District Court, Chaffee County, Colorado P. O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: May 5, 2021
THE PEOPLE OF THE STATE OF COLORADO **vs.** **DEFENDANT: Barry Lee Morphew** **IN RE: Arrest Warrant/Arrest Warrant Affidavit**	Case Number: CCSO 20000911 Div.: 2 Ctrm.:
Attorney for Plaintiff: Name: Linda Stanley, District Attorney, Jeffrey D. Lindsey, Senior Deputy District Attorney Eleventh Judicial District Address: 104 Crestone Ave., Salida, CO 81201 Phone Number: (719)539-3563 Fax Number: (719)539-3565 Atty. Reg. # 45298	

MOTION TO SEAL ARREST WARRANT AFFIDAVIT AND ARREST WARRANT

COME NOW, The People of the State of Colorado, by and through District Attorney Linda Stanley, and move the Court as follows:

1. The arrest warrant affidavit filed with this Motion and Order involves an active investigation of a missing person, namely Suzanne Morphew. The investigation is ongoing.

2. The People are extremely concerned that if this arrest warrant is made public the suspect may flee the jurisdiction, possibly even the United States. Upon information and belief, the suspect has liquidated his assets in Chaffee County and limited working at his business and his subcontracting job in this jurisdiction. Allegedly, Mr. Morphew has sold his house on Puma Path Drive and netted over one million dollars. Mr. Morphew has recently purchased several newer vehicles. Undersigned has further received information that Mr. Morphew took his Bobcat to Indiana and has made noises about leaving to Arizona.

3. The People respectfully request the Court accept the application under seal, and that the Court order that the arrest warrant affidavit and return currently filed remain under seal until the Defendant's first appearance before this Honorable Court or until further order of the Court, provided that law enforcement personnel be permitted to serve such warrant upon the suspect.

RESPECTFULLY SUBMITTED this 4th day of May 2021

/s/ Linda Stanley, Jeffrey D. Lindsey
By: Linda Stanley, District Attorney, #45298
Jeffrey D. Lindsey, Senior Deputy District Attorney #24664

District Court, Chaffee County, Colorado P. O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: May 5, 2021
THE PEOPLE OF THE STATE OF COLORADO **vs.** **DEFENDANT: Barry Lee Morphew** **IN RE: Arrest Warrant/Arrest Warrant Affidavit**	Case Number: CCSO 20000911 Div.: 2 Ctrm.:
Attorney for Plaintiff: Name: Linda Stanley, District Attorney, Jeffrey D. Lindsey, Senior Deputy District Attorney Eleventh Judicial District Address: 104 Crestone Ave., Salida, CO 81201 Phone Number: (719)539-3563 Fax Number: (719)539-3565 Atty. Reg. # 45298	

ORDER TO SEAL ARREST WARRANT AFFIDAVIT AND ARREST WARRANT

THIS MATTER, coming before the Court on the People's Motion and Order to Seal:

The Arrest Warrant Affidavit and Arrest Warrant for Barry Lee Morphew, the Court does hereby GRANT the motion this: 4th day of May 2021. The Warrant and supporting documents shall remain under seal until the suspect makes his first appearance at Advisement before the Honorable Court or until otherwise ordered by the Court.

5/4/21

JUDGE

PATRICK MURPHY

CHIEF JUDGE, 11th JD

DISTRICT COURT, CHAFFEE COUNTY, COLORADO 142 Crestone Ave, Salida, CO 81201 (719) 539-2561	DATE FILED: May 5, 2021 4:23 PM
PEOPLE OF THE STATE OF COLORADO, *Plaintiff* v **Barry Lee Morphew,** *Defendant*	**▲COURT USE ONLY▲**
Attorney for Defendant Daniel Zettler #32388 Magdalena Rosa, # 31716 Deputy State Public Defender MEGAN A. RING, COLORADO STATE PUBLIC DEFENDER 8044 W. Hwy 50, Suite 100 Salida, Colorado 81201 Phone: (719) 539-3521 Fax: (719) 539-4597	Case No: **21CR78** Division: Felony

NOTICE OF INVOCATION OF ALL STATUTORY, CASE LAW, AND CONSTITUTIONAL PRIVILEGES [D-3]

1. Mr. Morphew by and through counsel, hereby notifies the District Attorney's Office and/or all law enforcement agencies of its intent to specifically invoke the following privileges

a. All medical and psychiatric, including drug or alcohol treatment, privileges afforded to Defendant under the Colorado and United States Constitutions and Section 13-90-107 of the Colorado Revised Statutes as to all medical and/or psychiatric treatment Defendant has ever received.

b. All privileges in school, military, probation, prison, social services, or any other records Defendant has a confidentiality expectation through Federal and State statutes and case law, administrative regulations or rules, or Federal and State constitutional provisions, or the agencies own statements to Defendant, either oral or written.

Respectfully Submitted,

MEGAN A. RING,
COLORADO STATE PUBLIC DEFENDER

S: Daniel Zettler
Daniel Zettler (32388)
Deputy State Public Defender

Certificate of Service: I certify that on May 5, 2021 I served the foregoing document through the Colorado Courts E-Filing system on all opposing parties of record.

/s/ DFZ

DISTRICT COURT, CHAFFEE COUNTY, COLORADO 142 Crestone Ave, Salida, CO 81201 (719) 539-2561	DATE FILED: May 5, 2021 4:23 PM
PEOPLE OF THE STATE OF COLORADO, *Plaintiff* v **Barry Lee Morphew,** *Defendant*	**▲COURT USE ONLY▲**
Attorney for Defendant Daniel Zettler #32388 Magdalena Rosa, #31716 Deputy State Public Defender MEGAN A. RING, COLORADO STATE PUBLIC DEFENDER 8044 W. Hwy 50, Suite 100 Salida, Colorado 81201 Phone: (719) 539-3521 Fax: (719) 539-4597	Case No: **21CR78** Division: Felony

NOTICE OF REPRESENTATION [D-2]

Mr. Morphew notifies the Office of the District Attorney and any other law enforcement personnel or their agents to (a) obtain the consent of Defendant's counsel before attempting to contact or interview Defendant and (b) give said counsel reasonable opportunity to be present PRIOR to any contact with Defendant. As grounds, Defendant states:

1. The Office of the State Public Defender hereby enters its appearance as Counsel for Barry Lee Morphew via election based on his in-custody status.

2. Defendant invokes Defendant's right to counsel and right to remain silent under the Fifth, Sixth, and Fourteenth Amendments of the Colorado and United States Constitutions. Defendant does not wish to be interviewed, contacted, or questioned unless Defendant's attorney is present. This includes crimes or circumstances which the State or law enforcement believe are unrelated to the crime for which Defendant is in custody. Defendant specifically requests that pursuant to said amendments that Defendant's counsel make the determination as to any matters which impact his constitutional rights.

3. Consent of opposing counsel is required by Disciplinary Rule 4.2 of the Code of Professional Responsibility.

4. Defendant requests that this notice of representation be communicated to all agencies that the prosecution's Rules 16(a)(3) and (b)(4) of the Colorado Rules of Criminal Procedure obligations extend to and that those persons or agencies be directed by the prosecution to comply with the Fifth, Sixth, and Fourteenth Amendments pertaining to Defendant.

5. Defendant wishes to exercise both Defendant's right to silence (and against self-incrimination) and Defendant's right to counsel under the Federal and State Constitutions.

Respectfully Submitted,

MEGAN A. RING,
COLORADO STATE PUBLIC DEFENDER

S: Daniel Zettler
Daniel Zettler (32388)
Deputy State Public Defender

Certificate of Service: I certify that on May 5, 2021 I served the foregoing document through the Colorado Courts E-Filing system on all opposing parties of record.

/s/ DFZ

Respectfully Submitted,

MEGAN A. RING,
COLORADO STATE PUBLIC DEFENDER

S: Daniel Zettler
Daniel Zettler (32388)
Deputy State Public Defender

Certificate of Service: I certify that on May 5, 2021 I served the foregoing document through the Colorado Courts E-Filing system on all opposing parties of record.

/s/ DFZ

DISTRICT COURT, CHAFFEE COUNTY, COLORADO 142 Crestone Ave, Salida, CO 81201 (719) 539-2561	DATE FILED: May 5, 2021 4:23 PM
PEOPLE OF THE STATE OF COLORADO, *Plaintiff* v **Barry Lee Morphew,** *Defendant*	**▲COURT USE ONLY▲**
Attorney for Defendant Daniel Zettler #32388 Magdalena Rosa, #31716 Deputy State Public Defender MEGAN A. RING, COLORADO STATE PUBLIC DEFENDER 8044 W. Hwy 50, Suite 100 Salida, Colorado 81201 Phone: (719) 539-3521 Fax: (719) 539-4597	Case No: **21CR78** Division: Felony

ENTRY OF APPEARANCE, NOTICE OF ELECTION, AND REQUEST FOR PROOF EVIDENT PRESUMPTION GREAT HEARING [D-1]

The Office of the Colorado State Public Defender hereby enters an appearance on behalf of Barry Lee Morphew, Defendant. Mr. Morphew hereby requests a preliminary hearing pursuant to C.R.S. § 16-5-301(1) and Rule 5(a)(4) of the Colorado Rules of Criminal Procedure, as well as a proof evident presumption great hearing pursuant to C.R.S. § 16-4-101(3).

Mr. Morphew is in custody and cannot post bond, as no bond is presently set. Pursuant to Chief Justice Directive 04-04(III), the Office of the State Public Defender is automatically entering to represent Mr. Morphew.

Further, no bond has yet been set and it is anticipated that the Prosecution will request that Mr. Morphew be held without bail during the pendency of his cases. Mr. Morphew has the right to a hearing at which "the burden shall be upon the people to establish that the proof is evident or that the presumption is great. The court may combine in a single hearing the questions as to whether the proof is evident or the presumption great with the determination of the existence of probable cause to believe that the defendant committed the crime charged." C.R.S. § 16-4-101(3).

Mr. Morphew requests the Court order the prosecuting attorney to provide all discovery critical to the issues at the proof evident/ presumption is great hearing no later than thirty days prior to the hearing and produce all discovery under C.R.CR.P Rule 16 Part I (a)(1), (IV), and (VII), as soon as practicable but no later than 21 days after Mr. Morphew's first appearance.

Respectfully Submitted,

MEGAN A. RING,
COLORADO STATE PUBLIC DEFENDER

S: Daniel Zettler
Daniel Zettler (32388)
Deputy State Public Defender

Certificate of Service: I certify that on May 5, 2021 I served the foregoing document through the Colorado Courts E-Filing system on all opposing parties of record.

/s/ DFZ

MEGAN A. RING,
COLORADO STATE PUBLIC DEFENDER

S: Daniel Zettler
Daniel Zettler (32388)
Deputy State Public Defender

Certificate of Service: I certify that on May 5, 2021 I served the foregoing document through the Colorado Courts E-Filing system on all opposing parties of record.

/s/ DFZ

DISTRICT COURT, CHAFFEE COUNTY, COLORADO 142 Crestone Ave, Salida, CO 81201 (719) 539-2561	DATE FILED: May 5, 2021 4:51 PM
PEOPLE OF THE STATE OF COLORADO, *Plaintiff* v **Barry Lee Morphew,** *Defendant*	**▲COURT USE ONLY▲**
Attorney for Defendant Daniel Zettler #32388 Magdalena Rosa, #31716 Deputy State Public Defender MEGAN A. RING, COLORADO STATE PUBLIC DEFENDER 8044 W. Hwy 50, Suite 100 Salida, Colorado 81201 Phone: (719) 539-3521 Fax: (719) 539-4597	Case No: **21CR78** Division: Felony

MOTION FOR COURT TO ORDER THE RELEASE OF ALL SEARCH WARRANTS, AFFIDAVITS, AND PROPERY INVENTORIES ([D-4]

Barry Morphew through counsel, respectfully requests this Court order the Clerk of Courts for Chaffee County to provide access to Counsel via e-filing, and copies upon request, of all arrest warrants, search warrants, associated affidavits, and property inventories under C.R.Crim.P. 41 (d)(5)(VI) and so that Mr. Morphew can receive effective assistance of counsel. Counsel request these documents remain sealed to non parties and that the parties are not to disseminate the materials to any parties not directly involved in the investigation, litigation, or defense of the case absent further order of the Court.

MEGAN A. RING,
COLORADO STATE PUBLIC DEFENDER

S: Daniel Zettler
Daniel Zettler (32388)
Deputy State Public Defender

Certificate of Service: I certify that on May 5, 2021 I served the foregoing document through the Colorado Courts E-Filing system on all opposing parties of record.

/s/ DFZ

DISTRICT COURT, CHAFFEE COUNTY, COLORADO 142 Crestone Ave, Salida, CO 81201 (719) 539-2561	DATE FILED: May 5, 2021 5:23 PM
PEOPLE OF THE STATE OF COLORADO, *Plaintiff* v **Barry Lee Morphew,** *Defendant*	**▲COURT USE ONLY▲**
Attorney for Defendant Daniel Zettler #32388 Magdalena Rosa, #31716 Deputy State Public Defender MEGAN A. RING, COLORADO STATE PUBLIC DEFENDER 8044 W. Hwy 50, Suite 100 Salida, Colorado 81201 Phone: (719) 539-3521 Fax: (719) 539-4597	Case No: **21CR78** Division: Felony

OBJECTION TO ALL REQUESTS FOR EXPANDED MEDIA COVERAGE AT ANY AND ALL HEARINGS [D-5)

Barry Morphew through counsel, objects to any and all request for expanded media coverage . In support of this motion, Mr. Morphew states the following:

1. Mr. Morphew anticipates that multiple media agencies will file requests for expanded media coverage.
2. Mr. Morphew has been arrested for first-degree murder.
3. Mr. Morphew objects to any and all request for expanded media coverage for the following reasons:

a. There is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties, Mr. Morphew in particular, and his right to a fair trial;

b. The request would detract from the solemnity, decorum, and dignity of the Court;

c. Expanded media coverage would create adverse effects that are greater than those caused by traditional media coverage.

MEGAN A. RING,
COLORADO STATE PUBLIC DEFENDER

S: Daniel Zettler
Daniel Zettler (32388)
Deputy State Public Defender

Certificate of Service: I certify that on May 5, 2021 I served the foregoing document through the Colorado Courts E-Filing system on all opposing parties of record.

/s/ DFZ

DISTRICT COURT, CHAFFEE COUNTY, COLORADO 142 Crestone Ave, Salida, CO 81201 (719) 539-2561	DATE FILED: May 5, 2021 5:46 PM
PEOPLE OF THE STATE OF COLORADO, *Plaintiff* v **Barry Lee Morphew,** *Defendant*	**▲COURT USE ONLY▲**
Attorney for Defendant Daniel Zettler #32388 Magdalena Rosa, #31716 Deputy State Public Defender MEGAN A. RING, COLORADO STATE PUBLIC DEFENDER 8044 W. Hwy 50, Suite 100 Salida, Colorado 81201 Phone: (719) 539-3521 Fax: (719) 539-4597	Case No: **21CR78** Division: Felony

MOTION FOR PRESERVATION OF PHYSICAL EVIDENCE[D-6)

Mr. Morphew, by and through counsel, respectfully requests this Court order the Office of the District Attorney to preserve all physical evidence collected in this case. Additionally, Mr. Morphew specifically requests an order to preserve any remaining biological samples collected or obtained from any source. Further, Mr. Morphew requests notice and a hearing prior to the testing of any physical evidence if consumptive to degree independent testing by the defense would not be possible. or prior to release of such evidence.

MEGAN A. RING,
COLORADO STATE PUBLIC DEFENDER

S: Daniel Zettler
Daniel Zettler (32388)
Deputy State Public Defender

Certificate of Service: I certify that on May 5, 2021 I served the foregoing document through the Colorado Courts E-Filing system on all opposing parties of record.

/s/ DFZ

District Court, Chaffee County, Colorado 142 Crestone Avenue Salida, Colorado 81201	DATE FILED: May 6, 2021 10:54 AM FILED IN COMBINED COURTS MAY - 3 2021 CHAFFEE COUNTY, COLORADO
People of the State of Colorado v. Barry Lee Morphew, Defendant	
Prepared by the Court: Hon. Patrick W. Murphy Chief Judge, 11th Judicial District Chaffee County, Colorado	Case No. 21CR78

ORDER RE: REQUEST FOR EXPANDED MEDIA COVERAGE

This matter comes before the Court for consideration of numerous requests for expanded media coverage of the advisement scheduled for May 6, 2021. Having reviewed the requests, having heard from the parties and after considering applicable authority, the Court finds, concludes and orders as follows:

Standard for Authorizing Expanded Media Coverage

Chapter 38, Rule 3 of the Colorado Court Rules provides the standard for authorizing expanded media coverage. In determining whether expanded media coverage should be permitted, a judge shall consider the following factors: (A) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial; (B) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court; and (C) Whether expanded media

coverage would create adverse effects which would be greater than those caused by traditional media coverage.

Discussion/Analysis

Having considered the above listed three factors, the Court finds that expanded media coverage should be permitted, with reasonable restrictions, consistent with Chapter 38, Rule 3 of the Colorado Court Rules.

Specifically, the Court concludes that expanded media coverage will not interfere with the rights of the parties to a fair trial. The disappearance of Suzanne Morphew, the subsequent investigation and the recent arrest of the Defendant have already garnered significant media attention--in Chaffee County, in Colorado and nationwide. Allowing the Defendant's advisement to be filmed will not, in Court's view, significantly increase the media's or the public's awareness of, or attention to this case.

The Court concludes that expanded media coverage will not unduly detract from the solemnity, decorum or dignity of the court. See restrictions on expanded media coverage below.

The Court concludes that expanded media coverage will not create adverse effects which would be greater than those caused by traditional media coverage. Again, there will be significant limitations set on the single camera that will be allowed in the courtroom.

Finally, the Court is mindful that the inception of this case coincides with the ongoing COVID-19 pandemic. Due to local public health orders, social distancing of at least six feet for those who do not live together must be enforced in the courtroom. This severely limits the number of people who can enter and remain in the courtroom (the gallery is limited to 8 individuals if not from the same household). The Court will give priority to seating members of

the Morphew family and members of the defense/prosecution teams. It is quite possible that only a very few members of the general public will be allowed in the courtroom to observe the proceedings in person (although the proceedings will be broadcast via WebEx). Because public, in-person attendance of the advisement will be severely limited, the Court further concludes that expanded media coverage of the proceedings is appropriate.

The Court has been made aware that the Morphew children are likely to attend and make a statement at the hearing. The Court does not want images of the Morphew children, one of whom is a minor, to be recorded or broadcast nor does the Court believe there is a viable, recognizable reason to allow recording of their images.

Expanded Media Coverage Restrictions

Expanded media coverage shall be conducted only under the following conditions. The Court maintains final approval of all arrangements:

1. Video. The Court has accepted the expanded media request of KUSA—simply because the Court received that request before all others. KUSA shall be given access to the courtroom, prior to the hearing to set up their equipment with the direction of the Court and input from the parties if they so desire. KUSA shall be responsible for pooling pursuant to the arrangements outlined below. There shall be only one camera in the courtroom. Only one person shall be permitted to operate the camera. The camera operator may use a tripod but shall not change location while Court is in session.

If the Morphew children attend the hearing and speak at the hearing, the camera must be turned off, capped or moved in a manner that will not allow images of the Morphew children to be recorded.

2. Audio. No audio recording of any kind shall be permitted at any time in the courtroom.

3. Still Cameras. No still cameras will be allowed in the Courtroom.

4. Lighting. No movie lights, flash attachments, or sudden lighting changes shall be permitted. No modification or addition of lighting equipment shall be allowed.

5. Operating Signals. No visible or audible light or signal (tally light) shall be used on any equipment.

6. Zoom Photography. There shall be no zoom or close-up photography or videography of any bench conferences or conferences between Defendant and his counsel

7. Pooling Arrangements. KUSA shall be solely responsible for arranging an open and impartial distribution scheme with a distribution point located outside of the courthouse. If no agreement can be reached on either of these matters, there shall be no expanded media coverage. Neither judges nor other court personnel shall be called upon to resolve any disputes concerning pooling arrangements.

