

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
CERTIFICATE OF THE DISTRICT COURT OF COLORADO (D-026)	

HAVING REVIEWED THE MOTION of Defendant to Compel the Attendance of Witnesses from Another State and the People's Response to Defense Motion D-26 and being the Court of Record in this matter pending in the State of Colorado, this Court makes the following Certificate of the District Court of Colorado pursuant to Colo. Rev. Stat. §16-9-203 (2012) and McKinney's CPL §640.10(2):

1. The above-captioned case is now pending in the Arapahoe District Court in which this defendant James Eagan Holmes is charged with 166 felony counts, including 24 counts of first degree murder.
2. On July 23, 2012, the Aurora Police Department took a package into custody sent by Defendant to his University of Colorado psychiatrist. The package was seized by law enforcement from the University of Colorado pursuant to search warrant on July 23, 2012.
3. On July 23, 2012, this Court issued an order limiting pre-trial publicity that instructed the parties and law enforcement to refrain from disseminating information that "will have a substantial likelihood of prejudicing a criminal proceeding." The People have indicated that Order D-2 was distributed to the state and local agencies working on this case.
4. On July 25, 2012, this Court granted Defendant's Motion for Immediate Protective Order [D-008]. This order required any member of law enforcement (including the prosecution and all agents and employees), who has access to evidence seized in connection with this case, to refrain from opening or viewing the material in the package. The order stated that law enforcement should immediately seal the package and turn it over to the Court.
5. On July 25, 2012, this Court granted Defendant's Motion for Immediate Production and Protection of Privileged Material [D-009] thereby ordering the immediate production and sealing of the contents of the package obtained by law enforcement on July 23, 2012.

6. On July 25, 2012, this Court granted Defendant's Motion for Compliance with Order Limiting Pre-Trial Publicity [D-010] and directed the prosecution to serve all law enforcement officers with this Court's Order.

7. It appears that on July 25, 2012, Jana Winter of Fox News first published an online article that disclosed details about the contents of the package. The article stated that the package contained a notebook "full of details about how he was going to kill people" and "drawings and illustrations of the massacre." The article cites two unnamed "law enforcement source[s]."

8. On December 10, 2012, this Court held a hearing on 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]. At that hearing, Defendant filed Exhibits 1 through 6 consisting of affidavits from University of Colorado police officers and lay witnesses who had some contact with the package containing the materials referenced in Defendant's motions D-8, D-9, D-10, and D-17. According to these affidavits, none of these witnesses had any knowledge of the contents of the notebook nor did they discuss the package with the media.

9. This Court also heard testimony under oath from several law enforcement witnesses. Some of these witnesses either partially viewed the contents of the notebook inside the package that Defendant sent to his psychiatrist or heard conversations about those contents. However, at the hearing, every witness testified that he or she did not provide any information regarding the contents of the notebook to any media personnel and that he or she did not have any information regarding who did provide such information to media personnel.

10. 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, nor any other documentation, that could provide the names of the law enforcement agents who may have provided information to Jana Winter.

11. Based on the above information as well as the contents of Defendant's Motion for a Certificate to Compel Attendance of Jana Winter, an Out of State Witness From New York, this Court finds that defense counsel has used all available means to determine which law enforcement agent may have violated this Court's Order. As none of these efforts have revealed the source of the information in Jana Winter's article, Jana Winter has become a material and necessary witness in this case.

12. The potential violation of this Court's orders is a serious issue. The information about the package contents has received significant public attention that has implicated Defendant's constitutional rights to a fair trial, to a fair and impartial jury, and to due process as protected by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article II, sections 16, 18, 23 & 25 of the Colorado Constitution. See *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Estes v. Texas*, 381 U.S. 532 (1965); *People v. Botham*, 629 P.2d 589 (Colo. 1981) *overruled on other grounds by People v. Garner*, 806 P.2d 366, 370 (Colo. 1991).

13. Additionally, in her article, Jana Winter asserted that "two unnamed law enforcement sources" divulged the aforementioned information to her. If this statement is accurate, then due to the fact that all who had access to the package denied under oath that they spoke to her or knew anyone who spoke to her, perjury in the first degree may be implicated under C.R.S. § 18-8-502. Under Colorado law, this is a class four felony. If her assertion is inaccurate, then substantial resources will have been unnecessarily expended pursuing this issue.

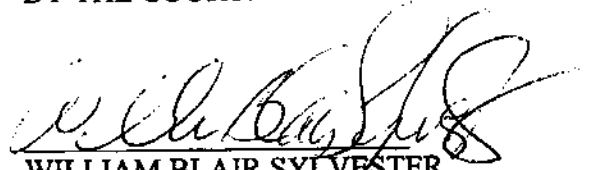
14. Based on the contents of Defendant's Motion for a Certificate to Compel Attendance of Jana Winter, an Out of State Witness From New York, and the Exhibits attached thereto, this Court finds that the defense will satisfy the compensation requirements of C.R.S. §16-9-203(2) and McKinney's CPL §640.10(2) by purchasing and providing Jana Winter with a round-trip airline ticket from New York to Colorado, transportation to and from the airports in New York and Colorado, and room and board in Colorado.

15. Jana Winter will be required to spend 3 days in travel and testimony in this case.

16. Colorado law, specifically Colo. Rev. Stat. § 16-9-203, provides for protection from arrest and service of civil and criminal process in connection with matters which arose before a witness' entry into Colorado when the witness is commanded by a summons issued from a court of record in another state to appear in Colorado.

DATED this 18th day of January, 2013.

BY THE COURT:



WILLIAM BLAIR SYLVESTER
CHIEF JUDGE
18TH JUDICIAL DISTRICT
STATE OF COLORADO

Court Seal:



CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2013, a true and correct copy of the **Certificate of the District Court of Colorado (D-026)** was served upon the following parties of record.

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