

REDACTED

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed JUN 18 2013 CLERK OF THE DISTRICT 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	σ COURT USE ONLY σ Case No. 12CR1522 Division 26
MOTION TO COMPEL DISCLOSURE OF VIDEOTAPE IN POSSESSION OF ARAPAHOE COUNTY SHERIFF'S OFFICE [D-132]	

CERTIFICATE OF CONFERRAL

Conferral is not appropriate for this pleading.

James Holmes, through counsel, moves this Court for an order requiring the Arapahoe County Sheriff's Office to disclose to defense counsel the video recording it has obtained of Mr. Holmes while Mr. Holmes was a patient at Denver Health Medical Center and, in support, states:

1. On November 15, 2012, the Arapahoe County Attorney's office filed an "Emergency Motion For Authorization to Proceed Under §§ 27-65-105, 106, and 125, Colo. Rev. Stat., As Amended" stating that Mr. Holmes was in immediate need of a psychiatric evaluation at an in-patient psychiatric facility, and that Mr. Holmes was a danger to himself at the detention center at the time.

2. The statutes cited by the County Attorney, C.R.S. §§ 27-65-105, 106, and 125, permit an emergency commitment and evaluation (sometimes referred to as a "seventy-two hour hold") when a designated professional determines that the "person appears to have a mental illness and, as a result of such mental illness, appears to be an imminent danger to others or to himself or herself or appears to be gravely disabled... ."

3. On that same day, Mr. Holmes was transferred by ambulance to Denver Health

Medical Center, where he remained for several days, frequently in restraints.¹

4. Counsel subsequently learned through discovery that on February 19, 2013, ACSO Bureau Chief Louie Perea informed District Attorney Investigator Mike Heylin that “when the defendant was taken to Denver Health Medical, that facility was equipped with their own CCTV cameras/video. He said that ACSO did obtain a copy of the video from DHM, but was not going to release it to defense counsel because ACSO had obtained it from Denver Health Medical.”

5. Subsequently, on March 4, 2013, both the prosecution and defense received an email from Assistant County Attorney Breena Meng stating that both parties had requested copies of the video made by Denver Health and that Sheriff Robinson would not be releasing the video to either side.

6. On June 4, 2013, Mr. Holmes entered a plea of not guilty by reason of insanity, and as a result, by operation of the statute, Mr. Holmes has “waive[d] any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for such mental condition” C.R.S. § 16-8-103.6(2)(a). *See also Gray v. District Court*, 884 P.2d 286 (Colo. 1994).

7. Moreover, the defense has spoken with the clinician who will be conducting the court-ordered sanity examination of Mr. Holmes, about the necessary materials he needs to conduct his examination. He expressly stated that video footage of Mr. Holmes while he was hospitalized at Denver Health is relevant to his sanity examination, and that he would like to view this footage.

8. In addition, this Court’s June 4, 2013 order for an in-custody sanity examination, directs that the sanity evaluator be provided with all jail, medical, and mental health records in the possession of the Arapahoe County Sheriff’s Office.

9. The defense has made efforts to obtain this video directly from Denver Health and the Arapahoe County Sheriff’s Office without success.

10. There is no legal basis for the Arapahoe County Sheriff’s Department to withhold relevant psychiatric records of Mr. Holmes from his own attorneys, particularly where this Court has ordered the department to disclose these materials to the State’s psychiatric evaluator. Counsel have previously provided HIPAA compliant releases signed by Mr. Holmes to the Arapahoe County Sheriff’s Office and have obtained other psychiatric and medical records from the department.

11. Mr. Holmes moves this Court for an Order requiring that the Arapahoe County Sheriff’s Office disclose the video obtained from Denver Health to the defense in accordance with Mr. Holmes’ constitutional right to due process. U.S. Const. amends. V, XIV; Colo. Const. art. II, sec. 25.

¹ This is a separate hospitalization from an earlier hospitalization that resulted from potential self-inflicted head injuries in his cell.

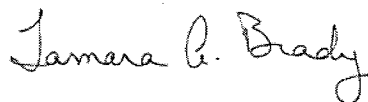
Request for a Hearing

12. If the Court is not inclined to immediately grant this motion, 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



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Deputy State Public Defender

Dated: June 18, 2013

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THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	σ COURT USE ONLY σ
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<p style="text-align: center;">ORDER RE: MOTION TO COMPEL DISCLOSURE OF VIDEOTAPE IN POSSESSION OF ARAPAHOE COUNTY SHERIFF'S OFFICE [D-132]</p>	

Defendant's motion is hereby GRANTED ____ DENIED ____.

BY THE COURT:

 JUDGE

 Dated

I hereby certify that on June 18, 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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