DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 8011	▲COURT USE ONLY▲
PEOPLE OF THE STATE OF COLORADO **v.** **JAMES EAGAN HOLMES,** **Defendant**	Case No. **12CR1522** Division: **201**

ORDER REGARDING DEFENDANT'S MOTION FOR SPECIFIC DISCOVERY—INTER-DEPARTMENTAL COMMUNICATIONS (D-49)

The defendant notes that numerous law enforcement agencies have been involved in the investigation of this case. Motion at p. 1. He moves for an order to disclose "all communications between law enforcement agencies concerning the investigation and prosecution of this case, including but not limited to: memos, emails, briefings, summaries, notes, reports, plans, lists, and communiqués." *Id.* The People object. For the reasons articulated in this Order, the motion is denied without a hearing.

As a preliminary matter, "[t]he United States Supreme Court has noted there is no general constitutional right to discovery in a criminal case, and *Brady* did not create one." *People v. Dist. Court*, 790 P.2d 332, 338 (Colo. 1990) (referring to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)) (quotation

marks and citation omitted). By providing additional means for disclosure, the Colorado Rules of Criminal Procedure "to some extent compensate for the limitations on the protection afforded criminal defendants under the *Brady* doctrine." *Id.*

The defendant cites Crim. P. 16 in support of his motion. Motion at p. 2. Rule 16 contains both mandatory and discretionary disclosure provisions. Turning first to the mandatory requirements, "the prosecution must automatically disclose to the defense," among other things, "'[p]olice, arrest and crime or offense reports, including statements of all witnesses.'" *People v. Vlassis*, 247 P.3d 196, 198 (Colo. 2011) (quoting Crim. P. 16(I)(a)(1)(I)). In *Dist. Court*, the Colorado Supreme Court observed that "witness statements in or associated with police reports, arrest reports, crime reports and offense reports" are governed by this rule. *Id.*

The defendant cites no authority for the proposition that the requested disclosures are required under Rule 16(I)(a)(1)(I), and the Court's research has unearthed none. The Court agrees with the People that the materials requested do not fall within the ambit of this rule. *See generally* Response at p. 2. Communications between law enforcement agencies are not police reports, arrest reports, crime reports, or offense reports. Even if they were, the motion would nevertheless be rejected under Crim. P. 16(V)(a), which provides, in pertinent part,

that "[t]he furnishing of the items discoverable" pursuant to Rule 16(I)(a)(1)(I) "is mandatory and no motions for discovery with respect to such items may be filed."

The defendant maintains, however, that to the extent a requested communication "tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefor," it must be disclosed pursuant to Crim. P. 16(I)(a)(2). Reply at p. 1. The defendant is correct. However, the request is still improper because it was filed in violation of Crim. P. 16(V)(a). *Id.* (mandatory disclosures under Rule 16(I)(a)(2) must be automatically provided by the prosecution and "no motions for discovery with respect to such items may be filed").

Turning next to the discretionary provisions of Rule 16, for the first time in his reply, the defendant contends that "[t]o the extent that the information requested is not automatically discoverable" pursuant to Rule 16(I)(a), the Court should "order the discretionary disclosure of this information pursuant to Rule 16(I)(d)(1)." Reply at p. 1. In addition to being untimely, this assertion lacks merit.

In its discretion, the Court may require the disclosure of "relevant material and information" under Crim. P. 16(I)(d)(1) "upon a showing by the defense that the request is reasonable." To make this showing, however, "the defense must demonstrate that the information sought is: (1) relevant to the conduct of the

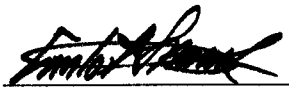
defense, and (2) unavailable from any source other than the prosecution." *Vlassis*, 247 P.3d at 198.

Here, the defendant has failed to make the prerequisite showing of relevance. Instead, he summarily avers that "[t]here is a high likelihood, given the significant number of victims, witnesses, and law enforcement agencies in this case, that the requested materials contain information that is relevant to the conduct of the defense." Reply at p. 1. The defendant presents no factual basis for his position. Instead, he speculates that the materials may "include statements of witnesses present in the theater or acquainted with [him] that could lead to additional defense investigation, or information concerning the handling and custody of important evidence in the case." *Id.* at p. 2. Simply guessing that it is "likely" or "high[ly] likel[y]" that the materials sought will contain this information, *id.* at p. 2, does not make the request any less conjectural. To hold otherwise would make the necessary showing meaningless and would entitle every criminal defendant to embark upon a fishing expedition.

For all the foregoing reasons, Motion D-49 fails. Part of the motion is improper and is therefore rejected. The other part, which includes an untimely argument, lacks merit and is therefore denied.

Dated this 16th day of August of 2013.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2013, a true and correct copy the **Order regarding defendant's motion for specific discovery – inter-departmental communications (D-49)** was served upon the following parties of record:

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