

RECEIVED

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	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 SPLIT THE COST OF TRANSCRIPT PREPARATION BETWEEN          DEFENSE AND PROSECUTION [D-088]</b>	

**CERTIFICATE OF CONFERRAL**

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

James Holmes, through counsel, respectfully requests that this Court enter an order requiring the parties to split the cost of ordering transcripts in the above-captioned case. In support of this motion, counsel states the following:

1. At the outset of this case, undersigned counsel ordered several transcripts from the managing court reporter. Counsel was informed by the reporter that it would be appropriate for counsel to file a standing transcript request asking for all of the hearings to be completed, rather than filing a separate transcript request for each hearing.

2. The court reporter also advised that any transcripts prepared for the defense team will automatically be sent to the district attorney's office pursuant to Section IV, H., 2. of Chief Justice Directive 05-03, which states that if a state agency (such as the public defender's office or the district attorney's office) orders a transcript, copy costs "for state-paid copy requests shall not apply" because "[t]he intent of this provision is for only one state agency to pay for the transcript."

3. As a result, the district attorney has received all of the transcripts in this case at no cost, while the office of the public defender is shouldering the entire burden of the cost, even though both parties have the need to review the transcripts of the hearings in the case.

4. Given the magnitude of this case, as time progresses, this cost is likely to become a significant financial burden on the Office of the State Public Defender.

5. Undersigned counsel contacted the district attorney several months ago seeking an informal resolution to this issue, but did not receive any response. Therefore, counsel is seeking assistance from this Court.

6. Requiring an indigent defendant to shoulder the entire financial burden of preparing transcripts in the case against him – especially where the prosecution enjoys the benefits of these transcripts at no cost at all – offends notions of due process and equal protection. *See, e.g., Ross v. Moffitt*, 417 U.S. 600, 609 (1974) (“‘Due process’ emphasizes fairness between the State and the individual dealing with the State.”); *Wardius v. Oregon*, 412 U.S. 470, 474 (1973) (Due Process Clause and notions of fundamental fairness speak to “balance of forces” between the accused and his accuser); *Griffin v. Illinois*, 351 U.S. 12, 17 (1956); *Petition of Patterson*, 136 Colo. 401, 404, 317 P.2d 1041, 1042 (1957) (“If, from the showing made, the trial court is satisfied that the defendant is unable to pay for a transcript, its duty is plain-it must order the same to be furnished to him without cost.”).

7. Therefore, the defense respectfully requests that this Court enter an order directing the parties to split the cost of transcripts in this case.

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

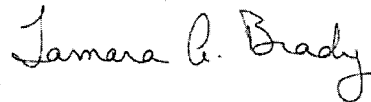
8. Mr. Holmes requests a hearing on this motion.

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.



---

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

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<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>ORDER RE: MOTION TO SPLIT THE COST OF TRANSCRIPT PREPARATION          BETWEEN DEFENSE AND PROSECUTION [D-088]</b>	

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

BY THE COURT:

\_\_\_\_\_ JUDGE

\_\_\_\_\_ Dated

