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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed JUL 17 2013 <small>DISTRICT COURT ARAPAHOE COUNTY, COLORADO</small> 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
REPLY TO PROSECUTION'S RESPONSE TO MOTION TO PRECLUDE EXPERT OPINION TESTIMONY OF BOMB TECHNICIANS AND/OR ANY OTHER EXPLOSIVES EXPERTS, PURSUANT TO CRE 702 AND 403, DUE PROCESS, AND PEOPLE V. SHRECK, 22 P.3D 68 (COLO. 2001) [D-109]	

Mr. Holmes, through counsel, submits the following in reply to the prosecution's response to his Motion to Preclude Expert Opinion Testimony of Bomb Technicians and/or Any Other Explosives Experts:

1. Citing *People v. Rector*, 248 P.3d 1196, 1201 (Colo. 2011), the prosecution contends that Mr. Holmes is not entitled to a *Shreck* hearing because he does not make any specific challenges to the underlying reliability of scientific principles involved in the experts' testimony about explosives.
2. This is incorrect. In *Rector*, the defense attorney challenged the propriety (rather than the reliability) of a medical diagnosis of shaken baby syndrome by a particular doctor, where the prosecution did not intend to call that doctor or present evidence about such a diagnosis. After receiving additional discovery, the defense failed to renew or make more specific its request for a *Shreck* hearing. The Colorado Supreme Court upheld the trial court's decision to deny the defendant a *Shreck* hearing under these circumstances. 248 P.3d at 1201.
3. In contrast, Mr. Holmes's motion clearly references witnesses who are bomb technicians or others who may claim to potentially have specialized or technical knowledge and experience regarding bombs, explosives or incendiary devices, and objects to the admission of any and all expert opinion testimony from such witnesses. The motion further requests that the Court hold a hearing to make specific findings about the reliability, admissibility, and usefulness to the jury of these techniques. Mr. Holmes has therefore made a proper request for – and is entitled to – a hearing on the admissibility of such testimony pursuant to *Shreck*.

4. The prosecution also contends that no hearing is required because it has established through its pleading that the scientific technique at issue satisfies the requirements of *Shreck*. It has not. As the proponent of the evidence, it is the prosecution's burden to establish that "the method employed by the expert in reaching the conclusion is scientifically sound and that the opinion is based on facts which sufficiently satisfy Rule 702's reliability requirements." *People v. Ramirez*, 155 P.3d 371, 378 (Colo. 2007). This Court cannot simply rely on the prosecution's citations to websites containing manuals and articles about the various scientific procedures utilized in testing and analyzing the materials found in Mr. Holmes's apartment and conclude that the techniques involved satisfy the requirements of *Shreck*. It should grant a pretrial hearing where the prosecution is required to put on *evidence* of the reliability of the scientific principles, the qualifications of the witness, and the usefulness of the testimony to the jury that is subjected to the crucible of cross-examination.

5. In addition, the prosecution's lengthy discussion of the proposed witnesses' testimony as well as the submission of exhibits attached to its motion does nothing more than outline the content of the evidence it intends to introduce, and does not speak to the requirements of *Shreck*.

6. This Court should hold a pretrial hearing to determine the admissibility of the testimony from bomb technicians and explosives experts the prosecution seeks to introduce at trial.

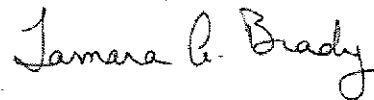
Request for a Hearing

7. Mr. Holmes renews his request for an evidentiary hearing on this motion.


Mr. Holmes incorporates by reference the arguments set forth in his original pleading, files this reply, 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: July 17, 2013

I hereby certify that on July 17, 2013, I

mailed, via the United States Mail,
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a true and correct copy of the above and foregoing document to:

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