

REDACTED

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 29 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
RESPONSE TO COURT'S ORDER DISTRIBUTING UPDATED JUDGE'S INTRODUCTORY REMARKS AND VIDEOTAPED REMARKS BEFORE INDIVIDUAL VOIR DIRE [C-172]	

CERTIFICATE OF CONFERRAL

The defense sent a draft of this pleading to the prosecution. The prosecution responded, "We do not object to paragraph 2 correcting the typographical error, however we object to all other suggestions you make."

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 proposed revisions, objections, and concerns regarding the Court's Order Distributing Updated Judge's Introductory Remarks and Videotaped Remarks Before Individual Voir Dire:

1. This pleading raises new objections, suggested revisions, and concerns that have not previously been made by the defense. The defense maintains and incorporates by reference all objections and proposed revisions it has previously raised with respect to these scripts, to the extent they have not already been adopted or incorporated by the Court.

Introductory Remarks

2. First, the defense brings to the Court's attention a minor typographical error on page 2 of the "Introductory Remarks." The word "your" should be replaced with "you" in the sentence, "Your must write your name and juror number on each form used."

3. Regarding the Court's discussion of the Presumption of Innocence on p. 4 of its introductory remarks, the defense requests that the Court rephrase the language as follows, in order to be consistent with *People v. McBride*, 228 P.3d 216, 224 (Colo. App. 2009): "Mr. Holmes is presumed innocent, and that presumption of innocence remains with him throughout every stage of the trial, including the jury's deliberations. It is extinguished only upon the jury's determination that guilt has been established beyond a reasonable doubt."

4. Also on p. 4, the defense requests that the Court include the word "additional" in the following sentence: "Because Mr. Holmes has pled not guilty by reason of insanity, if any evidence is presented that he was insane on the date of the offenses charged, the prosecution will have the **additional** burden of proving beyond a reasonable doubt that he was not insane." The addition of this word will clarify that a plea of not guilty by reason of insanity does not absolve the prosecution of the burden of proving every element of each crime charged beyond a reasonable doubt.

5. On pp. 4-5 of the script for the Introductory Remarks, the Court states that "Colorado law allows the prosecution to seek the death penalty under certain circumstances if a defendant is charged with murder in the first degree." The defense previously raised an objection to this language in the proposed video script, but does not believe it raised such an objection with respect to the introductory remarks. The defense continues to object to this language because it is unnecessary, confusing, and implies that the law has already authorized the imposition of the death penalty in this case, when in fact Mr. Holmes is not eligible for the death penalty unless the jury makes the requisite findings. *See People v. Dunlap*, 975 P.2d 723, 744 (Colo. 1999).

6. On p. 6, Mr. Holmes requests that the Court rephrase the language regarding the presumption of innocence as requested above in paragraph 2.

7. Finally, the defense also feels compelled to reiterate and expand upon a concern it raised at the December 8, 2014 hearing about directing prospective jurors to the Court's website. The defense's understanding based on the sample folder of information provided at that hearing is that prospective jurors will be directed to go to www.courts.state.co.us and click on the "Jury" tab in order to receive information about jury service. The defense believes that it would be extremely easy for prospective jurors to inadvertently obtain information about, or relevant to, this case by going to this website. If jurors veer even slightly from the directed path, they could stumble upon the "Cases of Interest" section of the website, simply by clicking on "Courts," "Trial Courts by County," and "Arapahoe." It would be easy and understandable for jurors to stumble upon this section of the website, having practically been directed to it. While the Court has directed prospective jurors to avoid all websites and other mediums containing information about this case, it would seem counterintuitive to direct jurors to go to a website containing forbidden information on it. For this reason, and to protect Mr. Holmes's state and federal constitutional right to a fair trial by an impartial jury, *see* U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, secs. 16, 23, 25, the defense reiterates requests it has previously made to take down the pleadings from this case that are currently published on the "Cases of Interest" section of the website.

8. Moreover, the “Jury” tab is located right next to the “Media” tab of the website. The “Media” tab contains a link to a “Law School for Journalists” presentation from March 2013 on the insanity defense, the death penalty, and media law, which includes a link to a handout on “The insanity defense and the death penalty” by Karen Steinhauer. Prospective jurors or jurors could easily stumble across this handout and use it to educate themselves using extrajudicial material. There is also a link to a YouTube video of the presentation itself, which explicitly references this case. It is clear from the presentation itself that it was put on for the purpose of educating journalists about the legal issues involved in this case. If it is within the Court’s authority to do so, the defense requests that the links to this presentation and these handouts be taken down as well.

Videotaped Remarks Before Individual Voir Dire

9. On p. 5 of the script for the videotaped remarks, Mr. Holmes asks that the Court rephrase the language regarding the presumption of innocence as requested above in paragraph 2.

10. On p. 9 of this script, the defense believes a revision is required in the first full paragraph on that page. The paragraph currently states:

Each juror must then individually decide what weight to give each mitigating factor and then weigh the mitigating factors and the aggravating factors to determine whether the mitigating factors outweigh the aggravating factors. The jury will be asked whether it unanimously finds beyond a reasonable doubt that the aggravating factors are outweighed by the mitigating factors. If “yes,” the jury must render a verdict of life imprisonment without the possibility of parole. If “no,” the sentencing hearing will continue to Phase 3.

11. The defense believes that in order to be compliant with C.R.S. § 18-1.3-1201(2)(a)(II) and *People v. Tenneson*, 788 P.2d 786, 790 (Colo. 1990), the language should be revised as follows:

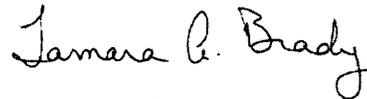
Each juror must then individually decide what weight to give each mitigating factor and then individually weigh the mitigating factors and the aggravating factors. Each juror must decide whether he or she is convinced beyond a reasonable doubt that any mitigating factors do not outweigh the proven statutory aggravating factors. If each juror’s answer is “yes,” and the jury unanimously finds beyond a reasonable doubt that any mitigating factors do not outweigh the proven statutory aggravating factors, the sentencing hearing will proceed to Phase 3. Otherwise, the jury must render a verdict of life imprisonment without parole, and the Court must sentence Mr. Holmes to life imprisonment without the possibility of parole.

In *Tennessee*, the Colorado Supreme Court made clear that “before a defendant may be sentenced to death the jury must be convinced beyond a reasonable doubt *that any mitigating factors do not outweigh the proven statutory aggravating factors.*” 788 P.2d at 790 (emphasis added). Accordingly, the proposed revision above contains this specific language. *See also* Motion D-259, paragraphs 7-10 (discussing and explaining the significance of the *Tennessee* language).

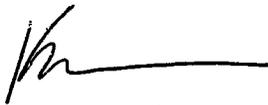
Mr. Holmes files this pleading, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, 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 29, 2014

I hereby certify that on December 29, 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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