

REDACTED

DISTRICT COURT, ARAPAHOE COUNTY
STATE OF COLORADO
Arapahoe County Justice Center
7325 S. Potomac Street
Centennial, Colorado 80112

Filed

JUL 2 - 2013

CLERK OF THE COMBINED COURT
ARAPAHOE COUNTY, COLORADO

THE PEOPLE OF THE STATE OF COLORADO vs.
Defendant(s):

JAMES EAGAN HOLMES

COURT USE ONLY

Attorney:
GEORGE H. BRAUCHLER
18th Judicial District Attorney
6450 S. Revere Pkwy.
Centennial, CO 80111
Phone: (720) 874-8500
Atty. Reg. #: 25910

Case Number: **12CR1522**
Division 26

**RESPONSE TO DEFENDANT'S MOTION FOR IN CAMERA REVIEW OF
MATERIALS RE: APPLICATION FOR VICTIM COMPENSATION [D-072]**

This pleading is filed by the District Attorney for the 18th Judicial District.

1. The Defendant has filed Motion D-72, titled "MOTION FOR IN CAMERA REVIEW OF MATERIALS RE: APPLICATION FOR VICTIM COMPENSATION."
2. In this case the defendant is charged with twenty-four counts of Murder in the First Degree pursuant to Colo. Rev. Stat. § 18-3-102(1)(a) and (d); and one-hundred-and-forty counts of Attempted Murder in the First Degree pursuant to Colo. Rev. Stat. § 18-3-102(1)(a) and (d); 18-2-101.
3. Without making any showing of need, the defense requests that the Court conduct "an *in camera* review of the materials relating to Crime Victim Compensation Board claims made in connection with this case, and [the] disclosure of any relevant materials."
4. Pursuant to C.R.S. §24-4.1-104 and C.R.S. §24-4.1-107.5 (2), the People respectfully object to the release and disclosure of confidential victim compensation files to the Court and counsel without strict compliance with the statutory procedure set forth in C.R.S. § 24-4.1-107.5. The People have standing to oppose the disclosure of confidential victim compensation materials. C.R.S. § 24-4.1-107.5(2).
5. Individuals employed by the District Attorney's Office (other than the Victim Compensation Administrator and Victim Compensation staff) do not have access to confidential Victim Compensation records, as they are in possession of the Victim Compensation program. C.R.S. § 24-4.1.107.5(2) mandates that Victim Compensation

records are not discoverable to either the prosecution nor to the defense unless disclosure is necessary to resolve an issue pending before the court.

Any materials received, made, or kept by a crime victim compensation board or a district attorney concerning an application for victim's compensation made under this article are confidential. Any such materials shall not be discoverable unless the court conducts an *in camera* review of the materials sought to be discovered and determines that the materials sought are necessary for the resolution of an issue then pending before the court. C.R.S. §24-4.1-107.5 (2).

6. In 2010 the Court of Appeals provided some guidance with respect to the requirements that must be met prior to granting an *in camera* review, and guidance as to when, if ever, an *in camera* review for Victim Compensation records is warranted by the Court. *People v. Rivera*, 250 P.3d 1272, (Colo. App. 2010), *cert. denied* December 13, 2010).
7. *Rivera* was a case of first impression with respect to Victim Compensation files and *in camera* review by the court in Colorado. In *Rivera*, the defendant pled guilty to sexual assault on a child and was sentenced to two years to life in the Department of Corrections. The People sought \$2,102.25 in restitution, a portion of which was for mental health treatment expenses for the victim. In *Rivera*, the defendant objected to paying the part of the restitution award that was apportioned for counseling expenses for the victim. The defendant argued that the victim's need for therapy was potentially attributable to issues that arose prior to the sexual assault. The defendant in *Rivera* requested that the court disclose the victim's medical and therapy records supporting the People's request for restitution of the victim's counseling expenses, or in the alternative, the defendant requested that the court conduct an *in camera* review of the records. *Id.* at 1273.
8. The lower court denied the *Rivera* defendant's motion for discovery and denied the request for *in camera* review of the records and also granted the victim's restitution request, including the portion for counseling expenses. The *Rivera* defendant appealed the court's decision. The Court of Appeals concluded that the *Rivera* defendant's allegations failed to establish a basis of disclosure for the confidential medical records and failed to establish a reasonable evidentiary hypothesis that would disprove the prosecution's restitution request. The Court of Appeals held that the trial court did not abuse its discretion in refusing to order disclosure of the mental health records, nor did it abuse its discretion in refusing to conduct an *in-camera* review. *Id.* at 1274.
9. Following *Rivera*, defendants must make a threshold showing of need for *in camera* review of confidential Victim Compensation Board records, "...a party requesting *in camera* review of confidential documents must make a threshold showing of need." *Id.*

at 1277. The defendant in this case has not offered even one reason as to why these records are needed.

