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DISTRICT COURT, EL PASO COUNTY, COLORADO 270 Tejon Street Colorado Springs, Colorado 80903	DATE FILED: March 2, 2023 7:20 PM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. <b>ANDERSON ALDRICH</b> , Defendant	σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender Joseph Archambault #41216 Chief Trial Deputy Michael Bowman #48652 Deputy State Public Defender 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903 Phone: (719) 475-1235 Fax: (719) 475-1476 Email: <a href="mailto:springs.pubdef@coloradodefenders.us">springs.pubdef@coloradodefenders.us</a>	Case No. <b>22CR6008</b>  Division <b>21</b>
<b>BRIEF IN SUPPORT OF MOTION TO SEAL ACCESS TO PEOPLE’S EXHIBIT 1 AND PEOPLE’S EXHIBIT 69 [D-26]</b>	

Mx. Aldrich<sup>1</sup>, by and through counsel, request the Court seal access to the exhibits on its own motion, and joins the prosecution in moving this Court to enter an order limiting the public access to People’s Exhibit 1, and People’s Exhibit 69, as admitted at the proof evident / presumption great hearing on February 22, 2023. Grounds for this motion are as follows:

1. Colorado Rule of Criminal Procedure 55.1 (4), allows a court, on its own motion, to make a record or other filing inaccessible to the public, so long as it follows the procedure outlined in sections (a)(6) through (a)(10).
2. As an initial matter, Mx. Aldrich does not believe that 55.1 needs to be addressed as it appears that these exhibits which are both videos are not “court record(s)” under the language of the statute of 55.1; and particularly when it is read in conjunction with Chief Justice Direct 05-01 which discusses documents in the ICCES e-filing system. Mx. Aldrich believes that because 55.1 does not apply the Court is not required to consider making these videos accessible and should keep them under seal. The videos are neither documents nor pleadings, and they are in a format, digital media, which cannot be uploaded into ICCES. Both 55.1 and 05-01 talks about redactions and the way that the

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<sup>1</sup> Anderson Aldrich is non-binary. They use they/them pronouns, and for the purposes of all formal filings, will be addressed as Mx. Aldrich.

redactions are discussed seems akin to how a document can be redacted with blacking out certain words or sections. It is much more difficult, if not impossible, to do that with video and particularly these videos. The fact that 55.1 and 05-01 seem to be addressing court records only as items which are either documents or pleadings seems to make it clear that videos handed to the court are not “court records” under the purview of 55.1. Therefore the Court need to decide access to these non-court records, as 55.1 does not apply.

3. If the Court were to find that 55.1 does apply, the Court should still not grant access to these videos. While sections (a)(7) through (a)(10) govern the procedure and proceedings required, (a)(6) contains the test a court must apply when considering whether to seal a court record. Colo. R. Crim. P. 55.1. It states as follows:

“The court shall not grant any request to limit public access to a court record or to any part of a court record, or enter an order on its own motion limiting such public access, unless it issues a written order in which it:

- (I) 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;
- (II) 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
- (III) 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).

4. Given the sensitive nature of the exhibit admitted, the following interests are served by prohibiting access to the exhibit: (1) Mx. Aldrich’s due process rights; (2) victim privacy; (3) public safety.

## ARGUMENT

### **I. Mx. Aldrich’s rights to due process would be violated by the public release of this exhibit at this stage in the proceeding.**

5. Mx. Aldrich is guaranteed the right to a trial by jurors who are fair and impartial. *Ross v. Oklahoma*, 487 U.S. 81 (1988); *Witherspoon v. Illinois*, 391 U.S. 510, 518 (1968); *Irvin v. Dowd*, 366 U.S. 717, 722 (1961); *People v. Sandoval*, 733 P.2d 319, 320 (Colo. 1987); *Oaks v. People*, 150 Colo. 64, 371 P.2d 433, 477 (1962); *Smith v. People*, 8 Colo. 457, 8 P.1045 (1885). Thus, while Mx. Aldrich is not entitled to jurors who will be sympathetic to them, they are guaranteed the right to a trial by jurors who “will hear the matter fairly and impartially.” *Edwards v. People*, 160 Colo. 395, 418 P.2d 174, 177-178 (1966).

