

DISTRICT COURT
ARAPAHOE COUNTY, COLORADO
Court Address: Arapahoe County Justice Center
7325 S. Potomac St., Centennial, CO 80112

THE PEOPLE OF THE STATE OF COLORADO vs.
Defendant:
JAMES HOLMES

Attorney:
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22

PEOPLE'S RESPONSE TO DEFENSE MOTION D-11

This response is submitted by the District Attorney for the 18th Judicial District.

1. The Defendant has filed Motion D-11. This motion seeks the “immediate” discovery of certain materials and information. The People object to the Motion and request that it be denied. The People will provide the discovery in their possession, which will contain most of the information sought by the defendant, as provided by the Colorado Rules Of Criminal Procedure.
2. The People would note that Motion D-11 is based on certain factual assumptions that are not established by evidence and that the People believe are of dubious validity, if not outright incorrect.
3. The Defendant argues in Motion D-11 that “the content of these materials was leaked by the government to the media. . .” Certainly the media, including Fox News and NBCNEWS.com, have said this, but that does not make it so. In fact, the content of the news stories would seem to indicate that whoever provided information to Fox News, *if anyone*, did not actually have knowledge of the facts of this case. For instance, the Fox News story stated that the FBI took possession of the package and its contents—this is incorrect, as it was the Aurora Police Department. The NBCNEWS.com story indicated that the Aurora Police Department had obtained two search warrants, one for the package itself and a second one for its contents. This is not correct, as the Aurora Police Department obtained only one search warrant. Other stories have stated that the police are currently examining the contents of the box—again untrue, as the contents were secured and not examined, and held for potential *in camera* review. These factual errors lead the People to believe that there may not even be a “law enforcement source” “leaking” confidential information and that the media is getting information from hoaxers,

fraudsters, or maybe from nobody at all by creating fake “law enforcement sources” out of whole cloth. To put it bluntly, the People are extremely dubious of the media assertions that “law enforcement sources” exist. The court need not, and should not, accept that the media is correctly identifying the affiliations of the persons they claim are providing them with “information.”

4. The defendant asserts that “the government’s disclosure of this confidential information has placed Mr. Holmes’ constitutional rights to due process and a fair trial by an impartial jury in serious jeopardy . . .” Again, this is based on an unproven and most likely fallacious assumption that: (1) there were disclosures and (2) they were made by the “government.” Still, the defendant states that he will be requesting a hearing on his assertion—an assertion based on media attestations of reliance on anonymous sources—for the purpose of “determining appropriate sanctions for this misconduct.”
5. Apparently in anticipation of such a hearing, the defendant requests “immediate” production of discovery, without stating what “immediate” means. The police and the prosecution are still in the process of collecting and compiling discovery. Crim. P. 16(1)(b)(1) provides that available discovery is to be provided by the prosecution not later than twenty calendar days after the filing of charges, and the People anticipate providing the defendant with available discovery at or before that time. The defendant has stated no need, much less a compelling need, that the hearing on sanctions for any alleged “leaks” must be held prior to the time that discovery is normally provided.
6. Furthermore, the People are in the process of gathering most of the discovery requested by the defense in Motion D-11, including lists of names of individuals present in the mailroom with the package, reports and video from the Adams County bomb squad, surveillance video from the mailroom itself, reports of officers, chain of custody and property reports.¹ The People have not yet received both of the video recordings mentioned in the previous sentence, and have not planned on viewing them or taking any other action with them until seeking guidance from the court, which the People plan to do at the July 30, 2012 hearing. Even though the People have been led to believe that the contents of the notebook would not be visible on the video recordings, in an abundance of caution the People will be sealing the video recordings and keeping them in evidence storage prior the July 30 court appearance.
7. In addition to the other items set forth in paragraph 4 of Motion D-11, the defendant seeks discovery relating to “any and all information pertaining to the allegation made in the media that Mr. Holmes informed law enforcement about the existence of the package.”

¹ The People dispute the defendant’s assertions that a privilege existed in relation to the contents of the package, and dispute that there has been a “breach” of the privilege, and thus dispute that any documents, materials, or information related to anything “privileged” or to any “breach” are in existence, and merely state that documents and other information exists relating to the discovery, testing for explosives/contaminants, and seizure of the package.

While the People have seen this report in the media, the People believe that it is just another inaccurate media report floating adrift in a sea of inaccurate media reports relating to this case. Because the People believe that it is just an inaccurate media report—and that the media outlets reporting the information may have just made it up—the People do not even know how to respond to this portion of Motion D-11.

8. The People request a hearing on Defense Motion D-11 prior to any ruling of the court, and that they be allowed to provide discovery as contemplated by the Rules Of Criminal Procedure.

Carol Chambers, District Attorney

By 

Deputy District Attorney

Registration No. 20035

CERTIFICATE OF MAILING

I hereby certify that I have deposited a true and correct copy of the foregoing in the Public Defender's Mailbox located at 6450 S Revere Pkwy Centennial CO 80111, addressed to:

TAMARA BRADY, ESQ.
DANIEL KING, ESQ.
OFFICE OF THE PUBLIC DEFENDER

Dated: 7/26/12 ^{7:42pm}

By 