

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;">OCT 20 2014</p> <p style="text-align: center;"><small>CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO</small></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
<p style="text-align: center;">NOTICE REGARDING DISCLOSURES PURSUANT TO CRIM. P. 32.1(7)(B) [D-244]</p>	

CERTIFICATE OF CONFERRAL

This pleading is a notice, not a motion. Conferral is not appropriate.

Pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments and article II, sections 16, 18, 20 and 25 of the Colorado Constitution, James Holmes, through counsel, submits the following notice to the Court:

1. Today, October 20, 2014, is the deadline for the defense to submit to the Court under seal any material subject to subsection (7) of Crim. P. 32.1 that the defendant believes contains self-incriminating information that is privileged from disclosure to the prosecution prior to the sentencing hearing.

2. In order to submit material to the Court pursuant to Crim. P. 32.1(7)(B), defense counsel must first determine which witnesses they intend to endorse and call at sentencing. Counsel cannot presently make this determination.

3. Counsel just received the report from the second sanity examiner last Wednesday, October 15, 2014. They have not been able to review all 22 hours of the video recording of the second sanity examiner's interview with the defendant, and have requested but have not yet received, let alone begun to review, all of the supporting materials underlying this examination from CMHIP.

4. As the Court is aware, the subject of the second sanity examiner's report is at the heart of this case. Given the nature of Mr. Holmes's plea, there is a significant amount of overlap between the issues that will be litigated at the merits and potential sentencing phases of the case. Additionally, C.R.S. § 18-1.3-1201(1)(b) permits evidence presented at the merits phase of the trial to be considered at sentencing.

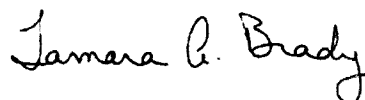
5. Until defense counsel are able to thoroughly review all of the materials generated by the second sanity examination, they cannot make informed decisions about which witnesses they intend to endorse for sentencing. These decisions are part of counsel's constitutional obligation to provide Mr. Holmes with the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Rodriguez*, 914 P.2d 230, 294 (Colo. 1996) ("A defendant's right to effective assistance of counsel is guaranteed by the United States and Colorado Constitutions."); ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases 10.8, commentary, rev. ed. 2003; U.S. Const. amends. VI, XIV; Colo. Const. art. II, secs. 16, 18, 25. These decisions also touch upon Mr. Holmes's right to present a defense. See *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) ("Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' " (quoting *Crane v. Kentucky*, 476 U.S. 683, 689-90 (1986))).

6. Because defense counsel first need to determine which witnesses they are endorsing for sentencing before they can determine whether there is any material they wish to assert is privileged, they are unable to submit any information for the Court's review pursuant to Crim. P. 32.1(7)(B) on this date.

Mr. Holmes files this notice, 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: October 20, 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
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ORDER RE: NOTICE REGARDING DISCLOSURES PURSUANT TO CRIM. P. 32.1(7)(B) [D-244]	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

JUDGE

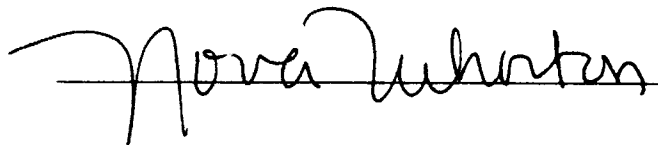
Dated

I hereby certify that on October 20, 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



Nova Schubert