

REDACTED

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed FEB - 5 2013 <small>CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO</small>
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	
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 22
RESPONSE TO CITY OF AURORA'S MOTION REGARDING RECONSIDERATION OF PRE-TRIAL PUBLICITY ORDERS [D-2a]	

Pursuant to the Court's request for any response to the City of Aurora's Regarding Reconsideration of Pre-Trial Publicity Orders by February 5, 2013, Mr. Holmes, through counsel, submits the following:

1. The City of Aurora requests that this Court "revisit and potentially revise" its pre-trial publicity orders in this case. The City's motion is exceedingly vague in its requested reconsideration, asking that the orders be modified "to allow City representatives to speak about the City's response to the attack." The City, in turn, apparently defines its "representatives" as "its management, elected officials, members of the first response teams from the Aurora Police Department, Aurora Fire Department, and many other divisions of the government...." (Motion, para. 1). Thus, the City includes both law-enforcement and non-law-enforcement personnel in its broad request without differentiation, even though they are treated differently under this Court's orders.

2. However, the City does not explain exactly what information it wishes to share (other than two 911 calls), or how the current publicity orders would be violated. Moreover, the City argues that because certain "information" and "evidence" was presented at the preliminary hearing, there is no longer a need for a pre-trial publicity order. However, there is a great deal of information related to this case that was not presented at the preliminary hearing, and which has not yet been made public. Furthermore, the publicity order prohibits extrajudicial statements that "will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." See D-2a. Such protections are necessary to ensure Mr. Holmes' right to due process, a fair trial, and an impartial jury.

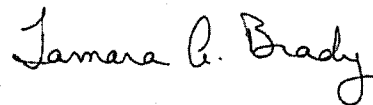
3. Mr. Holmes believes the City's arguments have already largely been addressed in Part V of this Court's order in D-2a. In addition, the City of Aurora is not a party in this action, but characterizes itself as an "interested party." Mr. Holmes asserts that the City of Aurora is in reality seeking a limited intervention in Mr. Holmes' case, which is prohibited under *People v. Ham*, 734 P.2d 623, 625 (Colo. 1987).

4. Even if this Court decides to entertain the City's motion, Mr. Holmes' objects to the City's vague request for reconsideration of this Court's orders. In addition, Mr. Holmes incorporates the arguments previously made in his "Motion to Limit Pre-Trial Publicity [D-002]." Without this Court's orders, there is a high likelihood that release of information will jeopardize his right to a fair trial by an impartial jury, as protected by the Colorado and federal constitutions. See *Sheppard v. Maxwell*, 384 U.S. 333, 350-51 (1966); *Irvin v. Dowd*, 366 U.S. 717, 728 (1961); *United States v. McVeigh*, 119 F.3d 806, 815 (10th Cir. 1997); U.S. Const. Amends. V, VI, and XIV; Colo. Const. Art. II, secs. 16 and 25.

Mr. Holmes files this response, 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



Jason Middleton (No. 25314)
Deputy State Public Defender

Dated: February 5, 2013

I hereby certify that on February 5, 2013, I

- mailed, via the United States Mail, to *Martha L. Fitzgerald*
- faxed, or to *Martha L. Fitzgerald*
- hand-delivered to *DA*

OK

a true and correct copy of the above and foregoing document to:

George Brauchler
Rich Orman
Karen Pearson
Office of the District Attorney
6450 S. Revere Parkway
Centennial, Colorado 80111
Fax: 720-874-8501

Martha L. Fitzgerald
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
Fax: 303-223-1111

SKAS