8. Conduct of KUSA representative. Equipment employed to provide expanded media coverage shall be positioned and operated so as to minimize any distraction. Identifying marks, call letters, logos, symbols, and legends shall be concealed on all equipment. Persons operating such equipment shall not wear clothing bearing any such identifying information. No equipment used to provide expanded media coverage shall be placed in, or removed from, the courtroom while Court is in session. No film, videotape, or lens shall be changed within the courtroom while Court is in session. Members of the media may utilize personal digital assistants (PDAs), laptops, tablets, and notebooks in the courtroom with wireless capabilities so long as it creates no disruption during the course of the proceeding

Done in Chambers and dated this 6 day of May, 2021.

BY THE COURT:

Hon. Patrick W. Murphy
Chief Judge, 11th J.D.

cc:

District Court, Chaffee County, Colorado 142 Crestone Avenue Salida, Colorado 81201	DATE FILED: May 6, 2021 4:07 PM
People of the State of Colorado v. Barry Lee Morphew, Defendant	FILED IN THE COMBINED COURTS MAY – 6 2021 CHAFFEE COUNTY, COLORADO
Prepared by the Court: Hon. Patrick W. Murphy Chief Judge, 11th Judicial District Chaffee County, Colorado	Case No. 21CR78

ORDER RE: PUBLIC RELEASE OF ARREST AFFIDAVIT

The arrest affidavit in this case remains sealed upon the order of the Court. During discussions between the Court and counsel prior to today's advisement it was agreed that the affidavit would be released to defense counsel immediately and this has since occurred.

Anticipating requests from the media and the public to unseal and release the affidavit, the Court requested that each side give their position on the issue. The prosecution did not object to unsealing the affidavit. Defense counsel requested time to read and review the affidavit before stating their position. This was a reasonable request considering the length of the affidavit.

Therefore, the Court gave defense counsel seven days from today to note their position regarding unsealing the affidavit. If defense counsel objects, the matter will be set for a hearing as soon as practicable.

Done in Chambers and dated this 6 day of May, 2021.

BY THE COURT:

Hon. Patrick W. Murphy
Chief Judge, 11th J.D.

cc:

☐ Municipal Court ☐ County Court ☒ District Court ☐ Denver Juvenile ☐ Denver Probate

District Court, Chaffee County

Court Address: Chaffee County Judicial Building
142 Crestone Avenue,
Salida, CO 812010000

RID: D0082021CR000078 - 000027

DATE FILED: May 6, 2021 3:28 PM

The People of the State of Colorado

v.

Defendant: MORPHEW, BARRY LEE

Address:

▲ COURT USE ONLY ▲

Case Number: D0082021CR000078

Division: 2

MANDATORY PROTECTION ORDER PURSUANT TO §18-1-1001, C.R.S.

Full name of Defendant ☐ Protected Party alleges Weapon involved	Date of Birth	Sex	Race	Weight	Height	Hair Color	Eye Color
MORPHEW, BARRY LEE	10/17/1967	☒M ☐F	W	190	510	BLN	BLU

Full name of Protected Party	Date of Birth	Sex	Race	Full name of Protected Party	Date of Birth	Sex	Race
		F	W			F	W

The Court finds it is appropriate to issue this Protection Order pursuant to §18-1-1001, C.R.S.

The Court finds that the Defendant ☐is ☐is not governed by the Brady Handgun Violence Prevention Act, 18 U.S.C. §922 (d)(8) and (g)(8).

Therefore, it is ordered that you the Defendant:

☒ 1. Shall not harass, molest, intimidate, retaliate against, or tamper with any witness to or victim of the acts you are charged with committing.

☐ 2. Shall vacate the home of the victim(s) or witness(es), and stay away from any other location the victim(s) or witness(es) is/are likely to be found.

☐ 3. Shall refrain from contacting or directly or indirectly communicating with the victim(s) or witness(es).

☐ 4. Shall not possess, purchase, or control a firearm or other weapon.

☐ 5. Shall not possess or purchase any ammunition.

☐ 6. Shall relinquish, for the duration of the order, any firearm or ammunition in your immediate possession or control, or subject to your immediate possession or control, and shall do so within (hours) for firearms and within day(s) for ammunition. If you are in custody and cannot relinquish firearms and ammunition, the court orders you to do so within 24 hours of your release from custody. You shall file proof of the relinquishment with the court, within 3 business days of the relinquishment as required by statute.

☐ 7. Shall not possess or consume alcoholic beverages or controlled substances.

☒ 8. **Is further ordered that:** CIVIL CONTACT IS ALLOWED

This Order remains in effect until final disposition or further order of the Court.*

Date: 5/06/2021

☒ Judge ☐ Magistrate
MURPHY, PATRICK W
Printed Name of Judicial Officer

By signing, I acknowledge receipt of this Order

Date: 5/06/2021

Defendant

I certify that this is a true and complete copy of the original order.

Date: 5/06/2021

Clerk

**"Until final disposition of the action" means until the case is dismissed, until the Defendant is acquitted, or until the Defendant completes his or her sentence. Any Defendant sentenced to probation is deemed to have completed his or her sentence upon discharge from probation. A Defendant sentenced to incarceration is deemed to have completed his or her sentence upon release from incarceration and discharge from parole supervision. (§18-1-1001(8)(b), C.R.S)

IMPORTANT INFORMATION ABOUT PROTECTION ORDERS

THIS ORDER IS IN EFFECT UNTIL THE DISPOSITION OF THIS ACTION, OR IN THE CASE OF AN APPEAL, UNTIL THE DISPOSITION OF THE APPEAL.

This order is accorded full faith and credit and shall be enforced in every civil or criminal court of the United States, Indian Tribe or a United States Territory pursuant to 18 U.S.C. Sec. 2265. The issuing court has jurisdiction over the parties and the subject matter. The Defendant has been given reasonable notice and opportunity to be heard.

NOTICE TO DEFENDANT

- **A knowing violation of a Protection Order is a crime under §18-6-803.5, C.R.S.** A violation may subject you to fines of up to $5,000.00 and up to 18 months in jail. A violation will also constitute contempt of court.
- You may be arrested without notice if a law enforcement officer has probable cause to believe that you have knowingly violated this Order.
- If you violate this Order thinking that a victim or witness has given you permission, **you are wrong,** and can be arrested and prosecuted.
- The terms of this Order cannot be changed by agreement of the victim(s) or witness(es). **Only the Court can change this Order.**
- You may apply at any time for the modification or dismissal of this Protection Order.
- Possession of a firearm while this Protection Order is in effect or following a conviction of a misdemeanor crime of domestic violence, may constitute a felony under Federal Law 18 U.S.C. §922(g)(8) and (g)(9).
- Firearm and ammunition relinquishment must be in accordance with §18-1-1001(9)(b), C.R.S. Failure to comply with the order to relinquish may result in an arrest warrant.

NOTICE TO LAW ENFORCEMENT OFFICERS

- You shall use every reasonable means to enforce this Protection Order.
- You shall arrest, or take into custody, or if an arrest would be impractical under the circumstances, seek a warrant for the arrest of the Defendant when you have information amounting to probable cause that the Defendant has violated or attempted to violate any provisions of this Order and the Defendant has been properly served with a copy of this Order or has received actual notice of the existence of this Order.
- You shall enforce this Order even if there is no record of it in the Protection Order Central Registry.
- You shall take the Defendant to the nearest jail or detention facility utilized by your agency.
- You are authorized to use every reasonable effort to protect the Protected Parties to prevent further violence.
- You may transport, or arrange transportation to a shelter for the Protected Parties.

NOTICE TO PROTECTED PERSON

- You may request the prosecuting attorney to initiate contempt proceedings against the Defendant.

District Court, Chaffee County, Colorado Court Address: 142 CRESTONE AVE , SALIDA, CO 81201 719-539-2561	DATE FILED: May 11, 2021 3:02 PM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. **BARRY MORPHEW,** Defendant	▲ COURT USE ONLY ▲
	Case Number: 21CR78 Courtroom DISTRICT

ORDER RE: ENTRY OF APPEARANCE, NOTICE OF ELECTION, AND REQUEST FOR PROOF EVIDENT PRESUMPTION GREAT HEARING (D-1)

The Court has previously appointed the Colorado State Public Defender to represent Mr. Morphew.

The Court hereby orders the prosecuting attorney to provide all discovery pursuant to Rule 16 of the Colorado Rules of Criminal Procedure. Specific issues regarding discovery may be raised by Motion

The Court orders the prosecution to produce all discovery under C.R.CR.P Rule 16 Part I (a)(1)(I), (IV), and (VII), as soon as practicable but no later than 21 days after Mr. Morphew's first appearance at the time of or following the filing of charges.

As discussed on the record, the setting of the proof evident/presumption great hearing will be discussed at the hearing set for May 27, 2021 at 4:00 p.m.

Dated 5/11/21

Patrick W. Murphy
Chief Judge, 11th J.D.

District Court, Chaffee County, Colorado 142 Crestone Ave Salida, CO 81201	DATE FILED: May 12, 2021
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. **BARRY MORPHEW,** Defendant	☐ COURT USE ONLY ☐
Attorney for Defendant Daniel Zettler #32388 Magdalena Rosa #31716 Deputy State Public Defender MEGAN A. RING, COLORADO STATE PUBLIC DEFENDER 8044 W. Hwy 50, Suite 100 Salida, Colorado 81201 Phone: (719) 539-3521 Fax: (719) 539-4597	Case No. 2021CR78 Division 2

MOTION TO LIMIT PUBLIC ACCESS TO ARREST WARRANT AFFIDAVIT FILED MAY 5, 2021 (D-7)

Barry Morphew, through counsel, hereby moves to limit public access to the arrest warrant affidavit filed May 5, 2021, and moves for an order for the parties to file all factual averments in motions as suppressed filings available only to the parties or with all factual averments redacted. As grounds, therefore, it is stated as follows:

I. INTRODUCTION

1. On May 5, 2021, District Attorney Linda Stanley filed a one hundred and twenty-nine page Affidavit for Arrest Warrant, authored by Alex Walker, Chief Investigator for the 11th Judicial District, Office of the District Attorney.
2. On May 5, 2021, the Court, based on a Motion to Seal filed by the prosecution, ordered the Affidavit for Arrest Warrant sealed until Mr. Morphew's "first

appearance at advisement." *See* Court Order to Seal Arrest Affidavit and Warrant, May 5, 2021.

3. On May 6, 2021, at Mr. Morphew's first appearance, the Court ordered the Affidavit for Arrest and Arrest Warrant remain sealed to the public and granted the parties seven days to file motions requesting they remain sealed.
4. This pleading requests the Affidavit for Arrest and Arrest Warrant remain sealed and access to the public denied until, at a minimum, the proof evident presumption great hearing and that all factual averments in pleading be sealed or redacted based on substantial interest of the alleged victims, the substantial interest of Mr. Morphew, the substantial interest of fair and impartial justice, and the substantial interest of the community.
5. Colo. R. Crim. P. 55.1, adopted December 17, 2020, effective May 10, 2021, authorizes the Court to limit public access in certain enumerated situations.
6. Colo. R. Crim. P. 55.1 (a)(2) states that "a party may file a motion requesting that the court limit public access to a court record previously filed." (Part (a)(1) addresses motions not previously filed but is substantially similar to Part (a)(2)).
7. Colo. R. Crim. P. 55.1 (a)(2) states that "an opposing party wishing to object to the motion must file a response within 14 days after service of the motion unless otherwise directed by the court."
8. Colo. R. Crim. P. 55.1 (a)(3) states that "a motion to limit public access shall identify the court record or any part of the court record the moving party wishes to make inaccessible to the public, state the reasons for the request, and specify how long the information identified should remain inaccessible to the public."

9. Colo. R. Crim. P. 55.1 Part (a)(6) requires the Court, when granting a request to seal, to issue a written order in which it:

(I) specifically identifies one or more substantial interests served by making the court record inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public;

(II) finds that no less restrictive means other than making the record inaccessible to the public or allowing only a redacted copy of it to be accessible to the public exists to achieve or protect any substantial interests identified; and

(III) concludes that any substantial interests identified override the presumptive public access to the court record or to an unredacted copy of it.

10. The rule contains certain procedural safeguards and requirements:

a. Crim. P. 55.1 (a)(1) essentially requires that all pleadings by all parties regarding limiting public access must be filed as suppressed filings, which themselves will not be subject to public access. The rule states, "upon receiving the motion, the clerk shall make the subject court record inaccessible to the public pending the court's resolution of the motion, except that if a party seeks to make inaccessible to the public only parts of the subject court record, then the party must also submit a redacted version of the court record with the motion and the clerk shall make the redacted version of the court record accessible to the public without undue delay. The clerk shall also make the motion and the response inaccessible to the public pending the court's resolution of the motion, except that, in its discretion, the court may

order that the motion and the response, or redacted versions of the motion and the response, be accessible to the public during that timeframe."

II. SUBSTANTIAL INTEREST JUSTIFYING THE REQUEST TO SEAL THE AFFIDAVIT FOR ARREST WARRANT

A. The unusual and inflammatory nature of the Arrest Affidavit

11. The Arrest Affidavit is unlike any other arrest affidavit counsel has ever reviewed.

12. The Arrest Affidavit is one hundred and forty nine pages long. It is written in an argumentative style; it is filled with irrelevant and salacious information; it is filled with inadmissible hearsay, opinions, and gossip. It is nothing more than an attempt to engage in prosecution through outright character assassination and by heightening public condemnation of Mr. Morphew. It reads more like an article written for a tabloid, intended to attract the attention of the media, and to convict based on inadmissible evidence, character assassination, rumors, and heightened public condemnation. The affidavit is inconsistent with a sworn statement of facts as required by Crim. P. 4(a)(2).

13. Some of the lowlights of the affidavit include the following:

    a. "Barry's statements about his actions on the days before and after Suzanne's disappearance have been proven to be false and misleading by this investigation." (This a conclusion rather than a fact, which neither the prosecution, nor a prosecution witness would not be allowed to utter at trial. *See* Aff. p. 1; *see also Wilson v. People*, 743 P.2d 415 (Colo. 1987); *Crider v. People*, 186 P.3d 39, 41 (Colo. 2008)).

b. "Suzanne's bicycle and helmet were recovered close to the Morphew residence, discarded before Barry left town in the early morning hours of May 10, 2020." (This a conclusion and theory, rather than a fact. *See id.*). *See* Aff. p. 1.

c. Explicit recitations concerning the alleged victim's sexual affair with a man in Michigan.

d. "Barry was shown the photos of nude women and sexual encounter dating sites recovered from his cell phone. He said he never had a dating website and the images and websites recovered must have been from pop-up ads when he was viewing pornography. Agents agreed such images and dating sites could have come from Barry viewing porn on his phone." *See* Aff. P. 110, (inadmissible under CRE 401 and 403).

e. "From December 2020 through April 2021, numerous Salida residents have reported that Darke is in a relationship with Barry. Their relationship is reported to date back to July 2020, though investigators have not confirmed that." *See* Aff. P. 124, (inadmissible under CRE 401 and 403).

f. The Affidavit contains details of statements made by Mr. Morphew to law enforcement on 1/27/2021, 1/28/2021, 2/28/2021, 3/1/2021, 3/5/2021, 3/10/2021, 4/5/2021, 4/22/2021. These statements were all obtained after law enforcement was aware Mr. Morphew was represented by counsel. *See* Aff., p. 55-56.

g. The affidavit includes an incredible amount of information which has no relevancy to the case, which is pure inadmissible character assassination, and

which will likely prejudice any and all potential jurors who review the affidavit:

- For example a complaint that Mr. Morphew sold his business in 2018 before he moved to Colorado and the purchaser thought he had been fooled by Mr. Morphew into a bad business deal. *See* Aff. p.56.
- "Wimmer told Kyle to be careful because he had seen a lot of Barry deals go south. Kyle and his friend became defensive. Wimmer told them, 'You are dealing with the devil.'" *See* Aff. p. 57.
- "When Wimmer learned Suzanne was missing, he Googled Barry and read about all that was going on with her disappearance. Wimmer was intrigued by it and saw the Tyson Draper video. After Wimmer watched it he concluded Barry is 'guilty, for sure.'" *See* Aff. p.57.
- "Wimmer said that Barry thinks he is a really good liar and he is not. Barry is the kind of person that will just stand there and 'tell you something you know damn well is not true.' Wimmer would often just listen and not contradict because he just did not want the conflict with Barry. Wimmer sent Barry a series of texts on September 23, 2020, accusing Barry of killing Suzanne and telling Barry he would rot in hell." *See* Aff. p. 57.

h. The affidavit contains the word "guilty" 14 times. The word innocent is never used once.

i. The affidavit contains speculative guesses by witnesses numerous times.

j. The affidavit actually discusses evidence identified as rumors. *See* Aff. p.31.

k. The affidavit includes the height, weight and dates of birth of Mr. Morphew's minor daughter and his 21-year-old daughter even though their physical description has nothing whatsoever to do with the case. p.1. Release of this information would be in violation of C.R.S. § 24-4.1-303 (2) ("Upon request of a victim, all correctional officials shall keep confidential the address, telephone number, place of employment, or other personal information of such victim or members of such victim's immediate family.").

l. "Barry was asked to voluntarily submit to a polygraph examination, which he declined and said he would think about it, saying he 'didn't want to do anything that wasn't 100% accurate;' he also said they 'weren't admissible in court.'" This was included in the affidavit, which was reviewed by the District Attorney's Office, despite such evidence being inadmissible in Court. *See* Aff. p.21; *see also Mills v. People*, 139 Colo. 397, 339 P.2d 998 (1959) (prohibits introduction in a criminal trial of evidence of an accused's refusal to submit to a lie detector test).

m. Alleges that "[o]n January 7, 2020, Barry's phone searched 'how to make a girl orgasm utube.'" *See* Aff. p. 32. (Inadmissible under CRE 401, 402, and 403).

n. Alleges that "[o]n January 24, 2020, Barry's phone searched '3rd base! My first hand job: Dear Teen Diary, 9th Grade, Entry 14 - You Tube.'" *See* Aff. p. 32. (Inadmissible under CRE 401, 402, and 403).

o. Whether Mr. and Ms. Morphew would have orgasms every time they had sexual intercourse. *See* Aff. p.119. (Inadmissible under CRE 401, 402, and 403).

p. SA Grusing said that in doing the victimology work on Suzanne, investigators know that was not the only time she came at Barry and that when Suzanne got frustrated, she would physically come at Barry. *See* Aff. p. 64, (Inadmissible under CRE 702).

B. Protect the alleged victims [redacted] and [redacted]

14. [redacted] is [redacted] and [redacted] is [redacted]. The nature of this case, including the disappearance of their Mother and the arrest of their Father, has resulted in extreme emotional distress. Both [redacted] oppose release of the Affidavit noting that the impact would be "devastating," and that they "can't even begin to explain the extent of the emotional impact release of the affidavit would have."

15. Sealing the Affidavit will protect and hono[redacted] and [redacted] consistent with the legislative and voter intent behind the Victim's Rights Act. *See* Colorado Constitution, Article II, Section 16a – Rights of Crime Victims; *see also* C.R.S. § 24-4.1-301 ("It is the intent of this part 3, therefore, to assure that all victims of and witnesses to crimes are honored and protected by law enforcement agencies, prosecutors, and judges.").

16. Given the outrageous, salacious, and tabloid style of the Affidavit its release would violate [redacted] and [redacted] right to be treated with "fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process." *See id.*; C.R.S. § 24-4.1-302.5.

C. The Affidavit if released would impede the ongoing investigations of the defense

17. Mr. Morphew is entitled to effective assistance of counsel, which includes the duty of counsel to investigate the matter in search of mitigation and exculpatory evidence. *See* 6th and 14th Amendments to the United States Constitution.

18. As of the filing of this motion the defense has not had an opportunity to engage in any meaningful investigations. Furthermore the defense has not yet received mandatory disclosures under C.R. Crim. P. 16. The defense investigation is ongoing and release of the Affidavit prior to defense investigation is likely to negatively impact that investigation. First, because of the tabloid style nature of the affidavit it is likely to bias any potential witnesses prior to defense interviews resulting in a refusal to cooperate or even worse an attempt to fabricate evidence or statements based on the review of the affidavit.

19. The prosecution cited an ongoing investigation as a basis for sealing the affidavit in their motion filed May 5, 2021. The prosecution has had almost a year to investigate the matter, while keeping the evidence sealed. Mr. Morphew is asking for the same opportunity as a matter of due process and basic fairness.

