

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 SIXTH STREET P.O. BOX 4249, BOULDER, CO, 80306-4249	DATE FILED: July 12, 2024 11:51 AM
THE PEOPLE OF THE STATE OF COLORADO v. Defendant(s) AHMAD AL ALIWI ALISSA	<p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2021CR497 Division: 13 Courtroom:
Order:Mr. Alissa's Motion to Suppress Statements - Hospital (D-059)	

The motion/proposed order attached hereto: NO ACTION TAKEN.

DA response due no later than July 26, 2024.

Issue Date: 7/12/2024



INGRID SEFTAR BAKKE
 District Court Judge

District Court, Boulder County, Colorado Court Address: 1776 6 th Avenue Boulder, CO 80306	<p style="text-align: center;">σ COURT USE ONLY σ</p>
THE PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant.	
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 55 TH 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 SUPPRESS STATEMENTS – HOSPITAL (D-059)	

AHMAD ALISSA, by and through counsel, moves for this Court to suppress any statements and evidence from the illegal interrogation of him while he was under arrest and receiving treatment for a gunshot wound at the hospital. In support of this motion, Mr. Alissa states the following:

FACTS¹

1. On the afternoon of March 22, 2021 Mr. Alissa left his home in Arvada, Colorado and drove to Boulder, Colorado. Boulder is a place that Mr. Alissa has no direct ties to nor is it believed he had ever visited prior to March 22, 2021.
2. Mr. Alissa's family home in Arvada is less than one mile from a King Soopers store. Instead of going to the King Soopers in Arvada, Mr. Alissa drove approximately fifteen miles and went to the King Soopers in Boulder. Mr. Alissa has no known ties to that King Soopers in Boulder.
3. Mr. Alissa was driving a Mercedes Benz C Sedan (license plate number BJR-Y99) registered in his brother's name. Law enforcement discovered through their investigation that Mr. Alissa and his brother regularly shared use of that sedan.
4. After arriving at the King Soopers, Mr. Alissa shot and killed ten people, including a Boulder police officer. Witnesses heard very few statements from Mr. Alissa. Statements believed to have been made by Mr. Alissa were described as "gibberish."

¹ The facts referenced in this motion are drawn solely from discovery. They do not constitute any admission on the part of Mr. Alissa.

5. During the cross-fire with law enforcement, Mr. Alissa was hit in the leg. He immediately started bleeding.
6. Mr. Alissa would undress, drop his weapons and surrender to police. He was immediately placed in handcuffs and under arrest. While being handcuffed, Sergeant Bonafede from Boulder County Sheriff's Office starts interrogating him. Sergeant Bonafede asks multiple questions of Mr. Alissa, including:
 - a. "Where are your clothes?"
 - b. "Why did you take your clothes off?"
 - c. "Did you shoot people?"
 - d. "Are you our shooter?"
7. Mr. Alissa responds to Sergeant Bonafede's demanding questions.
8. Mr. Alissa is then handed off to Officers Frederking and Drelles. Officer Drelles continues to interrogate Mr. Alissa by asking him:
 - a. "Is anyone else in there that is going to get hurt?"
 - b. "Are you hear by yourself?"
 - c. "I will let you call your mom if you just answer my questions?"
 - d. "Did you come here by yourself?"
 - e. "What did you bring with you when you came?"
 - f. "I'm not going to let you call your mom until you answer my questions, is there anyone else inside that is going to shoot at us?"
9. Mr. Alissa asks to call his mother. He makes an attempt at answering the questions.
10. Mr. Alissa is then placed in the back of an ambulance. Officers Frederking and Johnson ride with him to the hospital.
11. Once at the hospital, Mr. Alissa receives medical treatment for the gunshot wound to his leg. While receiving treatment detectives attempt to interview him. The attempts at interrogation start around 4:20pm. This includes questions about how Mr. Alissa is feeling, what was going on today, etc. At no time is Mr. Alissa read his *Miranda* rights.
12. Detectives Pontiakos and Johnson attempt to interrogate Mr. Alissa throughout the night and into the morning. Agent Stern of the FBI joins in on the attempts to interrogate Mr. Alissa.
13. A little after two in the morning on March 23, 2024 (approximately twelve hours since the time of the shooting) Detectives Ponitakos, Johnson and Agent Stern go into Mr. Alissa's room yet again. Detective Johnson and Agent Stern are using coercive techniques in an attempt to get Mr. Alissa to speak to them. This includes using Mr. Alissa's family and in particular his mother, as a way to try and convince Mr. Alissa to speak to them.
14. Twenty-four minutes later, law enforcement finally reads Mr. Alissa his *Miranda* rights. Up until this point, law enforcement never advised Mr. Alissa of his *Miranda* rights, even though he was clearly in custody since being arrested at the King Soopers.

