

REDACTED

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<div style="text-align: right;"> <p>Filed</p> <p>JUN - 3 2013</p> <p>CLERK OF DISTRICT COURT ARAPAHOE COUNTY, COLORADO</p> </div> <p style="text-align: center;">σ COURT USE ONLY σ</p>
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 FOR DISCLOSURE OF DNA TESTING RESULTS AND MATERIALS</b> <b>[D-064]</b>	

**CERTIFICATE OF CONFERRAL**

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

Mr. Holmes demands that the State provide the following information and materials forthwith, and he moves for the court to order the State to provide the following information and materials immediately, pursuant to the Cruel and Unusual Punishment and Due Process Clauses of the United States and Colorado Constitutions, Crim. P. 16(I)(a)(1), (2), (3), (b)(1), (3) and (4), and (d), and for the following reasons:

1. The materials and information requested herein are directly relevant to the DNA testing which the State has presumably already undertaken. The State has provided incomplete discovery concerning its DNA testing, and a number of items have not been received which make counsel unable to effectively analyze the evidence.

2. Mr. Holmes will challenge the reliability and accuracy of the State’s DNA evidence and alleged results. Mr. Holmes will also challenge the admissibility of the State’s DNA evidence and its alleged statistical results under *People v. Shreck* 22 P.3d 68 (Colo. 2001). Under the standards adopted by the Colorado Supreme Court in the *Shreck* case, a trial court “must issue specific findings as it applies the CRE 702 and 403 analyses” based “on the totality of the circumstances of a given case.” The circumstances of this case are unique as to specific issues the Colorado Supreme Court directed to be reviewed in *Shreck*, specifically: changes that have occurred in scientific evidence and research since the holding in the *Shreck* case, the reliability of the evidence in this case, the relevance of the evidence in this case, the witness qualifications in this case, the “usefulness of testimony to the jury” in this case, and the weight of the probative value of the evidence in this case versus unfair prejudice. The materials and

information requested herein are necessary in order for Mr. Holmes to be able to effectively investigate and prepare to present evidence relating to these issues. The materials and information requested herein are necessary in order for Mr. Holmes to be able to effectively investigate and prepare for the DNA evidence at trial. The court has a considerable interest in seeing that Mr. Holmes is able to do so, in the interests of reliable and fair hearings on those issues, and a reliable and fair trial.

3. These requests are intended to apply to all serology and DNA tests that have been performed or are currently being performed in the instant case. The request is ongoing. In the event that new materials responsive to this request are produced, discovered or otherwise come into the possession of the state or its agents, said materials should be provided to the accused in a timely manner. In the event that more than one laboratory handled or had custody of samples subjected to testing in this case, including any laboratory which has handled or had custody of the samples subsequent to testing, these requests should be addresses to each laboratory, including but not limited to crime laboratories, commercial testing facilities and government testing facilities.

4. For the purpose of this request the following terminology applies:

(a) A “photographic quality copy” is defined as a photographic reproduction which is indistinguishable from the original (not a photocopy). For materials that are represented in any format other than black and white paper copies, it is a copy which is equivalent in content and quality to the originals (that is, X-ray film copies of X-ray films, photographic quality copies of photographs and Polaroids, electronic copies of computerized data files, copies of GeneScan printouts, including tabular data and copies of Genotyper printouts). If DQAlpha or Polymarker testing was used, regular photocopies would not accurately display the true color of the test strips that were interpreted by the prosecution’s analyst in this case.

(b) An “outbreak or incident of sample contamination” is defined as any instance in which a reagent blank or negative amplification control showed the presence of DNA above background levels, or any instance in which a reference sample (that is a sample known to have originated from a single human individual) showed the presence of DNA above background levels for more than two alleles for a particular genetic system.

(c) A “multi-probe genotype” for a sample is defined as a record of all alleles observed for each probe or genetic system used in testing that sample.

(d) “False positive” is defined as an incident in which a test incorrectly produced an allele signal (dot, band or peak) due to contamination, cross hybridization, any other possible cause.

(e) “False negative” is defined as an incident in which a test failed to produce an allele indication (dot, band or peak) when the allele was known to be present.

