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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

Attorney:
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**PEOPLE'S RESPONSE TO DEFENDANT'S MOTION D-14 TO QUASH SUBPOENA
DUCES TECUM FOR DEFENDANT'S EDUCATIONAL RECORDS**

THE PEOPLE, hereby respond to the Defendant's Motion to Quash Subpoena Duces Tecum for Mr. Holmes' Educational Records (D-14). The People respectfully request this Court DENY the Defendant's Motion to Quash and as grounds in support state as follows:

1. The defendant is charged with the murder of 12 people and the attempted murder of dozens more.
2. Evidence gathered so far indicates: (1) the defendant had conversations with a classmate about wanting to kill people in March, 2012, and that he would do so when his life was over; (2) that he failed his graduate school oral boards at the University of Colorado in June 2012; (3) that he was denied access to the school after June 12, 2012 after he made threats to a professor at the school; (4) that he subsequently started the process to voluntarily withdraw from his graduate studies program, and was in the process of completing that withdrawal at the time that the offense occurred; and (5) that, after he was denied access to the CU-Denver Anschutz campus he began a detailed and complex plan to obtain firearms, ammunition, a tear-gas grenade, body armor, a gas-mask, and a ballistic helmet, which were used in the commission of the murders and the attempted murders.
3. The defendant's educational records are relevant to the investigation of these crimes, his planning and motive.
4. While school records are federally protected by the Family Educational Records Privacy Act ("FERPA"), 20 U.S.C.A. §1232g, and C.R.S. 24-92-204, there are exceptions in both federal and state law for disclosure via a subpoena issued for a law enforcement purpose.



5. C.R.S. 24-72-204(3)(e) states that:

Notwithstanding the provisions of subparagraph (I) of paragraph (a) of this subsection (3), under policies adopted by each local board of education, consistent with applicable provisions of the federal "Family Education Rights and Privacy Act of 1974" (FERPA), 20 U.S.C. §1232(g), and all federal regulations and applicable guidelines adopted thereto, information directly related to a student and maintained by a public school or by a person acting for the public schools shall be available for release if the disclosure meets one or more of the following conditions: . . . (D) The disclosure is to comply with a judicial order or a lawfully issued subpoena, if a reasonable effort is made to notify the student's parent . . . about the order or subpoena in advance of compliance, so that such parent . . . is provided an opportunity to seek protective action. . . .

6. FERPA permits the release of school records in response to a grand jury subpoena or "any other subpoena issued for a law enforcement purpose." if the student or parents have been notified. 20 U.S.C. § 1232g(b)(1)(J)(ii) and 20 U.S.C. § 1232g(b)(2)(B).

7. "FERPA does not create a privilege against disclosure and that school records may be discovered under § 1232g(b)(2) upon a proper showing of need. . . . Neither the federal nor the state statute erects an absolute privilege against disclosure. Instead, the statutes protect the privacy rights of students and parents through a general rule of confidentiality that may be overcome in certain circumstances. Accordingly, we conclude that a court may order the release of confidential school records to a party in a criminal case upon a proper showing of need." *People v. Bachofer*, 192 P.3d 454 (Colo.App. 2008).

8. The defendant was notified by the University of Colorado that they had received a subpoena by a letter dated August, 8, 2012.

9. "Because FERPA does not define "law enforcement purpose," that term is assigned the its plain and ordinary meaning. *See People v. Yascavage*, 101 P.3d 1090, 1094 (Colo.2004). "[A] subpoena is issued for a law enforcement purpose if it is intended to advance the "detection and punishment of violations of the law." *Black's Law Dictionary* 901 (8th ed.2004)" *Bachofer*, 192 P.3d 454 at 460.


10. The defendant incorrectly asserts that the records are being sought for the hearing on privilege set August 16, 2012. The People have simply used that date as a Subpoena Duces Tecum return because it is a scheduled court date.

11. The defendant further asserts we are seeking [REDACTED] but the list of items being sought in the SDT reflects that is not an accurate assertion. Further, the People request that the court review the records in camera for any privileged [REDACTED] documents that may have been inadvertently included.

12. The People are following the procedure outlined in FERPA and the Colorado Public Records Act for obtaining school records under the law enforcement exception.

The People respectfully request the Court DENY the Defendant's Motion to Quash Subpoena Duces Tecum.

Carol Chambers, District Attorney

By 
Chief Deputy District Attorney
Registration No. 20202

CERTIFICATE OF MAILING

I hereby certify that I have deposited a true and correct copy of the foregoing **PEOPLE'S RESPONSE TO DEFENDANT'S MOTION D-14 TO QUASH SUBPOENA DUCES TECUM FOR DEFENDANT'S EDUCATIONAL RECORDS** 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: 8/14/12

By 
Certifying Secretary