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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed JUL 3 2014 CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO
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 202
REPLY IN SUPPORT OF DEFENDANT'S 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]	

Mr. Holmes, through counsel, submits the following in reply to the prosecution's response to the defense's motion for discovery of emails and other written communications sent by the Arapahoe County District Attorney's Office to Victim-Witnesses in this Case [D-219]:

1. The prosecution responds that the defense's motion for production of all emails and other written communications sent by the Arapahoe County District Attorney's Office to the victim-witnesses in this case pursuant to Rule 16(I)(d)(1) should be denied.

2. The prosecution claims that "[t]he email communications are not relevant because the District Attorney's Office has always told the victims and witnesses that they are free to speak or not speak with anyone they wish about this case." *Id.* at para. 104. The prosecution also claims that "[t]he emails are also apparently available from other sources, because the defense obtained at least one email and purports to know" the number of mass emails the district attorney's office has sent to victim-witnesses. *Id.*

3. Finally, the prosecution claims that the request is overbroad and is not reasonable. Response, para. 105. The prosecution contends that "[m]any communications involve the District Attorney informing the victims or witnesses of upcoming court dates, scheduling issues, or matters completely unrelated to the victim or witnesses' knowledge of the facts of what occurred in the theater, what the defendant did, or any evidentiary issue in this case." *Id.* The prosecution further argues that the defense's request would be "unduly onerous" given the

number of victims and extent of communications that have occurred. *Id.* at para. 106.

4. In reply, the defense first notes that the prosecution's actions described in Motion D-137a are what make this request relevant. Given the serious ethical and legal violations contained in the May 8, 2014 email, the defense has a solid basis for requesting that the prosecution disclose other written communications with victim-witnesses. The prosecution asserts that it "has always told the victims and witnesses that they are free to speak or not speak with anyone they wish about this case," but the May 8th email reveals that in fact, this assertion cannot be relied upon or trusted.

5. Second, contrary to the prosecution's suggestion, all of the communications requested are not available to the defense. The defense is willing to further inform the Court of the circumstances under which it came into possession of the May 8th email on an *ex parte* basis, but as officers of the court, represent that they are not presently able to obtain the 324 mass emails that have apparently been sent by Ms. Teesch-Maguire to the victim-witnesses. Moreover, the defense's request is broader than the 324 mass emails that have been sent. Because the prosecution may well have had improper written communications with individual victim-witnesses, the defense requests that *all* of the prosecution's written communications with witnesses be disclosed, not just mass emails sent by Ms. Teesch-Maguire. Obviously, the defense does not have access to all of these individual communications.

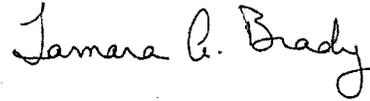
6. Third, the prosecution's claim that the defense's request is unreasonable and unduly onerous is untrue. The May 8th email serves as a basis for the reasonableness of the request. Given the volume of emails that have been sent to victim-witnesses from the district attorney's office in this case, it is unlikely that the May 8th email is an isolated incident. The only way that the Court and the defense can determine whether other violations have occurred is to have access to the other written communications the prosecution has exchanged with the victim-witnesses.

7. Finally, the defense notes that the prosecution has created this situation by its own doing. It cannot now complain that it would be too difficult for them to produce material that could lead to additional motions for sanctions for its unethical behavior. The defense's request meets the requirements of Crim.P. 16(I)(d)(1), *see People v. Dist. Court of El Paso Cnty.*, 709 P.2d 332, 338 (Colo. 1990), and should be granted.

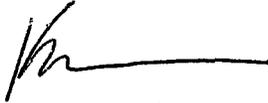
Mr. Holmes files this reply, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, 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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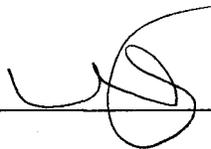
Dated: July 3, 2014

I hereby certify that on 7/3, 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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A handwritten signature in black ink, appearing to be 'JS', is written over a horizontal line.