

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;">DEC 30 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 201
<p>REPLY IN SUPPORT OF MOTION TO COMPEL COMPLIANCE WITH ORDER D-251 [D-263]</p>	

Pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments and article II, sections 16, 20, 23 and 25 of the Colorado Constitution, James Holmes, through counsel, submits the following in reply to the prosecution’s response to Motion D-263:

1. The prosecution claims in its response that Drs. Resnick and Mohandie will only be called during the merits phase of the case if it is necessary to rebut “new and unexpected opinions and assertions in [defense experts’] testimony.” It states that it currently believes that the information already provided to the prosecution in the reports from Drs. Gur and Hanlon “can be dealt with through the testimony of the experts the People have already indicated will testify in their case in chief, and through cross-examination.” Response, p. 1.

2. As an initial matter, the prosecution has never “indicated” to the defense which experts it intends to call in its case in chief. The prosecution has endorsed a number of experts, but has never said which experts it intends to rely on at which stage of its merits phase case. The defense has assumed that the prosecution will call Dr. Reid at some point during the merits phase of the trial, but other than that assumption, the defense has no idea what the prosecution is intending to do.

3. As for the prosecution’s assertion that Drs. Resnick and Mohandie will only testify at the merits phase of the case if it is necessary “to provide rebuttal testimony to [any] new and unexpected opinions” rendered by defense experts, the defense can only reiterate that the Due Process Clause forbids the State from playing a “poker game” of “secrecy for its own witnesses.” *Wardius v. Oregon*, 412 U.S. 470-475-76 (1973). The prosecution has received

reports and other disclosures regarding the opinions of Drs. Gur and Hanlon.¹ If the prosecution is to be taken at its word, then in the unlikely event that one of the defense's experts testifies about something unexpected, the testimony of Drs. Resnick and Mohandie must be strictly limited to whatever new issue has come up. The defense will vigorously oppose any attempt to further expand the scope of these experts' testimony.

4. It is also notable that the prosecution ignored the defense's assertion in paragraph 7 of its original motion, "Moreover, to the extent that Dr. Resnick tends to disagree with Dr. Reid's diagnosis and tends to agree with Dr. Gur or Dr. Metzner's diagnosis, this information constitutes exculpatory material that must be provided to the defense pursuant to Crim. P. 16(I)(a)(2) and *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, regardless of whether the prosecution intends to ask Dr. Resnick about any such opinion on direct examination."

5. The defense reiterates once again that the prosecution must promptly disclose any such information, regardless of whether it has been written down, and regardless of whether the prosecution intends to call Dr. Resnick during the merits phase of this case.

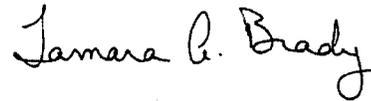
6. Finally, the prosecution states that "[t]he defendant has provided no reports or summaries of expert testimony for these endorsed sentencing phase experts." Issues regarding expert testimony at sentencing are distinct from expert testimony offered at the merits phase of the case. The expert disclosure provisions of Rule 32.1 are different from Rule 16. The defense has done its best to comply with the disclosure requirements in Rule 32.1 given the time restrictions it was under. It will further address this issue in a written response to any motion filed by the prosecution.

¹ In addition to the disclosures that have already been made, the defense received notes from Dr. Gur regarding her most recent visit with Mr. Holmes and will make these available to the prosecution by the end of the week.

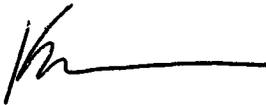
Mr. Holmes files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, 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: December 30, 2014

I hereby certify that on December 30, 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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