REDACTED

| District Court, Arapahoe County, Colorado<br>Arapahoe County Courthouse<br>7325 S. Potomac St., Centennial, CO 80112 | |
|---|---|
| THE PEOPLE OF THE STATE OF COLORADO,<br>Plaintiff<br><br>v.<br><br>**JAMES HOLMES,**<br>Defendant | Filed<br>JUN - 3 2013<br>CLERK OF THE DISTRICT COURT<br>ARAPAHOE COUNTY, COLORADO<br>σ COURT USE ONLY σ |
| DOUGLAS K. WILSON, Colorado State Public Defender<br>Daniel King (No. 26129)<br>Tamara A. Brady (No. 20728)<br>Chief Trial Deputy State Public Defenders<br>1300 Broadway, Suite 400<br>Denver, Colorado 80203<br>Phone (303) 764-1400 Fax (303) 764-1478<br>E-mail: state.pubdef@coloradodefenders.us | Case No. **12CR1522**<br><br>Division 26 |

**MOTION FOR SPECIFIC DISCOVERY – LIST OF TIPS [D-050]**

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## CERTIFICATE OF CONFERRAL

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

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Mr. Holmes is charged with multiple counts of first degree murder and attempted murder in connection with the July 20, 2012, shooting at the Century 16 Theater in Aurora. The prosecution seeks to kill Mr. Holmes. Mr. Holmes, through counsel, moves for the following specific discovery:

1. The provided discovery refers to a list of tips provided by citizens that law enforcement was apparently working from and investigating. *See Det. Wilson's report at discovery pp 4357 et seq.*

2. Mr. Holmes moves this Court to order the government to disclose any tips or lists of tips in the possession of law enforcement that relate to this case.

3. Mr. Holmes makes this request pursuant to C.R.Crim. P. Rule 16.

4. Counsel requires this information in order to discharge their constitutional obligation to provide Mr. Holmes with the effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984); 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. Moreover, the concept of fundamental fairness embedded in the Due Process Clause entitles a defendant to a general right of access to evidence. *See Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) ("[A] criminal trial is fundamentally unfair if the State proceeds against [a] ... defendant without making certain that he has access to the raw materials integral to the building of an effective defense.").

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.").

7. In addition, Mr. Holmes is clearly entitled to this information pursuant to Colo. R. Crim. P. 16. Evidence is relevant for Rule 16 purposes as long as its contents are relevant to the conduct of the defense. *See e.g., People v. District Court El Paso County*, 790 P.2d. 337 (Colo. 1990); *People v. Gallegos*, 644 P.2d 920 (Colo. 1982). The Due Process Clause of the Fifth and Fourteenth Amendments are implicated when this discovery is not provided to the defense. *United States v. Bagley*, 473 U.S. 667 (1985); *Kyles v. Whitley*, 514 U.S. 419 (1995).

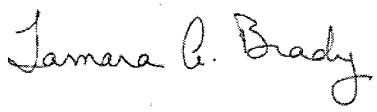
8. Finally, the prosecution has an overall ethical duty to provide discovery to the defense. *See In the Matter of Attorney C.,* 47 P.3d 1167 (Colo. 2002).

**Request for a Hearing**

9. 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)
Chief Trial Deputy State Public Defender

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

Dated: June 3, 2013

| District Court, Arapahoe County, Colorado<br>Arapahoe County Courthouse<br>7325 S. Potomac St., Centennial, CO 80112 | |
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| THE PEOPLE OF THE STATE OF COLORADO,<br>Plaintiff<br><br>v.<br><br>**JAMES HOLMES,**<br>Defendant | σ COURT USE ONLY σ |
| DOUGLAS K. WILSON, Colorado State Public Defender<br>Daniel King (No. 26129)<br>Tamara A. Brady (No. 20728)<br>Chief Trial Deputy State Public Defenders<br>1300 Broadway, Suite 400<br>Denver, Colorado 80203<br>Phone (303) 764-1400 Fax (303) 764-1478<br>E-mail: state.pubdef@coloradodefenders.us | Case No. **12CR1522**<br><br><br><br><br><br>Division 26 |
| **ORDER RE: MOTION FOR SPECIFIC DISCOVERY – LIST OF TIPS [D-050]** | |

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:

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

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