

FILED IN THE
COUNTY OF
ARAPAHOE COUNTY, COLO.
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March 26, 2013

BY EMAIL AND FEDERAL EXPRESS

The Honorable William Blair Sylvester
18th Judicial District Chief Judge
7325 South Potomac Street
Centennial, Colorado 80112

**Re: Case No. 12CR1522 (District Court, Arapahoe County, Colorado),
*People v. James Holmes***

Dear Judge Sylvester:

As the Court knows, this firm represents journalist Jana Winter. Earlier today, we received defendant James Holmes' submission in response to my March 19, 2013 letter (the "Letter"). We are writing to reiterate our request for an adjournment Ms. Winter's appearance scheduled for April 1, 2013.

We disagree with the inaccurate characterization Holmes' attorneys make of the proceedings that took place in New York before Justice Freedman. Holmes' submission does not dispute the fundamental point in my Letter: Winter is prosecuting an appeal in New York, and moving forward in Colorado at this time will eviscerate Winter's right to pursue that appeal. Going forward at this time will also cause this Court to expend its limited judicial resources considering Winter's rights under the First Amendment and the applicable reporters' shield law(s) – an expenditure of effort which will might be avoided if Winter's appeal in New York is successful. See *Gordon v. Boyles*, 9 P.3d 1106 (Colo. 2000) (before ordering testimony the court must make findings supporting a determination of the following elements: (a) that the news information is directly relevant to a substantial issue involved in the proceeding; (b) that the news information cannot be obtained by any other reasonable means; (c) and that a strong interest of the party seeking to subpoena the newsperson outweighs the interests under the first amendment to the United States constitution of such newsperson in not responding to a subpoena and of the general public in receiving news information).

The proceedings in New York are moving forward with all due haste. As mentioned in my Letter, Winter has filed a motion to stay in the Appellate Division, and Justice Freedman has ordered that Winter's motion to stay will be heard on an expedited basis. Since then, Holmes has consented to Winter's request for an expedited briefing schedule that, if granted, will permit her appeal to be heard during the June term of the Appellate Division, First Department, which is the next available hearing date. A copy of a stipulation indicating that consent is enclosed.

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The Hon. William Blair Sylvester

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For these reasons, we respectfully renew our request that Your Honor adjourn Winter's appearance in Colorado until after her appeal can be heard. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael C. Theis", written in a cursive style.

Michael C. Theis

Encl.

cc: George H. Brauchler, 18th Judicial District Attorney (by e-mail and Federal Express)
Douglas K. Wilson, Colorado State Public Defender (by e-mail and Federal Express)

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT**

)
IN RE JANA WINTER) New York County
) Case No. 30037/13
)
)
)

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between appellant Jana Winter (“Appellant” or “Winter”), on the one hand, and respondent James Holmes (“Respondent” or “Holmes”), on the other hand, by and through their undersigned attorneys, that:

1. The parties submit this Stipulation and Order in support of Appellant’s Motion for Preference and an Expedited Hearing, which is filed concurrently herewith;

2. This appeal concerns Holmes’ efforts to subpoena Winter, a journalist, to testify as an out-of-state witness at criminal proceedings currently pending in the District Court in Arapahoe County, Colorado (the “Colorado Court”) (the “Criminal Proceedings”);

3. On March 7, 2013, Justice Larry Stephen of the Supreme Court of the State of New York, New York County, Criminal Term orally granted Holmes’ request to issue a subpoena compelling testimony from Winter pursuant to Section

640.10 New York Criminal Procedure Law and then executed a subpoena (the "Subpoena") calling for Winter to testify before the Colorado Court, on April 1, 2013;

4. After obtaining Justice Stephen's written order and decision memorializing his oral ruling (together, the "Order") and serving notices of entry of the same, Appellant filed a Notice of Appeal and Pre-Argument Statement on March 18, 2013;

5. On March 19, 2013, Appellant filed an Application for Interim Relief with the Supreme Court of the State of New York, Appellate Division, First Department, which was heard and denied on that same day by Justice Helen E. Freedman;

6. Also on March 19, 2013, Appellant filed a motion to stay enforcement of the Order and the Subpoena pending resolution of the appeal (the "Motion to Stay");

7. Pursuant to the March 19, 2013 order of Justice Freedman, the Motion to Stay is to be heard on an expedited basis;

8. By agreement of the parties, the Motion to Stay is currently due to be fully submitted by April 5, 2013;

9. To avoid any potential to delay the Criminal Proceedings, the parties respectfully request that the appeal be given preference and heard on an expedited

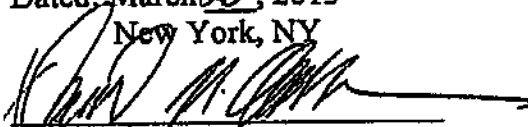
basis, such that it may be heard by this Court during its June 2013 term;

10. To that end, the parties respectfully request that this Court endorse and order the following schedule for the appeal:

- a. Appellant shall serve and file her opening brief on appeal on or before April 9, 2013;
- b. Respondent shall serve and file his brief in opposition on or before May 9, 2013;
- c. Appellant shall serve and file her reply brief on or before May 16, 2013; and
- d. The appeal shall be heard during the June 2013 term of this Court;

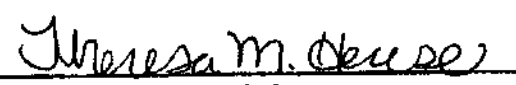
11. A facsimile copy or .PDF image of the signature page of this stipulation is deemed as an original for all purposes.

Dated: March 20, 2013
New York, NY


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Attorneys for Respondent James Holmes

Dated: March 20, 2013
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Attorneys for Appellant Jana Winter

SO ORDERED:

J.S.C.

Dated: New York, New York
 _____, 2013