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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed JUL 17 2013 CLERK OF THE DISTRICT COURT ARAPAHOE COUNTY, COLORADO
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	σ COURT USE ONLY σ Case No. 12CR1522 Division 26
REPLY TO PROSECUTION'S RESPONSE TO MOTION TO SUPPRESS EVIDENCE: WALLET [D-114]	

James Holmes, through counsel, submits the following in reply to the prosecution's response to his Motion to Suppress Evidence: Wallet:

1. The prosecution, citing *People v. Jones*, 767 P.2d 236 (Colo. 1989), contends that the search of Mr. Holmes's wallet was valid because it was conducted incident to his arrest.
2. However, the scope of a search incident to arrest must be "commensurate with its purposes of protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy." *Arizona v. Gant*, 556 U.S. 332, 339 (2009).
3. In *Jones*, the police searched the defendant's wallet, which was recovered from his pants that were "within the immediate area around him." 767 P.2d at 238. Because "Jones wanted his pants and specifically asked for them," the Court concluded that the unlawful evidence uncovered from Jones's wallet "could have been destroyed by Jones." *Id.*
4. In contrast, there was no possibility that Mr. Holmes could have reached his wallet when law enforcement conducted searches of its contents given that Mr. Holmes's wallet was seized at the scene but was not subsequently searched until later at the police station. Under these circumstances, the search was not actually "incident" to Mr. Holmes's arrest. *See, e.g., Stoner v. California*, 376 U.S. 483, 486 (1964) ("[A] search can be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest."); *United States v. Gomez*, 807 F.Supp.2d 1134 (S.D. Fla. 2011) (noting that the temporal and spatial limitation on searches incident to arrest "requires searches that are substantially contemporaneous with the arrest" and are "to the immediate vicinity of the arrest" and noting that if search in question had not occurred until later at the station house, officers' search "would have run afoul with the spatial and temporal safeguards" imposed"). *But see People v. Marshall*, 289 P.3d 27, 30-31 (Colo. 2012).

5. Moreover, the prosecution bears the burden of establishing this exception to the warrant requirement.

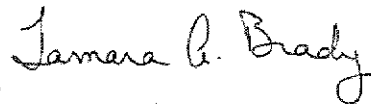
Request for a Hearing

6. Mr. Holmes renews his request for an evidentiary hearing on this issue.

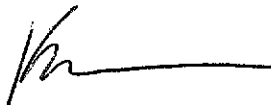
Mr. Holmes incorporates by reference the arguments set forth in his original motion, and files this reply, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process 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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Dated: July 17, 2013

I hereby certify that on July 17, 2013, I

mailed, via the United States Mail,
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a true and correct copy of the above and foregoing document to:

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