

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	<p style="text-align: center;">Filed</p> <p style="text-align: center;">JUN - 3 2013</p> <p style="text-align: center;"><small>CLERK OF THE DISTRICT COURT ARAPAHOE COUNTY, COLORADO</small></p> <p style="text-align: center;">σ COURT USE ONLY σ</p>
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 <div style="text-align: center; font-size: 2em; opacity: 0.5;">REDACTED</div> Division 26
MOTION FOR SPECIFIC DISCOVERY – WITNESS U-VISA REQUESTS [D-045]	

CERTIFICATE OF CONFERRAL

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

Mr. Holmes is charged with multiple counts of first degree murder and attempted murder in connection with the July 20, 2012, shooting at the Century 16 Theater in Aurora. The prosecution seeks to kill Mr. Holmes. Mr. Holmes, through counsel, moves for specific discovery of the following:

1. Some witnesses in this case have requested from the government U Visas to remain in the United States during (at least) the prosecution of this case.
2. Discovery indicates that the prosecution and/or law enforcement have been involved in the application and recommendation of these U Visas.
3. This information is material and relevant in that it can be used to show bias and favor towards the prosecution by these witnesses. The granting of a U Visa is a “benefit” conferred upon the witness by the prosecution. It is impeachment information.
4. The state and federal due process clauses require that the state disclose all impeachment information regarding any witness. *People v. District Court*, 793 P.2d 163 (Colo. 1990).
5. A witness may be impeached with any promises made by the state and any agreements with the state that might provide a motive for the witness to favor the state. *Delaware v. Van Arsdall*, 475 U.S. 673 (1986).

6. Broad cross-examination should be permitted regarding “the witness’s motive for testifying, especially where such witness is charged with or threatened with criminal prosecution for other alleged offenses ... and where his testimony against the defendant might be influenced by a promise of, or hope or expectation of immunity or leniency....” *People v. King*, 498 P.2d 1142 (1972). The same theory can be applied to a witness hoping to remain in the United States legally (and not be incarcerated, deported or removed from the country).

7. Counsel requires this information in order to discharge their constitutional obligation to provide Mr. Holmes with the effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984); ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases 10.8, commentary p. 89, rev. ed. 2003 (“Because of the possibility that the client will be sentenced to death, counsel must be significantly more vigilant about litigating all potential issues at all levels in a capital case than in any other case.”).

8. Moreover, the concept of fundamental fairness embedded in the Due Process Clause entitles a defendant to a general right of access to evidence. *See Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) (“[A] criminal trial is fundamentally unfair if the State proceeds against [a] ... defendant without making certain that he has access to the raw materials integral to the building of an effective defense.”).

9. Given that the prosecution is seeking the death penalty against Mr. Holmes, he is entitled to and demands his right to heightened due process and heightened reliability throughout this proceeding. *Beck v. Alabama*, 447 U.S. 625, 637-638 (1980); *People v. Tenneson*, 788 P.2d 786, 804-05 (Colo. 1990); *People v. Rodriguez*, 786 P.2d 1079, 1082 (Colo. 1989) (“In a capital case, there is a strong presumption that possibly exculpatory evidence should be given to the defendant Although we have upheld the nondisclosure of the identity of confidential informants under the balance of interests test when they were not eyewitnesses, the nature of the death sentence requires an extraordinary showing, based on competent evidence, before nondisclosure can be permitted.”).

10. In addition, Mr. Holmes is clearly entitled to this information pursuant to Colo. R. Crim. P. 16. Evidence is relevant for Rule 16 purposes as long as its contents are relevant to the conduct of the defense. *See e.g., People v. District Court El Paso County*, 790 P.2d. 337 (Colo. 1990); *People v. Gallegos*, 644 P.2d 920 (Colo. 1982). The Due Process Clause of the Fifth and Fourteenth Amendments are implicated when this discovery is not provided to the defense. *United States v. Bagley*, 473 U.S. 667 (1985); *Kyles v. Whitley*, 514 U.S. 419 (1995).

11. Finally, the prosecution has an overall ethical duty to provide discovery to the defense. *See In the Matter of Attorney C.*, 47 P.3d 1167 (Colo. 2002).

Request for a Hearing

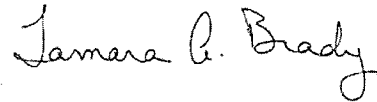
12. Mr. Holmes moves for a hearing on this motion.

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.



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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THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	σ COURT USE ONLY σ
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ORDER RE: MOTION FOR SPECIFIC DISCOVERY – WITNESS U-VISA REQUESTS [D-045]	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

JUDGE
Dated

I hereby certify that on June 3rd, 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

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Centennial, Colorado 80111

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Mona Johnston