DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: September 3, 2021
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78 Courtroom/Division: 2
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ADDENDUM TO MOTION TO SET BOND AND DISMISS MURDER CHARGES FOR LACK OF CORPUS DELICTI, PROOF EVIDENT, AND PROBABLE CAUSE [D-21(a)]

This Addendum supplements the dismissal motion to focus on proof evident/presumption great (PE/PG), addressing the Court's inquiry on the standards for evaluating the prosecution case. As discussed in the Motion, prosecutors who lack evidence of corpus delicti while relying on legally insufficient suppositions and inference-stacking cannot even establish probable cause. Necessarily, therefore, the prosecution case fails to meet the PE/PG "burden of proof," which is "greater than probable cause but less than the standard of beyond a reasonable doubt required for conviction." *Yording v. Walker*, 683 P.2d 788, 791 n.1 (Colo. 1984).

The prosecution's PE/PG burden is high because it must overcome constitutional presumptions of innocence and right to bail. Bail must be set unless the prosecution carries its burden of showing that its proof is "evident and the presumption of conviction is great." *People v. Jones*, 2015 CO 20, ¶ 25. Necessarily, to conclude "the presumption of conviction is great," *id.*, the Court must find that the prosecution's "proof evident" overcame the same constitutional presumption of innocence that it will instruct a jury to apply at trial.

By definition, for proof to be "evident," it must be "easily seen or understood." *Fry v. State*, 990 N.E.2d 429, 449 n.28 (Ind. 2013) (quoting Webster's II New College Dictionary 389 (1995)); *accord* Matthew J. Hegreness, *America's Fundamental and Vanishing Right to Bail*, 55 Ariz. L. Rev. 909, 945 n.136 (2013) (Webster's "defines 'evident' as 'clear to the vision or understanding,'" a definition "remarkably stable" since PE/PG provisions were first adopted centuries ago). As explained by Texas's highest criminal court, "proof [that] is evident, means evidence clear and strong, leading a well guarded judgment to the conclusion that [a capital] offense was committed, [and] that the accused is the guilty agent....." *Beck v. State*, 648 S.W.2d 7, 9 (Tex. Ct. Crim. App. 1983).

The New Hampshire Supreme Court explained why this requires "clear and convincing evidence." *State v. Furgal*, 13 A.3d 272, 280 (N.H. 2010). A requirement that proof be evident "means clear, strong evidence, which leads to a dispassionate conclusion that the offense has been committed as charged" while presumption great likewise requires "strong, clear, and convincing" evidence. *Id.* (internal quotations omitted).

A recent Colorado case held that PE/PG requires "clear and convincing evidence," and that "to determine if the people have met their burden, the Court looks at the evidence *not in the light most favorable to the Prosecution*, but in the traditional fact-finder's role of attempting to assess the truth after viewing all the evidence available...." *People v. Kimball*, 19CR7364, Exhibit A at 234-35 (emphasis added). There, the evidence on its face was far more compelling than here—the defendant's fiancé was found lying nearly lifeless on their bed with a fatal gunshot wound to the top of her head—but Judge Grant's courageous ruling in setting a $100,000 bond proved prescient, as a Denver jury later acquitted. Reported cases agree that PE/PG requires clear and convincing evidence. *See Furgal*, 13 A.3d at 280; *In re Haynes*, 619 P.2d 632, 636 (Or. 1980); *cf. United States v. Salerno*, 481 U.S. 739 (1987) (clear and convincing evidence is federal standard for denying bail based on dangerousness).

Most recently, the Nevada Supreme Court applied a similar standard in reversing a detention order of a defendant charged with first-degree murder. It held that "the district court's finding that the proof was evident and the presumption great that Sewall committed first-degree murder relies upon inference or conjecture rather than convincing evidence." *Sewall v. Eighth Jud. Dist. Ct.*, 481 P.3d 1249, 1253 (Nev. 2021) (internal punctuation omitted).

The deficiencies in the prosecution case here are made clear by comparison to a much stronger case where the Colorado Supreme Court reversed a PE/PG finding. *See Orona v. Dist. Ct.*, 518 P.2d 839 (Colo. 1974). The evidence there was much more compelling than here: among other things, there was no doubt that the victims were in fact murdered, the defendant had been involved in a disturbance at the apartment occupied by a murder victim three months before the killings, he was near that apartment on the night of the killings, and his fingerprint was inside the apartment. *Id.* at 840. But the hearing also "disclosed some discrepancies in the People's evident proof against" him. *Id.* The Colorado Supreme Court reversed a detention order, by holding that "the requisite standard to hold [defendant] without bail has not been satisfied. The proof of guilt offered by the People is neither evident nor the presumption of guilt great." *Id.*

The flaws in the prosecution case are only magnified by the inability to prove the threshold element of corpus delicti. To "establish guilt in a criminal case, the prosecution must prove the corpus delicti, or 'body of the crime.'" *People v. LaRosa*, 2013 CO 2, ¶ 14. Technically, "corpus delicti consists of two components, an injury and unlawful conduct causing that injury." *Id.* n.4 (citing *Lowe v. People*, 234 P. 169, 173 (Colo. 1925); and treatises). In a homicide case, the corpus delicti means the first two of three required elements: "First, the death; second, the criminal agency of another as the cause; [and] third, the identity of the accused as that other." *Lowe*, 234 P. at 173. To the extent the prosecution suggests that *LaRosa* prospectively eliminated the corpus delicti requirement, that suggestion is wrong; all it did was end a "rigid" and "outdated" evidentiary "rule" excluding confessions absent other proof of the crime. 2013 CO 2, ¶¶ 24-31. That "evidentiary" holding is irrelevant here, as there is no confession and no other proof of corpus delicti.

