

RETRACTED

FILED

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<p style="text-align: center;">JUN - 8 2015</p> <p style="text-align: center;">COURT CLERK</p> <p style="text-align: center;">σ COURT USE ONLY σ</p>
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 FOR DISCOVERY OF RECORDS RE: PROSECUTION COMMUNICATION AND CORRESPONDENCE WITH VICTIMS [D-069]	

CERTIFICATE OF CONFERRAL

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

Mr. Holmes, through counsel, requests that the Court order the prosecution to disclose to the defense all records of communication and correspondence with victims. In support of this motion, Mr. Holmes provides the following:

1. The defense assumes that dozens of victims have discussed the allegations in this case with victim advocates or representatives employed by the District Attorney for the 18th Judicial District or with people employed by law enforcement agencies.
2. Crim. P. 16(I)(a)(1)(I) requires the prosecution to make available to the defense all witness statements regarding the case.
3. Crim. P. 16(I)(a)(3) states that the prosecution’s discovery obligations “extend to material and information in the possession or control of members of his staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his office.”
4. Material generated by or in the possession of the Victim Witness Services Unit of the District Attorney for the 18th Judicial District is governed by Crim. P. 16.

5. Material generated by or in the possession of the law enforcement agencies is governed by Crim. P. 16.

6. Crim. P. 16(I)(d)(1) permits the Court to order discovery of relevant information not otherwise specified in Rule 16. “A witness statement or other evidence is relevant for Crim. P. 16(I)(d)(1) purposes, regardless of whether it contains information admissible at trial, as long as its contents are relevant to the conduct of the defense.” *People v. District Court*, 790 P.2d 332, 338 (Colo. 1990).

7. Where, as here, a specific request is made for information, the state and federal due process clauses require discovery if the information is “of material importance” to the defense. *People v. Thatcher*, 638 P.2d 768 (Colo. 1981); U.S. Const. amend XIV; Colo. Const. art. II, sec. 25.

8. In addition, the state and federal due process clauses require that all exculpatory information, including impeachment information, be disclosed to the defense. *E.g., People v. District Court*, 793 P.2d 163 (Colo. 1990).

9. There are numerous references in communications with witnesses and victims in this case similar to the following from discovery page 29829:

“The Arapahoe County Court advocate assigned to this case is Lisa Teesch-Maguire. Her information is contained in the packet given to you at our de-briefing on Aug 1st at 9:00 a.m. You can reach her at [REDACTED]. She can provide you with answers to all of your questions.”

Police officers, victim advocates and others are representing to witnesses that Ms. Teesch-Maguire will provide answers to all questions. Presumably Ms. Teesch-Maguire has had considerable contact with witnesses and victims as a result of these numerous referrals. Additionally, statements have been made in court referring to Ms. Teesch-Maguire’s direct contact with victims. Mr. Holmes has received little or no discovery concerning these witness statements or requests.

10. The District Attorney’s public web site has a Victim Service web page titled Aurora Movie Theater Incident:

<http://www.da18.org/VictimServices/AuroraMovieTheaterIncident.aspx>¹

That page includes contact information and a request that witnesses contact Sergeant Matt Fyles of the Aurora Police Department. That page includes a Victim Registration form, an e-mail address, and a phone number for Paula Bonnell, an employee of the District Attorney’s Office.

11. Mr. Holmes seeks discovery of all communications between victims/witnesses and employees of law enforcement or any employees of the District Attorney’s Office. This includes, but is not limited to all paper or electronic communications to and from

¹ Website visited June 1, 2013.

victims/witnesses and Ms. Teesch-Maguire, Sergeant Fyles, and Paula Bonnell. Page 29829 of discovery indicates that on August 1, 2012, the District Attorney provided victims with a packet of information concerning this case. Mr. Holmes moves for an order compelling disclosure of that packet.

12. Pursuant to section 13-90-107(1)(k)(II), C.R.S., no privilege applies to statements made to a victim advocate “employed by any law enforcement agency.” *People v. Turner*, 109 P.3d 639, 647 (Colo. 2005). No privilege applies to victim statements made to Ms. Teesch-Maguire, Ms. Bonnell, or to any other person employed by law enforcement or by the District Attorney.

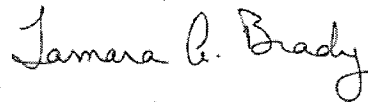
Request for a Hearing

13. Mr. Holmes requests an evidentiary 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 FOR DISCOVERY OF RECORDS RE: PROSECUTION COMMUNICATION AND CORRESPONDENCE WITH VICTIMS [D-069]	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

JUDGE

Dated

