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DISTRICT COURT
ARAPAHOE COUNTY, COLORADO
Court Address: Arapahoe County Justice Center
7325 S. Potomac St., Centennial, CO 80112

APR 10 2015

CLERK OF THE COMBINED COURTS
ARAPAHOE COUNTY, COLORADO

THE PEOPLE OF THE STATE OF COLORADO vs.
Defendant:

JAMES EAGAN HOLMES

Attorney:
GEORGE H. BRAUCHLER,
18th Judicial District Attorney
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Case Number:
12CR1522
Division/Ctrm:
201

PEOPLE'S RESPONSE TO MEDIA'S MOTION C-193 FOR MID-TRIAL ACCESS (TO MAKE COPIES) OF ALL NON-GRAPHIC IMAGES EXHIBITS ADMITTED INTO EVIDENCE AND PUBLISHED TO THE JURY DURING THE TRIAL

This response is filed by the District Attorney for the 18th Judicial District.

RESPONSE

1. The Media has filed a motion for MID-TRIAL ACCESS (TO MAKE COPIES) OF ALL NON-GRAPHIC IMAGES EXHIBITS ADMITTED INTO EVIDENCE AND PUBLISHED TO THE JURY DURING THE TRIAL ("Media Motion").
2. The People object to the Media Motion and request the Court deny the motion in its entirety. The grounds for this objection are set forth below.
3. In Motion P-118 and P-118b, the People requested that the Court limit the public viewing of Graphic Images, based in part on the desire of the families of the homicide victims. The People read the Media Motion as not including a request for access to the Graphic Images referenced in P-118 and P-118b. P-118 and P-118b did not include a request to limit public display of images relating to injuries to surviving victim. Even so, that issue was not outside of the People's consideration, and prior to filing P-118, the People had contacted all of the surviving victims regarding their feelings on display of photographs showing their injuries, and none objected to such photographs being displayed in open court. However, the release of high-resolution images to the media is a different issue, and the majority of the injured Victims object to any photographs of their injuries being released to the media during the trial. While

the media can capture images from the camera feed that the Court has allowed, such images would at a much lower level of resolution than the high-resolution photographs that the media is requesting access to. Many of the images of the injured victims include images of sensitive body parts that the victims prefer not be disseminated to the public. Those victims also did not object to their 911 calls (with their voices) being played in Court, but they object to the release of those recordings to the media prior to the conclusion of the trial. The People object to the media having any additional access to any images outside of what is displayed in Court, but if the Court is inclined to grant their request, the People would request that any photographs of injured and homicide victims, and the 911 call recordings of victims and survivors, be excluded.

4. Regarding the request to photograph items of *physical* evidence, the People object because such a procedure has the potential to negatively impact the integrity of the admitted exhibits. The physical exhibits will be admitted into evidence in open court, in full view of the camera footage which the Court has allowed. Allowing persons other than court staff and the parties to have close physical access to physical exhibits could lead to many potential issues, some of which are obvious and some of which are not. Although stated in another context involving statutes of limitation, the wisdom expressed in *Mader v. United States*, 654 F.3d 794, 814 (8th Cir. 2011) is especially apropos: Courts and parties allowing the media and the public to have close physical proximity to physical exhibits “have only themselves to blame when Murphy's Law comes knocking.” The People do not believe that the media would intentionally alter or damage any of the evidence that may be admitted in this case, but it is inevitable that even with the best of precautions in place, a piece of evidence could unintentionally and accidentally get misplaced or damaged, prior to the jury having an opportunity to review the evidence during deliberations.

5. Regarding the request to be provided copies with admitted photographs on a daily basis, the People object to the media being allowed to handle and copy any physical photographs admitted as exhibits, for the same reason that they object to allowing media members to have close physical access to admitted physical exhibits.

6. The Media Motion requests special access to admitted evidence during trial and cites to Colorado's Criminal Justice Records Act C.R.S. §24-72-301, *et. seq.* The request by the media is outside of scope of normal trial practice in Colorado, where the media and other spectators are able to view and observe evidence from the gallery.

