

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: 26
ORDER SETTING DEADLINE FOR SUPPLEMENTAL BRIEFS REGARDING JANA WINTER'S MOTION TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER (C-26B)	

The defendant is charged with shooting, and killing or injuring, numerous people inside an Aurora movie theatre during the early morning hours of July 20, 2012. On October 2, he filed a motion for sanctions, arguing that law enforcement agents violated the Court's July 23 pretrial publicity Order by leaking information to Jana Winter, an investigative journalist employed by FoxNews.com in New York, about the contents of a notebook seized at the University of Colorado's Anschutz Medical Campus. In connection with his motion, the defendant served a subpoenaed *duces tecum* and *ad testificandum* on Winter. Winter moved for a protective order and to quash the subpoena ("motion to quash"), based on the newsperson's privilege in Colorado, § 13-90-119, C.R.S. (2012).

The Court heard oral argument on both motions on April 1, 2013. The defendant explained that he was seeking to compel Winter to disclose the names of the law enforcement officers who leaked the information to her. He contended that the newsperson's privilege should be pierced because the identity of those confidential sources was relevant to "substantial issues" in the case, including the credibility at trial of one or more of the law enforcement witnesses who admitted under oath on December 10 to have acquired knowledge of the contents of the notebook, but who denied ever sharing that information with Winter. As relevant here, Winter countered that the matter was prematurely before the Court and not ripe for ruling. According to Winter, whether the credibility of any of the witnesses who testified on December 10 was a "substantial issue" in the case hinged on the admissibility of the contents of the notebook, and the Court had not yet determined whether those contents were protected by the physician-patient privilege or the psychotherapist-patient privilege.

A week after oral argument, the Court issued an Order deferring ruling on the merits of the motions until: (1) the defendant decided whether he would tender a not guilty by reason of insanity plea, since such a plea would place his mental condition at issue; and (2) the Court determined whether the contents of the notebook were protected by the physician-patient privilege or the psychotherapist-patient privilege. At a subsequent hearing held on April 10, the Court continued

Winter's subpoena and the hearing on the motions for sanctions and to quash until August 19, 2013. The Court also indicated that supplemental briefing on the motion to quash may be appropriate at some point.

Earlier this week, on June 4, 2013, the Court accepted the defendant's plea of not guilty by reason of insanity. In addition, the Court concluded that, to the extent the contents of the notebook were protected by one of the aforementioned privileges, those privileges have been waived as a result of the defendant's plea. *See* § 16-8-103.6 (2)(a), C.R.S. (2012).

Now that the Court has accepted the defendant's plea of not guilty by reason of insanity and has ruled that any privileges related to the notebook have been waived, it is appropriate to allow the parties and Winter an opportunity to file supplemental briefs on the "substantial issue" contention related to the motion to quash. If the parties and Winter wish to file supplemental briefs on the significance of the contents of the notebook and the credibility of any of the witnesses who testified on December 10, they must do so by no later than July 12, 2013. Any supplemental brief submitted should not exceed ten pages in length.

Dated this 7th day of June of 2013.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2013, a true and correct copy of **Order setting deadline for supplemental briefs regarding Jana Winter's motion to quash subpoena and for protective order (C-26B)** was served upon the following parties of record:

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