

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
<p style="text-align: center;">ORDER RE: MOTION TO INTERVENE FOR LIMITED PURPOSE (C-14)</p>	

This Matter comes before the Court pursuant to Victims/Intervenors' Motion to Intervene for Limited Purpose (C-14), filed October 1, 2012. Having reviewed the Motion, the Responses from the People and Defendant, and the Reply, the Court hereby Finds and Orders as follows:

In their Motion, Victims/Intervenors seek access to specific documents (including Affidavits in Support of both Arrest Warrant and Search Warrant as well as the Return on Inventory from the Search Warrant), access to Auditorium 9 of the Aurora Century 16 Theater, and disclosure of any transcripts of 911 calls made in connection with a theater shooting which took place on July 20, 2012. Both the People and Defendant have objected to the Motion. Defendant states that Victims/Intervenors do not have standing to intervene under either the Colorado Rules of Criminal Procedure or the Colorado Rules of Civil Procedure and that release of the information sought in the Motion would jeopardize Defendant's right to a fair trial by an impartial jury. This Court previously issued an Order on October 2, 2012, denying the request for access to Auditorium 9 for lack of jurisdiction.

In their Response, the People point out that any transcripts of 911 calls would not be in the Court's possession but would be part of discovery and, therefore, the Victims/Intervenors would need to request their release under the Colorado Criminal Justice Records Act. In his Response, Defendant concurs that transcripts of 911 calls are not in the court file. Victims/Intervenors did make a request to the City of Aurora for release of the 911 tapes and transcripts, and they attached the response to that request to their Reply. The City of Aurora, as the custodian of those records, denied the request by Victims/Intervenors, citing that release could jeopardize the integrity and fairness of the criminal investigations and therefore is against the public interest. If Victims/Intervenors contest the validity of the City of Aurora's decision, they may apply to the district court where the records are held for an order directing the custodian to show cause why the request was denied. C.R.S. § 24-72-305(7) (2012); *see Harris v. Denver Post Corp.*, 123 P.3d 1166, 1175 (Colo. 2005). Because the transcripts and tapes of

the 911 calls are not part of the case file and the Court is not the custodian of such records, the Court DENIES the Motion as it relates to tapes and transcripts of the 911 calls.

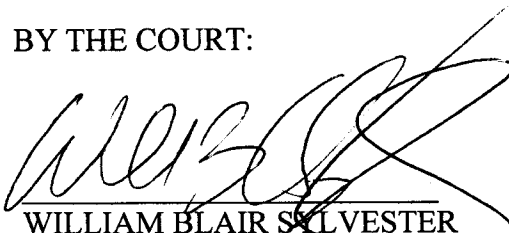
Victims/Intervenors argue that under C.R.S. §§ 24-4.1-301 *et seq.*, commonly called the Victims' Rights Act ("VRA"), the Colorado Legislature has identified that the public policy of the State is to ensure that a victim's rights are honored. Victims/Intervenors' Motion maintains that "these particular victims stand in a unique situation to other victims in this case, insofar as they have commenced a civil suit against Cinemark, USA, Inc." Motion, ¶10. However, there is no language in the VRA that specifically states that "victims may intervene in an existing criminal case." Furthermore, the Colorado Rules of Criminal Procedure make no provision for intervention by a third party in a criminal prosecution. In *People v. Ham*, 734 P.2d 623, 625 (Colo. 1987), the Colorado Supreme Court noted that, while Crim. P. Rule 57(b) provides where the criminal rules make no provision, a court may look to the Rules of Civil Procedure, the intervention standards of C.R.C.P. 24 are not necessarily applicable in a criminal case.

Thus, while the Court appreciates the Victims/Intervenors' willingness to subject themselves to a protection order to ensure that any information they receive remains undisclosed, the Court declines to avail itself of that alternative. As to the request for the Affidavits in Support of both Arrest Warrant and Search Warrant and the Return on Inventory from the Search Warrant, the Court notes that it is particularly important that such information not be disclosed prior to the proof evident/preliminary hearing. Regarding the denial of inspection of these documents, the Court references and incorporates the findings herein of its Order Re: Motion to Unseal Court File (Including Docket)/("Suppression Order") (C-4c), filed August 13, 2012, and its Order Re: Media's Motion to Unseal Redacted Information (Victims' Identities) (C-13), filed October 25, 2012. Accordingly, the Court DENIES the Motion as to the Affidavits in Support of both Arrest Warrant and Search Warrant and the Return on Inventory from the Search Warrant. Once the proof evident/preliminary hearing takes place, the Victims/Intervenors may wish to consider filing other appropriate requests seeking such information as the posture of this case and this issue may be different at that time.

Victims/Intervenors' Motion is DENIED.

Entered October 30, 2012.

BY THE COURT:


WILLIAM BLAIR SYLVESTER
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2012, a true and correct copy of **Order RE: Motion to Intervene for Limited Purpose (C-14)** was served upon the following parties of record.

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A handwritten signature in black ink, appearing to read "Julie A. Hart", written over a horizontal line.