





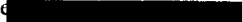
REDACTED

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO Arapahoe County District Court Arapahoe County Justice Center 7325 S. Potomac Street Centennial, Colorado 80112	▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF COLORADO Plaintiff v. James Holmes Defendant	Case Number: 12CR1522 Div.: 202
<i>Attorneys for Non-Party Witness:</i> ¹ Kari M. Hershey, Atty. No. 34246 Carmen N. Decker, Atty. No. 35864 Hershey Decker PLLC 10463 Park Meadows Drive Suite 209 Littleton, Colorado 80124 Phone Number: 303-226-1680 Fax Number: 303-226-1668 E-mail: kari@hersheydecker.com ; carmen@hersheydecker.com	
RESPONSE OF NON-PARTY WITNESS TO DEFENDANT'S MOTION FOR COURT ORDER REQUIRING THE SEALED SUBMISSION OF DOCUMENTS PURSUANT TO D-SDT-5 AND D-SDT-6 FOR PURPOSES OF APPELLATE REVIEW [D-227]  ** SUPPRESSED FILING **	

Non-Party Witness ("Witness"), through counsel, responds in opposition to Defendant's Motion for Court Order Requiring the Sealed Submission of Documents Pursuant to D-SDT-5 and D-SDT-6 for Purposes of Appellate Review [D-227] because 


**FILED UNDER SEAL
REQUEST FOR SUPPRESSION**

 as outlined in Witness's Motion to Quash D-SDT-5 and D-SDT-6, Witness files this Response as Suppressed and Under Seal and requests that this filing not be made part of the public court file.

¹ Because of the nature of this response, counsel does not identify her client by name, except to identify the client as the Non-Party Witness whose  records are the subject of D-SDT-5 and D-SDT-6.

ARGUMENT

1. [REDACTED] Prohibits the Relief Requested by Defendant

Witness does not wish to waste the Court's time reiterating the arguments filed in Witness's Motion to Quash granted by the Court. Because these same arguments prohibit the relief now sought by Defendant, Witness incorporates the Motion to Quash herein by reference.

[REDACTED]

Defendant does not provide any basis for this Court to deviate from the holdings cited above to allow production of [REDACTED] records for purposes of appellate review.

2. **Records Not Considered by the Trial Court Are Not Necessary for Appellate Review and are Not an Appropriate Part of the Record on Appeal**

Defendant's assertion that records that were not considered by the trial court in rendering its decision are necessary for appellate review is erroneous. It is axiomatic that appellate review is limited to the actual record and documents that were before the trial court in rendering an order.²

² Colorado Appellate Rule 10 defines composition of the record on appeal as follows:

- (1) The final pleadings which frame the issues in the trial court; the findings of fact, conclusions of law and judgment; the judgment entered upon any jury verdict, the jury verdict, and answers by the jury to any special interrogatories; motions for new trial and other post-trial motions, if any, and the trial court's ruling; together with any other documents which by designation of either party or by stipulation are directed to be included shall constitute the record on appeal in all cases.
- (2) The reporter's transcript, or such parts thereof as provided under section (b) of this rule and relevant depositions and exhibits may be made a part of the record.

REDACTED

The role of an appellate court is not as a finder of fact, rather it is to review the record to determine whether the trial court's findings are adequately supported by competent evidence and whether the court applied the correct legal standard to these findings in resolving the issue before it. *See Bovard v. People*, 99 P.3d 585, 589 (Colo. 2004), *see also People v. Hamilton*, 831 P.2d 1326, 1331 (Colo. 1992); *People v. Trujillo*, 784 P.2d 788, 792 (Colo. 1990).

Here, the Court has issued a well-reasoned and thorough Order regarding the factual and legal bases as to why Witness's records are not subject to production, in any manner. The record as to this issue is fully developed and it is both legally impermissible and unnecessary for production of the records for the purpose of appellate review.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Disclosure of the Subject Records as Requested by Defendant [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

REDACTED

CONCLUSION

Defendant's present motion for production of the documents that are the subject of D-SDT-5 and D-SDT-6 for purposes of appellate review fail for the reasons outlined in Witness's Motion to Quash D-SDT-5 and D-SDT-6. [REDACTED]

[REDACTED]

[REDACTED]

WHEREFORE, Witness respectfully requests that Defendant's Motion [D-227] be denied.

Respectfully submitted this 5th day of September, 2014.

/s/ Kari Hershey
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the Court and served on this 5th day of September 2014, to:

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