

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	DATE FILED: May 24, 2024 4:39 PM
<b>PEOPLE OF THE STATE OF COLORADO</b> v.  <b>AHMAD AL ALIWI ALISSA</b> Defendant	▲ <b>COURT USE ONLY</b> ▲
Michael T. Dougherty, District Attorney Ken Kupfner, Assistant District Attorney 1777 Sixth Street Boulder, CO 80302  Phone Number: (303)441-3700 FAX Number: (303)441-4703 E-mail: kkupfner@bouldercounty.org Atty. Reg. #29924	Case No. 21CR497  Div.: 13
<b>Response to [Defendant's] Motion to Sequester the Jury (D-047)</b>	

Ahmad Al Aliwi Alissa (the “Defendant”), through [Defendant’s] Motion to Sequester the Jury (D-047) (the “Motion”), moves for sequestration of the jury based on pretrial publicity and anticipated media coverage of the trial. Sequestration of a jury is left to the discretion of the Court. Here, the Motion should be denied.

Prior to January 1, 1984 sequestration of the jury was required in capital cases. Case law established a “capital case” as any case involving the charge of murder in the first degree. A defendant could waive sequestration of the jury under the old rule. Prior to January 1, 1984 Crim.P. 24(f) provided:

In noncapital cases jurors may be permitted to separate during all trial recesses after cautionary instructions by the court as to their conduct. After the case has been submitted to the jury for deliberation, and they have not been able to arrive at a verdict at a reasonable evening hour, they may be permitted to return to their homes to resume deliberations the next day at an hour appointed by the court. Continuous custody of the jury by the bailiff in noncapital cases shall only be upon express order of the court for good cause. In capital cases, however, jurors shall remain in the bailiff’s custody during all recesses from the time the jury is

selected until discharged by the court.

Crim.P. 24(f) was amended effective January 1, 1984 and now states:

Crim.P. 24 (f) Custody of Jury.

- (1) In all cases, in the court's discretion, jurors may be sequestered or permitted to separate during all trial recesses, both before and after the case has been submitted to the jury for deliberation. Cautionary instructions as to their conduct during all recesses shall be give to the jurors by the court.
- (2) The jurors shall be in the custody of the bailiff whenever they are deliberating and at any other time as ordered by the court.
- (3) If the jurors are permitted to separate during any recess of the court, the court shall order them to return at a day and hour appointed by the court for the purpose of continuing the trial, or for resuming their deliberations if the case has been submitted to the jury.

Defendant cites *People v. Vilapando*, 809 P.2d 1082 (Colo.App.1990) for the proposition that “[s]equestration is the only way of ensuring that the jurors will not be affected by media or other improper outside influences, that their judgments and verdicts are solely their own, and that they can remain safe.” It is true that the trial court in *Vilapando* refused to sequester the jury despite requests from the prosecution and the defense to do so. However, the real issue was the trial court’s choice to deny the defendant's requests for an admonitory instruction conforming with COLJI–Crim. No. 1:04 prior to recesses during the approximate four weeks of trial. The trial court advised the jurors only one time, prior to the first recess and, “the single instruction given by the court directed the jurors not to read, listen to, or view any publicity on the case, and not to discuss the case with anyone. However, despite defense counsel's requests and contrary to the mandate of COLJI–Crim. No. 1:04 (1983), the jurors were at no time instructed to report to the court if they inadvertently overheard a discussion of the case.” *Id.* at 1083. No additional instructions pertaining to media and outside influence were given during the remainder of the trial.

The sequestration of a jury is an extraordinary and unnecessary step. Rather than removing

jurors from their friends and families for a month, the People would request the Court be diligent in reading the proper admonition prior to every recess in the trial, including instructing the jurors if they inadvertently are exposed to discussions or material about the case to disclose it to the Court immediately. *See* COLJI-Crim C:12.

In the event the Court wishes to take further precautions to assure no outside influences on the jurors during the trial, the Court could implement a daily inquiry to determine if any juror has been exposed to outside information about the case. However, this step is likely unnecessary as well. The presumption is jurors will follow the instructions from the Court. If the Court is diligent in providing the proper instruction, the People believe the jury can be protected from outside influence without the extraordinary hardship of sequestration.

Respectfully submitted,

MICHAEL T. DOUGHERTY  
District Attorney

By: /s/ Kenneth E. Kupfner  
Kenneth E. Kupfner  
Assistant District Attorney  
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CERTIFICATE OF SERVICE  
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I hereby certify that a true and correct copy of the above and foregoing served via the Colorado e-filing system/hand-delivered on May 24, 2024, and addressed as follows:

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*s/Adam D. Kendall*  
Adam D. Kendall