

REDACTED

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:  
GEORGE H. BRAUCHLER, 18<sup>th</sup> Judicial District Attorney  
6450 S. Revere Pkwy Suite 100, Centennial, CO 80111  
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Atty. Reg. #: 25910

**Filed**  
**JAN 18 2013**  
CLERK OF THE COMBINED COURT  
ARAPAHOE COUNTY, COLORADO  
**COURT USE ONLY**

Case Number:  
**12CR1522**  
Division/Ctrm:  
**22**

**RESPONSE TO DEFENSE MOTION D-026**

This Response is filed by the District Attorney for the 18<sup>th</sup> Judicial District.

1. The Defense has filed Motion D-26, requesting a certificate to compel attendance of an out of state witness, Jana Winter.
2. The People take no position on whether the defense should be able to call this witness, or bring her from another state pursuant to C.R.S. § 16-9-203. The People object to the content of the certificate that the defense has requested that this court sign. The People object because the proposed certificate contains language that would be tantamount to this court making findings on issues that the People believe are both not supported by the record and are the matter of current litigation that has not been resolved.
3. Specifically, the proposed Certificate contains language that presupposes that law enforcement personnel “leaked” information to the media, and presupposes a violation of an order of this Court. The People do not believe that this has, in any way, been established, and that it would be improper for this Court to issue an order that would appear to make this finding. Specifically, the people refer to:
  - a. Numbered paragraph (3): “Identifying law enforcement sources *who leaked* this information to the media is an issue of serious and material importance to this case.”
  - b. Numbered paragraph (3) “The *violation of this Court’s protective order and leak of prejudicial information to the media* in a case that has received such significant public attention, have implicated Mr. Holmes constitutional rights to a fair trial . . . .”

c. Numbered paragraph (12) "Based on the information provided by defense counsel, there is no other witness beyond those that provided affidavits to the court or those that testified at the December 10, 2012 hearing, or any other documentation that could provide the names of the *law enforcement agents that leaked protected information to Jana Winter.*"

d. Numbered paragraph (13), ". . . this Court finds that defense counsel have used all available means to determine *which law enforcement agent violated this Court's Order by leaking the contents of the subject notebook* to the media. As none of these efforts have revealed the *source of the leaked information*, Jana Winter has become a material and necessary witness in this case."

4. The People also object to the argumentative and inappropriate suggestion that the court state, in numbered paragraph 11 that none of the witnesses who testified on December 10 "*admitted to providing any information . . .*"
5. The People request that the court either: (1) Deny Motion D-026, as the proposed certificate contains inappropriate language; (2) Request that the defense provide a certificate that does not contain the inappropriate language; or (3) Craft its own Certificate that does not contain the inappropriate language.

Respectfully submitted on this 17<sup>th</sup> day of January, 2013.

George H. Brauchler, District Attorney

By 

Deputy District Attorney

Registration No. 20035

Case: 12CR1522  
JAMES HOLMES

**CERTIFICATE OF MAILING**

I hereby certify that I have deposited a true and correct copy of the foregoing **RESPONSE TO D-26** 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: 1/17/2013

By   
Certifying Secretary