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ARAPAHOE COUNTY
DISTRICT COURT

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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	
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 22
MOTION FOR ORDER TO ARAPAHOE COUNTY SHERIFF'S OFFICE FOR PRESERVATION OF ANY VIDEO OBTAINED FROM DENVER HEALTH MEDICAL CENTER [D-034]	

James Holmes, through counsel, moves this Court for an order requiring the Arapahoe County Sheriff's Office to maintain and preserve the video recording it has obtained of Mr. Holmes while Mr. Holmes was a patient at Denver Health Medical Center and, in support, states:

1. On November 15, 2012, the Arapahoe County Attorney's office filed an "Emergency Motion For Authorization to Proceed Under §§ 27-65-105, 106, and 125, Colo. Rev. Stat., As Amended" stating that Mr. Holmes was in immediate need of a psychiatric evaluation at an in-patient psychiatric facility, and that Mr. Holmes was a danger to himself at the detention center at the time.

2. The statutes cited by the County Attorney, C.R.S. §§ 27-65-105, 106, and 125, permit an emergency commitment and evaluation (sometimes referred to as a "seventy-two hour hold") when a designated professional determines that the "person appears to have a mental illness and, as a result of such mental illness, appears to be an imminent danger to others or to himself or herself or appears to be gravely disabled... ."

3. On that same day, Mr. Holmes was transferred by ambulance to Denver Health Medical Center, where he remained for several days, frequently in restraints.¹

4. In recently provided discovery (p. 33,384), it was reported that on February 19, 2013, ACSO Bureau Chief Louie Perea informed District Attorney Investigator Mike Heylin that "when the defendant was taken to Denver Health Medical, that facility was equipped with their own CCTV cameras/video. He said that ACSO did obtain a copy of the video from DHM, but

¹ This is a separate hospitalization from an earlier hospitalization that resulted from potential self-inflicted head injuries in his cell.

was not going to release it to defense counsel because ACSO had obtained it from Denver Health Medical.”

5. Subsequently, on March 4, 2013, both the prosecution and defense received an email from Assistant County Attorney Breena Meng stating that both parties had requested copies of the video made by Denver Health and that Sheriff Robinson would not be releasing the video to either side.

6. Mr. Holmes moves this Court for an Order requiring that the Arapahoe County Sheriff's Office preserve and maintain the video obtained from Denver Health. Such must evidence must be preserved in its original state unless and until any issues related to its potential disclosure to either or both parties is resolved. Preservation of the evidence is necessary to effectuate Mr. Holmes' constitutional right to due process. U.S. Const. amends. V, XIV; Colo. Const. art. II, sec. 25.

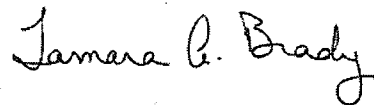
7. Alternatively, Mr. Holmes moves that the Court order that the video from Denver health be turned over to this Court for preservation and remain sealed until any issues related to its disclosure are resolved.

8. Mr. Holmes is only requesting preservation of the evidence at this point, and will file appropriate pleadings related to disclosure at a later time if warranted.

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



Jason Middleton (No. 25314)
Deputy State Public Defender

Dated: March 8, 2013

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THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	
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Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

 JUDGE

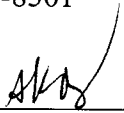
 Dated

I hereby certify that on March 8, 2013, I

mailed, via the United States Mail,
 faxed, or
 hand-delivered

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

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

A handwritten signature in black ink, appearing to be 'AKO', is written over a horizontal line.