5. The following information and materials are requested:

a. **Scope of DNA tests:** Identify all DNA and serology tests which were performed in this case, including, the type of test and the name(s) and address(es) of the individual(s) responsible for performing the tests.

b. **Crime scene investigation:** Provide copies of any guidelines, police department policies or procedures or other instructions provided to, or followed by, crime scene investigators in collecting, handling, shipping and processing of

samples to be analyzed by DNA or serology testing. These materials should include, but not be limited to, guidelines or instructions regarding any precautions to ensure sample integrity and minimize biological contamination for subsequent PCR testing.

c. **Sample handling instructions:** Provide copies of any guidelines, police department policies or procedures or other instructions followed by, or provided to, any laboratory, or government agency which handled any item of biological evidence pertaining to the instant case. These materials should include, but not be limited to, guidelines or instructions regarding any precautions to ensure sample integrity and minimize biological contamination for subsequent PCR testing.

d. **Chain of custody:** Provide copies of all chain of custody documents for all items of evidence subjected to testing in this case. This should start with the first description or 'log entry' for each item through to the current disposition of that item of evidence. This information should include documentation that indicates where and how the materials were stored (temperature and type of container) and the amount of evidence material which was consumed in testing. If genetic material was seized from Mr. Holmes and transmitted to a laboratory for testing, including but not limited to it being seized pursuant to a claim that Mr. Holmes had the status as a probationer, parolee or inmate, then the chain of custody documents should include documents from any institution or agency, including but not limited to the Department of Corrections, relating to such seizure or transmittal.

e. **Current disposition of evidence:** Provide documentation of the current disposition of biological evidence in this case, including description of the item of evidence, how the evidence is stored and the amount of material which remains.

f. **Laboratory Personnel:** Provide a current resume and job description for each person involved in conducting or reviewing the testing performed in this case.

g. **Case files:** Provide a legible copy of the complete case file including all records of DNA and serology testing in the instant case. Case files should be provided for all tests run at a DNA testing laboratory and any other laboratory which handled the samples either before or after they were tested by the DNA lab. These materials should include, but not be limited to:

g.1 **Reports:** All reports regarding DNA testing in this case.

g.2 **Photographs of test strips:** Photographic quality copies of all original photographs of immobilized test strips.

g.3 **Photographs of gels:** Photographic quality copies of all photographs of ethidium bromide stained gels or their equivalent if a DNA binding stain other than ethidium bromide was used. This should include, but not be limited to, product gels, yield gels, post restriction gels (if applicable) and analytical gels.

g.4 **Statistical calculations:** Legible copies of all statistical calculations produced.

g.5 **Bench notes:** Legible copies of all laboratory notes and records.

g.6 **Imaging data:** Photographic quality copies IN COLOR, IF ORIGINAL WAS IN COLOR, of all computer analyses of case data, including but not limited to: unedited and unedited image files and unedited and edited electropherograms.

g.7 **ABI software files:** Copies of all data files used and created in the course of performing the testing and analyzing the data in this case. These files should include all data necessary to, (i) independently reanalyze the raw data and (ii) reconstruct the analysis performed in this case. These materials should include, but not be limited to:

- (g.7.a) All ABI Prism 310 Collection files, including sample, injection lists and log files.
- (g.7.b.) All GeneScan files, including sample files.
- (g.7.c.) All Genotyper files, including stutter filter percentage assignments for each locus tested.

IN SUMMARY, IF THE TESTING IN THIS CASE INVOLVED STR ANALYSIS, THE DISCOVERY SHOULD INCLUDE, BUT WOULD NOT BE LIMITED TO:

1. Matrix files
2. Injection list files
3. Log files
4. GenoTyper Project files
5. GeneScan Project files
6. Samples files
7. ROC Standard files
8. Analysis Parameter files
9. The complete lab file

In order to preserve the integrity of data files, provide electronic copies of computerized data files in a 'read-only' format, such as CD-ROM. In the event that a program requiring retrieval of data files is used to produce the electronic copy (such as Retrospect), identify the program used (name of software program, manufacturer and version number) and provide detailed instructions necessary for retrieval of data files.

