

REDACTED

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed  AUG 28 2014  CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO  σ COURT USE ONLY σ
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  <b>JAMES HOLMES,</b> 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: <a href="mailto:state.pubdef@coloradodefenders.us">state.pubdef@coloradodefenders.us</a>	Case No. <b>12CR1522</b>    Division 202
<b>MOTION FOR COURT ORDER REQUIRING THE SEALED SUBMISSION OF DOCUMENTS PURSUANT TO D-SDT-5 AND D-SDT-6 FOR PURPOSES OF APPELLATE REVIEW [D-227]</b>	

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**CERTIFICATE OF CONFERRAL**

The defense has conferred with all parties listed on the certificate of service. Each party objects.

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1. In Order C-133, the Court denied Mr. Holmes's motion for an in camera review of materials produced pursuant to D-SDT-5 and D-SDT-6 and granted the motions to quash D-SDT-5 and D-SDT-6 filed by counsel for the University of Colorado, the University of Colorado [REDACTED] and the prosecution.

2. Mr. Holmes respectfully requests that the Court nevertheless order production of the records at issue in D-SDT-5 and D-SDT-6 in a sealed format for the purposes of facilitating appellate review of this issue. *People v. Dailey*, 639 P.2d 1068, 1077 (Colo. 1982) (noting that in cases where defendant requests identity of confidential informant, court may conduct in camera hearing at which prosecution is required to present the informant for judicial interrogation, and "a transcript of the proceeding should be sealed and preserved for use in case of appellate review"); *Sherman v. Dist. Court In & For City & Cnty. of Denver*, 637 P.2d 378, 384 (Colo. 1981) (ordering in camera inspection of potentially privileged material, and to "seal and preserve copies of the materials examined and held not discoverable" due to privilege).

3. Without an ability to review the records at issue, a reviewing appellate court will be unable to assess for prejudice in the event it finds that this court erred in refusing to require

production of the documents for an in camera review. *See, e.g., People v. McGlotten*, 166 P.3d 182, 186-87 (Colo. App. 2007) (reversing conviction and granting defendant new trial where appellate review was impossible due to inadequate record, and noting that “we cannot determine whether the error, if it occurred, was harmless beyond a reasonable doubt”); *People v. Wells*, 776 P.2d 386, 390 (Colo. 1989) (recognizing that the appellate court must be provided with a record sufficient to allow it to review alleged errors, noting that “[a]ny facts not appearing of record cannot be reviewed” and that “[t]he presumption is that material portions omitted from the record would support the judgment”).

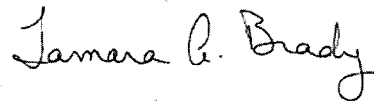
4. Counsel make this motion in accordance with Guideline 10.8(B)(2) of the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, which requires counsel to “ensure that a full record is made of all legal proceedings in connection with the claim,” *see* 31 Hofstra L. Rev. 913, 1028-29 (2003), as well as pursuant to Mr. Holmes’s rights to due process and the effective assistance of counsel on appeal. *See, e.g., Evitts v. Lucey*, 469 U.S. 387, 388-89 (1985); *Douglas v. California*, 372 U.S. 353 (1963); U.S. Const. amends V, VI, XIV; Colo. Const. art. II, secs. 16, 25.

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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Daniel King (No. 26129)  
Chief Trial Deputy State Public Defender



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Tamara A. Brady (No. 20728)  
Chief Trial Deputy State Public Defender



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

Dated: August 28, 2014

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  <b>JAMES HOLMES,</b> 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: <a href="mailto:state.pubdef@coloradodefenders.us">state.pubdef@coloradodefenders.us</a>	Case No. <b>12CR1522</b>       Division 202
<b>ORDER RE: MOTION FOR COURT ORDER REQUIRING THE SEALED          SUBMISSION OF DOCUMENTS PURSUANT TO D-SDT-5 AND D-SDT-6 FOR          PURPOSES OF APPELLATE REVIEW [D-227]</b>	

Defendant's motion is hereby GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_ JUDGE

\_\_\_\_\_ Dated

I hereby certify that on August 28, 2014, 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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I further certify that a true and correct copy of the foregoing document was emailed to the individuals listed below:

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