

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲ COURT USE ONLY ▲
Plaintiff: People of the State of Colorado v. Defendant: Holmes, James Eagan	Case No. 12CR1522 Division: 22
ORDER RE C-25 AND C-25a	

This Matter comes before the Court on Jana Winter's Letter to the Court dated March 18, 2013; the Court's Order to Respond (C-25) issued March 18, 2013; the People's Response to Court Order C-25 filed March 19, 2013; Ms. Winter's Letter to the Court dated March 19, 2013; the Court's Amended Order to Respond (C-25a) issued March 19, 2013; the People's Response to Court Order C-25a filed March 20, 2013; Defendant's Response to Court Order C-25a filed March 25, 2013; and Ms. Winter's Letter to the Court dated March 26, 2013. Being fully advised, the Court hereby Finds and Orders as follows:

Facts and Procedural History

Jana Winter is a journalist for FoxNews and a witness subpoenaed by Defendant concerning Defendant's Motion for Sanctions for Violating this Court's Order Limiting Pretrial Publicity by Leaking Privileged and Confidential Information to the Media and Request for Evidentiary Hearing (D-017), filed October 2, 2012. Ms. Winter wrote an article published on July 25, 2012, regarding a package that was found at the University of Colorado Anschutz Medical Campus related to this case. In her article, Ms. Winter cited two "law enforcement" sources. Defendant asserts that the information given to Ms. Winter regarding the package was leaked in violation of this Court's Protective Orders D-8, D-9, and D-10, as well as in violation of this Court's Order Limiting Pretrial Publicity D-2. The Court held an evidentiary hearing on the matter on December 10, 2012, and all individuals whom Defendant has identified as potentially having contact with the package testified that they did not speak to the media about the package and that they did not know of anyone who spoke to the media about the package.

On January 17, 2013, Defendant filed a Motion for a Certificate to Compel Attendance of Jana Winter, an Out-of-State Witness from New York and Production of Her Notes (D-026), and this Court issued a Certificate of the District Court of Colorado (D-026) on January 18, 2013. On

March 7, 2013, a justice of the Supreme Court of the State of New York, New York County, Criminal Term ("New York Trial Court"), issued a subpoena pursuant to CPL § 640.10, compelling Ms. Winter to appear and testify at the hearing set in front of this Court on April 1, 2013. Ms. Winter has filed an appeal of the New York Trial Court's subpoena, but that appeal will not be heard until after April 1, 2013. Ms. Winter asks this Court to continue the April 1 hearing, and therefore postpone her subpoenaed appearance in Colorado.

Ms. Winter states that compliance with the subpoena as scheduled for April 1 would effectively deny her the right to substantive appellate review in New York. She states that she is pursuing all opportunities to resolve the New York proceedings expeditiously while Defendant has purposely taken actions to frustrate her appeal of the subpoena, and she points out that this Court has already changed the date of the hearing from February 4, 2013, to April 1, 2013, on Defendant's Motion D-27. Ms. Winter concedes that the New York Appellate Division denied her request for a stay of the subpoena pending appeal, but she asserts that this Court must continue the April 1 hearing to prevent injustice to Ms. Winter. Ms. Winter does not give a date when she would be prepared to appear in Colorado, but she states that she has proposed that the New York Appellate Division hear her appeal during the June term.

Defendant objects to a continuance of the court date set for April 1, 2013. Defendant asserts that Ms. Winter has not appeared officially in this court in person or by an official pleading and, therefore, the request to continue the hearing set for April 1, 2013, is not properly before the Court. Through an affidavit of Defendant's counsel in New York, Defendant affirms that on March 19, 2013, a justice of the New York Appellate Division heard arguments from Ms. Winter and Defendant and denied Ms. Winter's application for a stay of the subpoena. Defendant points out that the justice was aware of the April 1 hearing date and of the consequences for Ms. Winter's appeal in New York if the subpoena were enforced. Defendant states he is prepared to move forward on the issue and asks this Court to maintain the scheduled hearing date of April 1, 2013.

