REDACTED

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed JUN 17 2014 CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. **JAMES HOLMES,** Defendant	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** Division 201

MOTION FOR DISCOVERY OF EMAILS AND OTHER WRITTEN COMMUNICATIONS SENT BY ARAPAHOE COUNTY DISTRICT ATTORNEY'S OFFICE TO VICTIM-WITNESSES IN THIS CASE [D-219]

CERTIFICATE OF CONFERRAL

The prosecution states that it needs "more information about this motion before [it] can respond."

Mr. Holmes, through counsel, moves this Court for an order directing the prosecution to provide the defense with copies of all emails and other written communications sent by the Arapahoe County District Attorney's Office to the victim-witnesses in connection with this case. In support of this motion, he states the following:

1. As stated in Motion D-137a, filed simultaneously with this pleading, Mr. Holmes filed a Motion for Discovery of Records re: Prosecution Communication and Correspondence with Victims [D-069] on June 3, 2013. Communications between Deputy District Attorney Lisa Teesch-Maguire and victims were specifically mentioned and requested in this pleading in paragraphs 9 and 11. That same day, Mr. Holmes filed a Motion for Specific Discovery-Witness/Victim Statements made to Lisa Teesch-Maguire [D-047].

2. These pleadings were denied by the Court without a hearing. In its written order, the Court concluded, *inter alia*, that the prosecution was not required to disclose this information pursuant to Rule 16(I)(d)(1), which requires disclosure of relevant material and information not covered by Rule 16(I)(a) "upon a showing that the request is reasonable." The Court held that the "defense has not asserted, much less demonstrated, that the disclosure sought is relevant to the conduct of the defense." Order re: D-069, pp. 3-4 (quoting *People v. Vlassis*, 247 P.3d 196,

198 (Colo. 2011)).

3. Pursuant to Rule 16(I)(d)(1), Mr. Holmes now specifically renews his motion for the production of all emails and other written communications sent by the Arapahoe County District Attorney's Office to the victim-witnesses in this case.

4. Upon information and belief, the prosecution has sent approximately 324 mass emails to the victim-witnesses in connection with this case. The defense obtained one of those emails, which is attached to Motion D-137a as Exhibit A. As fully explained in Motion D-137a, that email contains serious constitutional, legal, and ethical violations. Among other things, the email has violated Mr. Holmes's constitutional right to investigate and present a defense as well as his rights to the effective assistance of counsel and due process, violated Rule 16(III)(a), as well as Rules 3.4(f) and 4.1(a) of the Colorado Rules of Professional Conduct, and violated ABA Standard for Criminal Justice §3-3.1(d).

5. Given the significant volume of emails that have apparently been transmitted by the prosecutor's office to the victim-witnesses in this case, the defense believes it is unlikely that the email that is the subject of Motion D-137a was an isolated incident. The disclosure of these emails is relevant to the conduct of the defense because other emails or writings similar in nature to the one discussed in Motion D-137a would assist the defense in formulating its arguments regarding appropriate sanctions for the government's conduct and may also serve as grounds for defense motions for additional sanctions against the prosecution for its conduct in this case. While the defense did learn of the existence of the email discussed in Motion D-137a, it does not have the ability to obtain all of the other emails transmitted by the prosecution to victim-witnesses in this case. *People v. Dist. Court of El Paso Cnty.*, 790 P.2d 332, 338 (Colo. 1990) ("Crim.P. 16(I)(d)(1) further requires a showing by the defense that its request is reasonable, including a showing that the material or information sought is unavailable from any source other than the prosecution. Final determination of the reasonableness of the request, as of the relevance of the material sought, rests in the discretion of the trial court. Crim.P. 16(I)(d)(1).").

6. Mr. Holmes also has a constitutional right to this information. Where, as here, a specific request is made for information, the state and federal due process clauses require discovery if the information is "of material importance" to the defense. *People v. Thatcher*, 638 P.2d 768 (Colo. 1981); U.S. Const. amend XIV; Colo. Const. art. II, sec. 25. In addition, the state and federal due process clauses require that all exculpatory information be disclosed to the defense. *See, e.g.*, *Brady v. Maryland*, 373 U.S. 83 (1963); *People v. District Court,* 793 P.2d 163 (Colo. 1990).

7. On the basis of the foregoing, the defense requests that the Court issue an order requiring the prosecution to disclose the written communications its office has sent to the victim-witnesses in this case. At a minimum, Mr. Holmes requests that the Court order the prosecution to produce these documents in a sealed envelope to the Court so that the Court may view the documents *ex parte* and determine whether any of them should be discovered to the defense. This procedure will also ensure that this issue is properly preserved for appellate review.

Request for a Hearing

8. 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 17, 2014

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	σ COURT USE ONLY σ
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ORDER RE: MOTION FOR DISCOVERY OF EMAILS AND OTHER WRITTEN COMMUNICATIONS SENT BY ARAPAHOE COUNTY DISTRICT ATTORNEY'S OFFICE TO VICTIM-WITNESSES IN THIS CASE [D-219]

Defendant's motion is hereby GRANTED _____ DENIED _____.

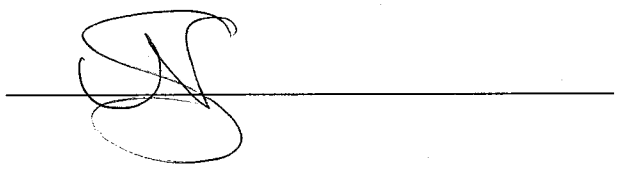
BY THE COURT:

_____ _____

JUDGE Dated

I hereby certify that on 10/17, 2014, 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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