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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	JUL 16 2015 CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	σ COURT USE ONLY σ
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
SUBMISSION OF AFFIDAVIT IN RESPONSE TO COURT ORDER D-293-A [D-294]	

James Holmes, through counsel, submits the affidavit attached as Exhibit A to this pleading, and states the following:

1. In Order D-293-A, the Court stated that the Court lacks sufficient information as to Witness 4. "If the defense provides proof of the witness's travel plans and additional details about those plans – such as when the plans were made, why he was scheduled to fly to Colorado on July 20, when his plans to fly to Colorado on July 20 were made, and when the defense learned of the witness's travel plans – the Court may allow his videotaped deposition on July 21." Order, p. 4.

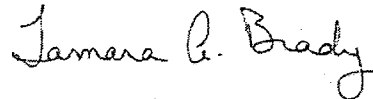
2. The defense submits the attached affidavit from investigator John Gonglach explaining in further detail the circumstances of the timing of the travel plans involved for Witness #4.

3. At this time, the defense has been unable to obtain proof of travel from Witness #4, but believes that the facts as set forth in the attached affidavit are sufficient for the Court to grant the defense's request to conduct a videotaped deposition of Witness #4's testimony. If the defense is able to subsequently obtain proof of travel for this witness, they will provide it to the Court.

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.



Daniel King (No. 26129)
Chief Trial Deputy State Public Defender



Tamara A. Brady (No. 20728)
Chief Trial Deputy State Public Defender



Kristen M. Nelson (No. 44247)
Deputy State Public Defender


Dated: July 16, 2015

I hereby certify that on July 16, 2015, 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



Motion D-294

Exhibit A

AFFIDAVIT OF JOHN GONGLACH

1. My name is John Gonglach. I am currently employed as State Chief Investigator with the Colorado State Public Defender's Office. I am a member of Mr. Holmes's defense team.

2. I have been assisting with travel coordination for mitigation witnesses in anticipation of a potential sentencing trial in Mr. Holmes's case, including travel coordination for Witness #4, whose identity was provided to the Court at a bench conference on July 10, 2015.

3. Witness #4 is a teacher, and as such, has specific and limited times during the year to take vacations. This is the time of year he always plans his annual vacation.

4. Witness #4 planned his upcoming trip out of the country in January of 2015. At the time Witness #4 planned his trip, the defense was unable to predict for him what date or even what month he would be needed to testify as a mitigation witness, other than to estimate that we may reach a sentencing trial in this case sometime in the summer of 2015.

5. By the time the defense was aware of the general date range during which Witness #4 might be actually needed for testimony during a potential sentencing trial in this case, his out-of-the-country trip had been planned and booked many months ago. The defense learned of Witness #4's specific travel plans on approximately 4 weeks ago when we contacted him about potential dates to testify.

6. Witness #4 has invested a significant amount of time and money into this trip.

7. The defense booked travel arrangements for Witness #4 to fly to Colorado on July 20, 2015 approximately 4 weeks ago in the hopes that this date would coincide with any potential sentencing hearing in this case and that Witness #4 would be able to provide live testimony to the jury at that time.

8. The defense had thought it was at least possible we would reach live testimony in the mitigation phase of a potential penalty trial by July 20, 2015. During the past two weeks it has become clear that this is unlikely if not impossible.

9. Witness #4 was not scheduled for testimony on July 21, 2015 due to concerns about potential travel delays on his return flight which could impact his ability to make his flight out of the country early on July 22, 2015.

10. Witness #4 will provide unique testimony regarding Mr. Holmes's background and character during fifth grade. There is no other witness that had as much contact with Mr. Holmes, or had contact with Mr. Holmes in the same capacity, as Witness #4.

I have read this affidavit and affirm under penalty of perjury that what is written in this affidavit is the truth.

Dated this 16th day of July, 2015.



John Gonglach

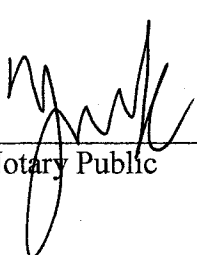
STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 16th day of July, 2015, by John Gonglach.

Witness my hand and official seal.

ZACHARY D TENNANT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20134046439
MY COMMISSION EXPIRES JULY 29, 2017

My commission expires: 7/29/17



Notary Public