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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed in Division JUL 20 2012 <small>Arapahoe County District Court</small> σ COURT USE ONLY σ
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES Defendant	
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Deputy State Public Defender 1290 Broadway, Suite 900, Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: daniel.king@coloradodefenders.us	Case No. 12CR1522 Division 408
<p align="center">MOTION FOR ACCESS TO AND PRESERVATION OF CRIME SCENE [001] (0-1)</p>	

James Holmes moves for a court order preserving and granting counsel and their agents access to inspect the crime scene at the Century Aurora 16 Theater, 14300 East Alameda Ave., Aurora, CO, and the surrounding area, pursuant to the Fifth, Sixth and Fourteenth Amendments to the Colorado Constitution, as well as Article II, sections 16, 18 and 25 of the Colorado Constitution. In support of this motion, Mr. Holmes states the following:

1. Mr. Holmes' family has requested that counsel represent him, and counsel anticipates being appointed to represent Mr. Holmes. However, as of the time of the filing of this motion, counsel has been prevented from personally meeting with Mr. Holmes. Due to the nature of the offense, the scheduled advisement hearing on Monday and intervening weekend, it is imperative for counsel to file this motion as soon as possible.
2. Mr. Holmes is alleged to have committed multiple murders at the Century Aurora 16 Theater in the early morning hours of July 20, 2012.
3. The movie theater and the surrounding area is the principal crime scene in this case. The scene is currently being processed by law enforcement.
4. The defense requests that this Court issue an order directing the Aurora Police Department and the other law enforcement agencies involved to preserve and refrain from releasing the scene to afford the defense team and defense experts the opportunity to inspect and observe the scene.
5. Inspection of the scene prior to its release is vital to Mr. Holmes' defense.
6. The United States and Colorado Constitutions grant criminal defendants the right

to investigate, prepare, and present a defense free from unreasonable governmental interference. See U.S. Const. amends. V, VI, and XIV; Colo. Const., Art. II, §§ 16, 18 and 25.

7. Moreover, the concept of fundamental fairness embedded in the Due Process Clause entitles a defendant to a general right of access to evidence. See *Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) (“[A] criminal trial is fundamentally unfair if the State proceeds against [a] . . . defendant without making certain that he has access to the raw materials integral to the building of an effective defense.”); *California v. Trombetta*, 467 U.S. 479, 485 (1984) (to safeguard right to present a complete defense embodied in Due Process Clause, “the Court has developed ‘what might loosely be called the area of constitutionally guaranteed access to evidence.’” (citation omitted)); *United States v. McClelland*, 141 F.3d 967, 971 (10th Cir. 1998) (“A defendant’s Fourteenth Amendment due process rights include a general right to access evidence.”).

8. In addition, counsel is obligated under the Sixth Amendment to conduct a thorough and independent pretrial investigation. See *Von Moltke v. Gillies*, 332 U.S. 708, 721 (1948) (“Prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved”); *Powell v. Alabama*, 287 U.S. 45, 57 (1932) (noting that “thorough-going investigation and preparation” by defense counsel is “vitally important”); *People v. Tackett*, 742 P.2d 957, 959 (Colo. App. 1987) (“A defendant is entitled to a pretrial investigation of sufficient thoroughness to develop potential defenses and uncover facts relevant to guilt and punishment.”).

9. Finally, the Colo. R. Crim. P. 16, Pt. 1(a)(1)(IV) requires the prosecution to “make available to the defense . . . [a]ny . . . tangible objects held as evidence in connection with the case.” This obligation extends beyond the prosecuting attorney to “any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his or her office.”

10. Counsel is willing to abide by all reasonable conditions that may be placed on the inspection of the scene for the purposes of preserving the integrity of the physical evidence.

11. On the basis of the foregoing authorities and Mr. Holmes’s weighty interest in exploring and gathering relevant and material evidence in his defense, the Court should order that the Aurora Police Department and the other law enforcement agencies involved should preserve and hold the scene to allow counsel an opportunity to access and inspect it, subject to such reasonable limitations and restrictions as the Court may impose.

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
Colorado Public Defender

Dated: July 20, 2012

This Motion having been reviewed by the Court, is hereby
 Granted Denied Ordered to be set by movant
with notice Further COURT ORDERS HEARING ON THIS TO
BE HELD 7/23/12 @ 9:30 AM
7/20/12 William B. Sylvester
Date William B Sylvester District Judge

I, Kathy Lyons, hereby certify that I provided a true and correct copy of the above order to the following persons on ___ July 20th ____, 2012 via fax/email/U.S. mail/intra-office mail as follows:

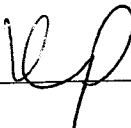
Jim O'Connor, Esq.
Public Defender's Office
Hand Delivered – CH2

Karen Pearson, Esq.
District Attorney's Office
Email

Andy Cooper, Esq.
District Attorney's Office
Email

Jacob Edson, Esq.
District Attorney's Office
Email

Rich Orman, Esq.
District Attorney's Office
Email



Clerk

