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DISTRICT COURT
ARAPAHOE COUNTY, COLORADO
Court Address: Arapahoe County Justice Center
7325 S. Potomac St., Centennial, CO 80112

Filed

AUG 8 2012

CLERK OF THE COMBINED COURT
ARAPAHOE COUNTY, COLORADO

THE PEOPLE OF THE STATE OF COLORADO vs.
Defendant:

JAMES EAGAN HOLMES

COURT USE ONLY

Attorney:
CAROL CHAMBERS, 18th Judicial District Attorney
6450 S. Revere Pkwy Suite 100, Centennial, CO 80111
Phone: (720) 874-8500
Atty. Reg. #: 14948

Case Number:
12CR1522
Division/Ctrm:
22

**PEOPLE'S RESPONSE TO DEFENDANT'S MOTION D-6: MOTION TO ALLOW
CONFIDENTIAL DEFENSE EXPERTS TO BE PRESENT
FOR SCIENTIFIC TESTING OF EVIDENCE**

THE PEOPLE, pursuant to Court Order, hereby respond to the Defendant's Motion to Allow Confidential Defense Experts to be Present for Scientific Testing of Evidence (D-6). The People respectfully request this Court DENY the Defendant's request for the presence of confidential defense experts at any non-consumptive testing of evidence in this matter.

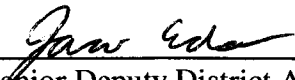
Grounds in support are as follows:

1. The Defendant has requested that this Court order that "confidential defense experts" be present for *all* scientific testing of evidence in this case.
2. Though the defendant cites two cases for the proposition that effective assistance of counsel may very well entail consultation with defense-retained experts, the People would note that the Defendant provides no authority for the proposition that the inclusion of defense-retained experts in non-destructive testing is any way mandated by statute or case law.
3. To the contrary, the legislature has *only* provided for the presence of representatives of the defendant in the limited circumstances of destructive testing of evidence. See C.R.S. §16-3-309.
4. The Colorado Supreme Court has upheld the principle that a Court's "supervisory role" with respect to testing of evidence is triggered only in situations involving consumptive or destructive testing. People v. Wartena, 156 P.2d. 469, 472, (Colo. 2007). Respectfully, the People assert any non-consumptive or non-destructive testing is not within Court oversight or limitation under C.R.S. 16-3-309 or Wartena, *supra*.

5. The defendant attempts to circumvent the plain holdings of Wartena by unduly broadening the limitations set forth by C.R.S. §16-3-309, in claiming that *any testing at all*, has the potential to be destructive, and thus all testing must in some way be destructive in nature. The People submit that this argument has no legal or factual support. To contend *any testing* situation may alter or consume evidence in *any way*, (no matter how miniscule or scientifically insignificant) would render C.R.S. §16-3-309 and Wartena meaningless, and would fly in the face of standard scientific practices.
6. The People acknowledge the legal requirement to notify the defense of known consumptive testing and will continue to comply with the legal obligations set forth in C.R.S. §16-3-309.

WHEREFORE, the People respectfully request that this Court DENY the Defendant's request for the presence of "confidential defense experts" at any non-consumptive testing of evidence in this matter.

Carol Chambers, District Attorney

By 
Senior Deputy District Attorney
Registration No. 36222

Case: 12CR1522
JAMES HOLMES

CERTIFICATE OF MAILING

I hereby certify that I have deposited a true and correct copy of the foregoing **PEOPLE'S RESPONSE TO DEFENDANT'S MOTION D-6: MOTION TO ALLOW CONFIDENTIAL DEFENSE EXPERTS TO BE PRESENT FOR SCIENTIFIC TESTING OF EVIDENCE** in the Public Defender's Mailbox located at 6450 S Revere Pkwy Centennial CO 80111, addressed to:

TAMARA BRADY, ESQ.
DANIEL KING, ESQ.
OFFICE OF THE PUBLIC DEFENDER

Dated: _____

8/8/12

By _____


Certifying Secretary