

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<div style="text-align: center;"> <p>σ COURT USE ONLY σ</p> </div>
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 JURY VIEW OF STERLING CORRECTIONAL FACILITY, COLORADO STATE PENITENTIARY, SAN CARLOS CORRECTIONAL FACILITY, AND CENTENNIAL CORRECTIONAL FACILITY IN THE EVENT A CAPITAL SENTENCING TRIAL IS HELD [D-153]	

CERTIFICATE OF CONFERRAL

The prosecution states that they object, and will file a responsive pleading to this motion.

Mr. Holmes moves this Court, in the event that there is a penalty phase of this trial, for an order allowing the jury to view the Sterling Correction Facility, to include the housing and conditions for death row inmates. Additionally, Mr. Holmes moves this Court for an order allowing the jury to view the Colorado State Penitentiary (including Colorado’s execution chamber), San Carlos Correctional Facility, and Centennial Correctional Facility. As grounds he states the following:

1. Mr. Holmes has been charged with the first degree murder of twelve people. The prosecution is seeking to execute Mr. Holmes.
2. Upon request of either party, the Court may allow the jury to go to the scene of the offense or to other locations *relevant to the case*. The purpose of this jury view is to assist the jurors in understanding particular evidence. The jurors are not allowed to ask any questions during the view and the defendant and defense counsel must be present during the procedure. *See 15 Colo. Prac., West Criminal Practice & Procedure Sec.18.146 (2^d ed.).*
3. This procedure is addressed in Colorado Jury Instructions, Criminal 2:06-Directions Upon Authorized Jury View as follows:

You will now go with the bailiffs to _____. While you are at the scene you are not to ask any questions or discuss the case. The purpose of this viewing is to help you understand the evidence which is introduced.

4. Generally, the decision of whether to authorize such a jury view is within the discretion of the trial court. *People v. Garcia*, 981 P.2d 214, 218 (Colo. App. 1999).

5. The discretion of the trial court in ruling on a request to view a scene must be exercised in accordance with the same rules which guide the admission of other evidence. *People v. Favors*, 556 P.2d 72, 76 (Colo. 1979).

6. A trial court acts within its discretion in denying a motion for a jury view only as long as sufficient evidence is available to describe the scene, such as “testimony, diagrams, or photographs.” *United States v. Crochiere*, 129 F.3d 233, 236 (1st Cir. 1997); *see also United States v. Culpepper*, 834 F.2d 879, 883 (10th Cir.1987).

7. Colorado courts have clearly followed this same analysis in addressing when motions for jury views may be denied within the discretion of the trial court. For example the Colorado Court of Appeals noted that “the same information could have been obtained through other means, such as photographs.” *Garcia*, at 218.

8. In *People v. Cisneros*, 720 P.2d 982 (Colo. App. 1986), the Court of Appeals noted that “the trial court gave defendant an opportunity to present a scale diagram or to present actual measurements to show the distance from which one of the eyewitnesses saw the shooting. Defendant chose not to accept that opportunity. Under such circumstances, refusing to view the scene did not constitute an abuse of discretion.” *Id.* at 984.

9. None of the cases cited above involved capital sentencing. The case law in Colorado on this issue involves not capital cases, but other criminal matters. In contrast, in the present case, each juror may be required to make the ultimate decision about whether Mr. Holmes will live or die.

10. In the event that there is a penalty phase in this case, jurors should be provided with all relevant information to make an informed decision on this issue. The defense has previously argued that capital sentencing procedures require heightened standards of reliability. *See, e.g., Beck v. Alabama*, 447 U.S. 625 (1980); *Simmons v. South Carolina*, 512 U.S. 154 (1994). In denying Mr. Holmes’s Motion for Application of Heightened Standards of Fairness and Reliability to all Aspects of this Capital Case [D-036], this Court found that the “requirement of heightened reliability in capital sentencing hearings... is achieved by the provision of the State’s death penalty statute.” *Order Regarding Defendant’s Motion for Application of Heightened Standards of Fairness and Reliability to All Aspects of this Capital Case [D-36]*, p. 2. Mr. Holmes maintains his original position regarding the application and meaning of this heightened standard of reliability and disagrees with the Court’s ruling. However, it is important to point out that even Colorado’s death penalty statute maintains a very broad definition of mitigation. *See* C.R.S.A. § 18-1.3-1201(4)(l).