10. In the context of requesting an *in camera* review for confidential mental health documents, *Rivera* requires that the Defendant must show that his request is not speculative and that an evidentiary hypothesis warrants *in camera* review because the Victim Compensation documents would tend to disprove all or part of the People's claims. *Id.* at 1277. The defendant has failed to show that his request for an *in camera* review is not speculative and has also failed to submit any credible evidentiary hypothesis that would tend to disprove all or part of any of the People's claims in this case.
11. C.R.S. § 24-4.1-101, the legislative declaration for the Crime Victim's Compensation Act, provides the Court with further guidance for the important policy considerations of the legislature:

... an effective criminal justice system requires the protection and assistance of victims of crime and members of the immediate families of such victims in order to preserve the individual dignity of victims and to encourage greater public cooperation in the apprehension and prosecution of criminal defendants. The general assembly hereby intends to provide protection and assistance to victims and members of the immediate families of such victims by declaring and implementing the rights of such persons and by lessening the financial burden placed upon victims due to the commission of crimes. This article shall be liberally construed to accomplish such purposes. C.R.S. § 24-4.1-101.

12. The records and information compiled and kept by the Victim Compensation Board in this case are confidential. This process was established to protect and assist victims of crime and "to preserve the[ir] individual dignity", C.R.S. §24-4.1-101, not to be a source of information for the prosecution, for the public¹, or for the defense.
13. It is in this statutory context that this court must determine whether particular Victim Compensation Board materials are "necessary for the resolution of an issue" pending before the court. C.R.S. § 24-4.1-107.5. It is also important to note that the legislature used the word "necessary," not a lesser standard such as "relevant" or "likely to lead to relevant information." Given the overriding purposes of the Crime Victim Compensation Act, the question of what is "necessary for the resolution" of a pending issue should be approached with due care so that neither the Court, nor the prosecution, nor the defense intrude unduly into the privacy of the victims in this case or into the authority of the Victim Compensation Board.

¹ In conjunction with this provision, the Public Records Act excludes victim compensation materials from the meaning of "public records" and provides that "the custodian shall deny the right of inspection of any materials received, made, or kept by a crime victim compensation board or a district attorney that are confidential pursuant to the provisions of section 24-4.1-107.5." C.R.S. §24-72-202(6)(b)(IV) and C.R.S. §24-72-204(2)(c).

14. Any broader approach to making victim compensation records available to the defense would unduly interfere with the privacy and dignity of victims as well as the authority of the Board over Victim Compensation expenditures. By making the information involved with an application for Victim Compensation confidential, the legislature recognized that the process of applying for Victim Compensation benefits does not trigger a waiver that might otherwise impact victim privacy. The legislature did so to protect and assist victims of crime in recovering from their experiences with crime. The confidentiality under the statute would be meaningless if the defendant can access confidential victim compensation records absent any showing of need. Victims would potentially be less likely to make use of the benefits under the Victim Compensation Act if it were likely that the person who has been accused of causing their losses would gain access to the materials concerning the application for assistance.
15. Such a risk is contrary to the strong legislative purposes underlying the Victims' Compensation Act. *See, e.g., People v. Sisneros*, 55 P. 3d 797, 802 (Colo. 2002) (holding that even though a claim for limited information might seem innocuous in otherwise confidential therapeutic records, the "possibility that documents relating to treatment may later be obtained in discovery decreases the likelihood that a victim will seek treatment, let alone be willing to reveal intimate details during treatment."); *People v. Turner*, 109 P. 3d 639, 644 (Colo. 2005) (holding, "if victims fear that their abuser may have access to victim impact statements, pre-sentence reports, and compensation files, they are less likely to seek assistance."); *People v. District Court in and For the City and County of Denver*, 719 P. 2d 722, 726, 727 (Colo. 1986) (holding, "[t]he vague assertion that the victim may have made statements to her therapist that might possibly differ from the victim's anticipated trial testimony does not provide a sufficient basis to justify ignoring the victim's right to rely upon her statutory privilege.").
16. In addition, confidential Victim Compensation files potentially include materials provided by victims that are also protected by other privileges. *See* C.R.S. § 13-90-107. Records reflecting medical or psychological treatment or personal finances are absolutely privileged in Colorado, and for that additional reason, should not be reviewed, even by the court, and should not be provided the defense without a waiver by the individual holding the privilege, i.e. the victim. *Sisneros*, 55 P. 3d at 800, (holding, "[an] evidentiary showing of waiver is required before the trial court may order the documents produced for an *in camera* review.").
17. The People respectfully request that the Court deny the defendant's request for *in camera* review because the defendant has not made a threshold showing of the need for the confidential records, because the request is nothing more than a speculative fishing expedition for confidential victim information, and because the defense has failed to articulate any credible evidentiary hypothesis that would tend to disprove all or part of the People's claims in this case.

18. The People Request that the Motion be denied without a hearing.

GEORGE H. BRAUHLER, District Attorney

By *Paula Gilligan*

Deputy District Attorney

Registration No. 35892

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: *July 2, 2013*

By *Aileen Sandberg*

DISTRICT COURT
ARAPAHOE COUNTY, COLORADO
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THE PEOPLE OF THE STATE OF COLORADO vs.
Defendant:
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COURT USE ONLY

Case Number:
12CR1522
Division/Ctrm:
26

COURT ORDER
RE: DEFENDANT'S MOTION FOR IN CAMERA REVIEW OF MATERIALS RE:
APPLICATION FOR VICTIM COMPENSATION [D- 072]

THE COURT, being fully advised, and being duly apprised of the relevant facts and law, hereby DENIES the DEFENDANT'S MOTION FOR IN CAMERA REVIEW OF MATERIALS RE: APPLICATION FOR VICTIM COMPENSATION [D- 072].

Dated this _____ day of _____, 2013

BY THE COURT

District Court Judge Carlos A. Samour