

DISTRICT COURT BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	
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
<p style="text-align: center;">Unopposed Motion to Limit Public Access to People’s Preliminary Hearing Exhibit One Filed on July 23, 2021 (P-007)</p>	

On July 23, 2021, the People filed an Unopposed Motion to Admit People’s Preliminary Hearing Exhibit One Prior to the Scheduled September 7, 2021 Hearing (the “Motion”) with the Court, requesting the Court to admit and review People’s Preliminary Hearing Exhibit One prior to September 7, 2021 and further requesting that People’s Preliminary Hearing Exhibit One remain sealed from public access until the prosecution of this case is concluded. The Court granted the Motion on July 26, 2021.

As this Court is aware, due to the nature of the crimes at issue, there has been a large media interest in the case since its filing. The People are concerned that if the Court were to make People’s Preliminary Hearing Exhibit One available to the public, there is a risk that the media or other members of the public would publish People’s Preliminary Hearing Exhibit One widely. The publication of People’s Preliminary Hearing Exhibit One 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. Additionally, the publication of People’s Preliminary Hearing Exhibit One will

potentially act to further traumatize not only the victims and victims' families associated with this case, but the community as a whole. Thus, this Court should affirm that People's Preliminary Hearing Exhibit One remains inaccessible to the public until the jury trial in this case is held and completed.

Defendant's counsel has reviewed this motion and Defendant does not object to the relief requested by the People.

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.”

As an initial matter “[w]hile 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 People’s Preliminary Hearing Exhibit One by this Court could impact the Defendant’s right to a fair trial – potentially resulting in the wide publication and replaying of a recording of 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 People's Preliminary Hearing Exhibit One at this stage of the case could result in more pre-trial information being consumed by potential jurors.

Additionally, the investigation into the crimes committed by Defendant is ongoing. To date, the People have engaged with the press in accord with all ethical duties, providing minimal, appropriate information and explicitly stating that Defendant is presumed innocent in this case until proven guilty. Law enforcement continues to interview witnesses and follow-up on leads. Witness accounts of what occurred in this case could be tainted by the mass publication of People's Preliminary Hearing Exhibit One.

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 People's Preliminary Hearing Exhibit One could potentially retraumatize those impacted by this case well before a trial is held in this matter. Considering the nature of the evidence contained on People's Preliminary Hearing Exhibit One, the release of a redacted version of People's Preliminary Hearing Exhibit One will not resolve the issues raised in this motion.

The People fully anticipate People's Preliminary Hearing Exhibit One becoming available to the public in the future as the People are likely to admit and publish People's Preliminary Hearing Exhibit One, or a similar exhibit, at Defendant's trial and/or potentially at Defendant's sentencing as well. Further, at the September 7, 2021 hearing, the People anticipate eliciting testimony describing what People's Preliminary Hearing Exhibit One shows. Thus, the public will learn of the evidence that supports the case against Defendant through testimony.

If the Court denies this unopposed motion, the People will withdraw the Motion and People's Preliminary Hearing Exhibit One and proceed to the September 7, 2021 hearing without admitting People's Preliminary Hearing Exhibit One.

WHEREFORE, as 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 People's Preliminary Hearing Exhibit One 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
August 23, 2021

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 August 23, 2021, and addressed as follows:

Kathryn Herold
Daniel King
Sam Dunn
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s/Adam D. Kendall
Adam D. Kendall