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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	 JUN 13 2013 DISTRICT COURT ARAPAHOE COUNTY COLORADO σ COURT USE ONLY σ
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: state.pubdef@coloradodefenders.us	Case No. <b>12CR1522</b>          Division 26
<p align="center"> <b>MOTION FOR COURT ORDER REQUIRING CLERK TO FURNISH RESULTS AND          WRITTEN REPORT OF EXAMINATION CONDUCTED PURSUANT TO C.R.S.          § 16-8-106 TO DEFENSE COUNSEL IN ADVANCE OF ANY SUBSEQUENT          DISCLOSURE TO THE PROSECUTION [D-093]</b> </p>	

**CERTIFICATE OF CONFERRAL**

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

Pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and article II, sections 16, 18 and 25 of the Colorado Constitution, Mr. Holmes respectfully moves, through counsel, for a court order requiring the Clerk of the Court to furnish the results and report of any examination conducted pursuant to § 16-8-106 to the defense in advance of providing the prosecution with the same. In support of this motion, Mr. Holmes states the following:

1. Pursuant to § 16-8-106(4), a written report of any sanity examination conducted pursuant to § 16-8-101 *et seq.* “shall be prepared in triplicate and delivered to the clerk of the court which ordered it.” The statute further provides that the clerk “shall furnish a copy of the report both to the prosecuting attorney and the counsel for the defendant.”

2. In accordance with his right to present a defense under the Sixth and Fourteenth Amendments and article II, sections 16 and 25 of the Colorado Constitution, Mr. Holmes has elected to raise the affirmative defense of not guilty by reason of insanity. *See, e.g., Rock v. Arkansas*, 483 U.S. 44, 51, 55 (1987); *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987); *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973); *Washington v. Texas*, 388 U.S. 14, 19

(1967); *People v. Pronovost*, 773 P.2d 555, 558 (Colo. 1989); *People v. Hampton*, 696 P.2d 765, 774 (Colo. 1985).

3. Consistent with those constitutional rights, Mr. Holmes may later withdraw his plea of not guilty by reason of insanity if he chooses to do so.

4. In the event that he makes such a choice, “no evidence acquired directly or indirectly for the first time from a communication derived from the defendant’s mental processes during the course of a court-ordered examination under section 16-8-106 or acquired pursuant to section 16-8-103.6 is admissible against the defendant on the issues raised by a plea of not guilty, if the defendant is put to trial on this issues . . . .” C.R.S. § 16-8-107(1)(a).

5. If Mr. Holmes chose to withdraw his insanity plea, there would be no legitimate purpose for the prosecution to have access to the results of the examination at that point in the proceedings. Moreover, the use of the results against Mr. Holmes as substantive evidence of guilt at a trial on the merits would violate his rights to due process and to be free from self-incrimination in violation of the Fifth and Fourteenth Amendments of the United States Constitution and article II, sections 18 and 25 of the Colorado Constitution. *See, e.g., People v. Herrera*, 87 P.3d 240, 245 (Colo.App. 2003); *People v. Galimanis*, 765 P.2d 644 (Colo.App. 1988) (defendant’s privilege against self-incrimination implicated only when evidence he is compelled to produce is admitted on the issue of guilt); *see also People v. Tally*, 7 P.3d 172 (Colo.App. 1999) (statements made by a defendant in a psychiatric exam may be admitted to prove sanity but not guilt of the charged offense).

6. Therefore, to protect his rights to present a defense, to be free from self-incrimination and to due process under the Colorado and United States Constitutions, Mr. Holmes respectfully requests this Court to issue an order directing the clerk to furnish a copy of the report from any examination conducted pursuant to C.R.S. § 16-8-106 to the defense in advance of furnishing a copy to the prosecution.

### **Request for a Hearing**

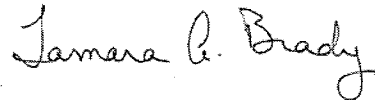
7. Mr. Holmes requests a hearing on this motion.

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.



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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

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  <b>JAMES HOLMES,</b> 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 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>ORDER RE: MOTION FOR COURT ORDER REQUIRING CLERK TO FURNISH RESULTS AND WRITTEN REPORT OF EXAMINATION CONDUCTED PURSUANT TO C.R.S. § 16-8-106 TO DEFENSE COUNSEL IN ADVANCE OF ANY SUBSEQUENT DISCLOSURE TO THE PROSECUTION [D-093]</b>	

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

BY THE COURT:

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JUDGE

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Dated