If the electronic copies of the ABI Prism 310 Collection files requested (sample sheets, injection lists, and log files), are not to be provided, please provide copies of these files as print-outs. In the event that any of these items cannot be provided due to loss, destruction or inability to locate the files or documents in question, please provide an explanation for the non-production of the item in question.

h. **Documents relied upon in performing testing:** Provide legible copies of all documents which were followed or relied upon in executing, interpreting and reporting the DNA and serology tests performed in the instant case. These materials should include, but not be limited to:

h.1 **SOP:** Standard operating protocols (SOP).

h.2 **Quality Assurance/Quality Control Manuals.**

h.3 **Instructions provided by manufacturers of commercial test kits** ('package inserts' and user's guides).

h.4 **Protocols and manuals relating to instruments and/or software** (including user's manual and machine run specifications).

h.5 **Updates to SOP:** Any memos or addenda which relate to any modifications to the SOP which were implemented in testing the samples in this case.

h.6 **Methodology:** Any written instructions which were followed in order to execute the laboratory bench-work.

h.7 **Interpretation:** Any written instructions which were followed in making the determination that samples either matched or did not match, or in ascribing genetic types to the samples which were tested. This should include, but not be limited to, all written guidelines for interpretation of analytical results pursuant to SWGDAM "Short Tandem Repeat (STR) Interpretation Guidelines" (Forensic Science Communications, July 2000, Volume 2, Number 3), and include:

- (i) Guidelines for preliminary evaluation of data.
- (ii) Guidelines for criteria to assign allele designations to appropriate peaks.
- (iii) Guidelines for interpretation of results with regard to (i) numbers of contributors, (ii) partial profiles, and (iii) profiles exhibiting potential stochastic effects.
- (iv) Guidelines for formulating conclusions resulting from the comparison of single source samples and mixtures with known reference samples.
- (v) Guidelines for statistical interpretation.

h.8 **Statistical manipulations:** Any written instructions which were followed in arriving at the reported statistical estimate for the frequency of occurrence of genetic characteristics.

h.9 **Frequency tables:** Any statistical tables or tabulated databases which were relied upon in arriving at said statistical estimates.

h.10 **Reporting of test results:** Any written instructions or guideline which were followed in writing the report.

h.11 **Manufacturer's instructions:** Any instructions provided by a manufacturer as part of a DNA testing kit used in this case.

i. **Software and macros:** Provide a list of all commercial software programs used in the DNA testing in this case, including name of software program, manufacturer and version number used in this case. This can be satisfied by providing copies of publication pages showing date of publication. In addition, identify any commercial macros used to analyze data in this case. In the event that any programs and/or macros written by the testing laboratory were used in the analysis of data in this case, please provide copies of these materials.

For commercially available software that was used unmodified in this case, a sufficient response is to indicate the name of the software item being claimed as proprietary (program, macro or other item), the manufacturer and the version used in this case. In the event that any commercial software item was modified in any way in the testing undertaken in this case, provide either, (i) a copy of the modified software item or, (ii) a detailed list of the changes or modifications which were made with regard to the software item as used in this case. In the event that non-commercial software items (program, macro or other item) were used in the testing in this case, provide a copy of that software item, including all supporting documentation.

j. **Capillary run history and matrix file date:** Provide records indicating, (i) the number of runs on the capillary prior to the capillary electrophoresis run in this case, and (ii) the date of preparation of the matrix file used in this case.

k. **Developmental validation:** Provide copies of any developmental validation studies pertaining to the specific DNA test(s) performed in this case (pursuant to TWGDAM Guidelines 4.1, 4.2 and 4.4 and DAB Standards 8.1.1 and 8.1.2), including developmental validation studies conducted by the testing laboratory and any additional developmental validation studies relied upon by the testing laboratory in claiming that the test has been adequately validated pursuant to TWGDAM and DAB. These materials should include copies of laboratory notebooks, computer data files, unpublished scientific papers and citations to published scientific papers.

l. **Internal validation:** Please provide copies of any internal validation studies pertaining to the specific DNA test(s) performed in this case (pursuant to TWGDAM Guideline 4.5 and DAB Standard 8.1.3), including internal validation studies conducted by the testing laboratory and any additional validation studies relied upon by the testing laboratory in claiming that the test has been adequately validated pursuant to TWGDAM and DAB (including “getting-to-know-the-system” studies). These materials should include copies of laboratory notebooks, computer data files, unpublished scientific papers and citations to published scientific papers.

m. **Genetic Independence:** Provide citations to studies that the laboratory relies upon to establish independence of the loci tested in the instant case. If no clear study of independence exists, please provide a clear statement as to the basis for assuming independence.

n. **Precautions against contamination:** Provide copies of all documents concerned with precautions utilized by the DNA lab to prevent and detect outbreaks or incidents of sample contamination using PCR-based DNA tests, including but not limited to: precautions taken in sample preparation, precautions taken in sample handling, the physical set-up and lay-out of the laboratory,

controls to detect contamination and precautions taken to prevent product carry-over, the tracing of contamination should it occur, cleaning laboratory areas and equipment in the event of a contamination event.

