

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<p style="text-align: center;"><b>Filed</b></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.  <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
<p><b>REPLY IN SUPPORT OF DEFENDANT'S MOTION TO EXCLUDE LAY OPINION          TESTIMONY REGARDING DEFENDANT'S "MENTAL CONDITION" OR          "SANITY" IN THIS CAPITAL CASE          [D-239]</b></p>	

Mr. Holmes, through counsel, submits the following in reply to the prosecution's response to the defense's motion to exclude lay opinion testimony regarding the defendant's "mental condition" or "sanity" in this capital case [D-239]:

1. In its response, the prosecution argues that evidence of lay witnesses' opinions regarding mental condition and/or sanity may well be "more reliable than the learned professional opinions of mental health professionals that did not have intimate knowledge of a person prior to the crime, and who did not speak to the defendant until a substantial period of time had elapsed from the commission of the crime." Response, p. 3. The prosecution further argues that this evidence is reliable because an adequate foundation must first be established before any such testimony can be admitted.

2. The prosecution overlooks the fact that, as explained in Motion D-239, whether or not the defendant has a mental disease or defect is an integral part of the insanity definition in Colorado. A determination of whether an individual knew the difference between right and wrong or had the capacity to form a culpable mental state therefore cannot be divorced from a consideration and assessment of his or her mental illness. Yet neither of the foundational requirements articulated by *People v. Medina*, 521 P.2d 1257, 1259 (Colo. 1974) requires a lay witness to have any understanding of mental diseases or defects before opining about sanity. As argued in the principal motion, such testimony is simply too unreliable to be admitted in a capital case.

3. The prosecution also misunderstands the defense's argument regarding the heightened reliability that a capital case requires. The prosecution claims that the defense's position is that evidence must be "extra relevant" or "super relevant" before it can be admitted in a capital trial. That is not the defense's argument with respect to the admission of lay opinion testimony on the issues of sanity and mental condition in a capital case. Rather, the defense asserts that when a defendant's life is at stake, the evidence introduced to convict and sentence the defendant must be highly *reliable*. That proposition is amply supported by the case law. *See, e.g., Mills v. Maryland*, 486 U.S. 367, 376 (1988) ("[I]n reviewing death sentences, the Court has demanded even greater certainty [than in other criminal cases] that the jury's conclusion rested on proper grounds."); *People v. Young*, 814 P.2d 834, 846 (Colo. 1991).

4. 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.

5. 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.

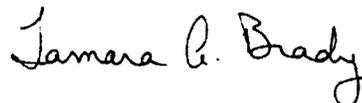
6. The defense filed motions D-237 through D-242 last week in good faith and the Court should accept and rule on the motions.

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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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: 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:

George Brauchler

Jacob Edson

Rich Orman

Karen Pearson

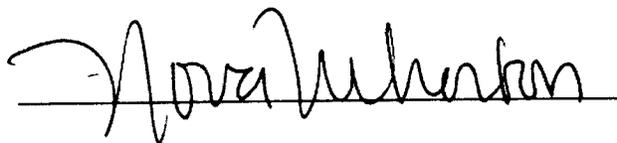
Lisa Teesch-Maguire

Office of the District Attorney

6450 S. Revere Parkway

Centennial, Colorado 80111

Fax: 720-874-8501

  
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