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| DISTRICT COURT BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302 | DATE FILED: October 26, 2023 1:27 PM |
| PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant | COURT USE ONLY |
| Michael T. Dougherty, District Attorney Adam Kendall, Chief Trial Deputy District Attorney 1777 Sixth Street Boulder, CO 80302 Phone Number: (303)441-3700 FAX Number: (303)441-4703 E-mail: akendall@bouldercounty.org Atty. Reg. #38905 | Case No. 21CR497 Div:13 |
| Motion to Unseal Warrants and Production of Records and to Limit Public Access (P-017) | |

During the pendency of this case, law enforcement officers have submitted numerous search warrants and production of records requests (collectively, “Warrants and Requests”) for review and approval by this Court. Due to the nature of the case, nearly all (if not all) of the Warrants and Requests have been provided to the Court and approved while under seal. As Defendant has been found competent by this Court, law enforcement’s investigation is largely complete, and the case is now proceeding forward, the People hereby request that the Court unseal all Warrants and Requests associated with this matter.

However, as this Court is aware, there has been a large media interest in the case since its filing. The People are concerned that to the degree the Warrants and Requests are made available to the public, there is a risk that the media or members of the public would seek to further investigate the details included in the Warrants and Requests and interview some, or many, of the witnesses noted in the Warrants and Requests, and publish previously unknown details of the case publicly. The publication of this information could potentially taint the jury pool in this case. Ahmad Al Aliwi

Alissa (the “Defendant”) maintains his right to a fair trial and impartial jury in this matter. Thus, this Court should make the Warrants and Requests inaccessible to the public until the jury trial in this case is held and completed.

Authority and Argument

Colo. R. Crim. P. 55.1(a) states that “[c]ourt records in criminal cases are presumed to be accessible to the public” and the Court can “deny the public access to . . . any part of a court record only in compliance with this rule.” Rule 55.1 details, with specificity, the proper considerations and processes to be used by the Court when limiting or denying public access to certain Court records. “A party may file a motion requesting that the court limit public access to a court record previously filed (including one not yet made accessible to the public) or to any part of such a court record by making it inaccessible to the public.” Colo. R. Crim. P. 55.1(a)(2). The Court shall only grant such a request by entering an order that “specifically identifies one or more substantial interests served by making the court record inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public; finds that no less restrictive means than making the record inaccessible to the public or allowing only a redacted copy of it to be accessible to the public exists to achieve or protect any substantial interests identified; and concludes that any substantial interests identified override the presumptive public access to the court record or to an unredacted copy of it.” Colo. R. Crim. P. 55.1(a)(6)(I - III) (subparagraph numbers omitted).

The release of criminal justice records is governed by the Colorado Criminal Justice Records Act (“CCJRA”). *See* C.R.S. § 24-72-301, et. seq. Pursuant to C.R.S. § 24-72-302(4), “‘Criminal justice records’ means all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, that are made, maintained, or kept by

any criminal justice agency in the state for use in the exercise of functions required or authorized by law.”

“While Colorado's two open government laws, CORA and the CCJRA, generally favor broad disclosure of records, [the Colorado Supreme Court has] construed the CCJRA to favor somewhat less broad disclosure.” *Freedom Colorado Info., Inc. v. El Paso Cty. Sheriff's Dep't*, 196 P.3d 892, 899 (Colo. 2008). The Court, a criminal justice agency, may deny a request to inspect Criminal Justice Records if such inspection would be contrary to the public interest. C.R.S. § 24-72-305(5).

In engaging in the required balancing test, a criminal justice agency “must consider the pertinent factors, which include: the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request.” *Freedom Colorado Info., Inc.*, 196 P.3d at 899.

As already noted, of greatest concern, release of the Warrants and Requests could impact the Defendant’s right to a fair trial – potentially resulting in the publication of detailed information regarding the events at issue in this case in the public forum well before Defendant’s trial is held. “The [D]ue [P]rocess [C]lauses of the United States and Colorado [C]onstitutions guarantee every criminal defendant the right to a fair trial.” *Morrison v. People*, 19 P.3d 668, 672 (Colo. 2000). “Encompassed in the right to a fair trial is the right to an impartial jury.” *Howard-Walker v. People*, 443 P.3d 1007, 1011 (Colo. 2019). The media has already interviewed and published certain witness accounts of the crimes at issue in this case. The release of the Warrants and Requests at this stage of the case could result in further publication of detailed information in the media and lead to more pre-trial information being consumed by potential jurors.

Further, while largely complete, the investigation into the crimes committed by Defendant remains ongoing. Law enforcement continues to interview witnesses and follow-up on leads. Additionally, witnesses will testify at Defendant's trial. Witness accounts of what occurred in this case could be tainted by the mass publication of previously unknown detailed information relating to the case.

Finally, the events underlying the charges in this case have traumatized the victims in this case and their families. The community continues to come to terms with what occurred on the date of offense. The release of the Warrants and Requests could potentially retraumatize those impacted by this case well before a trial is held in this matter. Considering the nature of the evidence contained in the Warrants and Requests, the release of a redacted version of the Warrants and Requests will not resolve the issues raised in this motion.

The People fully anticipate the information contained in the Warrants and Requests becoming available to the public in the future as the People are likely to introduce evidence related to the Warrants and Requests at Defendant's trial. Thus, the public will learn of the evidence that supports the case against Defendant through testimony.

WHEREFORE, the People request that Court unseal all Warrants and Requests related to this matter, but because Defendant's right to a fair trial and an impartial jury in this matter is paramount, this Court should issue an order in accord with Rule 55.1(a)(6) and ultimately determine that the Warrants and Requests should remain inaccessible to the public until the jury trial in this case is held and the prosecution of Defendant is completed.

Respectfully submitted,

MICHAEL T. DOUGHERTY
DISTRICT ATTORNEY

By:
s/Adam D. Kendall
Adam D. Kendall
October 26, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing served via the Colorado e-filing system on October 26, 2023, and addressed as follows:

Kathryn Herold
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s/Adam D. Kendall
Adam D. Kendall