

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<p style="text-align: center;">Filed MAY 31 2013</p> <p style="text-align: center;"><small>CLERK OF THE DISTRICT COURT ARAPAHOE COUNTY, COLORADO</small></p> <p style="text-align: center;">σ COURT USE ONLY σ</p>
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, 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: state.pubdef@coloradodefenders.us	Case No. 12CR1522 <div style="text-align: center; font-size: 2em; opacity: 0.5;">REDACTED</div> Division 26
OBJECTION TO PEOPLE'S REQUEST TO ADDRESS ISSUES SURROUNDING WAIVER OF PRIVILEGE WITH RESPECT TO PACKAGE SENT TO DR. FENTON AT JUNE 4, 2013 ADVISEMENT HEARING [D-041]	

CERTIFICATE OF CONFERRAL

Conferral is not appropriate for this pleading.

James Holmes, by and through counsel, objects to the People's request to address issues surrounding the waiver of privilege with respect to the package sent to Dr. Fenton at the advisement hearing on June 4, 2013. In support of this objection, Mr. Holmes states the following:

1. In a 50-page order issued on May 29, 2013, the Court ruled on Mr. Holmes' constitutional challenges to C.R.S. § 16-8-101 *et seq.* In the order, the Court recognized that counsel may require additional time to digest this order and prepare for the advisement hearing, and offered the defense the opportunity to postpone the advisement hearing to June 4, 2013.

2. The People responded that they do not object to postponing the advisement until June 4, 2013 as long as issues pertaining to the waiver of privilege with respect to the package Mr. Holmes sent to Dr. Fenton are addressed.

3. The defense strenuously objects to addressing issues surrounding the notebook on June 4, 2013. Once the advisement hearing takes place, counsel will need an opportunity to brief the outstanding issues surrounding any privileged materials prior to any hearing held on this issue. **Counsel cannot prepare to address those issues prior to June 4, 2013 because the arguments will depend in part on the outcome of the June 4 hearing.**

4. Moreover, counsel requested the postponement of the advisement hearing because they genuinely require additional time in order to fulfill their constitutional duties to provide him with effective representation. *See Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Rodriguez*, 914 P.2d 230, 294 (Colo. 1996) (“A defendant’s right to effective assistance of counsel is guaranteed by the United States and Colorado Constitutions.”); *see also* ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases 10.8, commentary, rev. ed. 2003 (“Because of the possibility that the client will be sentenced to death, counsel must be significantly more vigilant about litigating all potential issues at all levels in a capital case than in any other case.”).

5. Counsel have been working extremely long hours to comply with the Court’s June 3, 2013 deadline for non-capital motions as best they can. Counsel anticipate filing motions numbering in the dozens. Counsel’s ability to comply with that deadline has already been complicated by the fact that they have had to take significant time away from the drafting of other non-capital motions to address the issues and additional hearings pertaining to the tendering of Mr. Holmes’ NGRI plea that have arisen in the last several weeks.

6. Counsel simply cannot complete all the work that needs to be done on those motions, digest the Court’s lengthy order, prepare for the advisement hearing, and further be prepared to address highly critical issues surrounding the privileged status of the package sent by Mr. Holmes to Dr. Fenton. Counsel are working as hard and as fast as they can, but it would be impossible for them to complete all of those tasks by June 4.

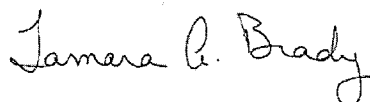
7. Finally, this is an instance in which the Court, when considering counsel’s request, must be mindful of the heightened reliability required in this case under the Eighth Amendment and section II, article 20 of the Colorado Constitution. *See, e.g., Beck v. Alabama*, 447 U.S. 625, 637 (1980) (risk of unreliable conviction “cannot be tolerated” in case where defendant’s life is at stake); *Herrera v. Collins*, 506 U.S. 390, 434 (1993) (“The decision in *Beck* establishes that, at least in capital cases, the Eighth Amendment requires more than reliability in sentencing. It also mandates a reliable determination of guilt.”); *People v. Young*, 814 P.2d 834, 846 (Colo. 1991); *People v. Rodriguez*, 786 P.2d 1079 (Colo. 1989).

8. Counsel need an adequate amount of time to perform their duties effectively in this capital case, and request that the Court not permit this matter to be rushed in a manner that compromises their client’s constitutional rights when his life is at stake.

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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Chief Trial Deputy State Public Defender



Kristen M. Nelson (No. 44247)
Deputy State Public Defender

Dated: May 31, 2013

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THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, 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: state.pubdef@coloradodefenders.us	Case No. 12CR1522 Division 26
ORDER RE: OBJECTION TO PEOPLE’S REQUEST TO ADDRESS ISSUES SURROUNDING WAIVER OF PRIVILEGE WITH RESPECT TO PACKAGE SENT TO DR. FENTON AT JUNE 4, 2013 ADVISEMENT HEARING [D-041]	

Defendant’s motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

_____ Dated _____

JUDGE

I hereby certify that on May 31, 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
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Fax: 720-874-8501

Nova Whitton