

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	JUN - 3 2013 11:35 AM COURT USE ONLY
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  <b>JAMES HOLMES,</b> Defendant	Case No. <b>12CR1522</b>
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>	Division 26
<b>MOTION TO SUPPRESS EVIDENCE: SEARCHES OF 1690 N. PARIS ST., #10</b> <b>[D-123]</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, moves to suppress the prosecution's use of any evidence obtained from the entries and searches of 1690 N. Paris Street #10 at any of the proceedings in this action on the grounds that any such evidence was obtained as a result of an illegal entry and search. In support, Mr. Holmes states:

1. In the early morning hours of July 20, 2012, law enforcement effected a warrantless entry into Mr. Holmes' apartment at 1690 N. Paris Street, #10 in Aurora, CO. Law enforcement utilized a bomb robot to make the initial entry into the apartment and to view the interior of the apartment. At the time of the bomb robot's entry, officers did not have a warrant to enter the apartment. Subsequent to the initial warrantless entry, and based in part upon the observations from the warrantless entry, law enforcement obtained a search warrant for the apartment.

2. Mr. Holmes contends that the warrantless entry into his apartment was illegal and unconstitutional, and that entry and search, and any subsequent entries and searches, were consequently illegal and any evidence viewed or seized as a result must be suppressed. U.S. Const. amends. IV; XIV; Colo. Const. art. II, §7.

3. Both the United States and Colorado constitutions generally require the police to obtain a search warrant, based upon probable cause, prior to the entry and search of a residence. U.S. Const. amends. IV; XIV; Colo. Const. art. II, §7. Although the Fourth Amendment protects a person from intrusion by the police into his privacy in a number of settings, “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” *Maryland v. Buie*, 494 U.S. 325, 341 (1990) (quoting *United States v. United States District Court, Eastern District of Michigan*, 407 U.S. 297 (1972)). Thus, evidence derived from, or acquired by, illegal entry into the defendant’s home is inadmissible in criminal prosecutions. *People v. Bostic*, 148 P.3d 250, 254 (Colo.App. 2006) (citing *Wong Sun v. United States*, 371 U.S. 471 (1963)); *Payton v. New York*, 455 U.S. 573 (1980).

4. “A search conducted without a warrant is prima facie unlawful unless there exists a valid exception to the warrant requirement of the Fourth Amendment to the United States Constitution and of Article II, Section 7, of the Colorado Constitution.” *People v. Harper*, 902 P.2d 842, 844 (Colo. 1995).

5. Here, the initial entry and search was illegal and unconstitutional, and any information obtained from this search or subsequent searches is must be suppressed. *See e.g. Wong Sun, supra*.

6. In addition, “[w]here a search pursuant to a warrant follows an illegal warrantless search, evidence acquired during the second search will be suppressed if it is tainted by the first illegal search.” *People v. McFall*, 672 P.2d 534, 537 (Colo. 1983). A warrant obtained based upon information acquired from an illegal entry of a residence is tainted and invalid, and evidence obtained as a result of such a search warrant must be suppressed. *People v. Hogan*, 649 P.2d 326 (Colo. 1982).

7. The affidavit in support of the search warrant in this case specifically relied upon the initial illegal entry and observations to obtain the warrant. It stated, in part:

Your affiant spoke with Detective Tom Wilson # 13163 who responded to this address. Detective Wilson informed your affiant that upon his arrival he observed that the Adams County Sheriff’s Office Bomb Squad was on scene. Detective Wilson informed your affiant that the apartment building was evacuated and the bomb squad utilized an explosive robot to make entry into this apartment. Detective Wilson informed your affiant that the explosive robot made entry to the apartment and immediately was stopped by trip wires. The explosive robot then utilized a camera and the interior to the apartment was viewed by officers. Detective Wilson informed your affiant that the camera observed the main room and observed additional trip wires that lead into different rooms within the apartment. Detective Wilson also informed your affiant that propane tanks, bottles filled with an unknown liquid and bottles filled with ammunition were observed located throughout the apartment.

8. Consequently, the subsequent warrant itself was obtained based in part upon the initial illegal entry and search and is invalid. *See e.g. Hogan, supra.*

9. Further, the search warrant was invalid on its face and unconstitutionally overbroad, and/or the warrant was illegally executed. U.S. Const. amends. IV, XIV; Colo. Const. art. II, sec. 7; *Illinois v. Gates*, 462 U.S. 213 (1983); *People v. Pannebaker*, 714 P.2d 904 (Colo.1986); *People v. Padilla*, 182 Colo. 101, 511 P.2d 480 (1973); Crim P. 41.

