

| | |
|--|------------------------------------|
| DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, Colorado 80302 | DATE FILED: July 26, 2024 7:25 PM |
| PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant | COURT USE ONLY |
| Michael T. Dougherty, District Attorney, Reg. #41831 1777 Sixth Street Boulder, CO 80302 Phone Number: (303) 441-3700 FAX Number: (303) 441-4703 E-mail: mdougherty@bouldercounty.gov | Case No. 21CR497 Div: 13 |
| <p style="text-align: center;">Response to Defendant’s Motion for Suppress Statements (D-059)</p> | |

On July 8, 2024, Ahmad Al Aliwi Alissa (the “Defendant”) filed his Motion to Suppress Statements – Hospital (D-059). The People are not seeking to admit Defendant’s statements from the hospital in the case-in-chief. In the People’s rebuttal case, and based on the defense asserted, the People reserve the right to admit that Defendant invoked his right to remain silent and his right to counsel, when asked by law enforcement. Those limited statements would be offered as possible rebuttal to Defendant’s witnesses. In support of this response, the People further state as follows:

BACKGROUND

On March 22, 2021, Defendant drove to the Table Mesa King Soopers store in Boulder armed with a semi-automatic Ruger AR-556 pistol (often referred to and described as an assault rifle), another gun, large capacity magazines, and a large amount of ammunition. Soon after he arrived at the store, he began shooting victims in the parking lot before continuing into the store and shooting other victims. Ultimately, he murdered 10 people, and shot in the direction of many others.

Defendant is charged with ten counts of Murder in the First Degree (F1), forty-seven counts of Attempted Murder in the First Degree (F2), one count of Assault in the First Degree (F3), six counts of Possession of a Large-Capacity Magazine During the Commission of a Felony (F6), and forty-seven counts of Crime of Violence with a Semiautomatic Assault Weapon as a Sentence Enhancer.

LEGAL ANALYSIS

Defendant claims that his statements to law enforcement during his treatment at the hospital on March 22 -23, 2021, must be suppressed. The legal basis for Defendant's request revolves around the assertion that Defendant's statements were involuntary and, also, obtained in violation of his *Miranda* rights.

Miranda warnings are required when a person is being interrogated in a custodial setting; there must be both custody and *interrogation* before *Miranda* warnings are required. *People v. Milhollin*, 751 P.2d 43, 49 (Colo. 1998) (citing *People v. Smith*, 173 Colo. 10, 475 P.2d 627 (1970)) (emphasis added).

In determining whether a defendant has been subjected to custodial interrogation, the Court must determine if "a reasonable person in the [defendant's] position would believe himself deprived of his freedom of action to the degree associated with formal arrest." *Effland v. People*, 240 P.3d 868, 874 (Colo. 2010) (quoting *People v. Matheny*, 46 P.3d 453, 467 (Colo. 2002)). The custody determination depends on analysis of the totality of the circumstances, including:

- (1) the time, place, and purpose of the encounter;
- (2) the persons present during the interrogation;
- (3) the words spoken by the officer to the defendant;
- (4) the officer's tone of voice and general demeanor;
- (5) the length and mood of the interrogation;
- (6) whether

any limitation of movement or other form of restraint was placed on the defendant during interrogation; (7) the officer's response to any questions asked by the defendant; (8) whether directions were given to the defendant during the interrogation; and (9) the defendant's verbal or nonverbal response to directions. *Id.* (quoting Matheny, 46 P.3d at 465-466).

The People concede that Defendant was in custody during his time at the hospital. He had been arrested following the commission of a mass murder. Law enforcement handcuffed Defendant and, under the totality of the circumstances, a reasonable person would have believed that they were under arrest.

Many of the conversations between law enforcement and Defendant while at the hospital did not rise to the level of interrogation. These exchanges were about Defendant's background, family, education, food, his level of pain, and so forth. These statements were voluntary.

