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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<p style="text-align: center;">Filed</p> <p style="text-align: center;">AUG 28 2014</p> <p style="text-align: center;">CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO</p> <p style="text-align: center;">σ COURT USE ONLY σ</p>
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 Division 202
MOTION TO RECONSIDER COURT'S IMPLEMENTATION OF TIME AND SUBJECT MATTER LIMITATIONS ON GENERAL VOIR DIRE [D-228]	

CERTIFICATE OF CONFERRAL

The prosecution states: "We believe the time limits for general voir dire outlined by the Court are appropriate. We need more time to formulate our response to the other aspects of your request regarding general voir dire and will consider that matter further after we see the motion."

Pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and article II, sections 16, 18, 20 and 25 of the Colorado Constitution, Mr. Holmes, through counsel, respectfully requests that the Court reconsider its ruling prohibiting the parties from questioning prospective jurors about certain topics during general voir dire, and imposing a 75-minute time limit on each party during general voir dire. In support of this motion, Mr. Holmes states the following:

1. In Order D-154a, the Court granted the defense's request to allow questioning on the issue of insanity during individual voir dire. However, the Court further indicated that because of its decision to do so, "the parties will need less time to conduct general *voir dire*," and therefore reduced the amount of time the parties will have to conduct general voir dire from two hours to 75 minutes. Order, p. 3.

2. The Court concluded that "[t]his is appropriate considering that the Court is using an extensive questionnaire and allowing individual *voir dire* on insanity, the main issue in the case. Inasmuch as the parties will be prohibited from questioning prospective jurors during

general *voir dire* about insanity, the death penalty, pretrial publicity, and hardship, 75 minutes should be sufficient time for general *voir dire*.” *Id.* at 4.

3. The defense requests that the Court reconsider this ruling for the following reasons.

4. With respect to the 75-minute time limit, counsel request that the Court instead decline to impose a time limit on the parties during general *voir dire*. While defense counsel initially stated during the May 29, 2014 hearing that a two-hour time limit on each party for general *voir dire* was “appropriate,” upon further reconsideration, the defense objects to any time limitation placed on general *voir dire*.

5. Given the size of the jury pool in this case and the fact that the Court has ordered that 12 alternates be selected, defense counsel have concerns that the “box” of 68 prospective jurors the parties are meant to question as a group will prove unwieldy if strict time limits are established. It will be a monumental task to adequately inquire of all 68 prospective jurors in a time frame of just 75 minutes.

6. Jury selection in this case is obviously an incredibly critical part of the trial. Mr. Holmes has the constitutional right under the Sixth and Fourteenth Amendments and article II, section 16 of the Colorado Constitution to a fair and impartial jury. *See, e.g., Nailor v. People*, 200 Colo. 30, 32, 612 P.2d 79, 80 (1980) (“It is fundamental to the right to a fair trial that a defendant be provided with an impartial jury”); *Irvin v. Dowd*, 366 U.S. 717, 722 (1961).

7. *Voir dire* “plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored. Without an adequate *voir dire* the trial judge’s responsibility to remove prospective jurors who will not be able impartially to follow the court’s instructions and evaluate the evidence cannot be fulfilled.” *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981).

8. The fact that this is a capital case only heightens the importance of jury selection. As explained in Motion D-154a, because of the jury’s special role in capital cases, the United States Supreme Court has expanded the rights of capital defendants in the area of *voir dire* on several occasions. *See, e.g., Turner v. Murray*, 476 U.S. 28 (1986); *Morgan v. Illinois*, 504 U.S. 719 (1992).

9. Given the importance of jury selection to these proceedings, placing time limits on general *voir dire* does not comport with Mr. Holmes’s constitutional rights. The defense requests that the Court allow counsel for both sides the opportunity to fully question prospective jurors to the point of their own satisfaction, rather than imposing arbitrary time limitations on the parties’ ability to determine whether a fair and impartial jury can be selected from the panel. Relatively speaking, general *voir dire* is likely to occupy a very small amount of time in the context of the overall length of this trial. Whether each side is provided 75, 90, or 120 minutes, or even a full day to conduct general *voir dire* is not likely to meaningfully impact the length of the proceedings or cause significant delay.

10. In addition, defense counsel request that the Court reconsider its ruling flatly prohibiting the parties from inquiring into the areas that will be covered in individual *voir dire*

during the general voir dire session. While the parties will have had the opportunity to ask the jurors questions about their feelings regarding insanity, publicity, hardship, and the death penalty during individual voir dire, there may be circumstances in which it is either appropriate or necessary to ask follow-up questions in front of the group, and/or where prospective jurors themselves may bring up one of these topics during general voir dire. If such a situation occurs, the Court should not prohibit the parties from revisiting the topics covered during individual voir dire. Such a procedure is necessary in order to ensure that Mr. Holmes's state and federal constitutional rights to a fair trial by an impartial jury and a fair and reliable sentencing proceeding are fully vindicated. *See* U.S. Const. amends. V, VI, VIII, XIV; Colo. Const. art. II, secs. 16, 18, 20, 25.

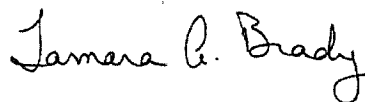
Request for a Hearing

11. Mr. Holmes moves for 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.



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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.	
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
ORDER RE: MOTION TO RECONSIDER COURT'S IMPLEMENTATION OF TIME AND SUBJECT MATTER LIMITATIONS ON GENERAL VOIR DIRE [D-228]	

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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