10. While the search warrant specified certain items to be identified for search and seizure purposes, the warrant also authorized officers to search for and seize “any other evidence that may be material to this investigation.” Mr. Holmes asserts that such broad, amorphous language fails to satisfy the particularity requirements for a search warrant under the state and federal constitutions and, instead, authorizes an unconstitutional general, exploratory search.

11. The Fourth Amendment to the United States Constitution requires not only that warrants be supported by probable cause, but also that they “particularly describ[e] the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV; *see also* Colo. Const. art. II, sec. 7 (“no warrant to search any place or seize any person or things shall issue without describing the place to be searched, or the person to be seized, as near as may be...”); *People v. Roccaforte*, 919 P.2d 799, 802 (Colo. 1996); *People v. Donahue*, 750 P.2d 921 (Colo. 1988) (A warrant specifying the place to be searched, but not the items to be seized, is invalid on its face for lack of particularity.). A search warrant must “identify or describe, as nearly as may be, the property to be searched for, seized, or inspected.” § 16-3-303(1)(b); Crim.P.Rule 41(d)(1)(II). “The policy behind the requirement is to prevent officers from conducting a ‘general, exploratory rummaging in a person’s belongings.’” *Roccaforte, supra*, quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971).

12. The particularity requirement “ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.” *Maryland v. Garrison*, 480 U.S. 79, 84, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987). *See also Marron v. United States*, 275 U.S. 192, 196, 48 S.Ct. 74, 72 L.Ed. 231 (1927) (“The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.”).

13. “The principal means of effectuating the [particularity] requirement is to suppress all evidence seized pursuant to an overbroad, general warrant.” *Roccaforte, supra.*

14. Lastly, Mr. Holmes contends that the illegal entry into his apartment, as well as the subsequent search warrant and search, resulted from statements obtained from Mr. Holmes in violation of his constitutional rights. See MOTION TO SUPPRESS MR. HOLMES’ JULY 20, 2012, ALLEGED STATEMENTS TO OFFICERS SWEENEY, OVIATT, AND BLUE [D-124].

15. Thus, the searches of Mr. Holmes apartment resulted from an initial illegal entry into the apartment. In addition, the search warrant itself was obtained based upon the illegal entry. Further, the initial entry and the warrant were the product of unconstitutionally obtained statements from Mr. Holmes. Therefore, the searches of the apartment were the fruit of the poisonous tree, and any evidence obtained as a result must be suppressed. U.S. Const. amends. IV, XIV; Colo. Const. art. II, §§ 7, 25; *Wong Sun v. United States*, 371 U.S. 471 (1963); *Deeds v. People*, 747 P.2d 1266 (Colo. 1987); *People v. Sparks*, 748 P.2d 795 (Colo. 1988); *People v. Lowe*, 616 P.2d 118, 123 (Colo. 1980)(overruled in part on other grounds); *Hogan, supra*.

### Request for a Hearing

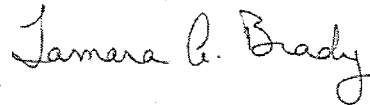
16. Mr. Holmes requests an evidentiary hearing on this motion.

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.



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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	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  <b>JAMES HOLMES,</b> Defendant	σ COURT USE ONLY σ
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<b>ORDER RE: MOTION TO SUPPRESS EVIDENCE: SEARCHES OF          1690 N. PARIS ST., #10 [D-123]</b>	

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

BY THE COURT:

\_\_\_\_\_ JUDGE

\_\_\_\_\_ Dated

I hereby certify that on June 3rd, 2013, I

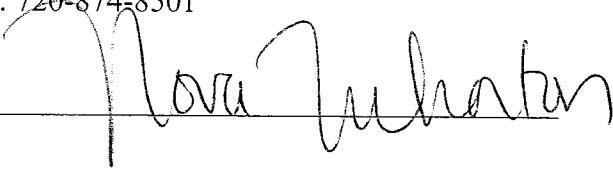
mailed, via the United States Mail,

faxed, or

hand-delivered

a true and correct copy of the above and foregoing document to:

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