D. The Affidavit, if released by the Court unopposed by the District Attorney, is a potential violation of Colo. R. Prof. Cond. 3.8 (f): Special Responsibilities of a Prosecutor

20. The affidavit was signed by Alex Walker, Chief Investigator for District Attorney Linda Stanley, the District Attorney for the 11th Judicial District. Mr. Walker affirms that the affidavit was reviewed by District Attorney Linda Stanley and Senior Deputy District Attorney Jeff Lindsey prior to its filing with the Court.

21. Colo. R. Prof. Cond. 3.8 (f) "Special Responsibilities of a Prosecutor" states: "[E]xcept for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused unless such comments are permitted under Rule 3.6(b) or 3.6(c), and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule."

22. The inflammatory, salacious, and inadmissible nature of the statements in the Affidavit, as approved and endorsed by District Attorney Linda Stanley would potentially constitute a violation of Colo. R. Prof. Cond. 3.8 (f) "Special Responsibilities of a Prosecutor" and as such the prosecution should also be asking the Court not to release the affidavit to the public. Such a release would be providing extrajudicial comments that would have a substantial likelihood of heightening public condemnation of Mr. Morphew, which is the clear intent of the affidavit.

E. Preserve the right to a fair trial by impartial jurors

23. The Sixth Amendment to the United States Constitution and the Colorado Constitution guarantee the rights of a person accused of a crime to have his or her case heard by an impartial jury, by independent people from the surrounding community who are willing to decide the case based only on the evidence.

24. The Affidavit is argumentative and salacious, it is filled with gossip, rumors, and information that will be inadmissible at trial.

25. The release of the Affidavit will create, consistent with its intended prosecutorial purpose, significant condemnation and bias in the local community and across the state of Colorado. Potential jurors will be flooded with biases and inflammatory information that will not be admissible at trial—bells that cannot be un-rung. Release of the Affidavit will negatively impact Mr. Morphew's right to an impartial jury and fair trial by independent people from the surrounding community who are willing to decide the case based only on the evidence.

FUTURE PLEADINGS

26. As this issue could reoccur if pleadings in the future simply restate the same inflammatory facts stated in the Affidavit, the defense moves for further orders.

27. The defense requests that all motions which contain non-publicly known factual information either be filed as suppressed motions or be filed as a public pleading with a suppressed supplement setting forth the non-publicly known facts.

28. The defense requests that suppressed motions be kept as non-public pleadings until defense investigations are complete, until after the proof evident presumption great hearing, or until a verdict is reached in the case.

CONCLUSION

29. Mr. Morphew has specifically identified more than one substantial interest served by making the court record inaccessible until either proof evident presumption great hearing or until a verdict is reached: 1) the unusual and inflammatory nature of the arrest affidavit; 2) to protect the alleged victims [redacted] 3) to allow the ongoing defense investigation to continue unimpeded; 4) to prevent a potential violation of Colo. R. Prof. Cond. 3.8 (f); and 5) to preserve Mr. Morphew's right to a fair trial by impartial jurors from the surrounding community.
30. Given the nature of the Affidavit, no less restrictive means would achieve or protect any substantial interests identified.
31. The nature and extent of the substantial interests identified override the presumptive public access to the court record or to an unredacted copy of it, especially if public access is only limited concerning the affidavit and until the proof evident presumption great hearing and defense investigation can be completed.

Respectfully Submitted, MEGAN A. RING,
COLORADO STATE PUBLIC DEFENDER

S: Daniel Zettler
Daniel Zettler (32388)Deputy State Public Defender

Certificate of Service: I certify that on May 12, 2021 I served the foregoing document through the Colorado Courts E-Filing system on all opposing parties of record.

District Court, Chaffee County, Colorado Court Address: 142 CRESTONE AVE , SALIDA, CO 81201 719-539-2561	DATE FILED: May 14, 2021 9:34 AM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. **BARRY MORPHEW,** Defendant	▲ COURT USE ONLY ▲
	Case Number: 21CR78 Courtroom DISTRICT

Order Regarding Defense Motion To Limit Public Access To Court Records Already Filed

The Defendant has filed a Motion to Limit Public Access to a Court Record Already Filed pursuant to C.R.C.P. Rule 55.1(2). That Motion was filed Thursday, May 13, 2021.

By Rule, a party in opposition to the Defense's Motion has fourteen days to file a Response to the Motion. C.R.C.P. Rule 55.1(2)

Also pursuant to Rule, "upon receiving the Motion, the clerk shall make the subject court record inaccessible to the public pending the court's resolution of the Motion." C.R.C.P. Rule 55.1(2)

The Motion, and any Response, shall also be inaccessible to the public pending the court's resolution of the Motion. The Court makes this decision because the Motion itself contains significant information that the Motion argues should not be accessible to the public. C.R.C.P. Rule 55.1(2)

Therefore, it is Ordered that:

1. Any party in opposition to the Motion has until Thursday, May 27, 2021, to file a Response to the Motion.

2. Until the Court resolves the Motion, the arrest affidavit, the Motion and any Response to the Motion are to remain inaccessible to the Public.

Dated May 14, 2021

Patrick W. Murphy
Chief Judge, 11th J.D.

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: May 17, 2021 5:39 PM
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78
Iris Eytan, #29505 Dru Nielsen, #28775 Eytan Nielsen LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (720) 440-8155 Facsimile: (720) 440-8156 Email: iris@eytan-nielsen.com dru@eytan-nielsen.com *ATTORNEYS FOR DEFENDANT BARRY LEE MORPHEW*	Courtroom/Division: 2

MOTION FOR PRESERVATION AND PRODUCTION OF EVIDENCE [D-13]

Mr. Barry Lee Morphew, by and through undersigned counsel, requests the prosecutors and law enforcement agencies involved in the investigation or prosecution of this case preserve and produce the following evidentiary items pursuant to C.R.C.P 16, and the legal grounds as stated in the filed Discovery Demand [D-9] incorporated herein:

1. Any recordings of radio, telephone or other communications between law enforcement officers and any other person(s) pertaining to this case.

2. Emails and text messages between law enforcement officers and all individuals (including prosecutors) contacted and pertaining to this case.

3. All photographs, video media, surveillance tapes, 911 calls, police dispatch tapes, all police reports, oral and written witness statements, including the statements, opinions, and reports of law enforcement officials, consultants and experts contacted by the prosecution.

The defendant objects to the destruction, release, alteration, or testing of any evidence observed, collected or held in connection with this case by the district attorney or law enforcement, or their agents.

The defendant objects to the destruction, release, alteration, or deletion of written correspondence between law enforcement officers and all individuals (including prosecutors) pertaining to this case, and between prosecutors and their consultants and experts that pertain to this case.

Respectfully submitted this 17th day of May, 2021.

EYTAN NIELSEN LLC

s/ Iris Eytan
Iris Eytan, #29505

s/ Dru Nielsen
Dru Nielsen, #28775

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2021 a true and correct copy of the foregoing **MOTION FOR PRESERVATION AND PRODUCTION OF EVIDENCE [D-13]** was served via CCE as follows:

Mr. Jeffrey Lindsey
11th Judicial District Attorney's Office
101 Crestone Ave.
Salida, CO 81201

s/ Tonya Holliday
Tonya Holliday

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: May 17, 2021 5:39 PM
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78
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MOTION FOR PRELIMINARY HEARING AND PROOF EVIDENT PRESUMPTION GREAT HEARING [D-12]

Mr. Barry Lee Morphew, by and through undersigned counsel, hereby moves for a preliminary hearing pursuant to Rule 5 of the Colorado Rules of Criminal Procedure, and C.R.S. § 16-5-301 and 18-1-404. Further, Mr. Morphew requests a proof evident presumption great hearing pursuant to C.R.S. §16-4-101(1)(a).

Respectfully submitted this 17th day of May, 2021.

EYTAN NIELSEN LLC

s/ Iris Eytan
Iris Eytan, #29505

s/ Dru Nielsen
Dru Nielsen, #28775

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2021 a true and correct copy of the foregoing **MOTION FOR PRELIMINARY HEARING AND PROOF EVIDENT PRESUMPTION GREAT HEARING [D-12]** was served via CCE as follows:

Mr. Jeffrey Lindsey
11th Judicial District Attorney's Office
101 Crestone Ave.
Salida, CO 81201

s/ Tonya Holliday
Tonya Holliday

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: May 17, 2021 5:39 PM
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78
Iris Eytan, #29505 Dru Nielsen, #28775 Eytan Nielsen LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (720) 440-8155 Facsimile: (720) 440-8156 Email: iris@eytan-nielsen.com dru@eytan-nielsen.com *ATTORNEYS FOR DEFENDANT BARRY LEE MORPHEW*	Courtroom/Division: 2

NOTICE OF INVOCATION OF ALL STATUTORY AND CONSITITUTIONAL RIGHTS AND PRIVILESGES AND REVOLCATION OF ANY AND ALL PREVIOUSLY GIVEN WAIVERS OF PRIVILEGES [D-11]

Defendant, Barry Lee Morphew, by and through undersigned counsel, hereby notifies the District Attorney's office and/or all law enforcement agencies of the following:

I. Invocation of Statutory and Constitutional Privileges

1. First, Defendant invokes the following privileges:

a. All privileges granted under C.R.S. § 13-90-107;

b. All medical and psychiatric (including but not limited to drug and alcohol treatment, mental health treatment, domestic violence and/or anger management treatment) privileges afforded to Defendant under the Colorado and United States Constitutions and

C.R.S. § 13-90-107 as to all medical and/or psychiatric treatment Defendant has ever received; and

c. All privileges in school, employment, military, probation, prison, parole, social services, educational, or any other records Defendant has a confidentiality expectation through federal and state statutes and case law, administrative regulations and rules, or federal and state constitutional provisions, or the agencies own statements to Defendant, either oral or written.

2. Defendant requests that this Court specifically order that no member of the Office of the District Attorney, law enforcement, or any person or agency specified in Rule 16, Part I,(a)(3) of the Colorado Rules of Criminal Procedure or their respective agents attempt to obtain confidential information pertaining to Defendant.

3. Defendant does not authorize any person to waive said privileges on Defendant's behalf.

4. Second, Defendant hereby exercises his right to silence, right against self-incrimination, and his right to counsel under the federal and state constitutions. See U.S. Const. amend. V, VI, XIV; Colo. Const. art. II, § 16, 18, 25; *People v. Pierson,* 633 P.2d 485 (Colo. App. 1981); *People v. Pierson,* 670 P.2d 770 (Colo. 1983); *People v. Cerezo,* 635 P.2d 1197 (Colo. 1981); *People v. Lowe,* 616 P.2d 118 (Colo. 1980); *People v. Jones,* 677 P.2d 383 (Colo. App. 1983). *See also Edwards v. Arizona,* 451 U.S. 477 (1981); *Massiah v. United States,* 377 U.S. 201 (1964); *United States v. Henry,* 447 U.S. 264 (1980); *Maine v. Moulton,* 474 U.S. 159 (1985).

5. The Defendant does not wish to be interviewed, contacted, or questioned unless his attorney is present. The Defendant wishes all of his contacts with state agents to take place through his legal counsel.

6. Defendant further moves this Court to enter a prophylactic order requiring the Office of the District Attorney, any other law enforcement persons, and their agents to (a) get the consent of Defendant's counsel before attempting to contact or interview the Defendant and (b) give said counsel reasonable opportunity to be present PRIOR to any contact with the Defendant.

7. Notification and consent of opposing counsel is required by the Colorado Rules of Professional Conduct, Rule 4.2.

II. Revocation of Any and All Previously Given Waivers

8. Additionally, counsel for defendant hereby notifies the court and prosecution that defendant as of today's date revokes any and all previously stated or signed purported waivers of confidentiality and/or privilege including but not limited to medical, psychological, custodial, marital, religious, educational, and/or job-related waivers. Defendant does not consent to release of any records to the prosecution, law enforcement, or any agents acting on behalf of the prosecution or law enforcement.

9. Defendant further revokes any and all previously stated or signed purported waivers of his constitutional right to silence, right against self-incrimination, and right to counsel.

Mr. Morphew 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.

Respectfully submitted this 17th day of May, 2021.

EYTAN NIELSEN LLC

s/ Iris Eytan
Iris Eytan, #29505

s/ Dru Nielsen
Dru Nielsen, #28775

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2021, a true and correct copy of the foregoing **NOTICE OF INVOCATION OF ALL STATUTORY AND CONSITITUTIONAL RIGHTS AND PRIVILESGES AND REVOLCATION OF ANY AND ALL PREVIOUSLY GIVEN WAIVERS OF PRIVILEGES [D-11]** was served via CCE to the following:

Mr. Jeffrey Lindsey
11th Judicial District Attorney's Office
101 Crestone Ave.
Salida, CO 81201

s/ Tonya Holliday
Tonya Holliday

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: May 17, 2021
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78
Iris Eytan, #29505 Dru Nielsen, #28775 Eytan Nielsen LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (720) 440-8155 Facsimile: (720) 440-8156 Email: iris@eytan-nielsen.com dru@eytan-nielsen.com *ATTORNEYS FOR DEFENDANT BARRY LEE MORPHEW*	Courtroom/Division: 2

DISCOVERY DEMAND [D-10]

The Defendant, Barry Morphew, by and through undersigned counsel, hereby requests and demands that his fundamental right to full discovery is protected pursuant to his statutory and Colorado and Federal constitutional right to a reliable and fair trial. Defendant also files this motion to ensure absolute fairness and integrity prior to and during trial. Whereby, Defendant makes the following specific demands:

I. GENERAL DISCOVERY REQUEST

1. Defendant requests this Court to order the discovery, preservation, and immediate production of the following materials:

a. Police handwritten or typed or dictated notes and tapes of any and all contacts and statements of all people contacted or interviewed regarding this case, and all police

handwritten or typed or dictated notes and tapes of all police activities and commentary and statements regarding this case.

b. The tapes of dictations police investigators dictate from their notes that are or are not transcribed into police reports.

c. All records, experiments, 911 tapes, dispatch tapes, and all other audiotapes and/or videotapes and/or other media of recordings.

d. Duplicates of all photographs, videotapes and/or audiotapes.

2. These materials should be preserved and made available to defense counsel pursuant to Crim.P. 16(I)(a) and (c).

3. This discovery is required by the Fifth, Sixth, and Fourteenth Amendments, Art. II, §§ 16 and 25 of the Colorado Constitution; Crim.P. 16, Part I; *Brady v. Maryland*, 373 U.S. 83 (1963) and *Wearry v. Cain*, 136 S. Ct. 1002 (2016). This information and material is exculpatory, material and relevant.

4. The preservation and production of requested items are material to the preparation of the defense in this case and is reasonable.

5. Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the U.S. Constitution.

II. DISCOVERY DEMAND FOR WITNESS IMPEACHMENT MATERIAL

1. Disclosure of the prior convictions and adjudications of the witnesses the prosecution will call.

2. Evidence that a prosecution witness has a motive or bias because he or she has entered into an agreement with the prosecution, received leniency from the state, or has outstanding litigation or cases with a prosecutorial agency, including juvenile cases, or parole or probation proceedings. *See Davis v. Alaska*, 415 U.S. 308 (1974); *People v. Bowman*, 669 P.2d 1369 (Colo. 1983); *People v. Pate*, 625 P.2d 369 (Colo. 1981).

3. Evidence of misdemeanor convictions of a prosecution witness that are probative of untruthfulness or dishonesty. *See People v. Armstrong*, 704 P.2d 877 (Colo. App. 1985) (cross-examination of witness concerning his prior conviction for the misdemeanor offense of making a false police report is permissible).

4. Any deferred judgment and sentence plea entered into by any witness that is not yet finished at the time the witness has made statements or appeared at a court proceeding. *See People v. Vollentine*, 643 P.2d 800, 802-803 (Colo. App. 1982).

5. Any grants of immunity to prosecution witnesses. *Giglio v. United States*, 405 U.S. 150, 154-55 (1972) (due process is violated where the prosecution fails to disclose the grant of immunity to a prosecution witness).

6. Any payments made to a prosecution witness for services to the police or prosecutorial authority. *See United States v. Shaffer*, 789 F.2d 682, 687-89 (9th Cir. 1986).

7. Any evidence or records that relate to the untruthful reputation of the prosecution witnesses, or evidence of specific instances of untruthfulness of the witness. C.R.E. 608.

8. Information concerning alternative suspects considered by the police or prosecution. *See Bowen v. Maynard*, 799 F.2d 693, 611 (10th Cir. 1986), *cert. denied*, 479 U.S. 962 (1986) (state violated due process by failing to disclose list of other suspects because a released suspect resembled the accused and matched the description of the perpetrator); *see also, People v. Flowers*, 644 P.2d 916, 918 (Colo. 1982) (an accused may prove his innocence by establishing the guilt of another).

9. Any other evidence relevant to the motive, bias, or interest of the witnesses. *See Merritt v. People*, 842 P.2d 162, 166 (Colo. 1992) (a defendant is allowed broad cross-examination of the bias and motive of prosecution witnesses); *People v. Pate, supra.*

10. If the witnesses have waived confidentiality, any and all records and information concerning the prior psychiatric or psychological treatment, evaluation, or hospitalization of all prosecution witnesses since evidence of the mental condition of a witness is admissible as bearing on the credibility of the witness. *People v. Schuemann*, 190 Colo. 474, 548 P.2d 911, 913 (1976); *People v. Vorrelli*, 624 P.2d 900, 904 (Colo. App. 1980).

11. Any and all information concerning drug and alcohol use, evaluation, or treatment of prosecution witnesses since the use or abuse of alcohol or drugs could have impaired the prosecution witness' ability to perceive or recollect. *See People v. Roberts*, 37 Colo. App. 490, 553 P.2d 93 (1976).

12. Materials in possession of all law enforcement agencies that have participated in the investigation or provided reports concerning the case which are constructively in the "possession or control" of the prosecuting attorney under Crim. P. 16(I)(a)(1). *People v. District* Court, 793 P.2d 163 (Colo. 1990) (the prosecuting attorney's obligations extend to material and information in the possession or control of staff or others that have participated in the investigation); *Chambers v. People*, 682 P.2d 1173, 1180 n.13 (Colo. 1984); *Ortega v. People*, 162 Colo. 358, 426 P.2d 180 (1967); *People v. Lucero*, 623 P.2d 424 (Colo. App. 1980); Crim. P. 16(I)(c). The prosecution must make efforts to locate and deliver copies of this material to the defense and "[i]t is incumbent upon the prosecutor to promulgate and enforce rigorous and systematic procedures designed to preserve all discoverable evidence gathered in the course of the criminal investigation." *People v. District Court*, 623 P.2d 424 (Colo. App. 1980); Crim. P. 16(I)(b)(4).

III. DISCOVERY DEMAND FOR INVESTIGATOR NOTES

1. The handwritten and/or typewritten notes of investigators and victim witness advocates must be preserved and disclosed to the defense if they contain the substance of recitals of oral statements made by witnesses. *See People v. Shaw*, 646 P.2d 375, 381 (Colo. 1982); *People v. Thatcher*, 638 P.2d 760, 767 (Colo. 1981). Although the work product of a prosecuting attorney is not discoverable, see Crim. P. 16(I)(e)(1), non-discoverable material may be excised and the remainder provided to the accused. *People v. District Court*, 780 P.2d 332, 336 (Colo. 1990).

2. Because the witnesses' versions of events are all told differently to each party involved, anything that is stated regarding the alleged incident is potential impeachment. *Giglio v. United States*, 405 U.S. 150(1972); *People v. District Court, City and County of Denver*, 808 P.2d 831(Colo. 1991); *People v. District Court for the 17th Judicial District*, 793 P.2d 163 (Colo. 1990); *People v. Doss*, 782 P.2d 1198 (Colo. 1989).

3. It is improper for the prosecution to attempt to circumvent its obligations by deliberately avoiding taking notes or reducing statements to writing. *People v. Anderson*, 837 P.2d 293 (Colo. App. 1992); *US v. Van Nuys*, 707 F.Supp. 465 (D. Colo. 1989).

4. In fact, the defense moves for the Court to order that any and all future discussions or interviews with witnesses in this case, about the events of the case, be tape-recorded by law-enforcement or by the agent of the prosecution. The defense will purchase a hand-held tape-recorder for the prosecution to make certain that resources are not an issue, and that all interviews are taped for future accuracy and verification.

IV. DEFENDANT MOVES FOR COMPLIANCE WITH RULE 16 TIMELINES, INCLUDING EXPERT DISCLOSURES

1. Defendant demands and moves for compliance with Crim.P. 16, including but not limited to the maximum time limits for production of discovery under part (I)(b). Defendant demands and requests duplicates of all duplicable materials.

