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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	FILED JUN - 3 2013 DISTRICT CLERK σ COURT USE ONLY σ
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 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: state.pubdef@coloradodefenders.us	Case No. 12CR1522 Division 26
MOTION ADVISING OF CHALLENGE TO VENUE ON COUNT 141 [D-095]	

CERTIFICATE OF CONFERRAL

The District Attorney states that they object to the motion, and that they will file a response.

James Holmes, through counsel, challenges venue and moves to sever Count 141 of the indictment charging him with possession of explosive or incendiary device in violation of C.R.S. § 18-12-109(2). The alleged offense occurred in Adams County and has been improperly brought in Arapahoe County. See C.R.S. § 18-1-202. As grounds for this motion, he states the following:

1. Count 141 charges Mr. Holmes with the possession of explosives and incendiary devices allegedly found in his apartment at 1690 Paris St. #10, which is located in Adams County.

2. Article II, section 16 of the Colorado constitution provides that a criminal defendant must be tried in the county or district in which the offense is alleged to have been committed. Pursuant to this constitutional provision, C.R.S. § 18-1-202(1) provides that “criminal actions shall be tried in the county where the offense was committed, or in any other county where an act in furtherance of the offense occurred.”

3. “The prosecution has the burden of proving venue and, when the issue is raised, venue must be proven as any other issue in the case.” *People v. Cortez*, 737 P.2d 810, 811 (Colo. 1987). “If the court finds that trial is not proper in the county in which the charges were filed, it is required to transfer the case to a court of appropriate jurisdiction in the proper county. *People v. Reed*, 132 P.3d 347, 350 (Colo. 2006).

4. Additionally, “the questions concerning venue and the authority of the district attorney to file [the charges at issue] must initially be determined solely from the face of the information.” *People v. Joseph*, 920 P.2d 850, 853-53 (Colo. App. 1995).

5. In *People v. Bobo*, 897 P.2d 909, 913 (Colo. App. 1995), the Court of Appeals held that “an act in furtherance of an offense *requires that there be some conduct by defendant connecting him or her to the county which helps forward, advance, or promote the crime charged.*” (emphasis added). Count 141 alleges that Mr. Holmes “unlawfully, feloniously, and knowingly possessed, controlled, manufactured, gave, mailed, sent, or caused to be sent an explosive or incendiary device.” There is nothing in the information indicating that an act took place in Arapahoe County that furthered Mr. Holmes’ alleged possession of explosives and incendiary devices. There is no allegation that any of the charged crimes that took place in Arapahoe County helped to “forward, advance, or promote” the crime of possessing explosive devices.

6. Rather, because the government’s theory appears to be that Mr. Holmes had already completed the crime of possessing the explosive or incendiary devices by the time he allegedly opened fire at the theater in Arapahoe County, the charging of the alleged crime in Count 141 is not proper in Arapahoe County. See *People v. Nevarez-Zambrano*, 222 P.3d 329, 331 (Colo. 2010) (charge of criminal impersonation improperly brought in Nineteenth Judicial District where defendant used fictitious social security number to earn income in Thirteenth Judicial District and used tax preparation service in Nineteenth Judicial District to file income tax return; crime was “fully completed” prior to the filing of any tax returns, and therefore the alleged filing of the tax return in Nineteenth Judicial District “could not constitute an act in furtherance of the crime of criminal impersonation”).

7. Therefore, venue must be transferred to Adams County.

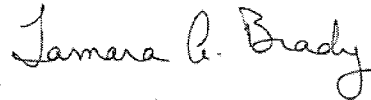
Request for a hearing

8. Mr. Holmes requests a hearing on this motion.

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



Kristen M. Nelson (No. 44247)
Deputy State Public Defender

Dated: June 3, 2013

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ORDER RE: MOTION ADVISING OF CHALLENGE TO VENUE ON COUNT 141 [D-095]	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

JUDGE
Dated

