People v. Terry*, 720 P.2d 125 (Colo. 1986); *People v. Millitello*, 705 P.2d 514 (Colo. 1985); *Cheatwood v. People*, 164 Colo. 334, 435 P.2d 402 (1967).

6. Given that the prosecution is seeking the death penalty against Mr. Holmes, he is entitled to and demands his right to heightened due process and heightened reliability throughout this proceeding. *Beck v. Alabama*, 447 U.S. 625, 637-638 (1980); *People v. Tenneson*, 788 P.2d 786, 804-05 (Colo. 1990); *People v. Rodriguez*, 786 P.2d 1079, 1082 (Colo. 1989) (“In a capital case, there is a strong presumption that possibly exculpatory evidence should be given to the defendant Although we have upheld the nondisclosure of the identity of confidential informants under the balance of interests test when they were not eyewitnesses, the nature of the death sentence requires an extraordinary showing, based on competent evidence, before nondisclosure can be permitted.”).

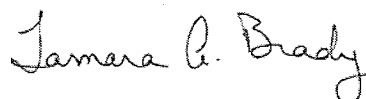
Request for a Hearing

7. Mr. Holmes moves for a hearing on this motion.

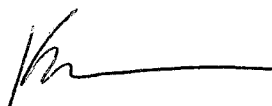
Mr. Holmes files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution.



Daniel King (No. 26129)
Chief Trial Deputy State Public Defender



Tamara A. Brady (No. 20728)
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Kristen M. Nelson (No. 44247)
Deputy State Public Defender

Dated: June 3, 2013

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THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	σ COURT USE ONLY σ
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ORDER RE: MOTION FOR SPECIFIC DISCOVERY – THREATENING EMAIL TO CENTURY 16 THEATER [D-043]	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

_____ JUDGE

_____ Dated

I hereby certify that on June 3, 2013, I

mailed, via the United States Mail,
 faxed, or
 hand-delivered

a true and correct copy of the above and foregoing document to:

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Jacob Edson
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