2. This request includes disclosure of the expert witnesses the prosecution intends to call at trial, as well as the written reports, opinions, and results of testing, any notes taken by the expert before and after the testing, the experts' resumés, curriculums vitae, history of testimony, opinions or summary of opinions, list of published articles, list of lectures, trainings attended, and certifications. *Venalonzo v. People*, 2017 CO 9 (February 6, 2017).

V. DEFENDANT MOVES FOR CHAIN OF CUSTODY DISCOVERY

1. Pursuant to Crim. P. 16 and the Due Process Clauses of the United States and Colorado Constitutions, Defendant requests disclosure of all records and logs and receipts pertaining to the storage and movement of physical evidence.

VI. DEMAND FOR IN-PERSON TESTIMONY

1. Defendant demands, pursuant to C.R.S. § 16-3-309 (5) and the Due Process, Right to Counsel, Confrontation, and Compulsory Process Clauses of the Federal and Colorado Constitutions, that all criminalistics and laboratory personnel, employees and technicians testify in person as to the results of any laboratory procedures used in obtaining evidence presented in any court proceedings, including but not limited to hearings on motions, trial, and sentencing.

VII. DEMAND FOR LIST OF EXHIBITS AND EVIDENCE PROSECUTION INTENDS TO ADMIT AT TRIAL

Defendant demands and moves for this Court to order the state to produce and allow him to examine all exhibits and evidence that the state has possession or control of, or which it intends to

present at trial, and for the state to prepare and submit a listing of its exhibits and evidence as soon as possible, but no later than 45 days before trial, for the following reasons:

1. Crim.P. 16 (I)(a)(1)(IV) requires that the state provide to the accused all "tangible objects held as evidence in connection with the case." This must be done as soon as practicable but no later than 20 days after the first appearance. Crim. P. 16 (I)(b)(1).

2. Although the Rule is mandatory in its terms, in order to comply with its obligations and to facilitate the process of the trial, and in order to enable Defendant to prepare for trial and to avoid surprise, the state should be ordered to perform the tasks set forth above. By requiring the state to provide a listing of exhibits that it intends to present as evidence, the Court will expedite the trial process and will enable Defendant to avoid wasted time and resources.

3. This demand and motion necessarily includes any charts, graphs, photos, and any other tangible physical objects the state might use as evidence at trial, or which is being held as evidence.

4. This demand and motion specifically includes the photographs that the state or its agents, the various police forces involved in this case, possess. It is imperative that Defendant immediately be provided with copies of these photographs.

VIII. DEFENDANT MOVES FOR COMPLIANCE WITH RULE 16 TIMELINES, INCLUDING EXPERT DISCLOSURES

1. Defendant demands and moves for compliance with Crim.P. 16, including but not limited to the maximum time limits for production of discovery under part (I)(b). Defendant demands and requests duplicates of all duplicable materials.

2. This request includes disclosure of the expert witnesses the prosecution intends to call at trial, as well as the written reports, opinions, and results of testing, any notes taken by the expert before and after the testing, the experts' resumés, curriculums vitae, history of testimony, opinions or summary of opinions, list of published articles, list of lectures, trainings attended, and certifications.

IX. LEGAL SUPPORT FOR IMMEDIATE PRODUCTION OF THE REQUESTED DISCOVERY

1. The prosecution has a duty to provide discovery of any material that may be meaningful to the defense, regardless of whether it is exculpatory or will relate to testimony the prosecution intends to present at trial. *People v. Thatcher*, 638 P.2d 760, 768 (Colo. 1981); *People v. Smith*, 185 Colo. 369, 524 P.2d 607 (1974).

2. Crim. P. 16(I)(a) and C.R.P.C. 3.8(d) imposes the duty that must be automatically performed by the prosecution (without a request from the defense) in a timely manner. *See People v. District Court*, 790 P.2d 332, 337 (Colo. 1990); *People v. Alberico*, 817 P.2d 573 (Colo. App. 1991); *In re Attorney C*, 47 P.3d 1167, 1170 (2002), *citing United States v. Bagley*, 473 U.S. 667 (1985).

3. The duty is *continuing* – and the prosecution shall disclose additional information as it is discovered. Crim. P. 16(III)(b); *see Mooney v. Holohan*, 294 U.S. 103, 108 (1935) (due process

violated where the prosecutor learned that a witness committed perjury during the trial, but did not disclose this fact to the defense counsel).

4. It does not matter that the information may or may not be material today, what matters is that the information will be material to the outcome of the trial, then "the prosecutor must disclose that evidence in advance of the next critical state of the proceeding – whether the evidence would particularly affect that hearing or not." *In re Attorney C*, *id.* at 1171.

5. In this case, the use of discovery material for a defendant's impeachment purposes at the preliminary hearing, arraignment, motions, plea-bargaining position and trial implicates the due process and confrontation rights of the accused. *People v. Thatcher*, 638 P.2d 760, 768 (Colo. 1981); *Goodwin v. District Court*, 197 Colo. 6, 688 P.2d 874 (1979); *Delaware v Van Arsdall*, 475 U.S. 673 (1986); *U.S. Const.*, amends. V, VI, XIV; *Colo. Const.*, art II, §§ 16, 25.

6. It is not the role or function of the prosecution to determine what information obtained during the course of the interview with a witness is useful to the defense. That responsibility is left to the defense and the Court. *People v. Smith*, 524 P.2d 607 (Colo. 1974); *People v. District Court*, 790 P.2d 332 (Colo. 1990). In the instant case, almost every version of the Accuser's statement has been contradicted by another version. This leaves every statement made to anyone worthy of impeachment.

7. If the prosecution refuses to provide the defendant with material evidence, which is favorable to the accused, and relates to either the guilt or punishment of the accused, the prosecutor violates his or her ethical duty and due process is denied. *See Brady v. Maryland*, 373 U.S. 83 (1963); *People v. Greathouse*, 742 P.2d 334 (Colo. 1987); *People v. Mucklow*, 35 P.3d 527 (2000); *U.S. Const.*, amends. V, XIV; *Colo. Const.*, art. II, § 25; Crim. P. 16(I)(a)(2); C.R.P.C. 3.8(d). It is irrelevant whether or not the prosecution acted in good faith in suppressing the evidence.

X. REVOCATION OF ALL RELEASES AND WAIVERS AND ASSERTION OF ALL RIGHTS AND PRIVILEGES

Defendant hereby revokes and rescinds all releases, waivers and authorizations for the release of information which he may have heretofore made, and he hereby asserts all of his rights and privileges under Colorado's privilege rules, statutes and principles including, but not limited to, C.R.S. § 13-90-107, and the Due Process, Right to Counsel, Confrontation, Right to Remain Silent, Privilege Against Self Incrimination, Compulsory Process, Ex Post Facto, Trial by Jury, Equal Protection, Right to Appeal, and Cruel and Unusual Punishment Clauses of the Federal and Colorado Constitutions, and Article II, §§ 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28, of the Colorado Constitution, and Article I, § 9, and the First, Fourth, Fifth,

WHEREFORE, Defendant makes all of these motions, and all other motions and objections during all proceedings in this case, whether or not explicitly stated at the time of the making of the motion or objection, under the Due Process, Right to Counsel, Confrontation, Right to Remain Silent, Privilege Against Self Incrimination, Compulsory Process, Ex Post Facto, Trial by Jury, Equal Protection, Right to Appeal and Cruel and Unusual Punishment Clauses of the Federal and Colorado Constitutions, and Article II, §§ 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28, of the Colorado Constitution, and Article I, § 9, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments

to the U.S. Constitution. All authorities and citations noted apply to and support all requests for relief herein.

Respectfully submitted this 17th day of May, 2021.

EYTAN NIELSEN LLC

s/ Iris Eytan
Iris Eytan, #29505

s/ Dru Nielsen
Dru Nielsen, #28775

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2021, a true and correct copy of the foregoing **DISCOVERY DEMAND [D-10]** was served via CCE as follows:

Mr. Jeffrey Lindsey
11th Judicial District Attorney's Office
101 Crestone Ave.
Salida, CO 81201

s/ Tonya Holliday
Tonya Holliday

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: May 17, 2021 5:39 PM
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78
Iris Eytan, #29505 Dru Nielsen, #28775 Eytan Nielsen LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (720) 440-8155 Facsimile: (720) 440-8156 Email: iris@eytan-nielsen.com dru@eytan-nielsen.com *ATTORNEYS FOR DEFENDANT BARRY LEE MORPHEW*	Courtroom/Division: 2

SUBSTITUTION OF COUNSEL [D-9]

The undersigned attorneys move this Court for an Order allowing entry of appearance of Eytan Nielsen, LLC, Iris Eytan (#29505) and Dru Nielsen (#28775) as counsel of record for the Defendant in the above-captioned matter, and the withdrawal of Daniel Zettler (#32388) and the Colorado State Public Defender's Office.

Dated: May 17, 2021

/s/ Daniel Zettler
Daniel Zettler, 32388

/s/ Iris Eytan
Iris Eytan, #29505

/s/ Dru Nielsen
Dru Nielsen, #28775

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2021, a true and correct copy of the foregoing **SUBSTITUTION OF COUNSEL [D-9]** was served via CCE to the following:

Mr. Jeffrey Lindsey
11th Judicial District Attorney's Office
101 Crestone Ave.
Salida, CO 81201

s/ Tonya Holliday
Tonya Holliday

DATE FILED: May 18, 2021 2:37 PM

District Court, Chaffee County, Colorado P. O. Box 279 142 Crestone Avenue Salida, CO 81201	
THE PEOPLE OF THE STATE OF COLORADO **vs.** **BARRY LEE MORPHEW,** Defendant	☐ **COURT USE ONLY** ☐
Linda Stanley Eleventh Judicial District District Attorney, # 45298 104 Crestone Avenue P. O. Box 699 Salida, CO 81201 Phone Number: 719-539-3563 Fax: 719-539-3565	Case No: D0082021CR000078 Div: 2 Courtroom:

COMPLAINT AND INFORMATION

CHARGES: 5

COUNT 1: MURDER IN THE FIRST DEGREE, C.R.S. 18-3-102(1)(a) (F1){01011}

COUNT 2: TAMPERING WITH A DECEASED HUMAN BODY, C.R.S. 18-8-610.5 (F3){26065}

COUNT 3: TAMPERING WITH PHYSICAL EVIDENCE, C.R.S. 18-8-610(1)(a) (F6){26062}

COUNT 4: POSSESSION OF A DANGEROUS WEAPON, C.R.S. 18-12-102(3) (F5){30011}

COUNT 5: ATTEMPT TO INFLUENCE A PUBLIC SERVANT, C.R.S. 18-8-306 (F4){24051}

Permission to file information in district court granted:
Judge:_____
Signature Date

Linda Stanley, District Attorney for the Eleventh Judicial District, of the State of Colorado, in the name and by the authority of the People of the State of Colorado, informs the court of the following offenses committed, or triable, in the County of Chaffee:

COUNT 1-MURDER IN THE FIRST DEGREE (F1)

Between and including May 9, 2020 and May 10, 2020, Barry Lee Morphew unlawfully, feloniously, after deliberation, and with the intent to cause the death of a person other than himself, caused the death of Suzanne Renee Morphew; in violation of section 18-3-102(1)(a), C.R.S.

COUNT 2-TAMPERING WITH A DECEASED HUMAN BODY (F3)

Between and including May 9, 2020 and May 10, 2020, Barry Lee Morphew, believing that an official proceeding was pending, in progress, or about to be instituted, and acting without legal right or authority, unlawfully and feloniously willfully destroyed, mutilated, concealed, removed, or altered a human body, part of a human body, or human remains with intent to impair its or their appearance or availability in the official proceedings; in violation of section 18-8-610.5, C.R.S.

COUNT 3-TAMPERING WITH PHYSICAL EVIDENCE (F6)

Between and including May 9, 2020 and March 4, 2021, Barry Lee Morphew, believing that an official proceeding was pending or about to be instituted, and acting without legal right or authority, unlawfully and feloniously destroyed, mutilated, concealed, removed, or altered physical evidence with intent to impair its verity or availability in the pending or prospective official proceeding; in violation of section 18-8-610(1)(a), C.R.S.

COUNT 4-POSSESSION OF A DANGEROUS WEAPON (F5)

Between and including May 9, 2020 and March 4, 2021, Barry Lee Morphew unlawfully, feloniously, and knowingly possessed a dangerous weapon, namely: short rifle; in violation of section 18-12-102(3), C.R.S.

COUNT 5-ATTEMPT TO INFLUENCE A PUBLIC SERVANT (F4)

Between and including May 10, 2020 and May 5, 2021, Barry Lee Morphew unlawfully and feloniously attempted to influence Damon Brown, Lamine Mulenax, Robin Burgess, Alexander Walker, Joseph Cahill, Derek Graham, Kenneth Harris, and Jonathan Grusing, public servants, by means of deceit, with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning a matter which was to be considered or performed by the public servant or the agency or body of which the public servant was a member; in violation of section 18-8-306, C.R.S.

All offenses against the peace and dignity of the people of the State of Colorado.

Linda Stanley
District Attorney, #: 45298

By: /s/ Jeffrey D. Lindsey Date: 5/18/2021
Jeffrey D. Lindsey #: 24664
Senior Deputy District Attorney

ENDORSED WITNESS LIST

Notice of Endorsement to be filed.

DEFENDANT INFORMATION

DOB: 10/17/1967

Race: W Gender: M

Height: 510 Weight: 175 Hair: BLN Eye: BLU

Birthplace: IN Tattoo:

Address:
19057 Puma Path
Salida, CO 81201

Home Phone #: - Work Phone #: -

AKA:

CASE INFORMATION

Arresting Agency: Chaffee County Sheriff'S Office

Arresting ORI: CO0080000 Other Number:

Offense Agency: Chaffee County Sheriff'S Office

Offense ORI: CO0080000

Arrest #: 20000911-1 Agency Case #: 20000911

Date of Arrest: 05/05/2021 BAC: _____

CCIC#: _____ NCIC #: SID#: XK022184

District Court, Chaffee County, Colorado P. O. Box 279, 142 Crestone Avenue Salida, CO 81201	DATE FILED: May 18, 202
THE PEOPLE OF THE STATE OF COLORADO **vs.** **BARRY LEE MORPHEW ,** Defendant	☐ **COURT USE ONLY** ☐
Linda Stanley Eleventh Judicial District District Attorney, # 45298 104 Crestone Avenue P. O. Box 699 Salida, CO 81201 Phone Number: 719-539-3563 Fax: 719-539-3565	Case No: D0082021CR000078 Div: 2 Courtroom:
AMENDED COMPLAINT AND INFORMATION	

DOMESTIC VIOLENCE

CHARGES: 5

COUNT 1: MURDER IN THE FIRST DEGREE, C.R.S. 18-3-102(1)(a) (F1){01011}

COUNT 2: TAMPERING WITH A DECEASED HUMAN BODY, C.R.S. 18-8-610.5 (F3){26065}

COUNT 3: TAMPERING WITH PHYSICAL EVIDENCE, C.R.S. 18-8-610(1)(a) (F6){26062}

COUNT 4: POSSESSION OF A DANGEROUS WEAPON, C.R.S. 18-12-102(3) (F5){30011}

COUNT 5: ATTEMPT TO INFLUENCE A PUBLIC SERVANT, C.R.S. 18-8-306 (F4){24051}

Linda Stanley, District Attorney for the Eleventh Judicial District, of the State of Colorado, in the name and by the authority of the People of the State of Colorado, informs the court of the following offenses committed, or triable, in the County of Chaffee:

COUNT 1-MURDER IN THE FIRST DEGREE (F1)

Between and including May 9, 2020 and May 10, 2020, Barry Lee Morphew unlawfully, feloniously, after deliberation, and with the intent to cause the death of a person other than himself, caused the death of Suzanne Renee Morphew; in violation of section 18-3-102(1)(a), C.R.S.

COUNT 2-TAMPERING WITH A DECEASED HUMAN BODY (F3)

Between and including May 9, 2020 and May 10, 2020, Barry Lee Morphew, believing that an official proceeding was pending, in progress, or about to be instituted, and acting without legal right or authority, unlawfully and feloniously willfully destroyed, mutilated, concealed, removed, or altered a human body, part of a human body, or human remains with intent to impair its or their appearance or availability in the official proceedings; in violation of section 18-8-610.5, C.R.S.

COUNT 3-TAMPERING WITH PHYSICAL EVIDENCE (F6)

Between and including May 9, 2020 and March 4, 2021, Barry Lee Morphew, believing that an official proceeding was pending or about to be instituted, and acting without legal right or authority, unlawfully and feloniously destroyed, mutilated, concealed, removed, or altered physical evidence with intent to impair its verity or availability in the pending or prospective official proceeding; in violation of section 18-8-610(1)(a), C.R.S.

COUNT 4-POSSESSION OF A DANGEROUS WEAPON (F5)

Between and including May 9, 2020 and March 4, 2021, Barry Lee Morphew unlawfully, feloniously, and knowingly possessed a dangerous weapon, namely: short rifle; in violation of section 18-12-102(3), C.R.S.

COUNT 5-ATTEMPT TO INFLUENCE A PUBLIC SERVANT (F4)

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All offenses against the peace and dignity of the people of the State of Colorado.

Linda Stanley
District Attorney, # 45298

By: /s/ Jeffrey D. Lindsey Date: 5/18/2021
Jeffrey D. Lindsey #: 24664
Senior Deputy District Attorney

District Court, Chaffee County, Colorado Chaffee County Combined Courts P. O. Box 279, 142 Crestone Avenue Salida, CO 81201 (719) 539-6031	DATE FILED: May 18, 2021 4:07 PM
THE PEOPLE OF THE STATE OF COLORADO **vs.** **Barry Lee Morphew,** **Defendant**	☐ **COURT USE ONLY** ☐
Linda Stanley DISTRICT ATTORNEY BY: Jeffrey D. Lindsey Senior Deputy District Attorney 104 Crestone Avenue P. O. Box 699 Salida, CO 81201 Telephone: (719) 539-3563 Fax: (719) 539-3565 Attorney Registration No.: 24664	Case No:D0082021CR000078 Div: 2

MOTION TO AMEND

Linda Stanley, District Attorney in and for the Eleventh Judicial District, State of Colorado, hereby requests that the Complaint and Information in the case be amended.

As grounds for this Motion, the District Attorney states as follows:

1. To include Domestic Violence.

Respectfully submitted this 18 day of May, 2021.

By: /s/ Jeffrey D. Lindsey Date: 05/18/2021
Jeffrey D. Lindsey #: 24664
Senior Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on this 18th day of May, 2021, a true and correct copy of the foregoing Motion To Amend was served via Colorado Courts E-Filing on all parties who appear of record and have entered their appearances herein according to Colorado Courts E-Filing.

By: /s/ Crystal Keim

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: May 18, 2021 4:45 PM
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78
Iris Eytan, #29505 Dru Nielsen, #28775 Eytan Nielsen LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (720) 440-8155 Facsimile: (720) 440-8156 Email: iris@eytan-nielsen.com dru@eytan-nielsen.com *ATTORNEYS FOR DEFENDANT BARRY LEE MORPHEW*	Courtroom/Division: 2

MOTION FOR IN-PERSON APPEARANCE AT ADVISEMENT HEARING ON MAY 27, 2021 [D-14]

Mr. Barry Lee Morphew, by and through undersigned counsel, moves for an In-Person Appearance at the Advisement Hearing on May 27, 2021 and in support states the following:

1. Mr. Morphew was arrested on May 5, 2021.

2. Undersigned counsel filed their Entry of Appearance on May 17, 2021.

3. This matter is set for a virtual Advisement on May 27, 2021 at 4:00 p.m.

4. Undersigned counsel requests that the Advisement be heard in person on May 27, 2021 at 4:00 p.m.

WHEREFORE, Mr. Morphew moves this Court to order that the Advisement Hearing set on May 27, 2021 at 4:00 p.m. be an in-person hearing.

Respectfully submitted this 18th day of May, 2021.