7. Nothing in the Criminal Justice Records Act states that the public or the media has the right to copy or handle admitted evidence, especially, physical evidence while a trial is ongoing.

8. Many of the photographs and physical exhibits will be referred to and used by multiple witnesses during the trial. Physical exhibits have been packaged in a way to contain biohazards and protect the integrity of the evidence. Many of the items are heavy and awkward to handle. Allowing them to be handled by the media during the trial increases the risk of damage or loss

to evidence that may be needed for future witnesses and must be available to jurors during their deliberation.

9. The Media Motion cites the commentary to the 1992 version of the Fair Trial Free Press Standards stating ... "The point is for the public, not just those attending a proceeding, to be able to gain information relevant to an assessment of the judicial authority." Given that the trial will be televised, the events occurring in court will be immediately available for assessment by the public and the exhibits will be accessible to members of the public who are not in attendance, thus eliminating the need to obtain copies and photographs of exhibits.

10. The Media Motion references the procedures in several United States District Court trials such as the recent trial of Dzhokhar Tsarnaev in Boston. The People would note that Federal court rules prohibit televising trials and a trial occurring in the United States District Court is not similarly situated to this one. Fed. R. Crim. P. 53.

11. The People do not believe that it is necessary or advisable to take any chances of loss or damage to the evidence in this case and that there are sufficient measures in place by virtue of televising the trial to allow the public to have contemporaneous access to the exhibits presented at trial.

12. Regarding the Media's request that the court consider providing digital copies of admitted photographs and videos, the People believe that this is unnecessary. The People intend to publish all of their admitted photographs and videos (except for the Graphic Images) on the courtroom monitors, which are visible on the Court's camera feed. The resulting images, which can be captured as still images and cropped, will be more than adequate for the media to cover the trial and inform the public of the goings-on in the courtroom. Upon information and belief, court staff will be extremely busy during the trial, and the People see no reason why Court staff should have to devote their time to additional duties such as providing the media *better* copies of photographs and videos for which they have already been provided access.

13. This Court has consistently recognized that the laws of Colorado acknowledge the unique and vital interests of crime victims in the criminal justice system and give to crime victims judicially recognizable rights in the justice system. The rights given are status rights that are automatically afforded to persons when they step into the legal role of "victim," and are independent of the facts of the alleged crime and independent of any motion asserted by the media. *See* Colo. Const., Art. II §16(a); Colo. Rev. Stat. § 24-4.1-301-304. The victims in this case are victims of crimes enumerated in Colorado's Victims' Rights Act (VRA): "Victim means any natural person against whom any crime has been perpetrated or attempted ... or, if such person is deceased ... the person's spouse, parent, child, sibling, grandparent, grandchild, significant other, or other lawful representative." *See* Colo. Rev. Stat. § 24-4.1-302(5). As a result, the victims in this case are afforded all of the rights in Colorado's VRA, the implementing legislation for Colorado Constitutional Amendment for victims of crime: Any person who is a victim of a criminal act, . . . or surviving immediate family members if such

person is deceased, shall have the right to be heard when relevant, informed, and present at all critical stages of the criminal justice process. All terminology, including the term 'critical stages', shall be defined by the General Assembly." Colo. Const. art. II, § 16a. Pursuant to the Colorado Victims' Rights Act, the victims also have the right to "be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process." C.R.S. § 24-4.1-302.5 (1)(a).

14. Even if the court were willing to utilize court staff to provide *better* copies, out of fairness, dignity, and respect for the attempted murder victims and homicide-family member victims in this case, there are certain images that the People particularly object to, specifically images showing any of the injured and surviving victims and any of the graphic images excluded from the media's request. The People asked the victims for their input, and sixty-two (62) victims responded. Fifty-one (51) of the victims object to the release of photographs of injured victims and object to the release of 911 recordings of victims and survivors; eight (8) victims do not object to the release of photographs and recordings; and three (3) victims took no position on the media's request.

