

DISTRICT COURT BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	DATE FILED: April 20, 2021 12:02 PM
PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant	COURT USE ONLY
Michael T. Dougherty, District Attorney Adam Kendall, Chief Trial Deputy District Attorney 1777 Sixth Street Boulder, CO 80302 Phone Number: (303)441-3700 FAX Number: (303)441-4703 E-mail: akendall@bouldercounty.org Atty. Reg. #38905	Case No. 21CR497 Div:13
Unopposed Motion to Limit Public Access to Notice Filed on April 15, 2021 (P-002)	

On April 15, 2021, the People filed a Notice of Endorsement of Witness (the “Notice”) with the Court, endorsing numerous witnesses in this case. As this Court is aware, due to the nature of the crimes at issue, there has been a large media interest in the case since its filing. The People are concerned that if the Court were to make the Notice available to the public, there is a risk that the media or other members of the public would seek to interview some, or many, of the endorsed witnesses in the case and publish the details of such interviews. The publication of these interviews could potentially taint the jury pool in this case. Ahmad Al Aliwi Alissa (the “Defendant”) maintains his right to a fair trial and impartial jury in this matter. Thus, this Court should make the Notice inaccessible to the public until the jury trial in this case is held and completed.

Defendant’s counsel has reviewed this motion and Defendant does not object to the relief requested by the People.

Authority and Argument

The release of criminal justice records is governed by the Colorado Criminal Justice Records Act (“CCJRA”). *See* C.R.S. § 24-72-301, et. seq. Pursuant to C.R.S. § 24-72-302(4), “‘Criminal justice records’ means all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, that are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law.”

As an initial matter “[w]hile Colorado's two open government laws, CORA and the CCJRA, generally favor broad disclosure of records, [the Colorado Supreme Court has] construed the CCJRA to favor somewhat less broad disclosure.” *Freedom Colorado Info., Inc. v. El Paso Cty. Sheriff's Dep't*, 196 P.3d 892, 899 (Colo. 2008). The Court, a criminal justice agency, may deny a request to inspect Criminal Justice Records if such inspection would be contrary to the public interest. C.R.S. § 24-72-305(5).

In engaging in the required balancing test, a criminal justice agency “must consider the pertinent factors, which include: the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request.” *Freedom Colorado Info., Inc., 196 P.3d at 899*.

Additionally, though not binding on this Court at this time, the Colorado Supreme Court adopted a new rule of criminal procedure on December 17, 2020, effective on May 10, 2021: Colo. R. Crim. P. 55.1 – “Public Access to Court Records in Criminal Cases.” Rule 55.1 provides

guidance on the proper considerations and processes to be used by the Court – in less than one month’s time – when limiting or denying public access to certain Court records.

Specifically, Rule 55.1 details the process to be used by the parties to a case when requesting the Court to make certain records inaccessible to the public. “A party may file a motion requesting that the court limit public access to a court record previously filed (including one not yet made accessible to the public) or to any part of such a court record by making it inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public.” Colo. R. Crim. P. 55.1(a)(1).

Although Rule 55.1 is not yet in effect, the People have complied with the procedural requirements of the Rule with the filing of this motion.

As already noted, of greatest concern, release of the Notice by this Court could impact the Defendant’s right to a fair trial – potentially resulting in the publication of accounts of the named witnesses in the Notice regarding the events at issue in this case in the public forum well before Defendant’s trial is held. “The [D]ue [P]rocess [C]lauses of the United States and Colorado [C]onstitutions guarantee every criminal defendant the right to a fair trial.” *Morrison v. People*, 19 P.3d 668, 672 (Colo. 2000). “Encompassed in the right to a fair trial is the right to an impartial jury.” *Howard-Walker v. People*, 443 P.3d 1007, 1011 (Colo. 2019). The media has already interviewed and published certain witness accounts of the crimes at issue in this case. The release of the Notice at this stage of the case could result in further publication of witness accounts in the media and lead to more pre-trial information being consumed by potential jurors.¹

Additionally, the investigation into the crimes committed by Defendant remain ongoing. To date, the People have engaged with the press in accord with all ethical duties, providing minimal,

¹ It is worth noting that the identity of victims in this case will continue to be available to the public. If and when the People amend the complaint and add additional charges, the amended complaint will be public and will identify all victims in this case.

appropriate information and explicitly stating that Defendant is presumed innocent in this case until proven guilty. Law enforcement continues to interview witnesses and follow-up on leads. Witness accounts of what occurred in this case could be tainted by the mass publication of interviews with other witnesses.

WHEREFORE, as Defendant's right to a fair trial and an impartial jury in this matter is paramount, this Court should order that the Notice is inaccessible to the public until the jury trial in this case is held and completed. Further, the People request that the Court enter an identical order to any future witness endorsement the People file in this case.

Respectfully submitted,

MICHAEL T. DOUGHERTY
DISTRICT ATTORNEY

By:
s/Adam D. Kendall
Adam D. Kendall
April 20, 2021

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing served via the Colorado e-filing system on April 20, 2021, and addressed as follows:

Kathryn Herold
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Sam Dunn
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s/Adam D. Kendall
Adam D. Kendall