

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	JUN - 8 2013 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: state.pubdef@coloradodefenders.us	Case No. 12CR1522 Division 26
MOTION TO SUPPRESS EVIDENCE: WALLET [D-114]	

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 his wallet, and any contents thereof, at any of the proceedings in this action on the grounds that the items were obtained as a result of an illegal search and seizure. In support, Mr. Holmes states:

1. It is unclear from discovery exactly how, when, and where police initially seized and searched Mr. Holmes' wallet. However, at some point while he was in custody and still at the scene, officers apparently retrieved his wallet and searched it for at least his driver's license.
2. In addition, in the early morning hours of July 20, 2012, after Mr. Holmes had been removed from the scene and taken to the police station, an incident briefing occurred at the Century 16 theaters. During that briefing, Det. Welton was apparently handed a brown wallet and told it belonged to the suspect in custody. Det. Welton then searched the contents of the wallet, reviewed and copied the items, and obtained certain information, including information regarding bank accounts, student identification, etc.
3. At the time Det. Welton conducted the search he did not have a search warrant for the wallet. In addition, Mr. Holmes had already been removed from the scene.

4. The warrantless search of the wallet was unconstitutional under the Fourth Amendment to the United States Constitution and Article II, Section 7 of the Colorado Constitution. Those provisions provide that the people shall be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and thus proscribe all unreasonable searches and seizures. “[I]t is a cardinal principle that ‘searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.’ ” *Mincey v. Arizona*, 437 U.S. 385, 390, 98 S.Ct. 2408, 2412, 57 L.Ed.2d 290 (1978) (quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967)); *see also* *People v. Higbee*, 802 P.2d 1085, 1088 (Colo.1990); *People v. Clements*, 661 P.2d 267, 270–71 (Colo.1983).

5. As the Colorado Supreme Court has specifically recognized:

The contents of a purse or wallet are of an extremely personal nature, and, in the absence of consent, any warrantless search of these items can be justified only under one of the narrowly defined exceptions to the warrant requirement.

People v. Wright, 804 P.2d 866, 869 (Colo. 1991).

6. “A warrantless search and seizure is presumptively illegal, and the prosecution has the burden of establishing an exception to the warrant requirement.” *People v. Higbee*, 802 P.2d 1085, 1090 (Colo.,1990) quoting *People v. Amato*, 193 Colo. 57, 59, 562 P.2d 422, 423 (1977); *see also* *Mincey v. Arizona*, 437 U.S. 385, 390-91, 98 S.Ct. 2408, 2412, 57 L.Ed.2d 290 (1978); *Coolidge v. New Hampshire*, 403 U.S. 443, 454-455, 91 S.Ct. 2022, 2031-32, 29 L.Ed.2d 564 (1971).

7. The warrantless search and seizure of the wallet in this case was therefore illegal.

8. Any evidence obtained or derived as a result of an unconstitutional and search illegal and/or seizure without a warrant in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article II, Section 7 of the Colorado Constitution is the fruit of said search and/or seizure and should therefore be suppressed. *See Wong Sun v. United States*, 371 U.S 471, 83 S.Ct. 407 (1963).

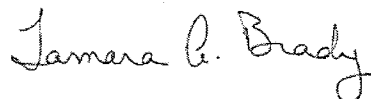
Request for a Hearing

9. Mr. Holmes moves for 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.



Daniel King (No. 26129)
Chief Trial Deputy State Public Defender



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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	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff	
v.	
JAMES HOLMES, Defendant	σ COURT USE ONLY σ
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ORDER RE: MOTION TO SUPPRESS EVIDENCE: WALLET [D-114]	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

_____ Dated _____

JUDGE

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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Jacob Edson
Rich Orman
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