"When a defendant challenges the voluntariness of a statement, the prosecution must establish by a preponderance of the evidence that the defendant made the statement voluntarily." *People v. Valdez*, 969 P.2d 208, 210 (Colo. 1998). "Critical to any finding of involuntariness is the existence of coercive governmental conduct, either physical or mental, that plays a significant role in inducing a confession or inculpatory statement." *Id.* at 211 (citing *Colorado v. Connelly*, 479 U.S. 157, 167 (1986)). Law enforcement conduct was not coercive here, and it certainly did not play a significant role in Defendant making statements.

It is the People's position that the statements prior to Miranda warnings being administered were not the subject of interrogation and would be admissible at trial. However, the People are not seeking to admit those statements at trial. The only statements that the People may seek to

admit on rebuttal is Defendant's invocation of his right to remain silent and his right to counsel. His invocation of these rights when asked to discuss the incident were voluntary and, in light of the defense of not guilty by reason of insanity, admissible at trial.

The Court is to consider the totality of the circumstances surrounding a defendant's statements when determining voluntariness. *Valdez*, 969 P.2d at 211 (citing *People v. Trujillo*, 938 P.2d 117, 126 (Colo. 1997)). The factors to be considered by the Court when evaluating the voluntariness of a statement include:

[1] Whether the defendant was in custody or was free to leave and was aware of his situation; [2] whether the Miranda warnings were given prior to any interrogation and whether the defendant understood and waived his Miranda rights; [3] whether the challenged statement was made during the course of an interrogation or instead was volunteered; [4] whether any overt or implied threat or promise was directed to the defendant; [5] the method and style employed by the interrogator in questioning the defendant and the length and place of the interrogation; and [6] the defendant's mental and physical condition immediately prior to and during the interrogation, as well as his education background, employment status, and prior experience with law enforcement and the criminal justice system. *Id.*

To find a defendant's statement involuntary, "[a] necessary prerequisite . . . is a finding that

the police conduct in question was coercive.” *Id.* at 212. (emphasis added) (*citing Connelly*, 479 U.S. at 167). If coercive conduct is found, the Court must continue its analysis and conclude that the conduct played a significant role in inducing a defendant’s statements. *Id.* Finally, the Court then must find that the defendant’s will was overborne by improper state conduct. *Id.*

The evidence does not support a finding that law enforcement’s conduct was coercive in any way. Defendant requested a lawyer when Miranda warnings were ultimately read to him, and he refused the invitation to talk on several occasions.

Evidence relevant to insanity is defined as evidence showing that “[a] person is so diseased or defective in mind at the time of the act as to be incapable of distinguishing right from wrong. . . [or] prevented the person from forming a culpable mental state.” § 16-8-101.5(1)(a), (b), C.R.S. (2023). The People may rely on Defendant’s responses to law enforcement’s requests to discuss the incident to argue (1) that he acted with intent after deliberation and (2) his decision to answer questions except what he did at the supermarket is evidence he was not insane when he killed ten (10) people just hours earlier.

The People will likely call two expert witnesses, Dr. Ian Lamoureux and Dr. Loandra Torres. Both have independently reviewed the discovery in this case and the sanity evaluation completed by the state hospital; Dr. Torres assisted in conducting the sanity evaluation. Each doctor will testify that Defendant was not legally insane at the time he committed the mass murder. Their opinions are informed in part by Defendant’s behavior on the day of the murders and may include his comments to, and interactions with, law enforcement at the hospital. This testimony may include Defendant’s decision to refuse to answer questions and invoke his right to counsel.

WHEREFORE, the People respectfully request this Court deny Defendant’s Motion to Suppress Statements – Hospital and allowed limited testimony as summarized above.

Respectfully submitted,

MICHAEL T. DOUGHERTY
DISTRICT ATTORNEY

By:
s/Michael T. Dougherty
Michael T. Dougherty
July 26, 2024

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing served via the Colorado e-filing system/hand-delivered on July 26, 2024, and addressed as follows:

Samuel Dunn
Kathryn Herold
Office of the Colorado State Public Defender – Boulder
2555 55th Street Suite. D-200
Boulder, CO 80301

s/Michael T. Dougherty
Michael T. Dougherty