Law and Analysis

Preliminarily, this Court recognizes Defendant's argument that Ms. Winter's letters to the Court regarding a continuance of the April 1 hearing do not meet the requirements for official pleadings under C.R.C.P. 11(a). The Court is unaware of any other case in Colorado where a witness, rather than a party, has filed for a continuance in a criminal case, and it questions whether Ms. Winter actually has standing to bring this issue before the Court. However, because of the unique circumstances of Ms. Winter's situation, the Court will address the merits of Ms. Winter's position and consider her request for a continuance of the April 1 hearing.

While this Court understands the challenge of Ms. Winter's situation, this case is currently set for trial beginning August 5, 2013, with motions hearings set for May 13-15 and a motions filing deadline of April 12, 2013. Speedy trial under C.R.S. § 18-1-405 began running after the arraignment of Defendant on March 12, 2013, and, as with any criminal matter, a fair and speedy trial in this case is a priority for this Court, the accused, the People, the victims, and the public. *See Baker v. Wingo*, 407 U.S. 514, 519-20 (1972). This court is in a different position now, post-arraignment, than it was when it initially continued the hearing on this matter originally set for February 4, 2013. Both parties have expressed a desire to resolve this matter regarding Ms. Winter promptly, and the Court recognizes that Ms. Winter's testimony at the April 1 hearing could have implications for the parties' strategy and preparation for future hearings in the case and for trial.

The United States Constitution provides that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." U.S. Const. art. IV, § 1. Both New York and Colorado have adopted the Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings. *See* C.R.S. § 16-9-203; McKinney's CPL § 640.10. The New York Trial Court has issued a subpoena requiring Ms. Winter to appear before this Court on April 1, 2013, to testify and produce documents in Defendant's case. Ms. Winter promptly filed an appeal of the New York Trial Court's issuance of the subpoena, but the New York Appellate Division denied Ms. Winter's request to stay the subpoena until after her appeal could be heard in New York. Thus, in the eyes of this Court, a valid subpoena exists from the State of New York. The subpoena mandates that Ms. Winter appear and produce documents before this Court on April 1, 2013.


Rule 17 includes the right of the parties in a criminal case to compel attendance of witnesses at "other hearings." Colo. R. Crim. P. 17. Generally, "no preliminary showing is ordinarily required to subpoena a witness for trial testimony." *Williams v. Dist. Court*, 700 P.2d 549, 554 (Colo. 1985). An attorney must comply with the service requirements of Rule 17 for a subpoena to be valid, but once a subpoena is properly issued and served, that subpoena must be honored by the witness and the court. *See* Colo. R. Crim. P. 17(h); *People v. Ensor*, 632 P.2d 641, 641 (Colo. App. 1981) ("Although [Rule 17] provides supervision by the court, there is no authority under it to quash the subpoena if the district attorney [issuing the subpoena] has complied with the technical requirements [of Rule 17]"); *United States v. Pursley*, 577 F.3d 1204, 1230 (10th Cir. 2009). Every citizen, as part of his civic duty, is expected to testify in judicial proceedings if subpoenaed by either party, even where that duty is inconvenient. *Losavio v. Dist. Court*, 533 P.2d 32, 34 (Colo. 1975). Because there is a valid subpoena that commands Ms. Winter to appear before this Court to testify and produce documents on April 1, 2013, this Court FINDS that it must honor that subpoena.

Conclusion

The Court FINDS that the New York Trial Court has issued a valid subpoena for Ms. Winter's testimony and records and denied her initial request for a stay of the proceedings pending her appeal. This Court will honor that subpoena. Ms. Winter's request for a continuance of the hearing set for April 1, 2013, is HEREBY DENIED. Any additional pleadings related to the hearing set for April 1, 2013, shall be filed with this Court by Friday, March 29, 2013, at Noon, Mountain Standard Time.

DATED this 27th day of March, 2013.

BY THE COURT:


WILLIAM BLAIR SYLVESTER
CHIEF JUDGE
EIGHTEENTH JUDICIAL DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2013, a true and correct copy of **Order Re: C-25 and C-25a** was served upon the following parties of record.

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