

District Court, Boulder County, State of Colorado 1777 Sixth Street, Boulder, Colorado 80302 (303) 441-3674	DATE FILED: September 3, 2021 10:26 AM
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
<p style="text-align: center;">ORDER RE: UNOPPOSED MOTION TO LIMIT PUBLIC ACCESS TO PEOPLE'S PRELIMINARY HEARING EXHIBIT ONE FILED ON JULY 23, 2021</p>	

THIS MATTER comes before the Court on the People's August 23, 2021 *Unopposed Motion to Limit Public Access to People's Preliminary Hearing Exhibit One Filed on July 23, 2021*. Having carefully considered the pleadings and applicable law, the Court enters the following rulings and orders:

BACKGROUND

On March 24, 2021, the People filed *Complaint and Information*, charging the Defendant with 10 counts of first-degree murder. The People filed *Motion to Amend Criminal Complaint and Information* and *Second Motion to Amend Criminal Complaint and Information* on April 21, 2021 and May 24, 2021 respectively. The Defendant is presently charged with 10 counts of first-degree murder, 47 counts of attempted first-degree murder, one count of first-degree assault, 10 counts of possession of a prohibited large capacity magazine, and 47 violent crime sentence enhancers. The Court held a Rule 5 Advisement on March 25, 2021. The Defendant waived his right to a Preliminary Hearing within 35 days. The Court held a Status Conference on May 25, 2021 and set a Preliminary Hearing for September 7, 2021.

On August 23, 2021, the People filed *Unopposed Motion to Limit Public Access to People's Preliminary Hearing Exhibit One Filed on July 23, 2021*. The People previously filed *Unopposed Motion to Admit People's Preliminary Hearing Exhibit One Prior to the Scheduled September 7, 2021 Hearing*, which the Court granted on July 26, 2021.

Due to the nature of the crimes at issue and the large media interest in the instant case, the People seek to limit public access to Exhibit One to preserve the Defendant's right to a fair trial and impartial jury pool and to avoid re-traumatizing the victims and Boulder County community.

The People request the Court order Exhibit One remain inaccessible to the public until the jury trial is held and completed.

APPLICABLE LAW

Court records in criminal cases are “presumed to be accessible to the public.” Colo. R. Crim. P. 55.1(a). The Court may deny public access to a court record “only in compliance with this rule.” *Id.*

A party seeking to limit public access to a previously filed court record must file a motion, identifying “by title and date of filing the court record the moving party seeks to make inaccessible or partially inaccessible to the public[.]” Colo. R. Crim. P. 55.1(2). The motion must be served on any opposing party and must be identified on the publicly available Register of Actions as a motion to limit public access. *Id.* Such a motion must identify the court record the moving party seeks to make inaccessible to the public, state the reason for the request, and specify how long the information should remain inaccessible. Colo. R. Crim. P. 55.1(3).

A court shall not grant a request to limit public access to a court record without (I) specifically identifying one or more substantial interests served by making the court record inaccessible to the public; (II) finding that no less restrictive means than making the record inaccessible to the public exists to achieve or protect any substantial interests identified; and (III) concluding that any substantial interests identified override the presumptive public access to the court record. Colo. R. Crim. P. 55.1(6).

A court’s order granting a request to limit public access to a court record shall indicate a date or event by which the order will expire. Colo. R. Crim. P. 55.1(7).

FINDINGS AND ORDERS

The Court finds the People have complied with Colo. R. Crim. P. 55.1(2) and (3). The People identified the specific record they seek to make inaccessible to the public in their *Motion* and complied with the rules of service. The People advanced multiple reasons for making the request and included a specified duration for how long they seek to make the court record inaccessible.

Consistent with Colo. R. Crim. P. 55.1(6), the Court makes the following findings:

The Court finds the Defendant’s right to a fair trial and impartial jury pool to be substantial interests that will be served by making Preliminary Hearing Exhibit One inaccessible to the public. Although the Court agrees with the District Attorney that the publication of Exhibit One could retraumatize the victims, their families, and quite frankly, any member of the public who would choose to view it outside of a court proceeding, the primary reasons for granting the request are in preserving the Defendant’s rights and ensuring that the trial may be held in a timely and efficient manner.

Next, the Court finds no less restrictive means exist to protect the Defendant's right to a fair trial and impartial jury pool. Given the nature of Exhibit One, the Court cannot issue a redacted version of the court record or make only part of the record publicly accessible.

Finally, the Court finds the Defendant's right to a fair trial and impartial jury pool overrides the right of the public to access Exhibit One. *See Morrison v. People*, 19 P.3d 668, 672 (Colo. 2000) (noting the Colorado and United State Constitutions guarantee every criminal defendant the right to a fair trial); *Howard-Walker v. People*, 443 P.3d 1007, 1011 (Colo. 2019) (noting the right to an impartial jury is encompassed in the right to a fair trial). Given the nature of the allegations, the public interest in this case, and the sensitive material contained in Exhibit One, the Court finds making Exhibit One publicly accessible risks tainting the jury pool in both Boulder County and across the State of Colorado as a whole.

Accordingly, the Court GRANTS the People's *Unopposed Motion to Limit Public Access to People's Preliminary Hearing Exhibit One Filed on July 23, 2021*. Exhibit One shall remain inaccessible to the public until the Defendant's jury trial is held and completed or until the case is otherwise closed.

SO ORDERED this 3rd day of September, 2021.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Ingrid S. Bakke', written over a horizontal line.

Ingrid S. Bakke
District Court Judge