15. Mr. Alissa complains about how tired he is at that moment. He just wants to rest. Law enforcement continue to try and get him to speak. It is clear Mr. Alissa is trying to invoke his rights and law enforcement is trying to get him to speak. Finally when pressed yet again, Mr. Alissa is able to say the words to get law enforcement to leave.

LAW AND ARGUMENT

16. The Fifth Amendment and Colorado's corollary right protects citizens from coerced self-incrimination. U.S. Const., amend. V; Colo. Const., Art. II, § 18. Those provisions state "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." *Id.* This right codifies and enforces the constitutional demand that "the government seeking to punish an individual produce the evidence by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth." *Miranda v. Arizona*, 384 U.S. 436, 460 (1966). To ensure this fundamental guarantee, a court must suppress evidence obtained from a custodial interrogation unless the government proves that the police provided a valid advisement and the suspect gives an uncoerced waiver. *Id.* at 478–79. These protections apply whenever a suspect is (1) in custody and (2) subjected to interrogation. *Id.*
17. Custody is a restraint of freedom "to the degree associated with formal arrest." *Stansbury v. California*, 511 U.S. 318, 322 (1994) (citing *California v. Beheler*, 463 U.S. 1121, 1125 (1983)). The totality of the circumstances is the essential criteria. *Id.* A court must "examine *all of circumstances* surround the interrogation" to determine if a person is in custody. *Id.* The totality of the circumstances analysis for determining custody includes the time, place, and purpose of the encounter, directions given by the police officer, and the limitations on the accused person's movement. *Effland v. People*, 240 P.3d 868, 874 (Colo. 2010). *Miranda* rights are "implicated when police detain a suspect using a degree of force more traditionally associated with concepts of 'custody' and 'arrest.'" *People v. Plander*, 41 P.3d 698, 705 (Colo.2001).
18. Interrogation, for the purposes of *Miranda* protections, refers both to express questioning by a police officer, and to any words or actions on the part of the officer that he or she should know are reasonably likely to elicit an incriminating response from the defendant. *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980); *People v. Madrid*, 179 P.3d 1010, 1014 (Colo. 2008); *In re J.C.*, 844 P.2d 1185, 1189 (Colo. 1993).
19. Once placed under arrest at the King Soopers, Mr. Alissa remained under arrest. He was handcuffed to the bed while at the hospital. He was surrounded by law enforcement. He was never free to leave.
20. While chained to the bed, law enforcement interrogated him. It wasn't until 10 hours later, that Mr. Alissa was finally read his rights. Once read his rights, because of how tired he was, he invoked those rights.
21. While at the hospital, Mr. Alissa was clearly in custody and being interrogated by law enforcement. His statements must be suppressed.
22. Any statements made by Mr. Alissa at the hospital were not voluntary. An accused

person's statements are also included within the safeguards of Due Process. U.S. Const. amend. V, XIV; COlo. Const. art. II, §25. To satisfy the constitutional requirements of Due Process, the accused person's statements must be given voluntarily. *Lego v. Twomey*, 404 U.S. 477, 483 (1972); *People v. Klinck*, 259 P.3d 489, 495 (Colo.2011). Regardless of whether the confession is truthful or fabricated, it is "axiomatic...that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession." *Lego*, 404 U.S. at 483 (internal citations omitted).

