District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. **JAMES HOLMES,** Defendant	FILED JUN – 3 2013 σ COURT USE ONLY σ
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** Redacted Division 26

MOTION FOR DISCOVERY OF ANY AND ALL EMERGENCY DISPATCH TAPES AND PRINTOUTS OF LAW ENFORCEMENT COMMUNICATION [D-075]

CERTIFICATE OF CONFERRAL

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

Mr. Holmes, through counsel, hereby requests that the Court order the discovery of all dispatch tapes and printouts of law enforcement communication during the events of July 20, 2012. In support of this motion, Mr. Holmes provides the following:

1. Mr. Holmes was arrested on July 20, 2012.

2. Numerous law enforcement officers from many different organizations were involved in responding to both the scene at the movie theater, and at the apartment on Paris Street.

3. These officers communicated with one another in order to effectuate the arrest, and initially investigate the case.

4. The discovery only contains very brief summaries of these communications.

5. Defense counsel has not received copies of dispatch tapes or printouts containing the communications made between the officers.

6. This evidence is discoverable pursuant to Crim.P. (16).

7. Colorado Rule of Criminal Procedure 16, Part I(a)(1)(VI); I(a)(2), and I(c) require the disclosure of this information. Rule 16, Part I(c)(1) reads, "Upon defense counsel's request and designation of material or information which would be discoverable if in the possession and control of the prosecuting attorney and which is in the possession and control of other governmental personnel, the prosecuting attorney shall use diligent good faith efforts to cause such material to be made available to defense counsel."

8. In *Ortega v. People*, 426 P.2d 180 (Colo. 1967), the Colorado Supreme Court held that statements in the possession of the police are "within the 'possession and control' of the prosecuting attorney so as to meet the requirements of Rule 16." *People v. Lucero*, 623 P.2d 424 (Colo. App. 1980) further held that any material in the possession of the police is constructively in the possession of the prosecution. *See also People v. Garcia*, 690 P.2d 869 (Colo. App. 1984) (asserting that statements made to police in the county and district of the trial are within the prosecuting attorney's possession and control); *People v. District Court of the Second Judicial District*, 664 P.2d 247 (Colo. 1983) (holding that the district attorney was ascribed knowledge of the existence of a fingerprint card held by the police "by the terms of the discovery order itself and as a matter of law").

9. *People v. Thatcher*, 638 P.2d 760, 768 (Colo. 1981) noted that "[w]here the defense has made a specific request for certain information in the possession or control of the prosecution, discovery of that information is constitutionally compelled, not only when it is exculpatory, but when it is 'of material importance to the defense.'"

10. This evidence is of material importance to the defense.

Request for a Hearing

11. Mr. Holmes requests 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)
Chief Trial Deputy State Public Defender

Kristen M. Nelson (No. 44247)
Deputy State Public Defender

Dated: June 3, 2013

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ORDER RE: MOTION FOR DISCOVERY OF ANY AND ALL EMERGENCY DISPATCH TAPES AND PRINTOUTS OF LAW ENFORCEMENT COMMUNICATION [D-075]

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

_____ _____

JUDGE Dated

I hereby certify that on June 3rd, 2013, I

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

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

George Brauchler
Jacob Edson
Rich Orman
Karen Pearson
Office of the District Attorney
6450 S. Revere Parkway
Centennial, Colorado 80111
Fax: 720-874-8501

Nora Mehaton