

RECEIVED DISTRICT COURT
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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	2012 JUL 25 PM 3:53
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 1290 Broadway, Suite 900 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: state.pubdef@coloradodefenders.us	Case No. 12CR1522 Division 408 22
MOTION TO ALLOW DEFENDANT TO SIT AT COUNSEL TABLE D-[012]	

James Holmes, through counsel, hereby moves this Court to issue an order pursuant to his constitutional rights to due process, a fair trial, the effective assistance of counsel, and to present a defense directing that Mr. Holmes shall be permitted to be seated at counsel table with his attorneys during subsequent proceedings. As grounds for this motion, Mr. Holmes states the following:

1. During Mr. Holmes' initial advisement on July 23, 2012, he was seated in the jury box at the request of the sheriff, who expressed concerns for Mr. Holmes' safety due to the apparent presence, statements, and behavior of individuals in the audience of the courtroom.

2. Mr. Holmes cannot continue to remain seated away from counsel table in the jury box during subsequent proceedings. Counsel need to be able to confer and communicate with Mr. Holmes and with each other and to review case-related documents and pleadings with him. This ability to communicate is critical to ensuring Mr. Holmes receives a fair trial and the effective assistance of counsel and is able to present a defense, as guaranteed by the federal and Colorado Constitutions. *See Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) (Constitution guarantees criminal defendants "meaningful opportunity to present a complete defense"); *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Rodriguez*, 914 P.2d 230, 294 (Colo. 1996) ("A defendant's right to effective assistance of counsel is guaranteed by the United States and Colorado Constitutions."); U.S. Const. amends. V, VI, XIV; Colo. Const. Art. II, secs. 16, 18 and 25.

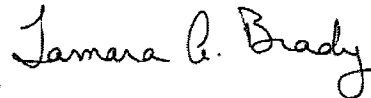
3. In addition, continuing to seat Mr. Holmes in the jury box may give those observing the proceedings the incorrect impression that the sheriff or the Court has concerns about Mr. Holmes expressing threats or exhibiting dangerous behavior, which would jeopardize Mr. Holmes' right to a fair trial by an impartial jury. *See Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Estes v. Texas*, 381 U.S. 532 (1965); *People v. Botham*, 629 P.2d 589 (Colo. 1981); U.S. Const. amends VI, XIV; Colo. Const. Art. II, secs. 16, 23, 25.

4. Mr. Holmes' constitutional rights cannot be compromised because other individuals present in the courtroom have expressed a desire to harm him. If the Court or the sheriff continues to have concerns about Mr. Holmes' safety, those concerns can be allayed by addressing the conduct of the individuals in question, rather than requiring Mr. Holmes to be separated from counsel table.

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

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

AKC