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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<div style="text-align: center;"> <p>FILED</p> <p>JUN - 3 2013</p> <p>COURT CLERK</p> <p>σ COURT USE ONLY σ</p> </div>
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  <b>JAMES HOLMES,</b> 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: <a href="mailto:state.pubdef@coloradodefenders.us">state.pubdef@coloradodefenders.us</a>	Case No. <b>12CR1522</b>       Division 26
<b>MOTION AND DEMAND FOR DISCLOSURE OF EXCULPATORY,          IMPEACHMENT AND REBUTTAL INFORMATION [D-070]</b>	

**CERTIFICATE OF CONFERRAL**

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

James Holmes demands from the State and moves this Court for an order that the state immediately provide Mr. Holmes the following information:

1. All information relating to the credibility of any witness endorsed by the State. This includes information which is consistent with or contrary to any statements, testimony or other evidence provided by those witnesses, as well as any other information which might raise issues concerning the credibility of such a witness.

2. All information pertaining to benefits, favors, considerations, promises, assistance, of any variety or form, sought by or offered to or provided to any prosecution witness by the State or any of its agents. This would include but not be limited to any promise, benefit, plea bargain, financial consideration or other inducement made to any prosecution witness by the State at any time during the investigation or pendency of this case, up to and including the time of trial or sentencing, whether or not the State is willing to admit that such inducements were in formal "exchange" for testimony or aid or information in this case. Any such evidence is admissible as to motive or bias. *Delaware v. Van Arsdall*, 475 U.S. 673 (1986); *Merritt v. People*, 842 P.2d 162, 166 (Colo. 1992); *People v. Pate*, 625 P.2d 369 (Colo. 1981).

3. All information pertaining to records, police reports and information regarding prior criminal convictions, guilty verdicts, juvenile adjudications, pending criminal or juvenile cases of all prosecution witnesses, pending investigations of any prosecution witnesses, including, but not limited to, relevant *rap sheets*.

a. Colorado Rule of Criminal Procedure 16 Part I (a)(1)(V) requires the production of “prior criminal convictions” of all prosecution witnesses. This includes the production of any and all juvenile adjudications suffered by any prosecution witness.

b. Felony convictions and adjudications may be used for impeachment purposes.

c. Juvenile adjudications may be used for impeachment purposes. *People v. Pate, supra*.

d. Misdemeanor convictions probative of untruthfulness or dishonesty may be used for impeachment purposes. C.R.E. 608; *People v. Armstrong*, 704 P.2d 877 (Colo. App. 1985).

e. The fact of probation or parole at any time during the pendency of this case is probative of bias or motive, and is admissible regardless of the type of underlying conviction. *Davis v. Alaska*, 415 U.S. 308 (1974); *People v. Pate, supra*; *People v. Bowman*, 669 P.2d 1369 (Colo. 1983).

f. The existence of cases pending at any time during the investigation of this case is admissible as to bias or motive. *People v. Jones*, 675 P.2d 9 (Colo. 1984); *People v. King*, 179 Colo. 94, 498 P.2d 1143 (1972).

g. The fact of immunity being offered to or accepted by any prosecution witness. *See Merritt v. People, supra*.

h. The fact of any investigation of any prosecution witness.

i. Colorado Rule of Criminal Procedure 16 Part I (1)(a)(2) and the due process and confrontation clauses require the disclosure of all potential impeachment information. *Merritt v. People, supra*; *People v. Thatcher*, 638 P.2d 760 (Colo. 1981).

4. All information and records concerning specific instances of untruthfulness, or dishonesty or character for untruthfulness or dishonesty, on the part of any prosecution witness. Such evidence is admissible under C.R.E. 608.

5. All information and records concerning prior psychiatric or psychological treatment, evaluation or hospitalization of all prosecution witnesses. The mental condition of witnesses is admissible for impeachment. *People v. Shuemann*, 548 P.2d 911 (Colo. 1976); *People v. Borrelli*, 624 P.2d 900 (Colo. App. 1980). These records may also contain information bearing upon the witnesses' character for truthfulness or specific instances of untruthfulness. C.R.E. 608.

6. All information and records concerning drug and alcohol use, evaluation, or treatment of prosecution witnesses. The use of drugs or alcohol is admissible to the extent that it affects a witness' ability to perceive, remember or testify. *People v. Roberts*, 553 P.2d 93 (Colo. App. 1976). In addition, such records may contain information bearing upon the witness' character for truthfulness or specific instances of untruthfulness. C.R.E. 608.

