

District Court, Boulder County, Colorado Court Address: 1776 6 th Avenue Boulder, CO 80306	
THE PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant.	DATE FILED: April 6, 2021 10:46 AM ♦ COURT USE ONLY ♦
Megan Ring, Colorado State Public Defender Daniel King #26129 Chief Trial Deputy State Public Defender Samuel Dunn #46901 Deputy State Public Defender Kathryn Herold #40075 Supervising Deputy State Public Defender Boulder Regional Public Defenders 2555 55 TH 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
RESPONSE TO THE PROSECUTION’S MOTION TO RECONSIDER THIS COURT’S MARCH 23, 2021 PROTECTION ORDER (D-006)	

Mr. Alissa responds, as follows, to the prosecution’s motion requesting this Court to reconsider its March 23, 2021 protection order. *See People’s Motion to Reconsider March 23, 2021 Order Regarding [Defendant’s] [sic] Motion for Protective Order (D-006)* (“Motion to Reconsider”). Mr. Alissa responds pursuant to his state and federal constitutional rights to due process, remain silent, privileges against self-incrimination, and his rights to counsel. U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 25; *cf.* Colo. R.P.C. 4.2.

In support of this motion, Mr. Alissa states the following:

1. The prosecution has charged Mr. Alissa with ten counts of first-degree murder and one count of attempted first-degree murder due to events that allegedly occurred on March 22, 2021. Two police officers are among the alleged victims in this case.

2. On March 23, 2021, the defense moved this Court to enter a protective order on Mr. Alissa’s behalf. *See Mr. Alissa’s Motion For Protective Order (D-006)*. Mr. Alissa sought the protective order to protect him from prosecutorial/police overreach that frequently occurs when the prosecution/police investigate the death of a “brother.” *See Kami Chavis Simmons, New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 Cath. U. L. Rev. 373, 383 (2010) (Police officers typically possess a “group loyalty” mentality where they perceive themselves as akin to “brothers in a military unit” that “band

together for mutual safety, security, and defense. . . . The dangers associated with group loyalty are exacerbated when police officers are killed in the line of duty.”) (internal citations omitted).

3. Specifically, the defense requested an order,

requiring the Office of the District Attorney, any other law enforcement persons, and their agents to (a) get the consent of Alissa’s counsel, Deputy State Public Defender Kathryn Herold and Samuel Dunn, before attempting to contact or interview Mr. Alissa and (b) give said counsel reasonable opportunity to be present PRIOR to any contact with Mr. Alissa.

D-006.

4. Mr. Alissa also invoked his rights to remain silent, privileges against self-incrimination, and his rights to counsel under the Federal and State Constitutions. U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 25.

5. This Court granted the motion for protective order that same day.

6. The prosecution subsequently moved this Court to reconsider its March 23, 2021 Order. *See* Motion to Reconsider.

7. In sum, the prosecution claims that this Court’s Order is “unnecessary and overbroad.” *Id.* As support, the prosecution claims this Court’s order (1) ignores “the bounds of Defendant’s Constitutional right to counsel” and “privileges and legal protections already in place to protect Defendant;” (2) “could interfere with urgent, unrelated law enforcement investigations and other necessary functions;” and, (3) “the relief requested is not ripe for consideration by this Court.” *Id.*

8. The prosecution is incorrect.

9. First, this Court’s order is not “unnecessary.” This Court’s order is necessary to preserve and protect Mr. Alissa’s state and federal constitutional rights to remain silent, privileges against self-incrimination, and his rights to counsel. U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 25. Indeed, the law requires Mr. Alissa to invoke certain rights, and this Court’s recognition of that invocation is this Court’s duty. *See McNeil v. Wisconsin*, 501 U.S. 171, 178-79 (1991) (requiring an accused to make a “statement that can reasonably be construed to be expression of a desire for the assistance of an attorney in dealing with custodial interrogation by the police” in order for the accused’s Fifth Amendment right to counsel to attach); *see also Arizona v. Roberson*, 486 U.S. 675, 683 (1988) (an accused who invokes the right to counsel for interrogation on one offense may not be re-approached regarding any offense unless counsel is present).

10. Moreover, contrary to the prosecution’s claims, this Court’s order is not “overbroad” because it “could severely hamper law enforcement’s ability to investigate future

crimes unrelated to the above captioned case.” *Motion to Reconsider*, pp2-3. The prosecution’s argument is an overdramatization—law enforcement’s ability to investigate “future crimes” will not be “severely hampered” by requiring them to wait a few hours to interrogate Mr. Alissa in the presence of counsel.

11. Similarly, the prosecution fails to explain why its agents would need to speak to Mr. Alissa before providing him with medical care. *See Motion to Reconsider*, pp2-3 (“Perhaps the most troubling aspect of the protective order is that if Defendant were to suffer a serious health issue, jail staff would be prohibited from speaking with him or to provide medical care until his attorneys provided consent for the contact and were given an opportunity to be present.”). Indeed, if Mr. Alissa has a medical issue in the jail, the guards can safely and easily refer him to a medical professional—and medical professionals are not covered by this Court’s order.

12. The prosecution’s “imminent danger” argument similarly lacks sufficient explanation. *See Motion to Reconsider*, p3 (“[I]f Defendant needs to relay that he is in imminent danger, staff would be prohibited from speaking with him about his concerns until contacting his legal counsel in this case.”). Indeed, if Mr. Alissa is in “imminent danger” in the jail, the guards can safely and easily isolate Mr. Alissa in a cell by himself and wait for the presence of Mr. Alissa’s counsel or secure a court order before speaking to him about his concerns. *Cf.* Colo. R.P.C. 4.2, Comment [6] (“A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.”).

13. Additionally, contrary to the prosecution’s claims, Mr. Alissa requested the protection order pursuant to Colo. R.P.C. 4.2 and his state and federal rights to remain silent, privileges against self-incrimination, and his rights to counsel. *See Motion to Reconsider*, p3 (alleging that Mr. Alissa “did not request the protective order pursuant to any statutory or rule-based authority.”).

14. Finally, the issue regarding whether to issue a protective order is ripe. *See Motion to Reconsider*, p3 (claiming that “the order proposed [and granted by this Court] . . . is not *yet* ripe”) (emphasis added). Such as the case with all protection orders, the law does not require Mr. Alissa to wait until the prosecution violates his rights to request protective measures. *See, e.g., Hotsenpiller v. Morris*, 2017 COA 95, ¶ 56 (the purpose of a protection order is to *prevent* “harm or evil”); *In re Marriage of Fiffe*, 140 P.3d 160, 163 (Colo. App. 2005) (protection orders are necessary to protect the requestor from “*future* endangering incidents”) (emphasis added).

15. This Court’s order is correct, necessary and lawful. Accordingly, this Court must deny the prosecution’s Motion for Reconsideration.

16. Mr. Alissa files this motion, and makes 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 Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to

Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution. Mr. Alissa cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER



Daniel King #26129
Chief Trial Deputy State Public Defender



Kathryn Herold #40075
Supervising Deputy State Public Defender



Samuel Dunn #46901
Deputy State Public Defender

Certificate of Service

I hereby certify that on April 6, 2021, I served the foregoing document by E filing same to all opposing counsel of record.

/s/ skos

Dated: April 6, 2021