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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	FILED JUN - 3 2013 COURT USE ONLY
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 TO ALLOW MR. HOLMES TO BE DRESSED IN CIVILIAN CLOTHING FOR TRIAL [D-094]</b>	

**CERTIFICATE OF CONFERRAL**

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

Mr. Holmes moves this Court for an order that he be allowed to wear civilian clothing – rather than an Arapahoe County Jail uniform - during his trial and in support states:

1. Mr. Holmes is being held without bond. He will be a prisoner at the Arapahoe County Jail at the time of any trial in this matter.

2. Mr. Holmes should not be required to appear in front of the jury in a jail uniform. Doing so would violate Mr. Holmes’ state and federal constitutional rights to due process, the presumption of innocence, a fair and impartial jury and equal protection of the law. U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 18, 23, 25. It would also undermine the reliability of the trial process and jury verdict in this capital case and violate the protections of the state and federal constitution prohibition against cruel and unusual punishment. U.S. Const. amends. VIII, XIV; Colo. Const. art. II, sec. 20; *Beck v. Alabama*, 447 U.S. 625, 637-638 (1980).

3. “The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment.” *Drope v. Missouri*, 420 U.S. 162, 172 (1975). Moreover,

“The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice . . . .

To implement the presumption, courts must be alert to factors that may undermine the fairness of the fact finding process. In the administration of criminal justice, courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970).

The actual impact of a particular practice on the judgment of jurors cannot always be fully determined. But this Court has left no doubt that the probability of deleterious effects on fundamental rights calls for close judicial scrutiny. *Estes v. Texas*, 381 U.S. 532 (1965); *In re Murchison*, 349 U.S. 133 (1955). Courts must do the best they can to evaluate the likely effects of a particular procedure, based on reason, principle, and common human experience.”

*Estelle v. Williams*, 425 U.S. 501, 504 (1976).

4. Although defense counsel failed to object and preserve the issue properly in *Estelle*, the Court declared, “[T]he State cannot, consistently with the Fourteenth Amendment, compel an accused to stand trial before a jury dressed in identifiable prison clothes ....” *Id.* at 512.

5. The Connecticut Supreme Court recently examined the issue in *State v. Rose*, 305 Conn. 594, 46 A.3d 146 (2012). Discussing *Estelle* at length, the Connecticut court adopted “a rule that the conviction of a defendant who is compelled to stand trial in identifiable prison clothing in violation of his or her constitutional rights is reversible per se.” *Id.* at 605-606.

6. In order to assure Mr. Holmes receives a fair trial and the same treatment and presumptions by the jury that would be afforded any other person, Mr. Holmes should be allowed to wear civilian attire during his trial.

#### **Request for a Hearing**

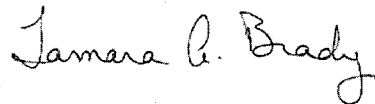
7. Mr. Holmes requests a hearing on this motion.

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

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<p align="center"><b>ORDER RE: MOTION TO ALLOW MR. HOLMES TO BE DRESSED IN CIVILIAN CLOTHING FOR TRIAL [D-094]</b></p>	

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

BY THE COURT:

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JUDGE

\_\_\_\_\_

Dated