11. The conditions on death row, and the method with which Colorado executes individuals are relevant to each juror's individual moral choice as to whether a sentence of death is the appropriate sentence, or whether a sentence of life in prison without the chance of parole would be appropriate instead. C.R.E. Rule 401,402; *Lockett v. Ohio*, 438 U.S. 586 (1978); *Simmons*, 512 U.S. 154; *People v. Dunlap*, 975 P.2d 723, 759 (Colo. 1999) ("In the penalty phase of a capital trial, the jury is required to make a factual and moral assessment of whether death is the appropriate penalty."). See *Tennessee*, 788 P.2d 786, 791 (Colo. 1990).

12. The jury will need to view death row and the execution chamber personally in order to fully understand and appreciate its layout, methods, and conditions. Such personal understanding is necessary for the jurors to make a fully informed individual moral choice as to whether a sentence of death is the appropriate sentence, or whether a sentence of life in prison without the chance of parole would be appropriate, and this cannot be obtained through other measures such as testimony or photographs.

13. Further, it is axiomatic that the discretion afforded a capital jury in choosing between a death or life penalty must be directed and limited so as to minimize the risk of a wholly arbitrary and capricious decision. Thus, such discretion must be well-informed with accurate sentencing information. *Gregg v. Georgia*, 428 U.S. 153, 190 (1976).

14. The same holds true for Mr. Holmes in that the jury cannot make a constitutionally guided decision based on misperceptions or incorrect information. In order for the jury to understand the true and accurate meaning of a death sentence, they must be able to access its real world manifestation. Only a view of death row and the execution chamber can accomplish this.

15. Additionally, any juror's misperceptions or misunderstandings about the meaning of a life punishment render a death sentence unconstitutional. *Simmons v. South Carolina*, 512 U.S. 154, 162 (1994). In order for each juror to understand the reality of a sentence to life without the possibility of parole, they also must see the types of environments where Mr. Holmes will be incarcerated in the event of a life sentence, at facilities such as San Carlos and Centennial. It is simply not enough to merely hear a description of the conditions within the Department of Corrections through testimony or photos.

16. The requested jury views are also necessary so that each juror understands his or her individual responsibility for their life and death sentencing decision in this matter. See generally *Caldwell v. Mississippi*, 472 U.S. 320 (1985) (prosecutor's closing argument improper and contrary to Eighth Amendment where prosecutor suggested jurors' decision would be subject to appellate review and, thus, diminished the jurors sense of responsibility for death decision); accord *People v. Drake*, 748 P.2d 1237, 1258 (Colo. 1988) ("[I]t is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere." (quoting *Caldwell*, 472 U.S. at 328-30)).

Request for a Hearing

17. It is beyond dispute that the “heightened standard of reliability” applies to the capital sentencing proceedings in this case. *See, e.g., Spaziano v. Florida*, 468 U.S. 447, 456 (1984); *Beck v. Alabama*, 447 U.S. 625, 637 (1980) (risk of unreliable conviction “cannot be tolerated” in case where defendant’s life is at stake); *Gardner v. Florida*, 430 U.S. 349, 357-58 (1977); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). *People v. Young*, 814 P.2d 834, 846 (Colo. 1991); *People v. Rodriguez*, 786 P.2d 1079 (Colo. 1989).

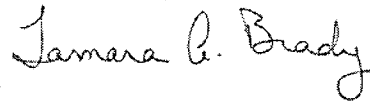
18. Therefore, Mr. Holmes also specifically requests that this Court refrain from ruling on this motion until the parties have completed briefing on this issue.

19. Additionally, 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.



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Dated: August 30, 2013

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ORDER RE: MOTION FOR JURY VIEW OF STERLING CORRECTIONAL FACILITY, COLORADO STATE PENITENTIARY, SAN CARLOS CORRECTIONAL FACILITY, AND CENTENNIAL CORRECTIONAL FACILITY IN THE EVENT A CAPITAL SENTENCING TRIAL IS HELD [D-153]	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

JUDGE

Dated

I hereby certify that on August 30, 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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JKES