DISTRICT COURT, ARAPAHOE COUNTY STATE OF COLORADO Arapahoe County Justice Center 7325 S. Potomac Street Centennial, Colorado 80112	Filed SEP 27 2013 CLERK OF THE COMBINED COURTS ARAPAHOE COUNTY, COLORADO
THE PEOPLE OF THE STATE OF COLORADO vs. Defendant(s): **JAMES EAGAN HOLMES**	COURT USE ONLY
Attorney: GEORGE H. BRAUCHLER 18th Judicial District Attorney 6450 S. Revere Pkwy. Centennial, CO 80111 Phone: (720) 874-8500 Atty. Reg. #: 25910	Case Number: **12CR1522** Division: **201**

PEOPLE'S REPLY IN SUPPORT OF MOTION P-047:
PEOPLE'S PROPOSED ALLOCUTION ADVISEMENT

This reply is submitted by the District Attorney for the 18th Judicial District.

1. In Motion P-47, the Prosecution has submitted a proposed allocution advisement. The defendant filed a response to the motion. The response appears to disagree with the People's proposed advisement in two important respects: (1) The defense objects to the form of the advisement to the extent that the People are requesting that the court inquire of the defendant as part of each question whether the defendant understands, and instead requests that the court read an advisement and simply ask the defendant at the end whether he understands, and (2) The defendant appears to object to some of the advisement questions that the People have proposed.

2. The procedure that the People are proposing is analogous to that discussed in *People v. Curtis*, 681 P.2d 504 (Colo. 1984). *Curtis* discusses the advisement a Colorado court is required to give to a defendant regarding the defendant's right to testify during the guilt phase of the trial. As explained in *Curtis*:

> The purposes of advisement by the court on the record are to ensure that waiver of a fundamental constitutional right is intelligent and knowing, to preclude postconviction disputes between defendant and counsel over the issue, and to facilitate appellate review. *See Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The trial judge could discharge this duty by permitting defense counsel to question the defendant on

> the record in the presence of the judge. There may be situations where it would be preferable to determine the defendant's wishes in that manner. To establish intelligent, knowing waiver of a constitutional right, "the best means of demonstrating the defendant's state of mind are his own declarations" on the record.

3. While the issues involved in a *Curtis* advisement and the type of advisement described by the People are different, the People believe that they share the same need for the court to ensure that the defendant's decision whether or not to speak in allocution is made in a knowing and intelligent manner. The People submit that the best way to do that is for the court to make sure that the defendant understands each individual portion of the advisement, and is making an intelligent decision. The procedure suggested by the defendant would not accomplish this purpose to the same degree.

4. Regarding the proposed advisement, the defendant appears to object to the following questions:

> (6) Have you consulted with your attorneys concerning this issue?
>
> (7) Are you satisfied with the advice of your attorneys concerning this issue?
>
> (8) Do you desire more time to discuss this issue with your attorney?
>
> (9) Whether or not you give a statement is your personal choice. Although you may have consulted with your attorneys and they may have given you advice on this issue, do you understand that whether or not you give a statement is your choice and not your attorneys' choice?
>
> (10) Whatever your decision is, is it your free and voluntary choice and your own personal decision?

5. The defendant does not state why he objects to these questions. The People believe that these questions will help ensure that the defendant makes a knowing and intelligent choice in deciding whether to address the jury in allocution. The questions do not seek to have the court inquire into any privileged information.

Respectfully submitted,
GEORGE H. BRAUCHLER,
District Attorney

By _____
Chief/Senior Deputy District Attorney
Registration No. 20939

CERTIFICATE OF MAILING

I hereby certify that I have deposited a true and correct copy of the foregoing in the Public Defender's Mailbox located at 6450 S. Revere Pkwy. Centennial, CO 80111, addressed to:

TAMARA BRADY, ESQ.
DANIEL KING, ESQ.
OFFICE OF THE PUBLIC DEFENDER

Dated: 9/27/13

By: _____