EYTAN NIELSEN LLC

s/ Iris Eytan
Iris Eytan, #29505

s/ Dru Nielsen
Dru Nielsen, #28775

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May, 2021 a true and correct copy of the foregoing **MOTION FOR IN-PERSON APPEARANCE AT ADVISEMENT HEARING ON MAY 27, 2021 [D-14]** was served via CCE as follows:

Mr. Jeffrey Lindsey
11th Judicial District Attorney's Office
101 Crestone Ave.
Salida, CO 81201

s/ Tonya Holliday
Tonya Holliday

District Court, Chaffee County, Colorado Chaffee County Combined Courts P. O. Box 279, 142 Crestone Avenue Salida, CO 81201 (719) 539-6031	GRANTED BY COURT 05/19/2021  PATRICK W MURPHY District Court Judge ☐ COURT USE ONLY ☐
THE PEOPLE OF THE STATE OF COLORADO **vs.** **Barry Lee Morphew,** **Defendant**	
	Case No: D0082021CR000078 Div: 2
ORDER	

Based upon the Motion to Amend,

IT IS ORDERED that said Amended Complaint and Information be substituted for the original in the above case.

DONE this _____ day of _____, 2021.

BY THE COURT:

_____
JUDGE

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	GRANTED BY COURT 05/19/2021 PATRICK W MURPHY District Court Judge ▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	Case Number: 21CR78
	Division: 2

ORDER RE: MOTION FOR IN-PERSON APPEARANCE AT ADVISEMENT HEARING ON MAY 27, 2021 [D-14]

This matter, having come before the Court on Mr. Morphew's **MOTION FOR IN-PERSON APPEARANCE AT ADVISEMENT HEARING ON MAY 27, 2021 [D-14]** and being fully advised in the premises, the Court hereby ORDERS:

_____ GRANTED.

_____ DENIED.

_____ _____

Date Judge

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: May 24, 2021 10:01 AM
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78
Iris Eytan, #29505 Dru Nielsen, #28775 Eytan Nielsen LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (720) 440-8155 Facsimile: (720) 440-8156 Email: iris@eytan-nielsen.com dru@eytan-nielsen.com *ATTORNEYS FOR DEFENDANT BARRY LEE MORPHEW*	Courtroom/Division: 2

MOTION TO ADOPT THE PREVIOUSLY FILED MOTION TO LIMIT PUBLIC ACCESS AND MOTION TO LIMIT PRE-TRIAL PUBLICITY [D-15]

Mr. Barry Morphew, by and through his new counsel, hereby adopts the Motion to Limit Public Access and Motion to Limit Pre-Trial Publicity which was filed by his previous counsel.

Respectfully submitted this 24th day of May, 2021.

EYTAN NIELSEN LLC

s/ Iris Eytan
Iris Eytan, #29505

s/ Dru Nielsen
Dru Nielsen, #28775

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2021 a true and correct copy of the foregoing **MOTION TO ADOPT THE PREVIOUSLY FILED MOTION TO LIMIT PUBLIC ACCESS AND MOTION TO LIMIT PRE-TRIAL PUBLICITY [D-15]** was served via CCE as follows:

Mr. Jeffrey Lindsey
11th Judicial District Attorney's Office
101 Crestone Ave.
Salida, CO 81201

s/ Tonya Holliday
Tonya Holliday

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 CRESTONE AVENUE, P.O. BOX 279, SALIDA, CO, 81201	DATE FILED: May 24, 2021 2:05 PM
THE PEOPLE OF THE STATE OF COLORADO v. **Defendant(s)** BARRY LEE MORPHEW	⚠ COURT USE ONLY ⚠ Case Number: 2021CR78 Division: 2 Courtroom:

Order Regarding Hearing on May 27, 2021

This case is currently set for a status hearing on Thursday, May 27, 2021 at 4:00 p.m. In reviewing the file, the Court notes several unresolved motions. Those motions include:

Motion for Preservation and Production of Evidence (D-6) (D-13)/ Discovery Demand (D-9)

Motion for Access to all Arrest Warrants, Search Warrants, Affidavits and Inventories (D-4)

Motion to Limit Pretrial Publicity (D-8)

The Court intends to address these Motions at the May 27, 2021 hearing.

Issue Date: 5/24/2021

PATRICK W MURPHY
District Court Judge

District Court, Chaffee County, Colorado Court Address: 142 CRESTONE AVE , SALIDA, CO 81201 719-539-2561	FILED IN COMBINED COURTS DATE FILED: May 24, 2021 2:30 PM MAY 24 2021 CHAFFEE COUNTY COLORADO
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. **BARRY MORPHEW,** Defendant	▲ COURT USE ONLY ▲
	Case Number: 21CR78 Courtroom DISTRICT

ORDER RE: EXPANDED MEDIA REQUESTS AND THE RECORDING/BROADCASTING OF HEARINGS

The Court has continued to receive requests for Expanded Media Coverage of the May 27, 2021 hearing.

Pursuant to Chapter 38, Rule 3 of the Colorado Supreme Court Rules, "Notwithstanding an authorization to conduct expanded media coverage of a proceeding, there shall be no expanded media coverage of pretrial hearings in criminal cases, except advisements and arraignments."

The hearing on May 27, 2021 is neither an advisement nor an arraignment. Therefore, any requests for expanded media coverage of that hearing, or any other pre-trial hearing except the arraignment, are summarily denied.

This Court, like many courts throughout the state and country, has been conducting court hearings via video conference (WebEx) for the past year due to the pandemic. This Court will continue to utilize video conferencing for this case until the public is allowed into the courthouse with no significant restrictions on capacity. The Court believes this is the most appropriate way to ensure that the proceedings are both public and safe.

This puts the Court in the unusual situation of being the entity that records and broadcasts the proceedings.

The expanded media coverage requests to re-broadcast the WebEx proceedings present the same issue as requests to expand media coverage within the courtroom. Regardless of the type of courtroom in which proceedings are held, the Court must always balance several important and often competing rights. First and foremost, the rights of the Defendant to a fair trial are the highest priority of the Court: "No right ranks higher than the right of the accused to a fair trial." *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984). The Court must also take great care to grant public access to criminal proceedings and provide a forum for named victims or their representatives to "be heard when relevant, informed, and present at all critical stages of the criminal justice process." Colo. Const. Art. 2, § 16a. The rights of the press to access a criminal proceeding are "no greater than those of any other member of the public."

Nixon v. Warner Communications, Inc., 435 U.S. 589, 609, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978) (quoting *Estes v. Texas*, 381 U.S. 532, 589, 85 S.Ct. 1628, 14 L.Ed.2d 543 (1965) (Harlan, J., concurring)). There is no constitutional right to the use of cameras or audio-transmitting devices during court proceedings. See, e.g. *United States v. Edmonds*, 785 F.2d 1293 (5th Cir. 1986).

As stated above, Chapter 38, Rule 3 of the Colorado Supreme Court Rules provides the standard for authorizing expanded media coverage and explains the types of hearings where expanded media coverage can be requested.

Therefore, it is ordered that any recording or re-broadcast of virtual court proceedings in this case for any pretrial hearing other than the arraignment is prohibited.

Violation of the Order may result in sanctions such as exclusion from future virtual proceedings and prosecution for contempt of court.

Dated 5/24/21

Patrick W. Murphy
Chief Judge, 11th J.D.

Combined Courts, Chaffee County P. O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: May 25, 202
THE PEOPLE OF THE STATE OF COLORADO **vs.** **BARRY LEE MORPHEW,** Defendant	☐ **COURT USE ONLY** ☐
Linda Stanley Eleventh Judicial District District Attorney, # 45298 District Attorney's Office 104 Crestone Avenue P. O. Box 699 Salida, CO 81201 Phone Number: (719)539-3563 Fax: (719)539-3565	Case No: D0082021CR000078 Div: 2 Courtroom:
PEOPLE'S RESPONSE TO MOTION FOR PRESERVATION OF PHYSICAL EVIDENCE [D-6]; [P6]	

COME NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District by and through her appointed Senior Deputy District Attorney, Jeffrey D. Lindsey hereby tenders their response to the above captioned Motion. As this Motion applies to C.R.S. § 16-3-309, the People will agree to those provisions that mimic the rule.

Dated: May 25, 2021

Respectfully submitted,
LINDA STANLEY
/s/ Jeffrey D. Lindsey
Jeffrey D. Lindsey, #24664
Senior Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on May 25, 2021, a true and correct copy of the foregoing Motion was served via Colorado Courts E-Filing on all parties who appear of record and have entered their appearance herein according to Colorado Courts E-Filing.

By: /s/ Jeffrey Lindsey

Combined Courts, Chaffee County P. O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: May 25, 202
THE PEOPLE OF THE STATE OF COLORADO **vs.** **BARRY LEE MORPHEW,** Defendant	☐ **COURT USE ONLY** ☐
Linda Stanley Eleventh Judicial District District Attorney, # 45298 District Attorney's Office 104 Crestone Avenue P. O. Box 699 Salida, CO 81201 Phone Number: (719)539-3563 Fax: (719)539-3565	Case No: D0082021CR000078 Div: 2 Courtroom:
PEOPLE'S RESPONSE TO MOTION TO LIMIT PUBLIC ACCESS TO ARREST WARRANT AFFIDAVIT FILED MAY 5, 2021 AND MOTION TO LIMIT PRETRIAL PUBLICITY **[D-7, D-8 AND D-15][1];[P 15]**	

COME NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District by and through her appointed Senior Deputy District Attorney, Jeffrey D. Lindsey hereby tenders their response to the above captioned Motion.

D7

1. Former defense counsel writes in his first allegation,

> "On May 5 2021, District Attorney Linda Stanley filed a one hundred and twenty-nine page Affidavit for Arrest Warrant, authored by Alex Walker, Chief Investigator for the 11th Judicial District, Office of the District Attorney."

That statement is mostly true, however, the Affidavit for Arrest Warrant (PC Affidavit) was filed by Investigator Walker.

[1] D-7 and D-8 was filed by Daniel Zettler of the Colorado Public Defendner's Office. D-15 was filed by current counsel and requested to adopt D-7 and D-8 .

2. The People did request the sealing of the PC affidavit up and until Mr. Morphew was apprehended by authorities.

3. As the People stated in the Advisement hearing on May 5, 2021, the People defer to the Court as to the release of the PC Affidavit.

4. Former defense counsel cites Colo. R. Crim. P. 55.1 as guiding authority to this Court. Again, this is not quite accurate. Rule 55.1 was made effective May 10, 2021, this PC Affidavit was filed, and a subsequent arrest warrant was issued on May 5, 2021.[2]

5. The People have attached the copy of the Rule as exhibit A to this pleading if the Court wishes to direct interested parties towards it.

6. The People agree with former defense counsel reference his paragraph 11, "The Arrest Affidavit is unlike any other arrest affidavit counsel has ever reviewed."

7. The People do not agree with the allegations in paragraph 12. The PC Affidavit covers the entirety of the investigation. It includes potential exculpatory information, other leads and investigations into those areas. The investigation recounts several hours of consensual interviews of Mr. Morphew. He is quoted numerous times. During the interviews, Mr. Morphew is questioned regarding his statements and provided information that proved his statements incorrect.

8. Former defense counsel states, "The affidavit is inconsistent with a sworn statement of facts as required by Crim. P. 4(a)(2). The correct citation should be Crim P 4.2.

9. Former defense counsel recites several facts from the affidavit ("lowlights" as he calls them), incorporating Rules of Evidence, and Colorado case law. Undersigned is not aware of any requirement that PC Affidavits must conform to the Rules of Evidence and existing Colorado case law.

10. Former defense counsel then indicates the PC Affidavit contains "an incredible amount of information which has no relevancy to the case, which is pure inadmissible character assassination, and which will likely prejudice any and all potential jurors who review the affidavit." Again, former defense counsel seems

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[2] The People are not suggesting the Court ignore Rule 55.1; it may indeed provide a framework for this Court and its decision regarding the unsealing of the affidavit.

to believe the Rules of Evidence and Colorado Case Law pertain to PC Affidavits. They do not.

11. The PC Affidavit includes details that the former defense counsel complains about that explore motives and reasons that may explain Mr. Morphew's actions and/or actions of Suzanne Morphew that may have led to her death. It quotes Mr. Morphew time and time again. His statements potentially are exculpatory and if material, are required to be contained in the PC Affidavit.

12. Former defense counsel then cites the affidavit must remain sealed to protect the alleged victims ([redacted] anc [redacted]). It cannot be said enough that this case alone, let alone any details, must devastate these young ladies. ([redacted] s considered [redacted] will be a[redacted] They can make their own decisions as to what they decide to review or not review. It is common for victims such as them to utilize someone to filter the information.

13. A defense attorney is not charged with protecting the rights of the victims under Colorado Law. C.R.S. §24-4.1-100.1 et seq charges law enforcement, the district attorney's office, the court system, probation and parole with that duty.

14. The People suggest current defense counsel submit redacted versions of the PC Affidavit as contemplated by Rule 55.1.

D8

1. Similar to the People's position in D7, the People defer to the Court regarding the D8 motion. The People are aware of another high-profile case (People v. Robert Dear) where the Court in El Paso County issued an order regarding pre-trial publicity. The People have a copy of this Order submitted this as guidance to the Court as exhibit B.

Dated: May 25, 2021

Respectfully submitted,
LINDA STANLEY
/s/ Jeffrey D. Lindsey
Jeffrey D. Lindsey, #24664
Senior Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on May 25, 2021, a true and correct copy of the foregoing Motion was served via Colorado Courts E-Filing on all parties who appear of record and have entered their appearance herein according to Colorado Courts E-Filing.

By: /s/ Jeffrey Lindsey

Combined Courts, Chaffee County P. O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: May 25, 2021
THE PEOPLE OF THE STATE OF COLORADO **vs.** **BARRY LEE MORPHEW,** Defendant	☐ **COURT USE ONLY** ☐
Linda Stanley Eleventh Judicial District District Attorney, # 45298 District Attorney's Office 104 Crestone Avenue P. O. Box 699 Salida, CO 81201 Phone Number: (719)539-3563 Fax: (719)539-3565	Case No: D0082021CR000078 Div: 2 Courtroom:
PEOPLE'S RESPONSE TO MOTION FOR PRESERVATION OF EVIDENCE [D-13]; [P13]	

COME NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District by and through her appointed Senior Deputy District Attorney, Jeffrey D. Lindsey hereby tenders their response to the above captioned Motion. As this Motion applies to Colo. R. Crim. P 16, the People will agree to those provisions that mimic the rule.

AS GROUNDS for this Response, the People inform this Court as follows:

1. The People do not object to preserving recordings that currently exist and any future recordings obtained by law enforcement.

2. The People do object to the request to preserve emails between law enforcement officers (including prosecutors) connected and pertaining to this case. This request is not based on Rule 16 and is onerous and burdensome. The People are aware of the their obligations under Rule 16 and if an email or text message contains Rule 16 material, it will be preserved and provided in discovery.

3. The People agree reference paragraph 3 to the mimicked Rule 16 requirements. The People do not believe that if they contact an expert and determine not to retain said expert that an obligation of discovery is required, with the caveat that

if the expert provides information that is exculpatory, that information will be provided to the defense.

4. Reference the last two unnumbered paragraphs of defense motion D-13, the blanket statement covers a multitude of actions. For the most part, the People agree with the statement, however, forbidding certain actions are not agreeable and the People request a hearing prior to the Court entering an order granting the defense requests.

Dated: May 25, 2021

Respectfully submitted,
LINDA STANLEY
/s/ Jeffrey D. Lindsey
Jeffrey D. Lindsey, #24664
Senior Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on May 25, 2021, a true and correct copy of the foregoing Motion was served via Colorado Courts E-Filing on all parties who appear of record and have entered their appearance herein according to Colorado Courts E-Filing.

By: /s/ Jeffrey Lindsey

Combined Courts, Chaffee County P. O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: May 25, 202
THE PEOPLE OF THE STATE OF COLORADO **vs.** **BARRY LEE MORPHEW,** Defendant	☐ **COURT USE ONLY** ☐
Linda Stanley Eleventh Judicial District District Attorney, # 45298 District Attorney's Office 104 Crestone Avenue P. O. Box 699 Salida, CO 81201 Phone Number: (719)539-3563 Fax: (719)539-3565	Case No: D0082021CR000078 Div: 2 Courtroom:
PEOPLE'S RESPONSE TO MOTION FOR COURT TO ORDER THE RELEASE OF ALL SEARCH WARRANTS, AFFIDAVITS, AND PROPERTY INVENTORIES [D-4]; [P4]	

COME NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District by and through her appointed Senior Deputy District Attorney, Jeffrey D. Lindsey hereby tenders their response to the above captioned Motion. As this Motion applies to Colo. R. Crim. P 16, the People will agree to those provisions that mimic the rule. The People have no objection to this Motion. Furthermore, the requested information will be provided in the normal course of discovery.

Dated: May 25, 2021

Respectfully submitted,
LINDA STANLEY
/s/ Jeffrey D. Lindsey
Jeffrey D. Lindsey, #24664
Senior Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on May 25, 2021, a true and correct copy of the foregoing Motion was served via Colorado Courts E-Filing on all parties who appear of record and have entered their appearance herein according to Colorado Courts E-Filing.

By: /s/ Jeffrey Lindsey

Document: Colo. Crim. P. 55.1

‹ Previous

Next ›

Colo. Crim. P. 55.1

Copy Citation

This document reflects changes received through May 3, 2021

CO - Colorado Local, State & Federal Court Rules COLORADO RULES OF CRIMINAL PROCEDURE CHAPTER 29 COLORADO RULES OF CRIMINAL PROCEDURE FOR ALL COURTS OF RECORD IN COLORADO COLORADO RULES OF CRIMINAL PROCEDURE VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 55.1. Public Access to Court Records in Criminal Cases.

(a) Court records in criminal cases are presumed to be accessible to the public. Unless a court record or any part of a court record is inaccessible to the public pursuant to statute, rule, regulation, or Chief Justice Directive, the court may deny the public access to a court record or to any part of a court record only in compliance with this rule.

(1) Motion Requesting to Limit Public Access to Court Record Not Previously Filed. A party may file a motion requesting that the court limit public access to a court record not previously filed 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. The motion must be accompanied by the court record the moving party seeks to make inaccessible or partially inaccessible to the public, 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. An opposing party wishing to object to the motion must file a response within 14 days after service of the motion unless otherwise directed by the court. Upon receiving the motion, the clerk shall make the subject court record inaccessible to the public pending the court's resolution of the motion, except that if a party seeks to make inaccessible to the public only parts of the subject court record, then the party must also submit a redacted version of the court record with the motion and the clerk shall make the redacted version of the court record accessible to the public without undue delay. The clerk shall also make the motion and the response inaccessible to the public pending the court's resolution of the motion, except that, in its discretion, the court may order that the motion and the response, or redacted versions of the

motion and the response, be accessible to the public during that timeframe.

(2) Motion Requesting to Limit Public Access to Court Record Previously Filed. 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. The motion must identify by title and date of filing the court record the moving party seeks to make inaccessible or partially inaccessible to the public,

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. An opposing party wishing to object to the motion must file a response within 14 days after service of the motion unless otherwise directed by the court. Upon receiving the motion, the clerk shall make the subject court record inaccessible to the public pending the court's resolution of the motion, except that if a party seeks to make inaccessible to the public only parts of the subject court record, then the party must submit a redacted version of the court record with the motion and the clerk shall make the redacted version of the court record accessible to the public without undue delay. The clerk shall also make the motion and the response inaccessible to the public pending the court's resolution of the motion, except that, in its discretion, the court may order that the motion and the response, or redacted versions of the motion and the response, be accessible to the public during that timeframe.

(3) Title and Contents of Motion and Response. A motion to limit public access shall identify the court record or any part of the court record the moving party wishes to make inaccessible to the public, state the reasons for the request, and specify how long the information identified should remain inaccessible to the public. A response to a motion to limit public access shall state the reasons why the motion should be denied in whole or in part. The motion shall be titled, "Motion to Limit Public Access"; the response shall be titled, "Response to Motion to Limit Public Access."

(4) Orders Entered on Court's Own Motion. The court may, on its own motion, make a court record or other filing inaccessible to the public or order that only a redacted copy of it be accessible to the public. If the court does so, it must provide notice to the parties and the public via the publicly available Register of Actions and must also comply with paragraphs (a)(6), (a)(7), (a)(8), (a)(9), and (a)(10) of this rule. The clerk shall make the subject court record or filing inaccessible to the public pending the court's final decision, except that, in its discretion, the court may order a redacted version of the court record or filing accessible to the public during that timeframe. In its discretion, the court may hold a hearing in accordance with paragraph (a)(5) of this rule before ordering on its own motion a court record or any part of a court record inaccessible to the public.

