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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed JUL 3 2014 CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO
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 202
REPLY IN SUPPORT OF DEFENDANT'S RENEWED MOTION FOR SANCTIONS FOR PROSECUTORIAL INTERFERENCE WITH DEFENSE INVESTIGATION [D-137a]	

Mr. Holmes, through counsel, submits the following in reply to the prosecution's response to the defense's renewed motion for sanctions for prosecutorial interference with defense investigation [D-137a]:

1. The prosecution's response to the defense's motion for sanctions is incredibly telling. The majority of its pleading is devoted not to the actual issue raised by Motion D-137a, which is whether the Court should impose sanctions for the prosecution's unethical behavior in sending an email to the victim-witnesses in this case that clearly disparages defense counsel and seeks to dissuade victim-witnesses from speaking with anyone affiliated with the defense. Instead, the prosecution attempts to distract and confuse by claiming that its behavior was somehow justified because of some wrongdoing on the part of the defense. In the process, it continues to further disparage the defense.

2. The defense and Ms. Krause have taken pains to be above-board, honest, and forthright with victims. The defense certainly disputes any suggestion or allegation that anyone affiliated with the defense, including the attorneys in this case and Ms. Krause, have done or said anything misleading or improper to victim-witnesses in this case. There are a number of assertions in the prosecution's pleading that are incorrect, and some of the recollections of victims of their contacts with Ms. Krause differ in significant ways from Ms. Krause's own records and recollections.

3. However, because the subject of Motion D-137a is not whether the defense has

done anything wrong, but whether or not the May 8, 2014 email sent by Ms. Teesch-Maguire to the victim-witnesses in this case is grounds for sanctions, the defense declines to respond in further detail to the prosecution's allegations of wrongdoing. The prosecution's May 8, 2014 email was improper and unethical. The prosecution cannot justify its behavior by claiming that it was necessary to respond to some perceived wrongdoing on the defense's part.

4. In addition, whether the prosecution has acted appropriately in the past is irrelevant to Motion D-137a. Even assuming the prosecution has acted properly in the past, that fact does not excuse its unethical behavior in the present.

5. The conduct of individuals who have acted on their own and not at the request of the defense is also obviously irrelevant.

6. Furthermore, the prosecution's extensive attack on the principles of defense victim outreach (DVO) is irrelevant to the merits of D-137a. The prosecution obviously has a philosophical disagreement with the defense over the ethics and propriety of DVO. It is clear that the prosecution dislikes and disagrees with the fundamental tenets of this type of outreach. However, if the prosecution believed that the defense or Ms. Krause was engaged in actual, unethical wrongdoing, it could have brought it to the attention of this Court. Again, the prosecution's personal feelings about and biases against DVO do not justify its blatant attempts to dissuade victim-witnesses from speaking with the defense or Ms. Krause.

7. While the prosecution's attack against DVO is irrelevant, it is also informative. It reveals that the prosecution has an incredibly proprietary view of the victim-witnesses in this case that further reinforces the defense's argument that the prosecution has adopted conflicting roles.

8. The prosecution cites extensively from a "Resolution" by the National Association of Prosecutor Coordinators that clearly views DVO as antagonistic to its own work. The prosecution quotes this resolution as stating, *inter alia*, that "it is expressly NOT the duty of the criminal defense attorney to attempt to meet the needs of the victims of his or her client." Response, para. 42. It espouses the belief that defense attorneys' roles "as zealous advocates negates the ability of the defense to claim that agents of the defense are *neutral* 'victim-outreach specialists.'" *Id.* at 15. The prosecution seethes that "[w]hat the District Attorney's Office does not believe is proper, is for the Defense to throw a wolf in sheep's clothing at the victims in this case." Response, para. 96.

9. What the prosecution appears to overlook is that, aside from ensuring that victims' statutory rights pursuant to C.R.S. 24-4.1-301 *et seq.* are enforced, it is also expressly NOT the duty of the prosecutor to attempt to meet the needs of the victims. The prosecution also has an ethical obligation to meet the needs of its own client – which is the People of the State of Colorado, not the victims. *See Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 804 (1987) ("The concern that representation of other clients may compromise the prosecutor's pursuit of the Government's interest rests on recognition that a prosecutor would owe an ethical duty to those other clients. Indeed, it is the highest claim on the most noble advocate which causes the problem—fidelity, unquestioned, continuing fidelity to the client."); Matthew S.

Nichols, *No One Can Serve Two Masters: Arguments Against Private Prosecutors*, 13 Cap. Def. J. 279, 287-88 (2001) (“[T]he relationship between the prosecutor and the victim must remain appropriately limited. The prosecutor’s larger duty to the public interest precludes collapsing his role into that of the victim’s advocate.”)

10. An ethical obligation to advocate for one’s client does not preclude the defense or Ms. Krause from contacting and speaking with the victim-witnesses in this case any more than it precludes the prosecution from engaging with victim-witnesses. Just as is the case with the defense, the prosecution may at times take actions in this case that are adverse to some individual victim-witnesses’ needs or desires in its effort to provide zealous advocacy on behalf of its client, the People of the State of Colorado. The victim-witnesses in this case do not belong to one side or the other.

11. The defense hopes that it is clear from Ms. Krause’s affidavit what the purpose of DVO actually is, and what the principles are behind it. DVO is intended to open a line of communication between the defense and a victim, *should the victim be interested* in such an interaction. This relationship proceeds exclusively and entirely on the victim’s own terms, and is never dependent upon a particular victim’s beliefs or wishes about the legal case or punishment.

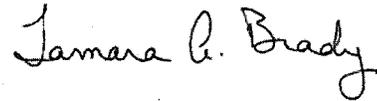
12. Of course, there may be times when the defense’s and the victim-witness’s interests align and that relationship, facilitated through DVO, is ultimately beneficial to the defendant in a capital case. There also may certainly be times when this is not the situation that results. None of this makes the work of DVO specialists improper or unethical in any way. The same is true for the prosecution. Certainly, there are many times when the prosecution’s relationship with a victim-witness is beneficial to its case. There are other times when the prosecution’s relationship with a victim-witness does not ultimately support or benefit the prosecution’s desired outcome in a case. The bottom line is the same: “Witnesses . . . to a crime are the property of neither the prosecution nor the defense.” *Gregory v. United States*, 369 F.2d 185, 188 (D.C. Cir. 1966).

13. The prosecution’s email speaks for itself. When read in its entirety, the clear purpose of the email was to disparage the defense and to discourage victim-witnesses from speaking with the defense or Ms. Krause. The prosecution’s actions have violated the numerous legal and ethical principles cited in Motion D-137a, have interfered with Mr. Holmes’s constitutional rights, and sanctions are warranted.

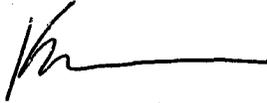
Mr. Holmes files this reply, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, 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.



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: July 3, 2014

I hereby certify that on 7/3, 2014, 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
Lisa Teesch-Maguire
Office of the District Attorney
6450 S. Revere Parkway
Centennial, Colorado 80111
Fax: 720-874-8501