15. Some of the victims expressed the following concerns:

"I feel like the media has already has enough access to information through the video feed of the trial and additional photos and copies of evidence is unnecessary. The evidence that will be shown does not need to be reprinted in the newspaper but can be referenced through their access to the video feed of the trial. This is one way that the media coverage can be respectful to the victims, victims' families, and the impacted community."

"I strongly do not want the media to have access to the images of my injuries."

"We absolutely DO NOT want the media to have photos of our injuries. I think they have been given more than enough access for this trial. Please do not let this happen."

"We do not feel the media needs access to individual photos of our injured daughter used as exhibits in the trial. This is very personal to us and exposure in the courtroom is sufficient."

"Please NO!! NO NO NO.....NO."

"My input is that the media should not get access to those material and audios."

"The integrity of the trial needs to be protected. If the media ever has to be given access to any of this, it should not be until the trial is over."

"I request that the 'Press' not be permitted to photograph any evidence...it would only cause pain and sadness to my family to see, if and when the said photographs, were to be on any of the news programs. Our family does not need any more pain."

"The trial is going to be televised so the public has access to see almost everything already. I do not understand the need of the press to copy these documents and see a risk for compromising the integrity of the documents. I do not want to see this happen especially for people who already have lost so much including any right for privacy during a very difficult time."

"The media has a poor record of reporting sensational news. I would like to withhold graphic, audio, physical evidence, and video tapes in order to limit coverage to just words heard at the trial to describe the events."

"I personally feel that the media should not be able to make copies of exhibits, documents or other information. The press has been granted access to attend the trial and they can do their due diligence of reporting the proceedings to the public without being privy to the evidence. I believe it would be a violation of the victims' rights and the prosecution needs to fight to protect the victims and the evidence to proceed with a fair trial."

"This seems like a pretty standard request. The media can't very well report without something to show, unless they want to confine themselves to radio. And there can't be any question that this is anything but a very high-profile case, the sort everyone is going to want to be kept up to date on. It's more respectful to the victims that the facts be known, than that they be held out of sight."

"This could be hurtful to the victims and their families. I absolutely do not want photos to be released to the media. That is extremely disrespectful towards the victims and those that love them. Certainly the media can report on this case without using these photos. It sounds like sensationalism. More importantly I do not want the evidence compromised. This is the purpose and responsibility of this court; to protect the evidence."

"I am resigned to the fact that there is going to be a 'LIVE' real time feed going out to the Press Pool during this trial. However, it is imperative that the restrictions placed on the nature of this live feed not be circumvented by providing copies of exhibits to the Press Pool. This live feed should remain as 'what you see is what you get.' It is also critical we remain focused on the trial and not expend time and resources feeding the insatiable appetite of the Press Pool for more."

16. The motion should be denied.

George H. Brauchler, District Attorney

By 
Deputy District Attorney
Registration No. 35892

CERTIFICATE OF MAILING

I hereby certify that I have deposited a true and correct copy of the foregoing in the Public Defender's Mailbox located at 6450 S. Revere Pkwy. Centennial, CO 80111, addressed to:

TAMARA BRADY, ESQ.
DANIEL KING, ESQ.
KRISTEN NELSON, ESQ.
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REBEKKA HIGGS, ESQ.
OFFICE OF THE PUBLIC DEFENDER

Dated: 8/10/15

By 

DISTRICT COURT
ARAPAHOE COUNTY, COLORADO
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THE PEOPLE OF THE STATE OF COLORADO vs.
Defendant:
JAMES EAGAN HOLMES

COURT USE ONLY

Case Number:
12CR1522
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201

COURT ORDER RE: MEDIA MOTION C-193

THE COURT, being fully advised, and being duly apprised of the relevant facts and law,
hereby DENIES Media motion C-193.

Dated this _____ day of _____, 2015

BY THE COURT

District Court Chief Judge Carlos A. Samour, Jr.