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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 Arapahoe County District Court
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
MOTION TO LIMIT PRE-TRIAL PUBLICITY [002] (0-2)	

James Holmes moves this Honorable Court to enter an order limiting the dissemination of information by attorneys, their agents, employees and all law enforcement agencies and investigators, employees and court personnel concerning this case.

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 respectfully requests that this Court enter the attached order limiting the dissemination of information by attorneys, their agents, employees and all law enforcement agencies and investigators, employees and court personnel concerning this case, based upon the following authorities:

- a. The American Bar Association Standards for Criminal Justice, Fair Trial and Fair Press, Third Edition, sections 8-1.1, 8-1.2, 8-2.2, and 8-2.3.
- b. The Colorado Rules of Professional Conduct, sections 3.6 ("Trial Publicity") and 3.8 ("Special Responsibilities of a Prosecutor").
- c. Mr. Holmes' constitutional rights, including but not limited to the rights to a fair trial, to a fair and impartial jury, and to due process as guaranteed him under the United States Constitution and the Colorado Constitution. U.S. Const. amends. V, VI, VIII, XIV; Colo. Const. art. II, secs. 16, 18, 20, 23, 25; *see also People v. Botham*, 629 P.2d 589 (Colo. 1981); *Sheppard v. Maxwell*, 384 U.S. 333 (1966).

3. An order limiting pretrial publicity is necessary to protect Mr. Holmes' above-mentioned rights.


4. Mr. Holmes moves for 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
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
Date **William B. Sylvester** District Judge 

CERTIFICATE OF SERVICE

I hereby certify that on 7/20, 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
Office of the District Attorney
6450 S. Revere Parkway
Centennial, Colorado 80111
Fax: 720-874-8501



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

UP

Clerk



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ORDER RE: MOTION TO LIMIT PRE-TRIAL PUBLICITY [007]	

IT IS HEREBY ORDERED AS FOLLOWS:

I. Extrajudicial Statements by Attorneys:

(A) Any lawyer participating in or associated with the investigation of this criminal matter shall not make or participate in making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

- (1) Information contained in a public record.
- (2) That the investigation is in progress.
- (3) The general scope of the investigation including the description of the offense and, if permitted by law, the identity of the victims.
- (4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.
- (5) The scheduling or result of any step in litigation.

(B) Any lawyer, law firm or legal representative (investigators of the firm) associated with the prosecution or defense of this criminal matter shall not, from the filing of a complaint, information or indictment, the issuance of an arrest warrant or arrest, until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that

a reasonable person would expect to be disseminated by means of public communication and that relates to:

- (1) The character, reputation or prior criminal record (including arrests, indictments or other charges of crime) of the accused.
- (2) The possibility of a plea of guilty to the offense charged or to the lesser offense.
- (3) The existence or contents of any confession, admission or statement given by the accused or his refusal or failure to make a statement.
- (4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.
- (5) The identity, testimony or credibility of a prospective witness.
- (6) Any opinion as to guilt or innocence of the accused, the evidence or the merits of the case.

(C) Section (B) above does not preclude a lawyer during such period from announcing:

- (1) The name, age, residence, occupation and family status of the accused.
- (2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.
- (3) A request for assistance in obtaining evidence.
- (4) The identity of the victim of the crime (if permitted by law).
- (5) The fact, time and place of arrest, resistance, pursuit and use of weapons.
- (6) The identity of investigating and arresting officers or agencies and length of investigation.
- (7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission or statement.
- (8) The nature, substance or text of the charge.
- (9) Quotations from and references to public records of the Court in the case.
- (10) The scheduling or result of any step in the judicial proceedings.

- (11) That the accused denies the charges made against him and the general nature of the defense to the charges or to other public accusations against the accused, including that the accused has no prior criminal record.

(D) During the selection of a jury or trial of this criminal matter, any lawyer or law firm associated with the prosecution or defense of this criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the Court in the case.

(E) Any lawyer or law firm associated with the prosecution or defense of this criminal matter shall exercise reasonable care to prevent his employees and associates from making an extrajudicial statement that he would be prohibited from making under this order.

II. Releases of Information by Law Enforcement Agencies:

(A) From the date of this order until the completion of the trial or disposition without trial, law enforcement officers shall not release or authorize the release of any extrajudicial statement for dissemination by means of public communication, if such statement presents a clear and present danger to the fairness of trial. In no event, however, shall a law enforcement officer make an extrajudicial statement concerning the following matters:

- (1) The existence of contents of any confession, admission or statement given by the accused or refusal or failure of the accused to make any statement.
- (2) The possibility of a plea of guilty to the offense charged or a lesser offense or other disposition.
- (3) The prior criminal records (including arrest, indictment or other charges of crime), the character or reputation of the accused, or any opinion as to the guilt or innocence or as to the merits of the case or evidence in the case.
- (4) The performance of or the result of any examinations or tests or the refusal of or failure of the accused to submit to examinations or tests.
- (5) The identity, testimony or credibility of a prospective witness.

(B) A law enforcement officer may make factual statements as follows:

- (1) The name, age, residence, occupation and family status of the accused.
- (2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.
- (3) A request for assistance in obtaining evidence.

- (4) The identity of the victim of the crime (if permitted by law).
- (5) The fact, time, and place of arrest, resistance, pursuit and use of weapons.
- (6) The identity of investigating and arresting officers or agencies and length of investigation.
- (7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission or statement.
- (8) The nature, substance or text of the charge.
- (9) Quotations from and references to public records of the Court in this case.
- (10) The scheduling or result of any step in the judicial proceedings.
- (11) That the accused denies the charges made against him.

III. Disclosure by Court Personnel:

Court personnel shall not disclose, to any unauthorized person, information relating to this pending criminal case that is not a matter of public record of the Court and that may be prejudicial to the right of the People or Mr. Holmes to a fair trial.

IV. Applicability:

This Order applies to those agencies served with a copy of this Order by mailing it to them at the addresses below and all subordinates in those agencies. If counsel wish this Order to apply to any agency not listed, the Court shall be notified by written motion forthwith of said agency with proper notice to the opposing party.

JUDGE

DATED

cc: Arapahoe County Sheriff's Office
Denver Police Department
18th Judicial District Attorney's Office
Clerk's Office of Arapahoe County District Court
Colorado Bureau of Investigation
Federal Bureau of Investigation

*I hereby certify
that on 7/20/12
I hand delivered
motion*