23. Statements may only be used if they are the product of a person's "rational intellect and free will." *Mincey v. Arizona*, 437 U.S. 385, 398 (1978); *People v. Raffaelli*, 647 P.2d 230, 235 (1982) ("Is the confession the product of an essentially free and unconstrained choice by its maker?"). The voluntariness inquiry examines whether the government used physically or psychologically coercive techniques to overcome the will of the defendant. *Colorado v. Connelly*, 479 U.S. 157 (1986); *People v. Zadran*, 314 P.3d 830, 833 (Colo. 2013). Improper coercion includes police exploitation of a person's psychological weaknesses. *Arizona v. Fulminante*, 499 U.S. 279 (1991); *People v. Gennings*, 808 P.2d 839, 843-44 (Colo. 1991).
24. Voluntariness is a two-step inquiry. *Connelly*, 479 U.S. at 167. First, the government conduct must be coercive. *Id.* Second, the coercive conduct must play a significant role in inducing the statements. *People v. Medina*, 25 P.3d 1216, 1222-23 (Colo. 2013). These questions must be answered in disregard to whether the person spoke the truth. *Effland*, 240 P.3d at 877. It is a totality of the circumstances test. *People v. Gennings*, 808 P.2d 839, 844 (Colo. 1991). Courts consider a number of factors, including:
- a. Whether the defendant was in custody;
 - b. Whether the defendant was free to leave;
 - c. Whether the defendant was aware of the situation;
 - d. Whether the police read *Miranda* rights to the defendant;
 - e. Whether the defendant understood and waived *Miranda* rights;
 - f. Whether the defendant had an opportunity to confer with counsel or anyone else prior to or during the interrogation;
 - g. Whether the statement was made during the interrogation or volunteered later;
 - h. Whether the police threatened the defendant or promised anything directly or impliedly;
 - i. The method or style of the interrogation;
 - j. The defendant's mental and physical condition just prior to the interrogation;
 - k. The length of the interrogation;
 - l. The location of the interrogation; and
 - m. The physical conditions of the location where the interrogation occurred.

Medina, 25 P.3d at 1222-23. Courts should "consider the significant details surrounding or inhering in the interrogation" and examine whether the police conduct created an atmosphere of unconstitutional coercion such that the conduct "play[ed] a significant role in inducing the statement." *Id.* At 1222.

25. Here, Mr. Alissa was in custody, never free to leave. He was not read his *Miranda* rights until over ten hours after the initial interrogation started. He was never given an

opportunity to consult with an attorney. Mr. Alissa was handcuffed to the bed for most of the time. He had just been shot and was accused of shooting up a grocery store, killing ten people. During the course of the interrogations law enforcement attempted coercive techniques to get him to talk, including telling Mr. Alissa “a man doesn’t leave their other alone.”

26. All statements made by Mr. Alissa at the hospital were involuntary and must be suppressed.
27. In the midst of these interrogations, law enforcement had Mr. Alissa sign a consent form for his medical records. This “consent” and records must be suppressed as fruit of the poisonous tree. The fruit of the poisonous tree doctrine suppresses evidence obtained with the aid of information obtained unconstitutionally. *People v. Bradshaw*, 156 P.3d 452, 459 (Colo. 2007). While a violation of *Miranda* does not implicate this doctrine, “actual coercion” where the accused “has been ‘compelled...to be a witness against himself in violation of the Fifth Amendment” requires suppression of all evidence gathered as fruit of the statement. *Id.*
28. Here, law enforcement coerced Mr. Alissa into signing a “consent” form to release his medical records. Because this was done in violation of the Fifth Amendment – in addition to *Miranda v. Arizona* – the Court must suppress the fruits of this illegal search.

WHEREFORE, Mr. Alissa requests this Court suppress statements and evidence made by him at the hospital. 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
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Deputy State Public Defender

Certificate of Service

I hereby certify that on ___ July
8_____, 2024, I served the foregoing
document through Colorado E filing to all
opposing counsel of record.

KH

Dated: June 26, 2024

Attachment to Order - 2021CR0017