

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 SIXTH STREET P.O. BOX 4249, BOULDER, CO, 80306-4249	DATE FILED: March 23, 2021 4:27 PM
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: MOTION TO PERMIT PUBLIC DEFENDER REPRESENTATIVES TO ATTEND AUTOPSY (D-010)	

The motion/proposed order attached hereto: DENIED.

The Defendant has no legal right to attend the autopsies of the victims in this matter. "Colorado law establishes that a trial court has no freestanding authority to grant criminal discovery beyond what is authorized by the Constitution, the rules, or by statute." People in the Interest of E.G., 368 P.3d 946, 950 (Colo. 2016).

Issue Date: 3/23/2021



THOMAS FRANCIS MULVAHILL
 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 Alissa, Defendant.	
Megan Ring, Colorado State Public Defender Samuel Dunn #46901 Senior Deputy State Public Defender Kathryn Herold #40075 Supervising Deputy State Public Defender Boulder Regional Public Defenders 2555 55TH 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 PERMIT PUBLIC DEFENDER REPRESENTATIVES TO ATTEND AUTOPSY (D-010)	

Mr. Alissa, through counsel moves the Court to Order that up to four representatives of the Public Defender's Office be permitted to attend a scheduled autopsy of the complaining witness in the above-captioned case on the following grounds:

1. The Office of the Public Defender has been appointed to represent Mr. Alissa, who is being held for investigation of multiple counts of first-degree murder.
2. Attendance at the autopsy by representatives of the Public Defender's Office is crucial if counsel is to provide effective assistance of counsel for the duration of the case. Denial of this request will result in a violation of Alissa's due process rights and will be manifestly unfair.
3. Mr. Alissa has a constitutional right to present evidence on his behalf and to confront adverse witnesses. *United States v. Nixon*, 418 U.S. 683, 771, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974); *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); *People v. Chard*, 808 P.2d 351, 353 (Colo.1991). The United States Supreme Court has construed these rights as granting a defendant the right to compel material evidence from private third parties, subject to certain limitations. *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967).
4. The Colorado Court of Appeals has even gone so far as to recently hold that a trial court has the authority to allow discovery of a crime scene to the defense, even if such access implicates constitutionally-protected privacy rights of a non-party, provided that the defendant's justification for the information outweighs any privacy interest. *People In Interest of E.G.*, 2015 COA 18, ¶ 6. The Court additionally held that, to obtain access, the defendant seeking access

must demonstrate that the evidence desired is relevant, material, and necessary to his defense, and the court must balance the defendant's proffered justification with the rights and legitimate interests of the non-party resident. *Id.* at ¶ 15.

5. Here, the “crime scene” defense counsel seeks access to is the autopsy. Even though the autopsy is not a crime scene in the technical sense, it is similar in that evidence relevant, material, and necessary to Mr. Alissa’s defense is likely to be discovered during the autopsy and may be lost to his counsel if representatives from the Public Defender’s Office do not appear when the autopsy is conducted. Photographs and other means of recording of the autopsy will not adequately preserve evidence for the defense. *See People ex rel. Gallagher*, 656 P.2d 1287 (1983); *People v. Poole*, 555 P.2d 980, (1976); and *People v. Harmes*, 560 P.2d 470 (1976).
6. The representatives of the Public Defender's Office who attend the autopsy will be unobtrusive and will not interfere with the process of the autopsy in any way. They will be there to observe the pathologists’ methods, practices, and techniques. This information will be critical for Mr. Alissa’s defense, including impeachment and cross-examination of the pathologists. It is also common practice for the District Attorney’s Office to have multiple representatives present during an autopsy. Their comments, questions, and interactions with the pathologist may not be preserved even though they may be exculpatory, relevant, and material to Alissa’s defense. There is no guarantee that the representatives of the District Attorney’s Office will recognize and preserve exculpatory information during the autopsy. This information could then be lost forever.
7. Unlike *In The Interest of E.G.*, there is no right or legitimate privacy interest of any non-party resident to be weighed against Mr. Alissa’s constitutional rights to present evidence on his behalf, to confront adverse witnesses, and to due process and a fair trial.
8. Therefore, Mr. Alissa’s constitutional rights mandate access to the autopsy.
9. Lastly, it has been the routine practice in other jurisdictions, including neighboring Adams County, for the District Courts to permit representatives of the Public Defender’s Office to attend autopsies in homicide cases.

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER

 /s/Samuel Dunn
Samuel Dunn #46901
Deputy State Public Defender

 /s/Kathryn Herold
Kathryn Herold #40075
Supervising Deputy State Public Defender

Certificate of Service

I hereby certify that on March 23, 2021, I served the foregoing document by E filing same to all opposing counsel of record.

/s/ Sam Dunn_

Dated: March 23, 2021

Attachment to Order - 2021CR497