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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	σ COURT USE ONLY σ
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 PRESERVE AND PRODUCE EVIDENCE [003] (03)	

Pursuant to Colo. R. Crim. P. 16 and the Due Process Clauses of the United States and Colorado Constitutions, Defendant moves for an order requiring the prosecution to preserve and provide Defendant with access to any and all items of evidence, including but not limited to the following items:

- a. All recordings produced or seized in connection with this case;
- b. All police notes. **Defense counsel is aware that it is the practice of law enforcement to destroy their notes. Defense counsel requests an order specifically ordering law enforcement agents to preserve all notes in this case;**
- c. All scientific reports, memoranda or notes produced in connection with the events in this case;
- d. All photographs made or seized in connection with this case;
- e. All biological samples and physical evidence made or seized in connection with this case;
- f. All correspondence, including email and text mail correspondence by or to law enforcement and the prosecution concerning the investigation of this case;
- g. All records and logs and receipts pertaining to the storage and movement of physical evidence;

As grounds for this request Defendant states:

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. Defendant will be making independent evaluation of all items which are possible material evidence and potentially exculpatory in this case.

3. Due process and Defendant's Sixth Amendment right to confront his accuser require that he be allowed to obtain such evidence. *People v. Harmes*, 560 P.2d 470 (1976), *People v. Norwood*, 547 P.2d 273 (1973); *People v. Sheppard*, 701 P.2d 49 (Colo. 1985).

4. The evidence seized includes items that are material and potentially exculpatory, *Brady v. Maryland*, 373 U.S. 83 (1963), and are necessary to the effective defense of this case. *Garcia v. District Court*, 589 P.2d 924 (1979).

5. This discovery is authorized by the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, Article II, Section 16 and 25 of the Constitution of the State of Colorado, and Crim. P. 16, Part I(c) and (d), and *People v. Garcia*, 627 P.2d 255 (Colo. 1980); *People v. Garries*, 645 P.2d 1306 (Colo. 1982); *People v. Thatcher*, 638 P.2d 760 (Colo. 1981); *People v. Gomez*, 596 P.2d 1192 (Colo. 1979).

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

This Motion having been reviewed by the Court, is hereby
 Granted Denied Ordered to be set by movant
with notice Further **COURT ORDERS**
RULE 16 COMPLIANCE BY
DA OFFICE 7/20/12
Date **William B Sylvester District Judge**

Dated: July 20, 2012


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:

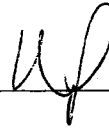
Jim O'Connor, Esq.
Public Defender's Office
Hand Delivered - CH2

Karen Pearson, Esq.
District Attorney's Office
Email

Andy Cooper, Esq.
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Jacob Edson, Esq.
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