

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed JUN - 5 2016 Office of the Clerk of the Court Arapahoe County, Colorado σ COURT USE ONLY σ
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 Redacted Division 26
MOTION FOR JUROR POSTPONEMENTS AND EXCUSALS TO BE MADE ON THE RECORD [D-080]	

CERTIFICATE OF CONFERRAL

The District Attorney states that they object to the motion, and that they will file a response.

Mr. Holmes, through counsel, moves this Court to enter an order requiring all juror service excusals and postponements to be made on the record, and granting him the opportunity to be present and participate in that process and, in support, states:

1. Mr. Holmes is charged with multiple counts of first-degree murder, among other charges, and the prosecution is seeking his death.
2. Any deficiencies in the jury selection process must be examined with great scrutiny, as Mr. Holmes is entitled to a jury drawn from a fair cross-section of the community under both the federal and state constitutions.
3. This Court and/or the jury commissioner are empowered under §§ 13-71-116, 13-71-119, and 13-71-121, C.R.S., to excuse persons from jury service, or to postpone the date of jury service. Further, under § 13-71-124, C.R.S., the court is empowered to delegate to the jury commissioner duties “as is appropriate for the efficient administration of this article.”
4. While in a routine case excusals and postponements may be handled by the jury commissioner, and are not requested by the parties to be judicially supervised, Mr. Holmes

requests that this court not grant the jury commissioner power to excuse or postpone potential jurors, which would deprive him of the opportunity to have a complete record of such actions, and to have the opportunity to be heard on the same. Mr. Holmes' case is not a "routine" case.

5. An unmonitored excusal system can result in certain groups of persons being both unrepresented, and under-represented on the jury panels, which would deprive Mr. Holmes of his right to a jury drawn randomly from a fair cross-section of the community. Often it is poor people and minorities who telephone the jury commissioner and ask to be excused because, for example, of the financial burden and difficulty of obtaining child care, of finding transportation, of missing work, and so on. While the jury commissioner might feel inclined, out of sympathy and compassion for the prospective juror, to grant such excusals or postponements, those excusals may very well unconstitutionally deprive Mr. Holmes of his rights to a random draw of jurors from a fair cross-section of the community.

6. It would not be unduly burdensome for this Court to schedule a brief hearing at which the jury commissioner could present requested excusals and postponements for the Court's consideration on the record, and at which the parties could be present and state their positions on these requests and make any necessary record on the Court's and the jury commissioner's actions.

7. If this procedure is not followed it may be impossible for Mr. Holmes to adequately reconstruct the actions of the jury commissioner and/or the Court in their consideration of off-the-record requests for excusal from jury service in this case. If this Court does not follow the requested procedure, then Mr. Holmes requests the Court to issue specific orders to the jury commissioner creating a method of complete preservation of all off-the-record requests for excusals and postponements in this case.

8. Unless a complete record is made of actions taken on prospective jurors' requests for postponements and excusals, Mr. Holmes will be deprived of his rights to litigate and be heard on these critical issues, and his right to appeal any errors made by the court or jury commissioner. Mr. Holmes must be able to ultimately, if not contemporaneously, review such requests and excusals in order to be able to litigate his federal and state constitutional rights.

9. These requests are made to ensure that Mr. Holmes' constitutional rights to a fair trial, an impartial jury, and to due process are protected. U.S. Const. amends. V, VI, VIII, XIV; Colo. Const. art. II, secs. 16, 18, 20, 23, 25; *see also People v. Botham*, 629 P.2d 589 (Colo. 1981); *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Estes v. Texas*, 381 U.S. 532 (1965).

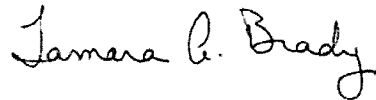
Request for a Hearing

10. Mr. Holmes requests a 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



Tamara A. Brady (No. 20728)
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 FOR JUROR POSTPONEMENTS AND EXCUSALS TO BE MADE ON THE RECORD [D-080]	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

_____ JUDGE

_____ Dated

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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Mona Johnston