(5) Hearing. The court may conduct a hearing on a motion to limit public access to a court record or to any part of a court record. Notice of the hearing shall be provided to the parties and the public via the publicly available Register of Actions. The court may close the hearing or part of the hearing if it finds that doing so is necessary to prevent the public from accessing the information that is the subject of the motion under consideration. If the court closes the hearing or part of the hearing, it shall enter appropriate protective orders regarding the transcript or recording of the proceeding and any evidence introduced during the hearing. Any such orders shall be modified or vacated if the court ultimately denies, in whole or in part, the request to limit public access.

(6) When Request Granted. The court shall not grant any request to limit public access to a court record or to any part of a court record, or enter an order on its own motion limiting such public access, unless it issues a written order in which it:

(I) specifically identifies one or more substantial interests served by making the court record

(I) specifically identifies one or more substantial interests served by making the court record inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public;

(II) finds that no less restrictive means than making the record inaccessible to the public or allowing only a redacted copy of it to be accessible to the public exists to achieve or protect any substantial interests identified; and

(III) concludes that any substantial interests identified override the presumptive public access to the court record or to an unredacted copy of it.

(7) Duration of Order Granting Request. Any order limiting public access to a court record or to any part of a court record shall indicate a date or event certain by which the order will expire. That date or event shall be considered the order's expiration date or event.

(8) Public Access to Order Granting Request. The order limiting public access to a court record or to any part of a court record pursuant to this rule shall be accessible to the public, except that any information deemed inaccessible to the public under this rule shall be redacted from the order.

(9) Review of Order Granting Request. The court shall review any order limiting public access to a court record or to any part of a court record pursuant to this rule at the time of the expiration of the order or earlier upon motion of one of the parties. The court may postpone the expiration of such an order if, in a written order, it either determines that the findings previously made under paragraph (a)(6) of this rule continue to apply or makes new findings pursuant to paragraph (a)(6) of this rule justifying postponement of the expiration date or event. If the court postpones the expiration of the order, it must set a new expiration date or event.

(10) Limited Access to Original Court Record When Request Granted. If a court limits public access to a court record or to any part of a court record pursuant to this rule, only judges, court staff, parties to the case (and, if represented, their attorneys in that case), and other authorized Judicial Department staff shall have access to the original court record.

(11) When Request Denied. When denying a motion to limit public access to a court record or to any part of a court record under this rule, the court must ensure, without undue delay, that the public is given access to: the subject court record or the parts of that court record previously made temporarily inaccessible to the public pending resolution of the motion; the motion; any response; and, as to any hearing held, the transcript or recording of the proceeding and any evidence introduced during that proceeding.

History

Source: Adopted December 17, 2020, effective May 10, 2021.

REDACTED

Exhibit B

District Court, El Paso County, Colorado Court address: **270 South Tejon** **Colorado Springs, CO 80903** Phone Number: **(719) 452-5446**	DATE FILED: May 25, 2021 FILED DATE FILED: December 9, 2015 COURTS EL PASO CO CO CASE NUMBER: 2015CR5795
People of the State of Colorado, Plaintiff, vs ROBERT LEWIS, DEAR, JR., Defendant.	DEC 0 9 2015 DIVISION 10
Attorney or Party wihout Attorney(Name and Address): Phone Number: Email: FAX Number: Atty.Reg#:	Case Number: 15CR5795 Division 10 Courtroom W570
ORDER RE: MOTION TO LIMIT PRE-TRIAL PUBLICITY (C00-3)	

THIS MATTER comes before the Court on Defendant's Motion to Limit Pretrial Publicity. The Court has reviewed Defendant's Motion and the applicable authorities. Having heard argument from the parties, the Court FINDS and ORDERS as follows:

Defendant has sought an Order restricting pretrial publicity. Defendant's case has already received attention from the media. The case is likely to continue to generate media attention. In light of such anticipated publicity and the difficulty in anticipating all possible scenarios, this Order is meant to provide guidelines to all involved in this case.

The nature of this case and the pretrial publicity that has already occurred, together with the anticipated publicity from the trial, demonstrate the need for Court intervention to guide the conduct of counsel and those associated with counsel.

Without suggesting that there have been any violations of general ethical principles, it is necessary for the Court to anticipate the following to be followed in this litigation in the form of this Order for future guidance in all forms of extrajudicial statements about this litigation.

Colorado Rules of Professional Conduct 3.6 and 3.8 provide the basis for this Order.

EC

I. Extrajudicial Statements by Attorneys:

A. Any lawyer, law firm or legal representative (investigators of any firm) associated with the prosecution or defense participating in or associated with the investigation or litigation of this criminal matter shall not, from the filing of the information until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state, without elaboration:

(1) The claim, offense or defense involved and, except when prohibited by law, the identity of the person involved;

(2) Information contained in the public record;

(3) That an investigation of a matter is in progress;

(4) The scheduling or result of any step in litigation;

(5) A request for assistance in obtaining evidence and information necessary thereto;

(6) A warning of danger considering the behavior of a person involved, when there is reason to believe there exists the likelihood of substantial harm to an individual or to the public interest;

(7) The identity, residence, occupation, and family status of the accused;

(8) The facts, time and place of an arrest as well as the identity of the investigating and arresting officers or agencies and the length of the investigation.

B. A lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

C. No lawyer associated in a firm or government agency with a lawyer subject to Section I (A) above shall make a statement prohibited by Section I (A)(1)-(8).

D. Any lawyer, law firm or legal representative (investigators of any firm)

associated with the prosecution or defense participating in or associated with the investigation or litigation of this criminal matter shall not, from the filing of the information, until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter and that relates to:

(1) The character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation or witness, or identity of a witness, or the expected testimony of a party or witness:

(2) In a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) Any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) Information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial.

E. During the selection of a jury of this criminal matter, any lawyer or law firm associated with the prosecution or defense of this criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the Court in this case.

F. Any lawyer or law firm associated with the prosecution or defense of this criminal matter shall exercise reasonable care to prevent his or her employees and associates from making an extrajudicial statement that he or she would be prohibited from making under this Order.

II. Releases of Information by Law Enforcement Agencies:

A. From the date of this Order until the completion of the trial or

disposition without trial, law enforcement officers shall not release or authorize the release of any extrajudicial statements for dissemination by means of public communication, if the law enforcement officers know or reasonably should know that it will have a substantial likelihood of prejudicing a criminal proceeding. Law enforcement officers and agencies are subject to the same restrictions as set forth above for attorneys in Section I regarding extrajudicial statements. COURT INCLUDES EL PASO COUNTY COLORADO. DLM.

III. Disclosure by Court Personnel:

Court personnel shall not disclose, to any unauthorized person, information relating to this pending criminal case that is not a matter of public records of the Court and that may be prejudicial to the right of the People or the Defendant to a fair trial.

IV. Applicability:

Attorneys of record will be served a copy of this Order and this will constitute service upon the District Attorney's Office and the Public Defender's Office. The Court Orders the District Attorney's Office to comply with Colorado Rule of Professional Conduct 3.8(f) in exercising reasonable care to ensure all applicable law enforcement agencies including Colorado Springs Police Department, El Paso County Sheriff's Department, Colorado Bureau of Investigation, Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives all receive prompt notice of this Order and comply with this Order accordingly.

DATED this 9th day of December, 2015

BY THE COURT:

Dale Madsen
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I have provided a true and correct copy of the above Order Regarding MOTION TO LIMIT PRE-TRIAL PUBLICITY (C-003) to the following persons on the 9th day of December, 2015 via e-mail as follows:

Dan May
Jeff Lindsey
Donna Billek
El Paso County District Attorneys Office

Daniel King
Rosalie Roy
Kristen Nelson
Office of the State Public Defender

Judy Beckenhauer

DATE FILED: May 26, 2021

DISTRICT COURT, CHAFFEE COUNTY, STATE OF COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201	
PEOPLE OF THE STATE OF COLORADO v. **BARRY LEE MORPHEW,** Defendant	▲ **COURT USE ONLY** ▲ Case Number: **21CR78** Division: 2 Hon. Patrick W. Murphy
Attorney for Media Consortium: Steven D. Zansberg, 26634 LAW OFFICE OF STEVEN D. ZANSBERG, LLC 100 Fillmore Street, Suite 500 Denver, CO 80206 (303) 385-8698 steve@zansberglaw.com	

MEDIA CONSORTIUM'S RESPONSE TO DEFENDANT'S MOTION TO LIMIT PUBLIC ACCESS TO COURT RECORDS ALREADY FILED (D-7)

The Associated Press, The Denver Post, The Gazette, KCNC-TV/Channel 4, KDVR-TV/Channel 31, KKTV-TV/Channel 11, KMGH-TV/Channel 7, KOAA-TV/Channel 5, KRDO-TV/Channel 13, KUSA-TV/Channel 9, KXRM-TV/Channel 21 ("the Media Consortium") by and through their undersigned counsel, hereby respond in opposition to Defendant's Motion to Limit Public Access to Court Records Already Filed (D-7) ("the Motion").

INTRODUCTION

The Court's May 14, 2021 order states that "*any party in Opposition* to the Motion has until Thursday, May 27, 2021 to file a Response to the Motion."[1] (emphasis added). C.R.C.P. 55.1(a)(3)

[1] Because the C.R.C.P. 55.1 refers expressly to "parties to the case" in subsection (a)(10), it is presumed that the Rule's other references to "parties" includes members of the public, such as the

declares that "[a] response to a motion to limit public access shall state the reasons why the motion should be denied in whole or in part." Because the Motion is suppressed pending the Court's resolution of it, the Media Consortium is not able to address or respond directly to any of the arguments, authorities or recitation of facts/evidence set forth therein.[2] Accordingly, the Media Consortium hereby objects to denial of public access to any portion of the Arrest Warrant Affidavit, any other affidavit(s) of probable cause, or *any other judicial records on file in this criminal case*, unless and until the party seeking to deny that presumptive right of public access meets its burden of proof, and the Court enters the record findings thereon, as required by C.R.C.P. 55.1(a)(6).

ARGUMENT

C.R.C.P. 55.1(a)(1) declares that "Court records in criminal cases are presumed to be accessible to the public. . . . [Accordingly,] the court may deny the public access to . . . *any part* of a court record *only* in compliance with this rule." (emphasis added). The substantive standard set forth in "this rule" is contained in subsection (a)(6):

> The court shall not grant any request to limit public access to a court record or to any part of a court record . . .unless it issues a written order in which it:
>
> (I) specifically identifies one or more substantial interests served by making the court record inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public;
>
> (II) finds that no less restrictive means than making the record inaccessible to the public or allowing only a redacted copy of it to be accessible to the public exists to achieve or protect any substantial interests identified; and

---

media entities who comprise the Media Consortium. *See also People v. Dear*, No. 2016SA13, Order and Rule to Show Cause (Jan. 27, 2016) (allowing members of the news media to challenge suppression of court records in a criminal case); *People v. Thompson*, 181 P.3d 1143 (Colo. 2008) (same); *Times-Call Publ'g Co. v. Wingfield*, 410 P.2d 511 (Colo. 1966) (same, in a civil case).

[2] The final sentence of C.R.C.P. 55.1(a)(2) authorizes the Court, in its discretion, to release a partially redacted version of the Motion (and Response) pending the resolution of the motion. If the Court does so, the Media Consortium hereby requests the opportunity to respond directly to any unsuppressed portions of the Motion.

(III) concludes that any substantial interests identified override the presumptive public access to the court record or to an unredacted copy of it.

Furthermore, C.R.C.P. 55.1(a)(7) states that "[a]ny order limiting public access to a court record or to any part of a court record shall indicate a date or event certain by which the order will expire."

Without being privy to the Defendant's arguments, the Media Consortium speculates that the Motion has argued that making the Arrest Warrant Affidavit available for public inspection will prejudice the Defendant's right to receive a fair trial. There is no doubt that protecting a criminal defendant's fair trial rights constitutes a "substantial" governmental interest under prong (I), above. However, to the extent that any information in the affidavit(s) of probable cause has already been revealed to the public, either through prior reports[3] or open court proceedings, or *will be* disclosed prior to jury selection (*i.e.,* in the course of a preliminary hearing that will be open to the public), there can be no showing that disclosure of that same information contained in the affidavit(s) of probable cause would pose any cognizable threat to the Defendant's fair trial right. *See, e.g., U.S. v. Pickard,* 733 F.3d 1297, 1305 (10th Cir. 2013) (holding that information that has "been disclosed in public . .. court proceedings" is not properly subject to sealing); *In re Herald Co.,* 734 F.2d 93, 101

[3] By way of example, only, it has been widely reported that on Mother's Day 2020, 49-year old Suzanne Morphew, the mother of two daughters, was reported as missing by a neighbor, after she purportedly had gone a bike ride outside of Maysville in Chafee County; that her bicycle and helmet were found at the bottom of a ravine near the intersection of County Road 225 and West Highway 50 with no footprints, blood, scent of an animal or signs of struggle at the site; that the Defendant posted a video on Facebook indicating he was concerned for her return and offering a cash reward for information; that Suzanne's sister has described the Defendant as the "dominant" person in the couple's relationship; that the Friday before Suzanne's disappearance her sister had received a lengthy text message from Suzanne that was "transparent" in showing her troubled state of mind; that Suzanne had shared details of her deteriorated marital relationship with her sister, and that Suzanne had "definitely made the implications that she had concerns about her safety," and "she was scared"; that Suzanne's brother suspected foul play and publicly called upon the Defendant to voluntarily submit to a lie detector test; that law enforcement conducted more than 400 interviews and have executed over 135 search warrants; and that the Defendant stands accused not only of Suzanne's murder but also of having tampered with evidence and with a human corpse.

(2d. Cir. 1984) (holding that a there is no basis to deny public access if "the information sought to be kept confidential has already been given sufficient public exposure"); *United States v. Gotti,* 771 F. Supp. 567, 569 (E.D.N.Y. 1991) ("Additional publicity which may flow from unsealing the record at this time, would, in my judgment, not give rise to a probability, substantial or otherwise, that defendants' right to a fair trial will be prejudiced."); *In re Charlotte Observer,* 882 F.2d 850, 854 (4th Cir.1989) (finding "highly dubious" the proposition that "the defendant's fair trial right would be decisively prejudiced by republication of [information] earlier put in the public domain"); *In re New York Times*, 828 F.2d 110, 116 (2d Cir. 1987) (holding that sealing of court papers is not proper where much of the information contained in them "has already been publicized").

Even as to information in the probable cause affidavit(s) that has not yet been publicly disclosed, *but see* n.3 *supra*, and may not be disclosed before the trial, and even if such potentially incriminating information might be excluded from evidence during trial, the Defendant simply cannot to meet his evidentiary burden of satisfying prongs (II) or (III) of the Rule. Regularly, and routinely, courts across the nation have held that arrest warrant affidavits must be made available to the public immediately following a defendant's arrest and initial charging. *See, e.g., Commonwealth v. Fenstermaker*, 530 A.2d 414, 418-19 (Pa. 1987); *Greenwood v. Wolchik,* 544 A.2d 1156, 1158 (Vt. 1988) ("Public access to affidavits of probable cause is all the more important because the process of charging by information involves no citizen involvement, such as is present with juries and grand juries."); *see also People v. Blagg*, No. 02-CR-623 (Mesa County Dist. Ct. June 5, 2002) (first-degree murder arrest affidavit unsealed before trial) *People v. Garcia- Flores*, No. 0l-CR-46, (Pitkin County Dist. Ct. July 20, 2001) (felony sexual assault and attempted murder unsealed upon motion by news media).

Courts similarly have granted public access to search warrant affidavits on file in criminal cases, long before trial or a preliminary hearing, upon recognizing that those documents "adjudicate[] the right of individuals under the Fourth Amendment not to be subjected to government intrusion into areas in which they might reasonably have expected privacy absent a judicial determination of sufficient cause." *In Re Sealed Search Warrant*, Nos. 04-M-370 & 04-M-388, 2006 WL 3690639, at *3 (N.D.N.Y. Dec. 11, 2006). "Public scrutiny of the search warrant process – even after the fact – can shed light on how and why a warrant was obtained, and thereby further the public's interest in understanding the justice system." *United States v. Loughner*, 769 F. Supp. 2d 1188, 1194 (D. Ariz. 2011). And more importantly, "[p]ublic access to search warrants may also serve to deter unreasonable warrant practices, either by the police or the courts." *Id.* "Permitting inspection of the search warrants [and] the accompanying affidavits ... will further public understanding of the response of government officials ... and allow the public to judge whether law enforcement functioned properly and effectively." *Id.*

The U.S. District Court for the Western District of North Carolina rejected a criminal defendant's request to limit pretrial public access to an affidavit of probable cause because it contained inculpatory information that would not be admissible at trial. *See United States v. Blowers*, No. 3:05-CR-0093, 2005 WL 3830634, 34 Media L. Rep. (BNA) 1235 (W.D.N.C. Oct. 17, 2005):

> An "admissibility standard" would ignore the ability of the *voir dire* process to identify jurors who have been prejudiced by pretrial publicity and are therefore unable to render a verdict based upon evidence presented at trial. . . . It would also exclude much of the criminal justice system from the public arena. If information could never be disclosed simply because it might be inadmissible at trial, much about the world of crime and the criminal justice system would be withdrawn from public view. . . . [A]ny negative publicity resulting from unsealing of those portions of the search warrant affidavit can be adequately addressed through the *voir dire* process. It is therefore unlikely that the release of the entire affidavit will interfere with Mr. Blowers' constitutional right to a fair trial. The search warrant affidavit is ordered released in its entirety.

(internal quotation marks and citations omitted); *see also Associated Press,* 705 F.2d at 1146 ("(W]e believe that careful jury selection is an alternative that can adequately protect the right to a fair trial.... [I]t is unlikely that 'searching questioning of prospective jurors . . . to screen out those with fixed opinions as to guilt or innocence' and 'the use of emphatic and clear instructions . . . to decide the issues only on evidence presented in open court' will fail to produce an unbiased jury, regardless of the nature of the pre-trial documents filed." (quoting *Nebraska Press Ass 'n v. Stuart,* 427 U.S. 539, 563-64 (1976)).

Indeed, it is firmly established that myriad "less restrictive means" than blanket sealing of court records are available that allow the court to adequately protect a criminal Defendant's fair trial rights. The trial judge may:

> (1) cause extensive voir dire examination of prospective jurors; (2) change the trial venue to a place less exposed to intense publicity; (3) postpone the trial to allow public attention to subside; (4) empanel veniremen from an area that has not been exposed to intense pretrial publicity; (5) enlarge the size of the jury panel and increase the number of peremptory challenges; or (6) use emphatic and clear instructions on the sworn duty of each juror to decide the issues only on the evidence presented in open court.

People v. Botham, 629 P.2d 589, 596 (Colo. 1981). Unless the Court is able to make the required judicial findings, on the record, that each of those alternative means, and in combination, is *not* adequate, there is no basis for blanket sealing of the probable cause affidavit(s) in the court file.

Courts have recognized that boilerplate concerns about "high-profile" criminal cases posing a difficulty to empaneling an impartial jury are frequently overstated. *See, e.g., see Skilling v. United States,* 130 S. Ct. 2896, 2925 (2010) (finding no presumption of prejudice arising from pervasive negative pre-trial publicity and approving of trial court's *voir dire* to empanel an impartial jury); *CBS, Inc. v. U.S. Dist. Ct. (United States v. DeLorean)* 729 F.2d 1174, 1179 (9th Cir. 1984) ("even when exposed to heavy and widespread publicity many, if not most, potential jurors are untainted by press

coverage"); *In re Charlotte Observer (United States v. Bakker),* 882 F.2d 850, 855-56 (4th Cir. 1989) ("Cases such as those involving the Watergate defendants, the Abscam defendants, and . . . John DeLorean, all characterized by massive pretrial media reportage and commentary, nevertheless proceeded to trial with juries which – remarkably in the eyes of many – were satisfactorily disclosed to have been unaffected (indeed, in some instances, blissfully unaware of or untouched) by that publicity."); *see also United States v. McVeigh,* 153 F.3d 1166, 1180-81, 1184 n.6 (10th Cir. 1998) (more than one half of potential jurors were unaware of Timothy McVeigh's purported confession to the Oklahoma City bombing despite ubiquitous press coverage given to that confession on the eve of trial).