7. All information which pertains to the possible and potential mitigation of punishment in this case. The State seeks to kill Mr. Holmes. In a case in which the prosecution seeks to kill an accused the stakes are obviously higher than in any other case. Death is a different kind of punishment than any other which may be imposed in this country. *Gardner v. Florida*, 430 U.S. 349, 357-358 (1977); *see also Mills v. Maryland*, 486 U.S. 367, 376 (1988); *California v. Ramos*, 463 U.S. 993, 998-99 (1983); *Beck v. Alabama*, 447 U.S. 625, 637-638 (1980); *Lockett v. Ohio*, 438 U.S. 586, 604 (1978); *People v. Young*, 814 P.2d 834, 839 (Colo. 1991); *People v. Rodriguez*, 794 P.2d 965, 972 (Colo. 1990). "From the point of view of the defendant, it is different in both its severity and its finality. From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action. It is of vital importance to the defendant and the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion." *Gardner v. Florida*, 430 U.S. at 357-358.

8. Disclosure of all potentially mitigating information is necessary in order that counsel may render Mr. Holmes effective assistance of counsel. To render effective assistance of counsel, an attorney must investigate his or her client's case. *See People v. White*, 182 Colo. 417, 514 P.2d 69 (1973); *People v. Dillon*, 739 P.2d 919 (Colo. App. 1988). Mr. Holmes has a right under the due process and cruel and unusual punishment clauses to investigate, discover and obtain mitigation evidence and to present that evidence to the sentencing court. *See Skipper v. South Carolina*, 476 U.S. 1 (1986); *U.S. Const.*, amends. V, VIII, XIV; *Colo. Const.*, art. II, § 20, 25. Mr. Holmes has the constitutionally protected right to present mitigating evidence concerning his character, background and history. *Skipper v. South Carolina, supra*.

9. Mr. Holmes further requests all possibly exculpatory information. *Kyles v. Whitley*, 514 U.S. 419 (1995). The government has a constitutional duty to disclose exculpatory evidence even in the absence of a specific request. *Id.*

10. This motion should be granted immediately. "The fundamental purpose of a criminal trial is the fair ascertainment of the truth, and the trier of fact should not be deprived of valuable evidence or witnesses." *See Gray v. District Court*, 884 P.2d 286, 291 (Colo. 1994) (denial of discovery of defendant's mental health records and ability of prosecution to use defense expert under then-existing impaired mental condition statutes would interfere with truth-seeking process inherent in criminal trial). Denial of discovery of the foregoing material and

information would interfere with the truth-seeking process in this case, interfere with Mr. Holmes' constitutional right to investigate his case and present mitigating evidence in defense of his life and deny Mr. Holmes his right to counsel and right to due process of law under the Constitutions. *See id.*, at 296; *U.S. Const.*, amends. V, VI, XIV; *Colo. Const.*, art. II, §§ 16, 25.

11. "Our courts are not gambling halls but forums for the discovery of the truth." *People v. St. Martin*, 1 Cal.3d 524, 533, 463 P.2d 390, 394, 83 Cal. Rptr. 166, 170 (1970). Crim. P. 16, Part I(a), (b) and (c) are vehicles to be employed to discover the truth. Mr. Holmes is rightfully exercising his right to discover the truth and right to defend his life through this rule, and this Court must ensure that the truth is discovered.

12. Mr. Holmes' request for the foregoing information is manifestly reasonable and necessary, particularly in this case where his life is at stake.

13. Denial of this discovery request would violate Mr. Holmes' right to the effective assistance of counsel, right to due process, right to confrontation, right to cross-examination, right to trial by jury, right to compulsory process and right to be free from cruel and unusual punishment under the Constitutions. *U.S. Const.*, amends. V, VI, VIII, XIV; *Colo. Const.*, art. II, §§ 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, and Crim. P. 16.

#### **Request For a Hearing**

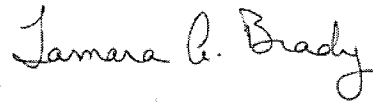
14. Mr. Holmes requests a hearing on this motion, if the motion is not immediately granted.

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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Daniel King (No. 26129)  
Chief Trial Deputy State Public Defender



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Tamara A. Brady (No. 20728)  
Chief Trial Deputy State Public Defender



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

Dated: June 3, 2013

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<p style="text-align: center;"><b>ORDER RE: MOTION AND DEMAND FOR DISCLOSURE OF EXCULPATORY,  IMPEACHMENT AND REBUTTAL INFORMATION [D-070]</b></p>	

Defendant’s motion is hereby GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_.

BY THE COURT:

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JUDGE

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Dated

I hereby certify that on June 3, 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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Jacob Edson  
Rich Orman  
Karen Pearson  
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AWD