

District Court, Boulder County, State of Colorado 1777 Sixth Street, Boulder, Colorado 80302 (303) 441-1866	DATE FILED: April 13, 2021 2:33 PM
<p><b>THE PEOPLE OF THE STATE OF COLORADO,</b></p> <p>v.</p> <p><b>AHMAD AL ALIWI ALISSA, DEFENDANT</b></p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
	Case Number:  <p style="text-align: center;"><b>21CR497</b></p> Division: 13
<p style="text-align: center;"><b>ORDER GRANTING IN PART THE PEOPLE’S MOTION TO RECONSIDER MARCH 23, 2021 ORDER REGARDING [DEFENDANT’S] MOTION FOR PROTECTIVE ORDER (D-006)</b></p>	

This matter comes before the Court on the PEOPLE’S MOTION TO RECONSIDER MARCH 23, 2021 ORDER REGARDING [DEFENDANT’S] MOTION FOR PROTECTIVE ORDER (D-006). Upon consideration of the People’s motion, the BOULDER COUNTY SHERIFF’S OFFICE RESPONSE TO THE PEOPLE’S MOTION TO RECONSIDER MARCH 23, 2021 ORDER REGARDING [DEFENDANT’S] MOTION FOR PROTECTIVE ORDER (D-006), and Defendant’s RESPONSE TO THE PROSECUTION’S MOTION TO RECONSIDER THIS COURT’S MARCH 23, 2021 PROTECTION ORDER (D-006), the Court Finds the Protective Order is unnecessarily overbroad and Orders as follows.

## CONTACT WITH DEFENDANT

The Protective Order on its face applies to all law enforcement, and their agents, without limitation, and would prohibit all BCSO staff, including Jail staff such as deputies and medical staff, from contacting Defendant in any form without first contacting his counsel. As “contact” is not defined in the Protective Order, it would include routine contacts necessary to provide food, clothing, and required transportation to inmates as well as additional contacts necessary to maintain an inmate’s safety and provide medical care.

The Eighth Amendment, applicable to the Jail via the Fourteenth Amendment’s Due Process clause, *see Perry v. Durborow*, 892 F.3d 1116, 1121 (10th Cir. 2018), prohibits cruel and unusual punishment and imposes duties on Jail officials to provide humane conditions of confinement, ensure that inmates receive adequate food, clothing, shelter and medical care, and take reasonable measures to guarantee the safety of inmates. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The Constitution further requires Jail officials to make available to inmates a level of medical care which is reasonably designed to meet the routine and emergency health care needs of inmates. *Ramos v. Lamm*, 639 F.2d 559, 574 (10th Cir. 1980).

The Protective Order on its face also would prohibit all BCSO staff, including Jail staff, (“any other law enforcement persons, and their agents”) from contacting or questioning Defendant. Accordingly, Jail medical staff, including nurses, a doctor, and a dentist, are prohibited from contacting or questioning Defendant. Accordingly, medical professionals onsite at the Jail are, on the face of the order, subject to the Protective Order’s restrictions. However, the Court agrees that Jail medical professionals are most readily available to respond and, under the Constitutional obligations outlined above, often must

respond to a medical emergency at the Jail. Furthermore, Jail staff may be unable to refer Defendant to a medical professional without making some form of “contact” with Defendant.

The Court also agrees that the ability of Jail staff to contact or question Defendant regarding his basic needs and medical care is critical to the BCSO’s ability to fulfill its obligations under the Fourteenth Amendment. The day-to-day operations of the Jail requires that Jail staff be able to contact Defendant in order to provide his meals, clean clothes, or any prescribed medications. Jail staff may also need to contact Defendant in order to effectuate his transport to the courthouse. Jail staff must make ministerial and routine contact with inmates in order to operate the Jail in a constitutional manner. Requiring Jail staff to confer with Defendant’s counsel prior to any contact could substantially interfere with the delivery of services designed to provide for and protect Defendant as constitutionally required.

Accordingly, the Court reconsiders its previous order to permit all Jail staff to perform their necessary duties pursuant to Defendant’s incarceration at the Boulder County Jail without requiring prior notice to Defendant’s counsel.

#### INTERVIEW OF DEFENDANT

Defendant has invoked his right to counsel, and the Public Defender’s Office was appointed to represent him on March 23, 2021. Therefore, Defendant has the right to have counsel present at all critical stages of the prosecution of this case, to include interrogation related to the charges in the matter. *People v. Vickery*, 229 P.3d 278, 280 (Colo. 2010) (citing *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991)). Additionally, Colo. R.P.C. 4.2 requires that the People contact Defendant’s counsel prior to discussing the above

captioned case with him. Absent a waiver of Defendant's right to counsel, the People (to include any agent employed by or acting on behalf of a law enforcement entity) may not interrogate Defendant with regard to the charges pending in the above captioned case.

However, the analysis with regard to discussions or interviews with Defendant on matters unrelated to the above captioned case is different. Defendant's right to counsel on unrelated matters or investigations is not subject to Colo. R.P.C. 4.2. Regardless, any statement made by Defendant on an unrelated matter would be protected, and subject to scrutiny and exclusion in any subsequent case, as outlined in *Miranda v. Arizona*, 384 U.S. 436 (1966). And, the protective order granted by this Court could severely hamper law enforcement's ability to investigate future crimes unrelated to the above captioned case. For instance, if Defendant becomes a witness to or victim of a crime while detained, the protective order granted by this Court could impact law enforcement's ability to properly investigate a matter wholly unrelated to the above captioned case. Thus, the Court agrees with the People that, in this regard, the protective order is unnecessary and overbroad.

Accordingly, the Court reconsiders its previous protective order to prohibit only the interrogation of Defendant with regard to the charges pending in the above captioned case.

For the foregoing reasons, the Court finds that THE PEOPLE'S MOTION TO RECONSIDER MARCH 23, 2021 ORDER REGARDING [DEFENDANT'S] MOTION FOR PROTECTIVE ORDER (D-006) is **GRANTED IN PART**.

SO ORDERED this 13 day of April, 2021.

BY THE COURT:



Thomas F. Mulvahill  
District Court Judge