

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
<p>REPLY IN SUPPORT OF DEFENDANT’S MOTION IN LIMINE REQUESTING COURT AND PROSECUTION TO REFRAIN FROM REFERRING TO THE TWO PHASES OF THIS CAPITAL TRIAL AS THE “GUILT PHASE” AND/OR THE “DEATH PHASE”</p> <p>[D-237]</p>	

Mr. Holmes, through counsel, submits the following in reply to the prosecution’s response to the defense’s motion in limine requesting the court and prosecution to refrain from referring to the two phases of this capital trial as the “guilt phase” and/or the “death phase” [D-237]:

1. The prosecution argues that the defense cites “no authority” from “anywhere” that stands for the proposition that using the terminology “guilt phase” and/or “death phase” would violate Mr. Holmes’s constitutional rights. Response to D-237, p. 1. The defense disagrees. As fully explained in Motion D-237, it is axiomatic that Mr. Holmes has a right to be presumed innocent, and that the Due Process Clause requires the prosecution to prove every element of the offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970). The defense filed Motion D-237 consistent with those principles.

2. The prosecution asserts that terminology such as “merits phase” or “culpability phase” is idiosyncratic and would be confusing to jurors. The defense disagrees. Particularly given that this case involves a defense of not guilty by reason of insanity, it is more accurate to describe the first phase of the proceedings as one in which Mr. Holmes’s “culpability” is being determined, rather than his “guilt.” The term “culpability” is not so technical or idiosyncratic that it would confuse an ordinary juror.

3. With respect to the term “death phase,” the prosecution states that none of the prosecutors have any intention of using that term, and that the prosecution “would more naturally use the terms ‘penalty phase,’ ‘sentencing phase,’ or perhaps ‘death penalty phase.’” Response to D-237, p. 2. The defense has no objection to the prosecution using the terms “penalty phase” and “sentencing phase.” However, for all of the reasons articulated in Motion D-237, the defense strongly objects to any use of the term “death penalty phase.”

4. The prosecution claims that it does not intend to use the term “death phase” but yet objects to the Court entering an order prohibiting the parties from using this terminology because the prosecution might slip up and use this phrase during these lengthy proceedings. This argument is nonsensical. If the prosecution does not intend to use the term “death phase,” then it should have no problems complying with a Court order instructing it not to do so.

5. Finally, in Order C-139, the Court requested the defense to address the timeliness of this motion. These motions are made *in limine*, which is Latin for “at the start,” or “on the threshold.” They involve matters that defense counsel could have simply objected to at trial when they arose. Addressing these matters in advance avoids causing inconvenience to the jurors and the Court. The Colorado Court of Appeals has described the function of a motion in limine as “not unlike the pre-trial conference, and it may accomplish similar ends.” *Good v. A. B. Chance Co.*, 39 Colo. App. 70, 75, 565 P.2d 217, 221 (1977). These motions were filed approximately two months prior to the time jury selection is scheduled to commence and almost four weeks in advance of the pre-trial conference scheduled for November 3, 2014. The defense believes there is still ample time to resolve these motions before trial.

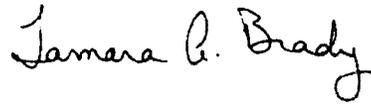
6. Trial preparation is an evolving process. It was not possible for counsel to anticipate with perfection every issue that would need to be raised by motion by June 3, 2013, which was almost a year and a half prior to the date this trial is scheduled to commence, or even by February of this year. The defense attorneys assigned to this case are only human. Some of the issues that were raised in Motions D-237 through D-242 were simply overlooked by the defense until recent trial preparation caused members of the defense to review and re-examine materials such as discovery and transcripts. Other issues in motions D-237 through D-242 were not raised or filed until now because the defense could not make strategic decisions about whether it was prudent to raise these issues with the court until closer to trial.

7. The defense filed motions D-237 through D-242 last week in good faith and the Court should accept and rule on the motions.

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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