

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲ COURT USE ONLY ▲
PEOPLE OF THE STATE OF COLORADO v. JAMES EAGAN HOLMES, Defendant	Case No. 12CR1522 Division: 202
ORDER REGARDING DEFENDANT'S MOTION FOR COURT ORDER REQUIRING THE SEALED SUBMISSION OF DOCUMENTS PURSUANT TO DSDT-5 AND DSDT-6 FOR PURPOSES OF APPELLATE REVIEW (D-227)	

In Order C-133, the Court: (1) granted multiple motions to quash two subpoenas *duces tecum* served by the defendant, DSDT-5 and DSDT-6; and (2) denied the defendant's motion for *in camera* review of any materials produced in response to those subpoenas. Order C-133 at pp. 1-2. Now the defendant asks the Court to "nevertheless order production of the records at issue . . . in a sealed format for the purposes of facilitating appellate review of this issue." Motion at p. 1 (emphasis omitted). The prosecution, the witness whose records are sought, and the two institutions subpoenaed oppose the motion. For the reasons articulated in Order C-133 and in this Order, Motion D-227 is denied without a hearing.

The defendant cites no authority in support of his request, and the Court's research unearthed none.¹ The defendant argues that "[w]ithout an ability to review the records at issue, a reviewing appellate court will be unable to assess for prejudice." *Id.* This argument is flawed because, even if this Court were to order the production of the requested records in a sealed envelope, "[i]n camera review [is] the province of the trial judge and not appellate courts." *People v. Wittrein*, 221 P.3d 1076, 1083 n.5 (Colo. 2009). Thus, contrary to the defendant's contention, "absent exceptional circumstances," an appellate court would not conduct an *in camera* review of the sealed records. *Id.* Instead, "in the event [an appellate court] finds that this court erred in refusing to require production of the documents," Motion at pp. 1-2, the case would "be remanded . . . for an in camera review." *Wittrein*, 221 P.3d at 1083 n.5.

The Court reiterates [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ The cases cited by the defendant, Motion at pp. 1-2, are inapposite. None of them addressed whether a trial court may allow a defendant to subpoena records for appellate review purposes where, as here, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] That the defendant simply desires to have those records in a sealed envelope for review purposes in this case is of little consequence. [REDACTED]

[REDACTED], he has no right to subpoena the records—for any purpose or in any form.

For all the reasons articulated in Order C-133 and in this Order, Motion D-227 fails. Accordingly, it is denied without a hearing.

Dated this 12th day of September of 2014.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Carlos A. Samour, Jr.", written over a horizontal line.

Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2014, a true and correct copy of the **Order Regarding Defendant's Motion for Court Order Requiring the Sealed Submission of Documents Pursuant to DSDT-5 and DSDT-6 for Purposes of Appellate Review (D-227)** was served upon the following parties of record:

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