

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 SIXTH STREET P.O. BOX 4249, BOULDER, CO, 80306-4249	<p style="text-align: center;">DATE FILED June 5, 2025 1:47 PM</p> <p style="text-align: center;">⚠ COURT USE ONLY ⚠</p> <p>Case Number: 2025CR785 Division: 5 Courtroom:</p>
THE PEOPLE OF THE STATE OF COLORADO v. Defendant(s) MOHAMED SABRY SOLIMAN	
<p style="text-align: center;">Order:MR. SOLIMAN'S MOTION FOR ACCESS TO THE SCENE (D-009)</p>	

The motion/proposed order attached hereto: MOOT.

The parties agree that this Motion is MOOT.

Issue Date: 6/5/2025



NANCY WOODRUFF SALOMONE
District Court Judge

COUNTY COURT, Boulder County, Colorado Court Address: 1776 6 th Avenue Boulder, CO 80306	<div style="text-align: center;"> <input type="checkbox"/> COURT USE ONLY <input type="checkbox"/> </div>
THE PEOPLE OF THE STATE OF COLORADO v. MOHAMED SOLIMAN, Defendant.	
Megan Ring, Colorado State Public Defender Kathryn Herold #40075 Supervising Deputy State Public Defender Nicole Collins #33122 Office Head, Boulder Regional Office 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. 25CR785 Division 8
MR. SOLIMAN'S MOTION FOR ACCESS TO THE SCENE (D-009)	

MOHAMED SOLIMAN moves for a court order preserving and granting counsel and their agents access to inspect the crime scene near 1325 Pearl Street, Boulder, CO, and the surrounding area, pursuant to the Fifth, Sixth and Fourteenth Amendments to the Colorado Constitution, as well as Article II, sections 16, 18 and 25 of the Colorado Constitution. Counsel has reason to believe the scene is currently under law enforcement's control. In support of this motion, Mr. Soliman states:

1. The area at and around 1325 Pearl Street is near the Boulder Courthouse. This is a public area. At present, it is believed to be under law enforcement's exclusive control as law enforcement investigates the matter.
2. The defense requests that this Court issue an order directing the Boulder Police Department and the other law enforcement agencies involved to preserve and refrain from releasing the scene to afford the defense team and defense experts the opportunity to inspect and observe the scene.
3. Inspection of the scene prior to its release is necessary to Mr. Soliman's defense. The arrest affidavit filed in this matter is short, giving very little detail about the scene. It fails to give information which would otherwise be useful in determining what are critical and necessary investigatory steps to provide effective assistance of counsel to Mr. Soliman. Mr. Soliman will be charged with multiple counts of attempted first degree murder, according to the information available to the defense at this time.

4. It is unknown how many officials are actively participating in the scene investigation, and what measures they are taking to ensure the integrity of the scene for other investigation, namely the defense's. This location is heavily trafficked by the larger Boulder community on a daily basis. Once law enforcement presence leaves, it will be nearly impossible to investigate the scene properly, without interference from private citizens in these public spaces. The location of witnesses, victims, and tangible pieces of evidence, as in every single serious criminal case, are crucial pieces of evidence. In this case, the location and vantage point of any potential witnesses and any potential piece of evidence is critically important, as it appears from the affidavit that varying and seemingly contradictory reports were provided to law enforcement during the incident. Without being able to view, and document these various aspects of this scene, without interference from the public, Mr. Soliman will be unable to effectively prepare a defense in the case.

5. Counsel requires access to document the precise location of various pieces of evidence relevant to the defense, the state of such evidence, and to document relevant evidence overlooked by the local, state, and federal law enforcement agents. Relevant pieces of evidence would include projectiles, casings, entry and exit holes on any items within the store, the precise location of these items before they are moved and removed by law enforcement.

6. Absent a court order granting counsel access, counsel will not be able to access, investigate, or document the scene.

7. The United States and Colorado Constitutions grant criminal defendants the right to investigate, prepare, and present a defense free from unreasonable governmental interference. See U.S. Const. amends. V, VI, and XIV; Colo. Const., art. II, §§ 16, 18, 25.

8. Moreover, the concept of fundamental fairness embedded in the Due Process Clause entitles a defendant to a general right of access to evidence. See *Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) (“[A] criminal trial is fundamentally unfair if the State proceeds against [a] . . . defendant without making certain that he has access to the raw materials integral to the building of an effective defense.”); *California v. Trombetta*, 467 U.S. 479, 485 (1984) (to safeguard right to present a complete defense embodied in Due Process Clause, “the Court has developed ‘what might loosely be called the area of constitutionally guaranteed access to evidence.’” (citation omitted)); *United States v. McClelland*, 141 F.3d 967, 971 (10th Cir. 1998) (“A defendant’s Fourteenth Amendment due process rights include a general right to access evidence.”).

9. In addition, counsel is obligated under the Sixth Amendment and Article II, section 16 of the Colorado Constitution to conduct a thorough and independent pretrial investigation. See *Von Moltke v. Gillies*, 332 U.S. 708, 721 (1948) (“Prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved”); *Powell v. Alabama*, 287 U.S. 45, 57 (1932) (noting that “thorough-going investigation and preparation” by defense counsel is “vitally important”); *People v. Tackett*, 742 P.2d 957, 959 (Colo. App. 1987) (“A defendant is entitled to a pretrial investigation of sufficient thoroughness to develop potential defenses and uncover facts relevant to guilt and punishment.”). In order for counsel to provide effective representation to Mr. Soliman, they must have access to the scene to investigate. *Strickland v. Washington*, 466 U.S. 668 (1984); *State v. Tetu*, 386 P.3d 844, 852-55 (Haw. 2016) (collecting authorities). Counsel may not defer to the prosecution and its agents to perform the factual investigation necessary to defend against these serious charges, which includes the death of one of its agents. *Id.*; *Tetu*, 386 P.3d at 852-55; see also *People v. Guzman-Rincon*, 369 P.3d 752, 757

(Colo. App. 2015) (rejecting the prosecution’s assertion that nothing in its ex parte conference with the judge harmed the defendant’s rights because “[i]t is not the role of the prosecution to determine whether a defendant’s rights are violated.”).

10. Finally, Crim. P. 16, I (a)(1)(IV) requires the prosecution to “make available to the defense . . . [a]ny . . . tangible objects held as evidence in connection with the case.” This obligation extends beyond the prosecuting attorney to “any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his or her office.”

11. Counsel is willing to abide by all reasonable conditions that may be placed on the inspection of the scene for the purposes of preserving the integrity of the physical evidence.

12. Based on the foregoing, authorities and Mr. Soliman’s weighty interest in exploring and gathering relevant and material evidence in his defense, the Court should order that the Boulder Police Department and the other law enforcement agencies involved should preserve and hold the scene to allow counsel an opportunity to access and inspect it, subject to such reasonable limitations and restrictions as the Court may impose.

Respectfully Submitted,

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER

_____/s/Kathryn Herold_____
Kathryn Herold #40075
Supervising Deputy State Public Defender

_____/s/ Nicole Collins
Nicole Collins #33122
Office Head, Boulder Regional Office

Dated: June 2, 2025

Certificate of Service

I hereby certify that on June 2, 2025, I served the foregoing document by E filing same to all opposing counsel of record.

_____/s/ Kathryn Herold ____