

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 SIXTH STREET P.O. BOX 4249, BOULDER, CO, 80306-4249	DATE FILED: March 23, 2021 3:12 PM
THE PEOPLE OF THE STATE OF COLORADO v. <b>Defendant(s)</b> AHMAD AL ALIWI ALISSA	<p style="text-align: center;"><b>△ COURT USE ONLY △</b></p> Case Number: 2021CR497 Division: 13                      Courtroom:
<b>Order:OBJECTION TO CONSUMPTIVE TESTING (D-008)</b>	

The motion/proposed order attached hereto: ACTION TAKEN.

Consumptive testing is defined as testing that renders evidence incapable of independent analysis by the defendant's experts. § 16-3-309(1), C.R.S. ("When evidence seized in so small a quantity or unstable condition that qualitative laboratory testing will not leave a sufficient quantity of the evidence for independent analysis by the defendant's expert . . . ."); People v. Gomez, 596 P.2d 1192, 1197 (1979). ("[I]n those cases where the amount of material available for testing is small . . . it may be incumbent on the state to contact the defendant to determine whether he wishes his expert to be present during the tests."); People v. Garries, 645 P.2d 1306, 1310 (Colo. 1982) ("The guidelines established in Gomez are applicable to all cases where the test sample is insufficient to allow independent analysis."). Alteration of the evidence, even if the alteration is irreversible, is not consumptive testing so long as the defendant is allowed the opportunity to conduct an independent analysis. Gomez, 596 P.2d at 1197-98.

Colorado law allows for defense experts to be present for consumptive testing. C.R.S. 16-3-309. Therefore, where the People are notified that consumptive testing may be necessary, they shall notify Defendant and allow a reasonable opportunity for Defendant's expert to be present during the consumptive testing.

Issue Date: 3/23/2021



THOMAS FRANCIS MULVAHILL  
 District Court Judge

District Court, Boulder County, Colorado Court Address: 1776 6 <sup>th</sup> 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
<b>MR. ALISSA'S OBJECTION TO CONSUMPTIVE TESTING (D-008)</b>	

Mr. Alissa objects to the prosecution conducting any consumptive testing of evidence in this case. In support of this motion, Mr. Alissa provides the following:

1. If the prosecution intends to pursue testing that, in their estimation, would completely consume the item(s), the prosecution must establish as a fact that the quantity of sample or substance to be tested is insufficient to allow more than the single test proposed by the prosecution. Until the State meets this burden they should not pursue any consumptive testing.

2. Mr. Alissa requests that this Court order the prosecution to refrain from any testing that is or is thought to be consumptive.

Mr. Alissa makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution.

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 - 2021CO00197