

District Court, Boulder County, Colorado Court Address: 1776 6 th Avenue Boulder, CO 80306	
THE PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant.	DATE FILED: April 26, 2024 4:00 PM σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender Kathryn Herold #40075 Supervising Deputy State Public Defender Samuel Dunn #46901 Deputy State Public Defender Boulder Regional Public Defenders 2555 55TH Street D-200, Boulder, CO 80301 Phone: (303) 444-2322 Fax: (303) 449-6432 E-mail: boulder.defenders@state.co.us	Case No. 21CR497 Division 13
MR. ALISSA'S MOTION TO CHANGE VENUE (D-051)	

AHMAD ALISSA, through counsel, moves for a change of venue of his trial because a fair trial cannot take place in Boulder County due to the massive, pervasive and prejudicial publicity. In support of this motion, Mr. Alissa states the following:

THIS MOTION IS RIPE AND TIMELY

1. Colo. R. Crim. P. 21(1)(1) gives the Court discretion to change venue when it determines that a fair or expeditious trial cannot take place in the county or district in which the trial is pending.
2. A motion for change of venue may be made at or before arraignment or, for good cause shown, for a late filing, at any time before trial. Colo. R. Crim. P. 22.
3. There is good cause for the filing of this motion at this time. First, at arraignment, the Court set a motions filing deadline for thirty-five days prior to the motion hearing. Second, for almost the entirety of this case, Mr. Alissa was incompetent to proceed due to his serious and persistent mental illness. Counsel was unable to communicate with Mr. Alissa in a rationale manner due to his mental illness during that time. Counsel did not believe it was prudent or within Mr. Alissa's due process rights to file substantive motions while he was incompetent to proceed. Mr. Alissa entered a not guilty by reason of insanity plea at his first arraignment. There was a short period of time prior to that arraignment that Mr. Alissa had been deemed competent by the Court. Counsel was not in an effective position to be filing this motion at that time.

AUTHORITY

4. The Sixth Amendment of the United States Constitution guarantees a right to trial “by an impartial jury.” Article II, Section 16 of the Colorado Constitution protects the same right.
5. Section 16-6-101, C.R.S., provides:

The place of trial may be changed:

- (a) When a fair trial cannot take place in the county or district in which the trial is pending; or
- (b) When a more expeditious trial may be had by a change in the place of trial from one county to another; or
- (c) When the parties stipulate to a change in the place of trial to another county in the same judicial district or to a county in an adjoining judicial district.

6. Colo. R. Crim. P. 21(a) provides:

The place of the trial may be changed when the court in its sound discretion determines that a fair or expeditious trial cannot take place in the county or district in which the trial is pending.

7. When the community is sufficiently impacted by adverse publicity or by the effects of the events at issue, or both, there arises a presumption of prejudice such that voir dire cannot perform the usual function of securing a fair and impartial jury. See *Sheppard v. Maxwell*, 384 U.S. 333, 362-63 (1966); *Estes v. Texas*, 381 U.S. 532, 550-51 (1965); *Irvin v. Dowd*, 366 U.S. 717, 725-28 (1961). Even indications of impartiality on the part of potential jurors may be disregarded in cases “where the general atmosphere in the community . . . is sufficiently inflammatory.” *Murphy v. Florida*, 421 U.S. 794, 802 (1975). In *Sheppard v. Maxwell*, the Court elaborated on this right:

Due process requires that the accused receive a fair trial by an impartial jury free from outside influences [T]rial courts must take strong measures to ensure that the balance is never weighed against the accused [W]here there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates **or transfer it to another county not so permeated with publicity.** (emphasis added)

384 U.S. at 362-63. The Court has also emphasized the importance of making the determination at the trial level, due to the trial court’s unique evaluation and perception of the community atmosphere. *Mu’Min v. Virginia*, 500 U.S. 415, 427 (1991).

8. In order to obtain change of venue, a defendant must establish one of two circumstances:
 - a. that pretrial publicity is so massive, pervasive, and prejudicial as to create a presumption that the defendant will be denied a fair trial ; or

- b. that any publicity will create actual prejudice and hostility in the jury panel.

People v. Hankins, 2014 WL 2525838 (Colo. App. 2014)

- 9. A trial court should review the following factors in determining whether pretrial publicity has been so massive, pervasive, and prejudicial as to create a presumption of public bias:
 - a. the size and type of the locale
 - b. the reputation of the victim
 - c. the revealed sources of the news stories
 - d. the specificity of the accounts of certain facts
 - e. the volume and intensity of the coverage
 - f. the extent of comment by the news reports on the facts of the case
 - g. the manner of presentation
 - h. the proximity to the time of trial
 - i. the publication of highly incriminating facts not admissible at trial.

People v. McCrary, 190 Colo. 538, 545, 549 P.2d 1320, 1326 (1976); *People v. Hankins*, 2014 WL 2525838 (Colo. App. 2014). Reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. *Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966). Regarding the size of the locale, while a strict upper limit has not been set, the Supreme Court has described a city in excess of 600,000 persons as alleviating concerns of community prejudice. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1044 (1991); *see also Skilling v. United States*, 561 U.S. 358, 382 (2010).

- 10. An affidavit is attached setting forth the facts upon which Mr. Alissa relies in support of this motion.
- 11. Mr. Alissa requests a hearing on this motion.
- 12. Mr. Alissa makes these arguments and motions, and all motions and objections in this case, whether or not expressly stated at the time of the motion or objection, under the Due Process, Trial by Jury, Right to Counsel, Confrontation, Compulsory Process, Equal Protection Cruel and Unusual Punishment and Privilege Against Self Incrimination Clauses of the federal and Colorado Constitutions, and the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution, and Art. II, §§ 3,6,7,8,16,18,20,23 and 25 of Colorado's Constitution.

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER



Kathryn Herold #40075
Supervising Deputy State Public Defender

Certificate of Service

I hereby certify that on ___April
26_____, 2024, I served the foregoing



Samuel Dunn #46901
Deputy State Public Defender

document through Colorado E filing to all
opposing counsel of record.

 KH

Dated: April 25, 2024

