

District Court, Boulder County, State of Colorado 1777 Sixth Street, Boulder, Colorado 80302 (303) 441-3674	DATE FILED: April 12, 2021 1:16 PM
PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA, DEFENDANT	▲ COURT USE ONLY ▲
<i>Attorneys for the People:</i> Michael Dougherty & Adam Kendall <i>Attorneys for the Defendant:</i> Daniel King, Samuel Dunn, & Kathryn Herold	Case Number: 2021CR497 Division: 13 Courtroom: G
ORDER RE: MOTION TO BAN ALL EXTRAJUDICIAL STATEMENTS AND DISCLOSURES BY THE DISTRICT ATTORNEY, HIS AGENTS, AND LAW ENFORCEMENT	

THIS MATTER comes before the Court on the Defendant’s March 29, 2021 *Motion to Ban all Extrajudicial Statements and Disclosures by the District Attorney, his Agents, and Law Enforcement*. The Court issued an Order on March 30, 2021, authorizing a response from the People by April 5, 2021. On April 5, 2021, the People filed *People’s Response to [Defendant’s] Motion to Ban all Extrajudicial Statements and Disclosures by the District Attorney, his Agents, and Law Enforcement*. Having carefully considered the pleadings and applicable law, the Court enters the following rulings and orders:

BACKGROUND

In his March 29, 2021 *Motion*, the Defendant requests the Court enter an order limiting the dissemination of information by the People, by law enforcement, and by the Court concerning this case. The Defendant notes the District Attorney has held or participated in at least three press conferences, and he has answered questions related to the Defendant’s mental illness and fitness to stand trial, whether a fair jury could be empaneled, and possible pleas and defense theories. Similarly, members of various law enforcement agencies have also held press conferences, published press releases, and released case information to the media. These official statements and press releases have contributed to “unprecedented and overwhelming” media coverage surrounding this case.

The Defendant argues the requested order is necessary to preserve and protect his right to have his case tried by a fair and impartial jury. The Court, the Defendant argues, has the power to place reasonable restrictions on the release of information to the media by any lawyer, party, witness, or court official[,]” and failure to implement such reasonable restrictions risks violating the Defendant’s rights to an impartial venire, a fair trial, and due process of law. *Sheppard v.*

Maxwell, 384 U.S. 333, 335 (1966); *People v. Bryant*, 94 P.3d 624 (Colo. 2004). See also *Gannett Co. v. DePasquale*, 443 U.S. 368, 378 (1979).

In their April 5, 2021 *Response*, the People contend they have not “directly” answered any questions from the media regarding questions or topics described in the Defendant’s *Motion*. To the extent the People have responded to questions from the media, their responses have been “limited and in compliance with all ethical requirements regarding public disclosures involving a pending case[.]” and further, the People have instructed law enforcement agencies to follow the ethical requirements of Colo. R.P.C. 3.6 and 3.8.

The People argue the Defendant’s right to a fair trial must be balanced against the public’s right to information. See *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1071-75 (1991). Colo. R.P.C. 3.6 and 3.8 were enacted following the *Gentile* Opinion and exist to strike this balance and ensure both sets of rights are protected. The People assert they have complied with Colo. R.P.C. 3.6 and 3.8 in all of their public comments regarding this case. The People are aware of their ethical duties and will continue to comply with the requirements of Colo. R.P.C. 3.6 and 3.8.

ORDERS

After considering the pleadings and applicable law, the Court concurs with the People’s analysis and DENIES the Defendant’s *Motion*.

Specifically, the Court finds the Defendant failed to identify any specific statements made by the People or by law enforcement that violate the Defendant’s rights to a fair trial, to an impartial venire, and to due process of law. Similarly, the Defendant has identified no statements made by the People or law enforcement that violate the People’s ethical duties under Colo. R.P.C. 3.6 and 3.8. The Court notes Colo. R.P.C. 3.6 and 3.8 are self-executing and prohibit lawyers involved in the investigation or litigation of a case and their associates from making statements they know or should know “will have a substantial likelihood of materially prejudicing an adjudicative proceeding.” Colo. R.P.C. 3.6 Comment 3. Colo. R.P.C. 3.8 extends further requirements on prosecutors to “exercise reasonable care” to prevent law enforcement personnel from making extrajudicial statements “that the prosecutor would be prohibited from making under Rule 3.6[.]” Colo. R.P.C. 3.8(f). The Defendant asserts no specific violations of these ethical duties, and conversely, the People’s attached Exhibit 1 demonstrates their compliance with the rules.

In accordance with these rules, the People shall continue to refrain from making extrajudicial statements they know or should know are substantially likely to result in material prejudice. This rule extends to the People’s agents, including investigators, law enforcement personnel, employees, any other people assisting or associated with the prosecution of this matter.

Court personnel, similarly, shall continue to refrain from disclosing any information related to this action that is not a matter of public records and that may be prejudicial to the Defendant’s rights to a fair trial, to an impartial venire, and to due process of law.

THE STATUS CONFERENCE REMAINS SCHEDULED FOR May 25, 2021 at 8:15 a.m.

SO ORDERED this 12th day of April, 2021.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Ingrid S. Bakke', written in a cursive style.

Ingrid S. Bakke
District Court Judge