

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	ARAPAHOE COUNTY DISTRICT COURT 2012 JUL 26 PM 3:55 σ COURT USE ONLY σ
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	Case No. 12CR1522 Division 408 22
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Tamara A. Brady (No. 20728) Chief Trial Deputy State Public Defenders 1290 Broadway, Suite 900 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: state.pubdef@coloradodefenders.us	
MOTION FOR IMMEDIATE PRODUCTION OF ALL DISCOVERY PERTAINING TO IMPROPER DISCLOSURE OF PRIVILEGED MATERIAL D-[011]	

James Holmes, through counsel, hereby moves this Court to order the government to immediately produce all discovery pertaining to the seizure of the package from Mr. Holmes addressed to Dr. Lynne Fenton pursuant to search warrant on July 23, 2012 and the subsequent breach of confidentiality and privilege regarding these materials pursuant to his state and federal constitutional rights to due process, a fair trial by an impartial jury, and C.R.S. §13-90-107. As grounds for this motion, Mr. Holmes states the following:

1. As recounted in previous pleadings filed with this Court, the government seized a package from the University of Colorado that was sent from Mr. Holmes to Dr. Lynne Fenton pursuant to a search warrant that was executed on July 23, 2012. The materials contained in that package include communications from Mr. Holmes to Dr. Fenton that Mr. Holmes asserts are privileged. Mr. Holmes [REDACTED] and his communications with her are protected by [REDACTED]

2. Despite this Court's issuance of a protective order and an order limiting pre-trial publicity, details concerning the content of these materials were leaked by the government to the media, in direct violation of these orders and C.R.S. § 13-90-107(1)(d),(g).

3. The government's disclosure of this confidential and privileged information has placed Mr. Holmes' constitutional rights to due process and a fair trial by an impartial jury in serious jeopardy, and Mr. Holmes will be requesting a hearing on this issue for the purpose of determining appropriate sanctions for this misconduct.

4. In anticipation of such litigation, Mr. Holmes requests that this Court order the government to immediately produce all discovery that is relevant to this issue, including but not limited to a list of all persons who were involved in the seizure or handling of the material in question in any way, the names of the law enforcement agents, including federal agents, who

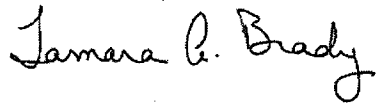
were involved in the testing of this package for the presence of explosives and chemical/biological contaminants, and the identity of any and all individuals from any and all state and federal law enforcement agencies who were involved in any way with respect to the chain of custody for this package and its contents, information about the precise timing of events surrounding the seizure of the package and the subsequent breach of privilege with respect to the contents of the package, any and all information pertaining to the identity of the individuals responsible for the breach, any and all handwritten notes or reports prepared by any person or agency in connection with the analysis, seizure and search of the package, and any and all information pertaining to the allegation made in the media that Mr. Holmes informed law enforcement about the existence of the package, including but not limited to statements made by Mr. Holmes concerning the package, the identity of any individuals who were involved or present when such a statement was made, and the identity of any and all individuals involved in the disclosure of the information that Mr. Holmes made such a statement.

5. Mr. Holmes makes this request pursuant to his state and federal constitutional rights to due process, confrontation, the effective assistance of counsel, and a fair trial by an impartial jury, as well as the Colorado Rules of Criminal Procedure, and the Colorado Rules of Professional Responsibility. See, e.g., *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Bagley*, 473 U.S. 667 (1985); *Strickland v. Washington*, 466 U.S. 668 (1984); *Brady v. Maryland*, 373 U.S. 83 (1963); *In the Matter of Attorney C.*, 47 P.3d 1167 (Colo. 2002); *People v. District Court El Paso County*, 790 P.2d. 337 (Colo. 1990); *People v. Gallegos*, 644 P.2d 920 (Colo. 1982); Colo. R. Crim. P. 16, Part I, (a)(I), (a)(IV), (d)(1); U.S. Const. amends. IV, V, VI, and XIV; Colo Const. Art. II, secs. 3, 6, 7, 16, 18, 23, and 25.

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

Dated: July 26, 2012

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<p style="text-align: center;">ORDER RE: MOTION FOR IMMEDIATE PRODUCTION OF ALL DISCOVERY PERTAINING TO IMPROPER DISCLOSURE OF PRIVILEGED MATERIAL D-[011]</p>	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

_____ JUDGE

_____ Dated

I hereby certify that on July 26, 2012, I

mailed, via the United States Mail,
 faxed, or
 hand-delivered

a true and correct copy of the above and foregoing document to:

Carol Chambers
Karen Pearson
Office of the District Attorney
6450 S. Revere Parkway
Centennial, Colorado 80111
Fax: 720-874-8501