o. **Instances of laboratory contamination:** Provide copies of all documents pertaining to any outbreak(s) or incident(s) of contamination concerning PCR-based DNA tests at the DNA lab, and the corrective action(s) taken to trace, identify and rectify such incident(s).

p. **Records of trouble-shooting or problems during testing:** Provide copies of any laboratories records or other materials which document any trouble shooting, repairs, modifications or changes which were made to the genetic analyzer instrument used in the instant case. These materials should include:

p.1. Copies of any notes, or records of communications, relating to trouble-shooting which had to be done on the instrument, including calls to technical support lines and visits by field technicians to repair instrument.

p.2. Records of any changes that were made to the instrument in the course of testing samples in this case, including replacement of parts such as a laser or CCD virtual camera.

p.3. Records of all computer resets or reboots which had to be done during the testing in the instant case, including, soft reset, cold boot and or clear memory reset.

p.4. Records of all incidents in which manual control was used to override genetic analyzer presets.

q. **Control strips:** Provide photographic quality copies of all controls strips run within five days of the testing done in the instant case.

r. **Copies of databases:** Provide citations to or copies of all databases used in the instant case in a format such that the multi-probe genotype is given for each sample tested. If the databases have not been maintained such that complete multi-probe genotypes can be provided for samples included in said databases, provide copies of the databases in the format that most closely approximates a complete multi-probe genotype, and provide a simple statement indicating that complete multi-probe genotypes are not known. In the event you have in your possession, or have access to, records that would enable the reconstruction of complete multi-probe genotypes across genetic systems, provide copies of said records.

s. **Construction of databases:** Provide copies of all documents related to the source or origin of samples in databases used by the DNA lab in the instant case, including but not limited to: documents concerning the method by which samples were collected, the background or characteristics of individuals who were the source of the samples, the choice of populations and sub-populations to be sampled and the nature of the sampling procedure used to collect the samples. In the event that samples were obtained from an outside agency, identify the outside agency by institution name, contact person, address, phone number, and provide copies of all correspondence with that agency. In the event that a database compiled by an outside agency was used, identify the outside agency by

institution name, contact person, address, phone number, and provide copies of all correspondence with that agency. Provide copies of all documents related to the extraction, amplification, quantitation, hybridization, testing, scoring, typing, of all samples included in the database. Provide the opportunity to inspect the original database data. Provide the opportunity to view the original data for randomly selected samples at the laboratory by allowing the random selection of a small percentage of the samples to insure representation of a cross-section of the data. The original data in this context refers to original dot blot photographs, STR electropherograms and graphic images.

t. **Statutorily-created databases:** Concerning any database consisting of multi-probe genotypes of persons whose sample were contributed as required by any state or federal statute as persons incarcerated or on probation or parole for a sexual offense, or consisting of multi-probe genotypes obtained from case materials in any case, and concerning a comparisons made to such database, provide the:

t.1. **Multi-probe genotype for all individuals in the database:** Provide the multi-probe genotype for all individuals in the database on transferable computer media.

t.2 **Computer Programs:** Provide a clear statement as to statistical and spreadsheet programs used to list and analyze the data. If such programs are not generally available, please provide the program with documentation for loading and running the program(s).

t.3 **Search Results:** Provide the profiles and identifying information of any person or case materials produced in any search of such database, irrelevant of whether the search criteria specified a complete match or not.

u. **Accreditation:** Provide copies of all licenses or other certificates of accreditation held by each laboratory. This request should include, but not be limited to: accreditation by the American Society of Crime Laboratory Directors (ASCLD) Laboratory Accreditation Board in Forensic DNA testing and the College of American Pathologists (CAP).

v. **Audits:** Copies of any laboratory audits, external or internal, performed by any agency or group, including the lab itself. This would include, but not be limited to, any ASCLD or DNAB audits. This would include the audit report itself, any "findings" presented or communicated separately from the audit report, any responses to the audit, any recommendations or list of corrective measures, and any correspondence between the lab and auditors or auditing agency.

w. **Proficiency test programs:** Provide all documentation regarding any analyst's participation in a proficiency testing programs including programs which were in place at the time the samples were tested in this case and those in place today. These materials should include for each proficiency test, (i) the complete proficiency test case file, (ii) computer data files, (iii) evaluations and/or reports by the testing agency, and (iv) records maintained pursuant to TWGDAM Guideline 9.3 and DAB Standard 13.1.1.

