REDACTED

DISTRICT COURT, ARAPAHOE COUNTY STATE OF COLORADO Arapahoe County Justice Center 7325 S. Potomac Street Centennial, Colorado 80112	**Filed** AUG 29 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: **201**

PEOPLE'S RESPONSE TO MOTION C-053

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

1. Counsel for Jana Winter have filed motion C-53, seeking to continue the September 30, 2013 hearing until January. For the reasons discussed below, the People object to the relief requested in the Motion.

2. The September 30, 2013 hearing date has been set to consider the issue of the defendant's request to call Ms. Winter as a witness to testify relating to Motion D-17, which was filed on October 2, 2012. The defendant obtained Ms. Winter's presence pursuant to the statutory procedure for securing the compulsory attendance of out-of-state witnesses, C.R.S. § 16-9-201, *et seq.*

3. The defendant has stated his intent to ask Ms. Winter questions intended to elicit responses identifying the source or sources of information in her news story, and to require her to turn over her notes. Ms. Winter has indicated that she is protected by Colorado's limited journalist privilege, C.R.S. § 13-90-119. The People do not know how long the litigation relating to Ms. Winter will take, nor how long any subsequent additional litigation related to Motion D-17 might take. The litigation may be protracted, and the People believe that it should occur as soon as possible, so as not to interfere with the trial date in February.

4. If the court were to find that the limited journalist privilege recognized by Colorado law does not protect Ms. Winter, the People believe that the court would then have to order her to divulge the information, and that she would refuse to do so in order to protect her appellate rights. The court would then have to decide whether to hold Ms. Winter in contempt of court for

refusing to answer the questions, which might require an additional hearing. If the court found Ms. Winter in contempt of court, the People believe that any competent counsel representing Ms. Winter would request a stay of the court's order and then to seek immediate review in the Colorado Supreme Court under that court's original jurisdiction, pursuant to the procedures specified in C.A.R. 21. Ms. Winter would no doubt claim that she would have no other adequate appellate remedy. While the Supreme Court usually rules on such petitions quickly, it would likely take a week or two to know whether they would take the case. If the Supreme Court elected to hear the C.A.R. 21 petition, briefing would likely take weeks, if not months, and the Supreme Court would by necessity have to take additional time to make a decision on the matter. Additionally, normal practice would be for the Supreme Court to stay all proceedings in the underlying matter (i.e. this case) pending C.A.R. 21 review. While the People would request a limited remand so that this court could conduct other business on the case, the People believe that there is a high degree of likelihood that an incipient or active C.A.R. 21 proceeding could result in a continuance of the trial date.

5. Similarly, if the court declines to require Ms. Winter to divulge the information, the People believe that the defendant may very well seek C.A.R. 21 review, which could result in the same types of delays as would be the case if Ms. Winter sought C.A.R. 21 review.

6. The People believe that any delay of the September 30, 2013 hearing might have the potential to delay the trial. The People therefore object to the relief Ms. Winter seeks in C-53, and request that C-53 be denied.

GEORGE H. BRAUCHLER, District Attorney

By _____
Deputy District Attorney
Registration No. 20935

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

I also certify that I placed a copy of the foregoing in the United States Mail, first class postage prepaid, addressed to:

MICHAEL C. THEIS
CHRISTOPHER O. MURRAY
HOGAN LOVELS US LLP
1200 17TH STREET, SUITE 1500
DENVER, CO 80202

Dated: 8/29/13

By _____
Certifying Secretary

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 EAGAN HOLMES**	COURT USE ONLY
	Case Number: **12CR1522** Division/Ctrm: **201**

COURT ORDER
MOTION C-53
MOTION OF NON-PARTY WITNESS JANA WINTER TO VACATE SEPTEMBER 30, 2013 HEARING DATE

THE COURT, being fully advised, and being duly apprised of the relevant facts and law, hereby DENIES MOTION OF NON-PARTY WITNESS JANA WINTER TO VACATE SEPTEMBER 30, 2013 HEARING DATE [C-53].

Dated this _____ day of _____, 2013

BY THE COURT

_____
District Court Judge Carlos A. Samour