6. Mx. Aldrich is constitutionally entitled to a fair and impartial jury trial, it may nevertheless be impossible to obtain even one fair and impartial juror if they are tried in the forum of public opinion before their case ever makes it to a jury.
7. Given the high level of public interest in this case, and the resulting bombardment of potential witnesses and jurors with pervasive saturating media coverage via newsprint, radio, television, the internet, phone alerts, social media etc., the Court must take precautionary measures to keep prejudicial and damaging material out of the public sphere.
8. The content of the exhibits themselves is highly provocative, and violent. Viewing the footage is likely to cause a long-lasting, visceral reaction in anyone that views it. As the public is the jury pool, allowing this exhibit into the public sphere, and providing unfettered access will cause irreparable harm to the pool's ability to be impartial and fair.
9. Given the level of exposure this case has already received locally and nationally, should these videos be released, they are likely to be distributed to various websites, and forums, whether reputable or not. Once released, the videos could be edited, altered, or otherwise changed subject to the distributors' interest. Ultimately, the distribution of the video becomes a liability for the prospect of Mx. Aldrich's jury trial and one which cannot be reduced through any other means than keeping the exhibits sealed.
10. A fair and impartial jury pool is one where the individuals are able to assess the evidence as it is presented at trial, not one where the jurors arrive to the trial with preconceived notions based upon unfettered access to evidence.
11. There is no way to properly redact the footage to make it less prejudicial to Mx. Aldrich's Due Process rights. Practically speaking, redactions for the purposes discussed here would require the entirety of the video to be restricted from view, and the only appropriate course therefore, is to prohibit public access to the exhibits entirely.

## **II. Public safety concerns weigh in favor of prohibiting public access to the exhibit.**

12. The videos in the proposed exhibits show the moments of death and severe injury to several people. Even more, the surveillance has been prepared and presented in such a way that it repeats, backs up, and then replays the same moments from different angles. Ultimately, Exhibit 69 extends the moments of the shooting into a thirty-one minute long video showing not only the graphic nature of the incident, but also the last moments of some victim's lives.
13. This footage is, unfortunately, the type that is sought by people for nefarious purposes – whether finding enjoyment in the violence displayed, or finding inspiration from the

same. Should the court publish this type of footage it would be contributing to the distribution of the footage likely to end up on all corners of the internet and examined, or even idealized for reasons the court system hopes to discourage.

14. As discussed above, redacting the footage would be next to impossible given the content and provides no relief from the potential public safety concerns that making these exhibits publicly available would create. Simple redactions would not alleviate the public safety concerns, and therefore the exhibits should be prohibited from public access.

### **III. Victim privacy concerns weigh in favor of prohibiting access to the exhibit.**

15. As mentioned the Prosecution's motion on this issue, the victim's in this case have the right to be treated with fairness, respect and dignity. C.R.S. §24-1.4-302.5.
16. Allowing the release and dissemination of these exhibits would violate those concepts and only cause those individuals further trauma, harm and distress. As the court is aware, the videos shows victims losing their lives, being seriously injured, and receiving medical treatment.
17. Those individuals deserve the respect of not having the last moments or the most traumatic moments of their lives broadcast and downloadable from a State of Colorado website.
18. Furthermore, to date, no victim has come forward to argue in favor of these exhibits being released.
19. As a result, Mx. Aldrich request the court seal access to the discussed exhibits based on its own motion, or, to seal the access based on the motions by both the prosecution and the defense.

WHEREFORE, Mx. Aldrich, through counsel, requests the court, on its own motion, seal access to People's Exhibit 1 and People's Exhibit 69, and joins in the prosecution's request to prohibit public access to People's Exhibit 1 and People's Exhibit 69 as admitted at the preliminary hearing.

MEGAN A. RING  
COLORADO STATE PUBLIC DEFENDER



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Joseph Archambault #41216  
Chief Trial Deputy

#### **Certificate of Service**

I certify that on March 2, 2023, I served the foregoing document electronically



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Michael Bowman #48652  
Deputy State Public Defender

Dated: March 2, 2023

through Colorado Courts E-Filing to all  
opposing counsel of record.  
s/skoslosky