x. **Means of calculating error rate:** Provide all documentation regarding the method the DNA laboratory uses to calculate the error rate for each DNA test performed in this case, including the rate of false positives and false negatives (for example, error rate calculated as a function of total number of proficiency test samples tested or error rate calculated as a function of total number of



comparisons made). In the event that a laboratory has not adopted a method for calculating its error rates, provide a simple statement regarding the laboratory's policy concerning reporting its error rates in court testimony or otherwise.

y. Photocopies of all reports submitted by the testing agency regarding the evidence tested unless already provided to Mr. Holmes.

z. Copies of all computations of population frequencies for the tests, typings or matches reported, whether manually or by computer.

aa. All materials and information concerning potential artifacts and the manner or method by which potential artifacts are identified, the conditions under which they are believed to occur, the controls implemented for detecting their occurrence and the steps taken when they occur.

bb. All materials and information concerning the amplification conditions under which PCR testing was conducted. This information should include, but not be limited to, information and materials concerning the amplification cycling program, the composition of the amplification mixture, and the amount and nature of the target DNA in the sample.

cc. All materials and information concerning any safeguards to ensure that differential amplification does not occur during PCR testing.

dd. All materials and information concerning any safeguards to ensure that factors do not inhibit amplification.

ee. Complete and accurate hybridization records, including original photographs of the hybridization strips involved, for the ten cases performed both before and after the analysis in this case.

ff. Provide original quality duplicate slot blot films or photographs generated during testing in the instant case and notes and documents showing slot blot conclusions.

gg. Notes and documents showing total estimated amount of DNA for each sample per protocol.

hh. Test and documents showing calculations related to the determination of quantity of DNA.

ii. Test and documents showing calculations relevant to dilution of samples.

jj. Lab notes for all samples pertaining to quantitation.

kk. Thermal cycler calibration logs for time periods in this case during which testing was performed.

ll. Provide a clear statement as to the instrument calibration schedule for the thermal cyclers and water baths used in the instant case. This information should include, but not be limited to, statements as to how often instruments are calibrated and with what reference measuring device. Provide complete copies of manufacturer's instructions and specifications that accompany each measuring device.

6. The following materials and information are also requested:

a. Concerning any products used in the course of any testing in this case, copies of all guides or protocols, instructions manuals, pamphlets or directions which were otherwise used in any manner in or concerning this case. This request includes such materials as might not be included within the scope of previous or subsequent requests.

b. Provide all lab notes, bench notes, replicative quality copies of any photographs and X-Rays, and all documentation showing compliance with or deviation from the protocols for use of Perkin Elmer Quantiblot, Chelex extraction, Profiler+ and Cofiler processes and kits, and for any other testing kits or products used in this case, for the following:

1. Extraction: Preparation of reagents for extraction procedures. This includes extraction procedures on hair, whole blood, blood stains and swabs and any other extractions done in this case.

2. Extraction procedures. This includes documentation, lab notes and bench notes for extraction procedures done on hairs, whole blood, blood stains and swabs and all other extraction procedures done in this case.

3. Use of the Quantiblot Human DNA quantitation Kit or any other form of quantitation. This includes but is not limited to: reagent preparation procedures for reagents prepared at the lab or for reagents supplied (when supplied, by whom, when and how, etc.), information regarding protocols, slot blotting/immobilization of DNA, DNA hybridization, detection steps, results interpretation, and performance characteristics. This includes all materials used for interpretation of the quantiblots or other quantitation procedure.

4. All information related to the amplification procedure and/or the use of the PM plus DQA1 kit. This includes but is not limited to: preparation of reagents (supplied and not supplied), precautions, amplification and typing protocols, verification of PCR amplification, amplification procedures and storage, preparation and pouring of agarose gel, gel loading and electrophoresis, DNA hybridization, color development, disposal or reuse of typing trays, interpretation of results, reading the types from the DNA probe strips, performance characteristics and all information used to interpret the results or lack of results.

5. All information related to the use of the AmpliFLP D1S80 Allelic Ladder. This includes but is not limited to: reagent preparation (supplied or not supplied), precautions, PCR amplification protocols, recommended gel plate set-up for gel electrophoresis, preparation of gel, gel loading and electrophoresis, silver staining the gel, interpretation of amplification results, and all other information used for interpretation of results.

