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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	ARAPAHOE COUNTY COURT 2012 MAR -9 PM 2:09
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
<p align="center">OBJECTIONS TO COURT’S PROPOSED “ADVISEMENT ON PLEA OF NOT GUILTY BY REASON OF INSANITY” [D-033]</p>	

James Holmes, through counsel, objects to the Court’s proposed “Advisement On Plea of Not Guilty By Reason of Insanity” in its entirety for the reasons set forth in his motions D-028 through D-032, as neither this advisement nor the Court’s order on those motions satisfy the concerns raised in those motions, and Mr. Holmes incorporates those motions herein. Without waiving any of those prior objections, defense counsel makes the following specific objections to the advisement on the following grounds:

1. Mr. Holmes objects to paragraph 13 in its entirety. Mr. Holmes has argued that the use of statements involuntarily compelled through a narcoanalytic interview violates due process and, in any capital proceeding, the prohibition against cruel and unusual punishment. Mr. Holmes has also argued that admission of the results of a polygraph examination against a defendant who pleads not guilty by reason of insanity is unconstitutional as the Colorado Supreme Court has recognized that the results of polygraph examinations are unreliable and inadmissible in all other contexts. Admission of any such results or statements against Mr. Holmes would violate due process and, in a capital case, the right against cruel and unusual punishment. U.S. Const. amends. V, VIII, XIV; Colo. Const. art. II, secs. 20, 25. Although this Court acknowledged these arguments at p.8 of its order, it only ruled that the admission of such evidence did not violate the right against self-incrimination. *See* p.9 of Order. It did not address the due process issue of voluntariness or the unconstitutional use of such an interview as evidence in support of a death sentence.

2. Mr. Holmes objects to the language in paragraphs 15 and 16 stating that "the nature of the opinions rendered depends upon the type of examination ordered by the court." Mr. Holmes must be advised of the nature and scope of any examination *prior* to entry of the plea resulting in a court-ordered examination. *See e.g. Estelle v. Smith*, 451 U.S. 454 (1981). “[T]he Sixth Amendment right to counsel requires that counsel be given *advance* notice of the scope and nature of a psychological evaluation so that counsel can discuss with the client the advisability of undergoing the examination and give other appropriate advice”. *Delguidice v. Singletary*, 84 F.3d 1359, 1362 (11th Cir. 1996)(emphasis original), citing *Estelle v. Smith, supra* and *Buchanan v. Kentucky*, 483 U.S. 402, 424-425 (1987). “The Supreme Court case law is clear that, under the Sixth Amendment, counsel must have advance notice not only of the fact of

an examination but also the scope of the examination.” *Id.* at 1363. It is a meaningless "advisement" if counsel and Mr. Holmes do not find out the type of examination that will be ordered by this Court until *after* entry of plea.

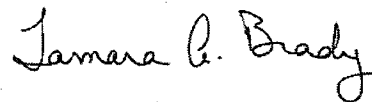
3. Mr. Holmes objects to paragraph 19 in its entirety as this Court’s order does not resolve the constitutional issues surrounding the admission of evidence derived from a court-ordered examination being used in a sentencing hearing pursuant to C.R.S. § 18-1.3-1201 to "prove the existence of absence of any mitigating factor." In the context of a possible capital sentencing hearing, this Court's order appears to limit the use of evidence derived from a court-ordered examination under section 16-8-106, or evidence disclosed pursuant section 1-8-103.6, to rebuttal of any expert testimony presented by the defense as mitigation, but it is not entirely clear that the Court is imposing such a restriction and the statutes do not do so. As a result of the uncertainty, Mr. Holmes objects to the advisement.

4. As stated above, Mr. Holmes objects to the advisement in its entirety for the reasons set forth in motions D-028 through D-032, including but not limited to objection to the advisement of waiver of privileges and confidentiality (para. 4), as well as the use of the terms "cooperate" (e.g. para. 11, 12) and "mental condition" throughout the advisement without the clarifications or rulings requested in those motions. Without such clarifications or rulings, the resulting "advisement" is relatively meaningless and counsel cannot effectively advise Mr. Holmes.

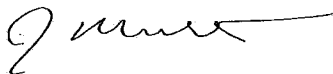
Mr. Holmes files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, 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.



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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	σ COURT USE ONLY σ
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ORDER RE: OBJECTIONS TO COURT'S PROPOSED "ADVISEMENT ON PLEA OF NOT GUILTY BY REASON OF INSANITY" [D-033]	

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:

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