In highly publicized cases "'[t]he relevant question is not whether the community remembered the case, but whether the jurors ... had such fixed opinions that they could not judge impartially the guilt of the defendant.'" *Mu'Min v. Virginia,* 500 U.S. 415, 430 (1991) (quoting *Patton v. Yount,* 467 U.S. 1025, 1035 (1984)). As the Supreme Court noted more than thirty years ago, in any "important case,"

> [s]carcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. *To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard.* It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

Irwin v. Dowd, 366 U.S. 717, 722-23 (1961) (citations omitted) (emphasis added). This same sentiment was echoed by the Colorado Supreme Court:

> [A]n important criminal case can be expected to generate much public interest and usually the best qualified jurors will have heard or read something about the case. To hold that jurors can have no familiarity through the news media with the facts of the case is to establish an impossible standard in a nation that nurtures the freedom of the press. It is therefore sufficient if jurors can lay aside the information and opinions they have received through pretrial publicity.

People v. McCrary, 549 P.2d 1320, 1325 (Colo. 1976).

Moreover, empirical research confirms that jurors are able to set aside their conclusions based on extensive and prejudicial pretrial publicity, and base their verdict solely on the evidence presented in court. *Gentile v. State Bar of Nev.,* 501 U.S. 1030, 1054-55 (1991); *see Skilling,* 130 S. Ct. at 2925 (holding that defendant had "failed to establish that a presumption of prejudice arose or that actual bias infected the jury" because "[i]t is sufficient if the juror[s] can lay aside [their] impression[s] or opinion[s] and render a verdict based on the evidence presented in court" where trial was held amidst massive local press coverage concerning Enron's collapse and alleged crimes perpetrated by firm's management, including the defendant) (quotation omitted); *id.* at 2920 n.28 (citing numerous cases where, despite extensive pretrial publicity, the court was able to seat an impartial jury).

In the aftermath of the highly-publicized mass shooting in Arizona involving a sitting member of Congress, the federal district court ruled that the defendant's fair trial rights would not be compromised by release of the warrant affidavits because the court, "with the assistance of counsel ... intends to develop a comprehensive jury questionnaire, which will help identify the extent of exposure prospective jurors may have had to the news coverage about th[e] case and assist counsel in ferreting out people with fixed opinions." *See Loughner,* 769 F. Supp. 2d at 1196. Further, that court noted it would "permit counsel to personally and extensively voir dire prospective jurors" and would "consider granting additional peremptory challenges to each side, if voir dire establishes that is necessary." *Id.*

In light of the fact that myriad "less restrictive" prophylactic measures are available, and the absence of any showing that such alternative measures would not adequately protect the Defendant's

right to a fair trial, the Court cannot enter the record findings required by C.R.C.P. 55.1(a)(6) to justify blanket sealing of the probable cause affidavits in the Court file.[4]

CONCLUSION

For the reasons set forth above, the Media Consortium respectfully urges this honorable Court to deny the Defendant's Motion to Limit Public Access to Court Records That Have Already Been Filed.

DATED: May 26, 2021

By /s/ *Steven D. Zansberg*
Steven D. Zansberg
LAW OFFICE OF STEVEN D. ZANSBERG, LLC

Attorneys for the Media Consortium

THIS RESPONSE WAS FILED WITH THE COURT
THROUGH THE ICCES ELECTRONIC FILING
PROCEDURES, UNDER C.R.C.P. 121(C), § 1-26.

AS REQUIRED BY THOSE RULES, THE ORIGINAL SIGNED
COPY OF THIS PLEADING IS ON FILE WITH LAW OFFICE
OF STEVEN D. ZANSBERG, L.L.C.

[4] Release of redacted versions of the probable cause affidavit(s) is a "less restrictive alternative" than blanket sealing of court documents in their entirety. *See, e.g., In re Nat'l Prescription Opiate Lit.*, 927 F.3d 919, 939 (6th Cir. 2019) (reversing district court's sealing order and requiring district court, before sealing documents, to "explain . . . why the seal itself is no broader than necessary") (internal quotation marks and citations omitted); *Matter of New York Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987) (holding, in a criminal case, that "wholesale sealing of motion papers was more extensive than necessary to protect defendants' fair trial rights, their privacy interests, and the privacy interests of third persons"); *U.S. v. Arel,* 533 F.3d 72, 82 (2d Cir. 2008) ("it is the responsibility of the district court to ensure that sealing documents . . . is no broader than necessary."); *Pickard,* 733 F.3d at 1304-05 (reversing trial court's blanket sealing order because "the district court did not consider whether selectively redacting just the still sensitive, and previously undisclosed, information from the [records] . . . would adequately serve the government's interest"); *see also* 10th Cir. R. 25.6(A)(2) (motions to seal must "explain why the sensitive information cannot be reasonably redacted in lieu of filing the entire document under seal").

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Response was served, this day, May 26, 2021, on the following counsel of record, by my designating that they should be served electronically through the ICCES e-filing system:

Linda Stanley, Esq.
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/s/ *Steven D. Zansberg*

District Court, Chaffee County, Colorado Court Address: 142 CRESTONE AVE , SALIDA, CO 81201 719-539-2561	DATE FILED: June 3, 2021 3:16 PM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. **BARRY MORPHEW,** Defendant	FILED IN CHAFFEE COURTS JUN - 3 2021 CHAFFEE COUNTY, COLORADO ▲ COURT USE ONLY ▲
	Case Number: 21CR78 Courtroom DISTRICT

ORDER RE: HEARING MAY 27, 2021

On May 27, 2021, a hearing was held on this matter. Present were defense counsel, Iris Eytan and Dru Nielsen, Deputy District Attorney Jeff Lindsey and the Defendant, Barry Morphew.

The following orders were entered at that hearing:

1. Defense Motion for Access to Warrants/Affidavits/Returns (D-4): GRANTED

2. Defense Motion to Limit Pretrial Publicity (D-8): GRANTED (a separate order will be issued)

3. Preservation/Production of Evidence (D-13) and (D-6): GRANTED IN PART

   D-6 was granted in whole

   D-13

   paragraph 1 was granted

   paragraph 3 was granted with the caveat that experts contacted by the prosecution who did not work on the case do not need to be disclosed to the defense.

   paragraph 2 was taken under advisement. The Court enters the following order with regard to paragraph 2: The request is denied in part. As mentioned in *Kyles v. Whitley*, 514 U.S. 419, (1995); the prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including law enforcement. This sentiment is echoed in C.R.C.P. Rule 16(a)(2) (requiring disclosure of any evidence favorable to the defendant) and 16(a)(3) (extending the prosecutor's obligations to law enforcement). The defense request for all "emails and text messages between law enforcement officers and all individuals (including prosecutors) contacted and pertaining to this case" is too broad and is not required by case law or statute. Collecting and

distributing these communications (which would be a constantly ongoing process) would be an unreasonable burden on the prosecution. Therefore it is ordered that any electronic communications created or received by law enforcement officers related to this case must be disclosed to the defense if they are material to the prosecution of the case or if they contain any evidence that would be in any way favorable to the defense.

The defense noted their objection to destruction or release of any physical evidence. The Court ordered no evidence would be destroyed or released and that no evidence would be tested if the testing would consume the evidence to a degree that would make testing by the defense impossible. If such testing or release/destruction of evidence is contemplated, notice must be given to the defense with adequate time to object.

4. Discovery Demand (D-10)

Section I, paragraph 1 was granted with some clarification of what was being requested in section (b)

Section II, paragraphs 1,2,3,4 (if agreement is with the 11th Judicial District's District Attorney's office), 5, 6 (if related to this case), 7 (if in possession of the District Attorney's Office), 8 (if in possession of law enforcement) and 12 were granted.

Section II, paragraph 9 was denied as too broad. Paragraph 10 and 11 were denied at this point but may be raised with greater particularity in the future if need be.

Section III, paragraph 1 was granted, paragraph 4 was denied.

Section IV: expert disclosures are governed by C.R.C.P. Rule 16. Any particular issues may be raised by separate motion.

Section V: granted.

Section VI: noted.

Section VII: to be addressed later

Section VIII: redundant

Section IX: legal authority

Section X: noted

Discovery is to be delivered to the defense no later than Wednesday, June 2, 2021.

5. Release of Arrest Affidavit

The court will address the release of the arrest affidavit in a separate Order.

Dated 6/3/21

Patrick W. Murphy
Chief Judge, 11th J.D.

District Court, Chaffee County, Colorado 142 Crestone Ave Salida, CO 81201	DATE FILED: June 3, 2021 3:20 PM JUN - 3 2021 CHAFFEE COUNTY, COLORADO
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. **BARRY MORPHEW**, Defendant	☐ COURT USE ONLY ☐
	Case No. 2021CR78 Division 2
ORDER RE MOTION TO LIMIT PRE-TRIAL PUBLICITY	

This matter comes before the Court on Defendant's Motion to Limit Pretrial Publicity. The Court has reviewed Defendant's Motion and the applicable authorities. Having heard argument from the parties on May 27, 2021, the Court FINDS and ORDERS as follows:

Defendant has sought an Order restricting pretrial publicity. Defendant's case has already received attention from the media. The case is likely to continue to generate media attention. In light of such anticipated publicity and the difficulty in anticipating all possible scenarios, this Order is meant to provide guidelines to all involved in this case.

Counsel involved in this matter will no doubt conduct themselves in a professional way. However, the nature of this case and the pretrial publicity that has already occurred, together with the anticipated publicity from the trial, demonstrate the need for Court intervention to guide the conduct of counsel and those associated with them to avoid lowering the level of advocacy in this case.

Without suggesting that there have been any violations of general ethical principles, it is necessary for the Court to articulate the following to be followed in this litigation in the form of this Order for future guidance in all forms of extrajudicial statements about this litigation.

Colorado Rules of Professional Conduct 3.6 and 3.8 provide the basis for this Order.

I. Extrajudicial Statements by Attorneys:

A. Any lawyer, law firm or legal representative (investigators of any firm) associated with the prosecution or defense participating in or associated with the investigation or litigation of this criminal matter shall not, from the filing of a complaint, information or indictment, the issuance of an arrest warrant or arrest, until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state, without elaboration:

(1) The claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) Information contained in the public record;

(3) That an investigation of a matter is in progress;

(4) The scheduling or result of any step in litigation;

(5) A request for assistance in obtaining evidence and information necessary thereto;

(6) A warning of danger considering the behavior of a person involved, when there is reason to believe there exists the likelihood of substantial harm to an individual or to the public interest;

(7) The identity, residence, occupation, and family status of the accused;

(8) If the accused has not been apprehended, information to aid in apprehension of that person; and

(9) The facts, time and place of an arrest as well as the identity of the investigating and arresting officers or agencies and the length of the investigation.

B. A lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

C. No lawyer associated in a firm or government agency with a lawyer subject to Section I (A) above shall make a statement prohibited by Section I (A) (1)-(9).

D. Any lawyer, law firm or legal representative (investigators of any firm) associated with the prosecution or defense participating in or associated with the investigation or litigation of this criminal matter shall not, from the filing of a complaint, information or indictment, the issuance of an arrest warrant or arrest, until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would

expect to be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter and that relates to:

(1) The character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation or witness, or identity of a witness, or the expected testimony of a party or witness;

(2) In a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) Any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) Information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) The fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

E. During the selection of a jury or trial of this criminal matter, any lawyer or law firm associated with the prosecution or defense of this criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the Court in this case.

F. Any lawyer or law firm associated with the prosecution or defense of this criminal matter shall exercise reasonable care to prevent his or her employees and associates from making an extrajudicial statement that he or she would be prohibited from making under this Order.

II. Releases of Information by Law Enforcement Agencies:

A. From the date of this Order until the completion of the trial or disposition without trial, law enforcement officers shall not release or authorize the release of any extrajudicial statement or evidence for dissemination by means of public communication or to individuals other than those working for the parties, if the law enforcement officers know or reasonably should know that it will have a substantial likelihood of prejudicing a criminal proceeding. Law enforcement officers and agencies are subject to the same restrictionsas set forth above for attorneys in Section I regarding extrajudicial statements.

B. Law enforcement officers and agencies shall not exercise their custodial authority over an accused individual in a manner that is likely to result in either:

(1) The deliberate exposure of a person in custody for the purpose of photographing or televising by representatives of the news media; or

(2) The interviewing by representatives of the news media of a person in custody except upon request or consent by that person to an interview after being informed adequately of the right to consult with counsel and of the right to refuse to grant an interview.

C. Nothing in this Order is intended to preclude any law enforcement officer or agency from replying to charges of misconduct that are publicly made against him or her from participating in any legislative, administrative, or investigative hearing.

III. Disclosure by Court Personnel:

Court personnel shall not disclose, to any unauthorized person, information relating to this pending criminal case that is not a matter of public records of the Court and that may be prejudicial to the right of the People or the Defendant to a fair trial.

IV. Dissemination of Discovery and Evidence to individuals other than the Parties.

Attorneys of record and all law enforcement officers and agencies shall not release to anyone, other than a party or to each other, any discovery materials or investigative materials of any kind, except as and used by them for purposes of furthering the investigation or for the preparation and trial of the case.

V. Applicability:

Attorneys of record will be served a copy of this Order and this will constitute service upon the District Attorney's Office and defense counsel. The Court Orders the District Attorney's Office to comply with Colorado Rule of Professional Conduct 3.8(f) in exercising reasonable care to ensure all applicable law enforcement agencies including Chaffee County Sheriff's Office, the Colorado Bureau of Investigation, the Federal Bureau of Investigation and any other agencies who have participated in the investigation of this matter all receive prompt notice of this Order and comply with this Order accordingly.

DATED this 3 day of June, 2021.

PATRICK W. MURPHY
DISTRICT COURT JUDGE

DATE FILED: June 17, 2021 4:58 PM

DISTRICT COURT, CHAFFEE COUNTY, STATE OF COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201	
PEOPLE OF THE STATE OF COLORADO v. **BARRY LEE MORPHEW,** Defendant	▲ **COURT USE ONLY** ▲
Attorney for Media Consortium: Steven D. Zansberg, 26634 LAW OFFICE OF STEVEN D. ZANSBERG, LLC 100 Fillmore Street, Suite 500 Denver, CO 80206 (303) 385-8698 steve@zansberglaw.com	Case Number: **21CR78** Division: 2 Hon. Patrick W. Murphy

MEDIA CONSORTIUM'S RESPONSE TO, AND REQUEST FOR RECONSIDERATION OF, THE COURT'S ORDER GRANTING DEFENDANT'S MOTION TO LIMIT PUBLIC ACCESS TO ARREST WARRANT AFFIDAVIT FILED MAY 5, 2021 (D-7)

The Associated Press, The Denver Post, The Gazette, KCNC-TV/Channel 4, KDVR-TV/Channel 31, KKTV-TV/Channel 11, KMGH-TV/Channel 7, KOAA-TV/Channel 5, KRDO-TV/Channel 13, KUSA-TV/Channel 9, KXRM-TV/Channel 21 ("the Media Consortium") by and through their undersigned counsel, hereby respond to the Court's above-referenced Order, as they were specifically invited to do therein (Order at 5, 6).

INTRODUCTION

The Court's order grants, in its entirety, the Defendant's motion, barring the public from inspecting *any portion* of the 130-page Arrest Warrant Affidavit, on grounds that (1) disclosure of portions (*not all*) of the affidavit would interfere with or "impede" the "ongoing

defense investigation," (2) disclosure of portions (*not all*) of the affidavit might subject Mallory and Macy Morphew to "harassment, abuse or intimidation," and (3) the process of preparing and releasing a redacted version of the affidavit, to reduce or eliminate concerns (1) and (2),[1] prior to the completion of the Proof Evidence Presumption Great Hearing and Preliminary Hearing, would be unduly burdensome on the parties and the Court.

For the reasons stated below, Media Petitioners respectfully request that the Court reconsider its ruling, and, in compliance with C.R.C.P. 55.1, order the forthwith release of a redacted version of the Arrest Warrant Affidavit.

ARGUMENT

I. THE LENGTH AND DETAILS CONTAINED IN THE AFFIDAVIT ARE NOT LEGITIMATE GROUNDS TO DENY THE PUBLIC'S PRESUMPTIVE RIGHT TO INSPECT IT

The Order indicates that the "substantial interest[s] justifying the continued sealing of the [entire] Affidavit under Rule 55.1" include protection of the Morphew daughters and "the nature of the Affidavit." Order at 3. The Order notes that the affidavit is unique in the Court's experience, in that it is 130 pages in length and "[a] significant portion of the information in the Affidavit was not relevant to the Court's finding of probable cause and possibly not admissible at trial under the Colorado Rules of Evidence. *Id.* While the affidavit is not a "record of official action" subject to mandatory disclosure under the

[1] The Order cursorily mentions that the Defendant's right to a fair trial, through seating of an impartial jury untainted by pretrial publicity, is "not *the only* ground" the Court relies on in granting the Defendant's Motion. Order at 5 (emphasis added). However, the Order makes no finding, as required by C.R.C.P 55.1(a)(6), that "no less restrictive means . . . exists to achieve or protect" the Defendant's fair trial rights, including the ineffectiveness of *all* of the alternatives canvassed in *People v. Botham*, 629 P.2d 589 (Colo. 1981). While *Botham* itself does not command that those means be exhausted or found inadequate, Rule 55.1(a)(6) quite expressly does so.

Colorado Criminal Justice Records Act, it is subject to C.R.C.P. 55.1, which imposes a heightened burden on any party seeking to overcome the public's *strong presumptive right* to access it, as a "court record." *See* C.R.C.P. 55.1(a)(1) ("Court records in criminal cases are *presumed* to be accessible to the public.") (emphasis added).

In *People v. Thompson*, 181 P.3d 1143 (Colo. 2008), Colorado's Supreme Court held that a lengthy (64-page) and incredibly detailed indictment, accusing the defendant of child abuse resulting in the death of his daughter (whose body, also, has never been found), as well as 59 other counts, must be released to the public under the CCJRA. *Id.* at 1144 ("In great detail, the factual allegations described various events that occurred in the Thompson home, including a possible sexual assault by an unindicted person, going far beyond the 'essential facts" that must be included in a grand jury indictment."). This was so, notwithstanding the fact that, as here, "the factual allegations in the indictment far exceed the essential facts of the charged offenses." *See id.* at 1147. The Colorado Supreme Court in that case denied the District Court's petition for rehearing which argued the criminal defendant's fair trial rights, guaranteed by the federal constitution, would be violated if the entire indictment were released to the public. *See, e.g.*, Carlos Illecas, *Aaron's Sibling Heard Beating*, Denver Post (Apr. 30, 2008) https://www.denverpost.com/2008/04/30/aarons-sibling-heard-beating/. Indeed, the length or detail of judicial records has never been a sufficient grounds for overriding the public's presumptive right of access. *See, e.g.*, Howard Berkes, *Unsealed Documents Reveal Lax Attention To Safety Before Mine Blast*, NPR (Jun. 2, 2011) (reporting on the contents of "more than 5,300 pages of documents that a West Virginia judge ordered unsealed in response to a joint motion"), https://www.npr.org/sections/thetwo-

way/2011/06/02/136900784/unsealed-documents-reveal-lax-attention-to-safety-before-mine-blast.

To the extent that there are discreet pieces of highly sensitive and/or personal and private information in the affidavit that are *completely unrelated* to the People's request for a warrant to be issued by a judge or magistrate for the Defendant's arrest – which, frankly, is difficult to contemplate – Rule 55.1 provides that such information may be redacted,[2] but only upon a judicial finding that its disclosure would countervail some specified "substantial interest."