7. All of the information and material requested must be produced forthwith to the defense under the due process clauses of the Constitutions. U.S. CONST., amends. V, XIV; COLO. CONST., art. II, § 25; *see Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995); *Brady v. Maryland*, 373 U.S. 83 (1963). Indeed, information and material that sheds

light on the reliability and credibility of a police investigation and that can be used to impeach that police investigation is appropriate information for the defense to have possession of. See *Brady v. Maryland*, *supra*; *Kyles v. Whitley*, *supra*; *Giglio v. United States*, 405 U.S. 150 (1972) and *United States v. Bagley*, 473 U.S. 667 (1985) (impeaching as well as exculpatory is favorable to the accused under *Brady* and constitutes *Brady* material); see also *People v. Rodriguez*, 786 P.2d 1079, 1082 (Colo. 1989) (there is a strong presumption that possibly exculpatory evidence should be given to the defense). “The determination of what may be useful to the defense can properly and effectively be made only by an advocate.” *Dennis v. United States*, 384 U.S. 855, 875 (1966).

8. 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.

9. 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). Defense counsel cannot adequately and effectively investigate Mr. Holmes' case without the information and materials requested in this motion. Effective investigation is a necessity to, among other important constitutional rights, the effective and complete cross-examination of witnesses called to testify against an accused. “Effective investigation by the lawyer has an important bearing on competent representation at trial, for without adequate investigation the lawyer is not in a position to make the best use of such mechanisms as cross-examination or impeachment of adverse witnesses at trial or to conduct plea discussions effectively. The lawyer needs to know as much as possible about the character and background of witnesses to take advantage of impeachment.” *ABA Standards for Criminal Justice, Prosecution Function and Defense Function*, Standard 4-4.1 (2nd ed. 1986).

10. Concomitant with the right to an adequate and effective investigation, Mr. Holmes is guaranteed the right to confront and cross-examine witnesses who are called to testify against him. U.S. CONST., amends. VI, XIV; COLO. CONST., art. II, § 16, 25. The prosecution will call to the stand alleged experts in pretrial hearings on the admissibility of any DNA evidence. Defense counsel cannot adequately and effectively prepare to confront or cross-examine any such witnesses at these hearings or during the trial on this matter should any such testimony be deemed admissible without production of the materials and information requested in this motion. Production of the materials and information requested in this motion will enable Mr. Holmes to impeach witnesses called by the prosecution against Mr. Holmes and to expose to the factfinder facts from which the factfinder may appropriately draw inferences relating to the credibility and reliability of these witnesses. This is entirely acceptable, appropriate and constitutionally protected cross-examination. See *Merritt v. People*, 842 U.S. 162, 166 (Colo. 1992); *Delaware v. Van Arsdall*, 475 U.S. 673 (1986); *Davis v. Alaska*, 415 U.S. 308 (1974).

11. Further, the disclosure and production of this material and information is required under Colo. R. Crim. P. 16, Part I(a)(III), (IV). Rule 16, Part I(a)(III), (IV) requires the State to produce to the defense any reports or statements of experts made in connection with the particular case, including but not limited to the results of scientific tests, experiments or comparisons as well as any books, papers, documents, photographs or tangible objects held in connection with the case.

12. In addition, Rule 16, Part I(2) requires the State to produce to the defense any material or information which may tend to negate the guilt of the accused as to the offenses charged or would tend to reduce the punishment for any such offenses. Moreover, the Constitutions require the production of this material and information as it will mitigate the

punishment to be sought or to be imposed by the appropriate sentencer. *Brady v. Maryland, supra; Kyles v. Whitley, supra*; U.S. CONST., amends. V, VI, VIII, XIV; COLO. CONST., art. II, § 16, 20, 23, 25.

13. The items requested are those needed by any competent expert hired to assist the defense in order to fully evaluate the evidence and claims of the prosecution witnesses as to the appropriateness, validity, accuracy and precision of any testing or conclusions.

### Request for a Hearing

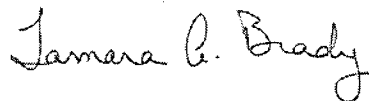
14. Mr. Holmes moves for a hearing on this motion.

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	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: <a href="mailto:state.pubdef@coloradodefenders.us">state.pubdef@coloradodefenders.us</a>	Case No. <b>12CR1522</b>  Division 26
<b>ORDER RE: MOTION FOR DISCLOSURE OF DNA TESTING RESULTS AND MATERIALS [D-064]</b>	

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

BY THE COURT:

\_\_\_\_\_

JUDGE

\_\_\_\_\_

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:

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

AKW