

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 14 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
REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR SPECIFIC INSTRUCTIONS TO WITNESSES AND JURORS REGARDING VICTIM IMPACT EVIDENCE [D-242]	

Mr. Holmes, through counsel, submits the following in reply to the prosecution's response to the defense's motion for specific instructions to witnesses and jurors regarding victim impact evidence [D-242]:

1. The prosecution bizarrely appears to contest the proposition that the Court has an obligation to administer justice, protect Mr. Holmes's constitutional rights and to ensure that the proceedings run smoothly and efficiently. The defense finds this perplexing. While the prosecution may reasonably disagree with what is required to effectuate these obligations, it is axiomatic that the Court has an obligation to ensure that the proceedings are fair to the defendant and that justice is administered.

2. The instructions that the defense has proposed are supported by the case law cited. There is absolutely nothing in Colorado law that precludes the Court from administering such an instruction. In fact, when evidence is introduced for a limited purpose, it is common and appropriate for courts to administer a contemporaneous limiting instruction to the jury. *See, e.g., People v. Leonard*, 872 P.2d 1325, 1330-31 (Colo. App. 1993) (trial court properly concluded that similar transaction evidence was admissible to show motive, "subject to giving appropriate limiting instructions to the jury"); *People v. Dist. Court for Second Judicial Dist.*, 195 Colo. 570, 573, 580 P.2d 388, 390 (1978) (if court concludes that prior inconsistent statement may not be offered for the truth of the fact to which it relates, but still may be used for the limited purpose of impeachment, "then Instruction 4:8 should be given contemporaneously, thus limiting the jury's consideration of the specific evidence to impeachment of the witness.").

3. The prosecution wrongly suggests that a jury can consider victim impact evidence for any purposes it wishes. It is axiomatic that the purpose of a capital sentencing hearing is to assess the *defendant's* moral culpability and blameworthiness. See *Zant v. Stephens*, 462 U.S. 862, 879 (1983) (“What is important at the selection stage [of a capital sentencing trial] is an *individualized* determination on the basis of the character of the individual and the circumstances of the crime.” (emphasis added)); see also *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982); *Lockett v. Ohio*, 438 U.S. 586, 605 (1978); *Enmund v. Florida*, 458 U.S. 782, 801 (1982) (punishment in a capital case “must be tailored to [a defendant’s] personal responsibility and moral guilt.”); *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976) (sentencer must focus on “relevant facets of the character and record of the individual offender”). Even *Payne* recognized that the purpose of victim impact evidence is to “assess meaningfully the defendant’s moral culpability and blameworthiness.” *Payne v. Tennessee*, 501 U.S. 808, 825 (1991).

4. Victim impact evidence has the strong potential to distract the jury of its task of making a reasoned moral response when imposing a sentence in this case. If the Court does not provide a proper limiting instruction guiding and directing the jury’s consideration of this evidence, there is a high likelihood that the jury will allow emotion and sympathy to overwhelm its verdict. See, e.g., *People v. Welsh*, 80 P.3d 296, 209 (Colo. 2003) (abuse of discretion for trial court to allow what it deemed rebuttal evidence to come in during case-in-chief and failing to provide any sort of limiting instruction as to the purpose of that evidence, which improperly left the jury “to assign to such testimony whatever meaning the jury itself deemed appropriate”).

5. The cases cited by the prosecution in which the trial courts’ rejection of defense-proposed limiting instructions on victim impact evidence was upheld on appeal are inapposite. The facts and circumstances of those cases, and the language of those proposed instructions, are different from the proposed instructions in this case.

6. Finally, in Order C-139, the Court requested the defense to address the timeliness of this motion. The defense believes this motion is timely pursuant to the Court’s own order. At the May 29, 2014 hearing, the Court requested that the parties provide the Court with any “contemporaneous limiting instructions” they were requesting at or before the pretrial conference that is currently scheduled for November 3, 2014. See Transcript, May 29, 2014, p. 67. This motion is a request for a contemporaneous limiting instruction, and was filed almost 4 weeks ahead of the pre-trial status conference.

7. The Court should accept and rule on this motion.

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.



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Dated: October 14, 2014

I hereby certify that on October 14, 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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