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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<div style="text-align: right;"> <p>JUN - 9 2012</p> <p>10:00 AM</p> </div> <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>MOTION TO SUPPRESS EVIDENCE: SEARCHES OF WHITE HYUNDAI [D-115]</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 searches of his white Hyundai Tiburon at any of the proceedings in this action on the grounds that any such evidence was obtained as a result of illegal searches. In support, Mr. Holmes states:

1. In the early morning hours of July 20, 2012, Mr. Holmes was arrested next to his white Hyundai Tiburon with Colorado license plate 119-ROC. Mr. Holmes was subsequently removed from the scene.
2. After Mr. Holmes was removed from the scene and transported to the police department, his vehicle was searched at least twice and possibly more times without a warrant. His car was initially searched by a bomb robot and police officers. It appears the entire vehicle was searched. Various items were removed from the vehicle and searched. There was also a second search performed by bomb squad personnel. Further, the interior and exterior of the car were photographed and searched. All of those searches apparently occurred prior to law enforcement obtaining a warrant to search the vehicle at approximately 9:15 a.m. on July 20, 2012. A second search warrant was obtained on August 2, 2012.
3. Mr. Holmes contends that the warrantless searches of his vehicle were unconstitutional, and such searches, and any subsequent 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.

4. The Fourth Amendment to the United States Constitution guarantees the people the right to be free from unreasonable searches and seizures. U.S. Const. amend IV, XIV. Colorado's Constitution provides equivalent protection. Colo. Const. art. II, §7. All warrantless searches and seizures are presumed unreasonable and in violation of the federal and state constitutions. *People v. Bertine*, 705 P.2d 411 (Colo. 1985). Therefore, unless the warrantless search falls within one of the "few specifically established and well delineated exceptions" to the warrant requirement, the search is *per se* unreasonable, and therefore, unconstitutional. See *Katz v. United States*, 389 U.S. 347, 357 (1967). The prosecution bears the burden of proving that the warrantless search falls within one of the exceptions to the warrant requirement. *People v. Turner*, 660 P.2d 1284, 1287 (Colo. 1983).

5. "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).

6. Here, the initial warrantless search was illegal. The second warrantless search was likewise illegal for the same reasons, and also as fruit of the poisonous tree, as were any additional warrantless searches. See *Wong Sun v. United States*, 371 U.S. 471 (1963). The subsequently obtained search warrants were also invalid as fruit of the poisonous tree. The fruit of the poisonous tree doctrine excludes evidence discovered as a result of an initial Fourth Amendment violation. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *People v. Hogan*, 649 P.2d 326 (Colo. 1982).

7. 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); *People v. Hogan*, 649 P.2d 326 (Colo. 1982).

8. The affidavit in support of the first search warrant for the vehicle specifically relied upon the initial illegal search and observations to obtain the warrant. It stated, in part:

Officers from the Arapahoe County Sheriff's Department Bomb Squad responded and utilizing an explosive removal robot, removed items from the vehicle. Included among these items were two rifle cases and a pair of black gloves. A second black semi-auto pistol in a holster was observed inside the storage compartment on the passenger side door.

9. The affidavit for the second search warrant relies upon firearm trace data regarding firearms illegally seized from the Hyundai.

10. Consequently, the subsequent warrants were obtained based in part upon the initial illegal searches and are invalid.

11. Further, the initial search warrant was invalid on its face and unconstitutionally overbroad. 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.

12. 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.

13. 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).

14. 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.”).

15. Mr. Holmes asserts that the second warrant, and any search based upon it, was the fruit of the initial unconstitutional searches.

16. Thus, there were several illegal searches of Mr. Holmes’ car. In addition, the subsequent search warrants were tainted by the illegal searches. Therefore, the searches of the car were unconstitutional 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).

### **Request for a Hearing**

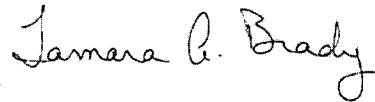
17. Mr. Holmes requests an evidentiary hearing on this motion.

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
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 SUPPRESS EVIDENCE: SEARCHES OF WHITE HYUNDAI [D-115]</b>	

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

BY THE COURT:

\_\_\_\_\_

JUDGE

\_\_\_\_\_

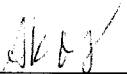
Dated

I hereby certify that on June 3, 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  
Office of the District Attorney  
6450 S. Revere Parkway  
Centennial, Colorado 80111  
Fax: 720-874-8501

  
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