II. THE DEFENDANT'S OWN "INVESTIGATION" IS NOT A "SUBSTANTIAL GOVERNMENT INTEREST" THAT WARRANTS DENIAL OF THE PUBLIC'S PRESUMPTIVE RIGHT TO INSPECT JUDICIAL RECORDS

The Order cites Judge Sylvester's ruling, in August 2012, in *People v. Holmes*, No. 12CR1522 (Arapahoe Cty. Dist. Ct.), as support for the proposition that suppressing probable cause affidavits is appropriate to allow "*law enforcement officials* to continue to conduct a complete investigation thoroughly and efficiently." Order at 4 (emphasis added); *see also U.S. v. Valenti*, 987 F.2d 708, 714 (11th Cir. 1993) (stating that a continuing *law enforcement investigation* is a compelling government interest justifying the denial of access to judicial records); *ACLU v. Holder*, 673 F.3d 245, 253 (4th Cir. 2011) (recognizing "a compelling interest in protecting the integrity of ongoing fraud investigations," which justifies the

[2] This duty is also imposed by the Colorado Criminal Justice Records Act, and the common law. *See, e.g., In re Freedom Colo. Info., Inc. v. El Paso Cnty. Sherif"s Dep't,* 196 P.3d 892, 900 n.3 (Colo. 2008) (holding that under Colorado Criminal Justice Records Act, the custodian of records "*should* redact *sparingly*" in order "to provide the public with as much information as possible") (emphasis added); *Baltimore Sun Co. v. Goetz,* 886 F.2d 60, 66 (4th Cir. 1989) (finding that search warrant materials may be produced in redacted form so as to meet the public interest in access to judicial records); *In re N.Y. Times Co.,* 878 F.2d 67, 67-68 (2d Cir. 1989) (same).

temporary sealing of certain judicial records). Notably, Judge Sylvester's order in *Holmes* was entered only 24 days after the mass murder of 12 individuals, and the wounding of 70 others in the Aurora Theater Shooting, which resulted in Holmes being charged with (and convicted of) 165 separate counts. Thus, at that *extremely early stage* in that massive criminal *law enforcement investigation*, the court decided that multiple additional witnesses needed to be interviewed by the police, sheriff's deputies and the District Attorney's office.

Here, in sharp contrast, the arrest warrant affidavit was prepared *a full year* after the crimes alleged to have been perpetrated against a single homicide victim, *following* the extensive criminal law enforcement investigation. So much painstaking investigation has been performed by "law enforcement officials" in preparing the 130-page affidavit that **the People (acting through the District Attorney) do not oppose the public release of that document**. In other words, there is absolutely no concern here that release of the affidavit, *in its entirety*, would interfere with the People's (still ongoing) criminal law enforcement investigation as it prepares this case for trial.

Instead, the Order cites as justification for denying public access "the *Defendant's* investigation" of his case in preparing to mount a defense. Undersigned counsel is not aware of any case, in any jurisdiction, that has found that interest a sufficient weighty one to overcome the public's presumptive right of access to judicial records or proceedings. Criminal defendants do not engage "investigations" to gather sufficient evidence to file charges or successfully prosecute some other individual(s); unlike the prosecutor, a criminal defendant is not required to provide the government with the "fruits" of his "investigation." Criminal defendants need only persuade a jury that *the Government's criminal investigation* was inadequate, and/or that it failed to produce evidence of the defendant's guilt "beyond a

reasonable doubt." Criminal defendants are not required to produce a scintilla of evidence at trial.

Furthermore, this particular Defendant was aware, on the date of his wife's disappearance, that her suspicious absence was the subject of keen law enforcement interest. He, too, has had more than a full year now to conduct his own "investigation" for purposes of preparing a defense. In the event that the Court finds sufficient probable cause to hold Defendant over for trial, it is presumed that the Defendant will have several additional months to continue his "investigation."

And again, as the party who is asking this Court to deny the public *its presumptive right* to access court records, the Defendant bears the burden of showing that public disclosure of each page, each paragraph, each sentence, each word, in the affidavit poses a substantial and real threat to his ability to prepare and present his defense. He has not done so; nor could he. Accordingly, no Order can be entered consistent with C.R.C.P. 55.1 that suppresses the entirety of the affidavit.

III. THERE ARE MULTIPLE ADEQUATE AND LESS RESTRICTIVE MEANS TO PROTECT THE SAFETY AND WELL BEING OF THE MINOR VICTIMS

The Order cites concerns for the safety and well-being of Mallory and Macy Morphew that, for unspecified reasons, might be jeopardized by public release of the affidavit. Certainly the Morphew girls maintain the freedom and ability to "review, or decide not to review, the evidence alleged against their father," Order at 3, whether or not that information is released to the public. As for unspecified concerns the Court may have that these two minor victims may become subject to "harassment, abuse or intimidation," there are numerous available "less restrictive means" to prevent such harms. As Judge Sylvester found in a subsequent ruling in *People v. Holmes*, 12CR1522, in rejecting the request of both the People

and the Defendant to redact the names of all victims from the court records, "there are other methods of protection available to witnesses and victims, including, but not limited to, C.R.S. § 13-14-102 (civil protection orders), C.R.S. § 18-9-111 (criminal harassment), C.R.S. § 18-8-707 (tampering with a witness or victim), and C.R.C.P. 365 (injunctions, restraining orders, and orders for emergency protection). Any victim or witness can seek assistance from the District Attorney's Office, the county courts, or a local police station to bring criminal charges or to obtain a protection order if that individual believes he or she has been stalked, threatened, assaulted, or harassed." Order Re: Media's Motion To Unseal Redacted Information (Victims' Identities) (C-13), *People v. Holmes*, 12CR1522 at 8 (Arapahoe Ct. Dist. Ct. Oct. 25, 2012), https://www.courts.state.co.us/userfiles/file/Court_Probation/18th_Judicial_District/18th_Courts/12CR1522/001/2012-10-26%2012CR1522%20Order%20Re%20C-13.pdf. Accordingly, in order to satisfy C.R.C.P. 55.1 and continue the suppression of the *entire* arrest warrant affidavit, the Court must enter a record finding that each and every one of those alternatives is inadequate to protect the two child victims in this case from harassment, abuse or intimidation by third parties.

IV. THE DUTY TO RELEASE REDACTED VERSIONS OF JUDICIAL RECORDS, AS SPECIFICALLY MANDATED BY C.R.C.P. 55.1, IS DESERVING OF AS MUCH WEIGHT AS OTHER TASKS THE PARTIES ARE PERFORMING IN THIS LITIGATION

The Order excuses both the parties and the Court from complying with the clear mandate of Rule 55.1(a)(6)(II) – which requires a written finding that "no less restrictive means other than . . . *allowing only a redacted copy of* [the judicial record at issue] *be*

accessible to the public exists to achieve or protect any substantial issue identified"[3] – on grounds that "the Court cannot meaningfully complete" the "time-consuming process" of redaction "without the input and involvement of both parties, who are currently involved in the early stages of these proceedings . . ." The fact that it may be "time-consuming" or might interfere with other duties the Court and the parties must fulfill in litigating a criminal case does not excuse their failure to comply with *any* Rule of Criminal Procedure formally adopted by the Colorado Supreme Court.

While the process of preparing a releasing a redacted version of the Arrest Warrant Affidavit may be time-consuming or burdensome, there is no suggestion in Rule 55.1(a)(6)(II) that its requirements can be suspended or disregarded because the Court and the parties are engaged in performing other (presumably *more important*) tasks. Colorado's Supreme Court carefully considered all of the burdens associated with complying with Rule 55.1, over the course of many months,[4] and, after taking those considerations into account, it enacted the Rule in its current form. The Rule specifies that any limitation on the public's *presumptive right of access* to <u>all</u> judicial records on file in a criminal case[5] must be of a fixed limited duration, C.R.C.P. 55.1(a)(7), making clear that any such denial is to be only *temporary*, not

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[4] *See, e.g.,* Jeff Roberts, *Colorado Supreme Court Holds Public Hearing on Proposed Rule for Sealing and Suppressing Criminal Court Records*, Colorado Freedom of Information Coalition (Oct. 14, 2020), https://coloradofoic.org/colorado-supreme-court-holds-public-hearing-on-proposed-rule-for-sealing-and-suppressing-criminal-court-records/

[5] At present, **more than 280 separate court records on the docket in this case are completely suppressed from public inspection**, including the Media Consortium's Response to Defendant's Motion D-7 (which obviously was shared with members of the media before it was filed). Rule 55.1 imposes a duty on the Court to enter the requisite findings with respect to each of those judicial records, even in the absence of any party or member of the public requesting access thereto; any *denial* of *the presumption of access* requires the entry of detailed judicial findings. *See* C.R.C.P. 55.1(a) ("the court may deny the public access to . . . any part of a court record *only* in compliance with this rule.").

indefinite or for any unnecessarily protracted period of time. Other courts have recognized "the importance of immediate access when a right of access is found." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 126-27 (2d Cir. 2006); *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (access to court records "should be immediate and contemporaneous"); *Republic of the Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 664 (3d Cir. 1991) ("the public interest encompasses the public's ability to make a *contemporaneous review* of the basis of an important decision") (emphasis added). In other words, access delayed is access denied.

CONCLUSION

For the reasons set forth above, the Media Consortium respectfully urges this honorable Court to reconsider its Order granting in full the Defendant's Motion to Limit Public Access to the Arrest Warrant Affidavit Filed May 5, 2021.

DATED: June 17, 2021

By /s/ *Steven D. Zansberg*
Steven D. Zansberg
LAW OFFICE OF STEVEN D. ZANSBERG, LLC

Attorneys for the Media Consortium

THIS DOCUMENT WAS FILED WITH THE COURT THROUGH THE ICCES ELECTRONIC FILING PROCEDURES, UNDER C.R.C.P. 121(C), § 1-26.

AS REQUIRED BY THOSE RULES, THE ORIGINAL SIGNED COPY OF THIS DOCUMENT IS ON FILE WITH LAW OFFICE OF STEVEN D. ZANSBERG, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing was served, this day, June 17, 2021, on the following counsel of record, by my designating that they should be served electronically through the ICCES e-filing system:

Linda Stanley, Esq.
Jeffrey D. Lindsey, Esq.
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Iris Eytan, Esq.
Dru Nielsen, Esq
EYTAN NIELSEN LLC
3200 Cherry Creek South Drive, Suite 720
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/s/ Steven D. Zansberg

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: June 24, 2021
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78
Iris Eytan, #29505 Dru Nielsen, #28775 Eytan Nielsen LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (720) 440-8155 Facsimile: (720) 440-8156 Email: iris@eytan-nielsen.com dru@eytan-nielsen.com *ATTORNEYS FOR DEFENDANT BARRY LEE MORPHEW*	Courtroom/Division: 2

MOTION FOR DISCOVERY AND SANCTIONS [D-16]

Mr. Barry Morphew, by and through undersigned counsel, hereby requests the Court to sanction the prosecution for violating its May 27, 2021 Order (and C.R.C.P Rule 16) to disclose material and information within their possession and control in a timely manner; and to use the required diligent good faith efforts to cause material held by other governmental personnel to be made available in a timely manner to the defense.

While Mr. Morphew remains in custody without bond, the prosecution is violating the Court's Order, C.R.C.P Rule 16, and Mr. Morphew's statutory and constitutional rights to due process and bail by failing to produce discovery in a timely manner. Mr. Morphew needs this discovery for processing and analysis prior to the Proof Evident Presumption Great and Preliminary Hearings. As a sanction for these ongoing discovery violations, Mr. Morphew requests that the Court grant him reasonable bond. As grounds, Mr. Morphew states the following:

I. HISTORY

1. On May 5, 2021, Mr. Morphew was arrested for First Degree Murder for allegedly murdering his wife, Suzanne Morphew.

2. The District Attorney filed a 129-page Affidavit using circumstantial and inadmissible evidence claiming Ms. Morphew is alleged to be deceased at the hands of Mr. Morphew. However, there is no direct evidence of a death or a murder, and Ms. Morphew's body has never been found despite extensive search and rescue efforts. All that is known is that Ms. Morphew went missing on May 10, 2020.

3. The Affidavit in this case heavily focuses on the data from Mr. Morphew's phone, collected on May 13, 2020, in making this bold accusation and charge.

4. On May 27, 2021, the Court ordered pursuant to various sections of the Defense's Discovery Demand (D-10), and Rule 16 that discovery be produced by Wednesday, June 2, 2021.

5. On May 27, 2021, the parties set the Preliminary Hearing and Proof Evident Presumption Great Hearings for August 9- 10 and August 23-24, 2021.

6. On June 2, 2020, the DA produced a Terabyte of data to the defense on a defense-provided hard drive and on discs.

7. Since that time, the defense has been not only reviewing discovery, but assessing what has not been provided on the hard drive and/or what files are inoperable. The defense has promptly notified the DA of what has not been produced or what cannot be accessed. The prosecution has failed to produce the outstanding discovery or the inoperable files.

8. A critical piece of evidence on which the DA's base their accusation has not been produced - the forensic image of Barry Morphew's phone. In fact, it appears that the DA's have failed to produce the forensic images from the vast majority of the devices that have been seized or examined. *See* Exhibit 1, June 17, 2021 email from Iris Eytan to DAs Lindsey and Pembleton.

9. The DA has also not produced the outstanding inoperable files identified in attached Exhibit 2, June 11, 2021 Email from Iris Eytan to DAs Lindsey and Pembleton. In addition, the DAs have not produced a spy pen recording where Ms. Morphew's lover "Jeff" is identified.

10. The defense has also not been provided the original files form the warrant return of Suzanne Morphew's iCloud account.

11. Ms. Nielsen emailed Mr. Lindsey on June 23, 2021 about the status of missing discovery. Mr. Lindsey indicated that they are "working on this," but gave no indication of when this discovery, which should have been included in the initial production, will be produced.

12. Most of the discovery identified above has been in the DA's possession for more than one (1) year. And, it has been more than 20 days after the Filing of Charges, and three weeks since the court ordered production of the discovery.

II. LAW

1. If the prosecution refuses to provide the defendant with material evidence, which is favorable to the accused, and relates to either the guilt or punishment of the accused, the prosecutor violates his or her ethical duty and due process is denied. *See Brady v. Maryland*, 373 U.S. 83 (1963); *People v. Greathouse*, 742 P.2d 334 (Colo. 1987); *People v. Mucklow*, 35 P.3d 527 (2000); *U.S. Const.*, amends. V, XIV; *Colo. Const.*, art. II, § 25; Crim. P. 16(I)(a)(2); C.R.P.C. 3.8(d). It is irrelevant whether or not the prosecution acted in good faith in suppressing the evidence.

2. The defense is requesting that the prosecution be sanctioned for violating the May 27, 2021 Court Order and pursuant to Colorado Rule of Criminal Procedure 16 (III)(g), which provides:

> (g) Failure to Comply; Sanctions.
>
> If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems just under the circumstances.

3. In this case, a continuance is not a sanction on the prosecution. It is a punishment on Mr. Morphew who continues to be held in jail without bond.

4. The right to bail is an important constitutional right. The Colorado Supreme Court has held that that the burden is on the prosecution to show that the constitutional exception to the right to bail is applicable; and only with that showing can the conditional freedom secured by bail properly be denied. *People ex rel. Dunbar v. District Court*, 500 P.2d 358 (Colo. 1972).

5. The prosecution selected when to charge Mr. Morphew with First Degree Murder. There is no excuse for not being prepared at this point to produce discovery, particularly those items which are central to the Affidavit. The prosecution must follow Court Orders and the Rule of Law. The prosecution and law enforcement's delay and tactics are in violation of Mr. Morphew's constitutional and statutory right to bail and due process.

6. Mr. Morphew requests the following sanctions:

- A reasonable bond amount to be set; and

- An order for the prosecution to produce all discovery and material and information outlined above by June 30, 2021.

WHEREFORE, Mr. Morphew makes all of these motions, and all other motions and objections during all proceedings in this case, whether or not explicitly stated at the time of the making of the motion or objection, under the Due Process, Right to Counsel, Confrontation, Right to Remain Silent, Privilege Against Self Incrimination, Compulsory Process, Ex Post Facto, Trial by Jury, Equal Protection, Right to Appeal and Cruel and Unusual Punishment Clauses of the Federal and Colorado Constitutions, and Article II, § 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28, of the Colorado Constitution, and Article I, § 9, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the U.S. Constitution. All authorities and citations noted apply to and support all requests for relief herein.

Respectfully submitted this 24th day of June, 2021.

EYTAN NIELSEN LLC

s/ Iris Eytan
Iris Eytan, #29505

s/ Dru Nielsen
Dru Nielsen, #28775

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2021, a true and correct copy of the foregoing **MOTION FOR DISCOVERY AND SANCTIONS [D-16]** was served via CCE as follows:

Mr. Jeffrey Lindsey
11th Judicial District Attorney's Office
101 Crestone Ave.
Salida, CO 81201

s/ Tonya Holliday
Tonya Holliday

DISTRICT COURT, CUSTER COUNTY, STATE OF COLORADO 205 S. 6th Street P.O. Box 60 Westcliffe, CO 81252	DATE FILED: June 10, 2021 1:06 PM FILING ID: B35160C935879 CASE NUMBER: 2020CR52
Plaintiff: **PEOPLE OF THE STATE OF COLORADO** vs. Defendant: **NELSON BONILLA, JR.**	Δ COURT USE ONLY ∇
Counsel for Defendant Martha H. Eskesen, #18365 MARTHA H. ESKESEN, P.C. 5445 DTC Parkway, Penthouse 4 Greenwood Village, CO 80111 Telephone: (303) 486-6938 Facsimile: (303) 573-4921 E-mail: meskesen@eskesenlaw.com	Case No.: 20CR52 Division 1

MOTION FOR ORDER TO SHOW CAUSE

Defendant Nelson Bonilla, Jr., through counsel, respectfully requests the Court to issue and Order directing the prosecution to appear and show cause why it should not be held in contempt for its failure to respond to this Court's June 8, 2021 Order requiring an expedited response to Mr. Bonilla's Motion for Order Directing the Prosecution to Produce Accessible Discovery. (*See* Exhibit A attached). As grounds he states:

1. Mr. Bonilla incorporates the averments and exhibits set forth in the June 8, 2021, Motion for Order Directing the Prosecution to Produce Accessible Discovery.

2. On June 8, 2021, this Court issued its order requiring an expedited response by June 15, 2021 to the defendant's motion. Specifically, the Court directed "[t]he People shall file an expedited response to this motion no later than 7 days from today's date **(by Tuesday, June 15, 2021)**."

3. The prosecution failed to file an expedited response by June 15 or seek an extension of time within which to respond. Moreover, the prosecution has not provided fully accessible discovery or otherwise attempted to communicate with defense counsel regarding the inaccessible discovery or this case.

4. The prosecution has continually ignored communications from defense counsel since her entry of appearance and Mr. Bonilla's Motion for Discovery on January 15, 2021. As reflected in Mr. Bonilla's Renewed Motion for Discovery and Request for Immediate Production filed on March 7, 2021, multiple calls to the District Attorney's Office requesting discovery went unanswered.

5. Shad Brown, the assigned Deputy District Attorney who filed the case and was initially handling it, is no longer in the office and there has been no entry by another prosecutor. The elected District Attorney, Linda Stanley, whose name now appears in Colorado Courts e-filing as counsel of record, has done nothing in the case and did not respond to a voice-mail message left for her by defense counsel.

6. And now the prosecution has ignored this Court's June 8, 2021 Order for an expedited response.

7. "The imposition of sanctions serves the dual purposes of protecting the integrity of the truth-finding process and deterring the prosecutor and the police from [misconduct]." *People v. District Court*, 656 P.2d 1287, 1293 (Colo. 1983).

8. Crim.P. 16(III)(g) provides for sanctions in case of violation of Rule 16, stating that the court may order a party who has failed to comply with the rule "to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed *or enter such other order as it deems just under the circumstances.*" Crim.P. 16(III)(g).

9. This case has been pending since December 28, 2020 when the Felony Summons was served upon Mr. Bonilla. He should not be forced to seek a continuance based on the prosecution's lack of attention to this case. He has been, and continues to be, prejudiced by the delay caused by the prosecution's failure to promptly furnish discoverable items as required under Crim. P. 16(I)(a)(1)(2) and (3).

10. Accordingly, Mr. Bonilla requests the Court issue an Order to Show Cause directing the prosecution to appear and show cause why it not be held in contempt for its failure to respond to this Court's June 8, 2021 Order requiring an expedited response to Mr. Bonilla's Motion for Order Directing the Prosecution to Produce Accessible Discovery.

The foregoing is submitted under penalty of perjury.

Dated: June 16, 2021

MARTHA H. ESKESEN, P.C.

s/*Martha H. Eskesen*
Martha H. Eskesen, #18365

CERTIFICATE OF ELECTRONIC FILING AND NOTICE

Pursuant to Rule 49.5 of the Colorado Rules of Criminal Procedure, I hereby certify that I have maintained a printable copy of this **MOTION FOR ORDER TO SHOW CAUSE** which has been e-filed and served to:

Office of the District Attorney
136 Justice Center Road
Suite 203
Canon City, CO 81212

Via Colorado Courts E-Filing

s/*Martha H. Eskesen*
Martha H. Eskesen, #18365