The People and defense do agree on one point: courts independently must evaluate the weight and credibility of the prosecution evidence in deciding the PE/PG issue under *Gladney v. Dist. Ct.*, 535 P.2d 190, 191 (Colo. 1975). Prosecutors correctly summarized *Gladney* as holding that: "The weight to be accorded the testimony of the witnesses, as well as questions of credibility are solely for the finder of fact, in this case, the court. The judge was free to believe or disbelieve the testimony of the witnesses." People's 8/24/21 Mem. at 5.

Conclusion

No "clear," much less credible and convincing, proof makes evident the corpus delicti and Barry Morphew's guilt of first-degree murder. After four days of supposition-filled testimony, only one thing is clear: the prosecution has no idea how (or even if) the alleged murder occurred. It has no body (and no plausible explanation of how one man could have hidden the body beyond without any trace in the home, car, or frozen grounds); no physical evidence of murder in the home or any car; and, of course, no confession. The prosecution has utterly failed to establish a great presumption that a jury will convict Barry Morphew of first-degree murder. As such, this Court must effectuate the constitutional presumptions of innocence and the right to bail.

Respectfully submitted this 3rd day of September, 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 3rd day of September, 2021, a true and correct copy of the foregoing **ADDENDUM** [D-21(a)] 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

Combined Courts, Chaffee County P. O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: September 7, 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:
D-21a PEOPLE'S RESPONSE ADDENDUM TO MOTION TO SET BOND, DISMISS MURDER CHARGES FOR LACK OF CORPUS DELECTI, PROOF EVIDENT, AND PROBABLE CAUSE	

COMES NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District, and submits the "People's Response to Defendant's Addendum." First, the Colorado Supreme Court has interpreted the meaning of "proof evident" and "presumption great," never adopting a "clear and convincing" standard. Second, the Corpus Delicti Doctrine can be satisfied by circumstantial evidence and depends upon the quantity and quality of the evidence presented. Although the Defendant's filings have been called memorandum they require relief by the Court – those requests should be denied, and this Court should respectfully find probable cause and that the proof is evident or the presumption great.

I. THE COLORADO SUPREME COURT HAS NEVER ADOPTED THE CLEAR AND CONVINCING STANDARD FOR PROOF EVIDENT OR PRESUMPTION GREAT AND HAS ADOPTED "FAIR LIKELIHOOD THAT THE DEFENDANT IS IN DANGER OF A JURY VERDICT OF FIRST DEGREE MURDER"

The standard at the proof/presumption hearing is: "'bail should be denied when the circumstances disclosed indicate a fair likelihood that the defendant is in danger of a jury verdict of first degree murder." *Gladney v District Court*, 188 Colo. 365, 368-69; 535

P.2d 190, 191 (1975). The standard articulated in *Gladney* has never been reversed or vacated – it is the existing law in the State of Colorado. The Defendant's desire to have a different standard, i.e., "clear and convincing evidence," should not be adopted by this Court as being incompatible with existing case law.

The Defendant cites to *People v Jones*, 346 P.3d 44, 2015 CO 20 (addendum page 2). The paragraph does not support the Defendant's argument that "proof evident or presumption great" is similar or should be interpreted to mean "clear and convincing evidence." The paragraph, in total, states:

> ¶ 25 Article II, section 19 of the Colorado Constitution provides that all persons, with several specifically enumerated exceptions, shall be bailable by sufficient sureties pending disposition of the charges. Those exceptions are limited to charges of capital offenses and legislatively defined crimes of violence, under limited circumstances, where proof of the charged offense is also evident, and the presumption of conviction is great. The constitutional exceptions to bailability clearly cannot be understood to include a mere finding of probable cause to believe a defendant, released on bond pending any felony charge, has committed another felony while free on that bond.

Nor should this Court consider authorities from other jurisdictions concerning the standards for "proof evident or presumption great." Many States have adopted the standard, usually in the State's Constitution but sometimes in a statute.[i] The Defendant argues from other States that such a standard should be adopted. However, Colorado has never adopted such a standard. Further, at least one State, Delaware, requires the defendant to prove that "proof evident or presumption great" does not exist. See citation in endnote. Other States hold that an indictment or probable cause finding concerning first degree murder is sufficient to meet the standard. Of course, based upon Colorado case law, the burden is not on the defendant and a probable cause finding is not sufficient. However, these divergent interpretations demonstrate why the "clear and convincing" standard should not be adopted.

This Court is bound by the Colorado Supreme Court's decisions concerning what "proof is evident, or presumption is great" means as fully described in the People's Memorandum.

In fact, the Colorado Supreme Court has held what the standards for a proof/presumption hearing are. In *Gladney v District Court*, 188 Colo. 365, 368-69; 535 P.2d 190, 191 (1975) the Court held:

> In a bail hearing, guilt or innocence of the accused is not the issue.

'(T)he standard which the constitution requires before bail may be denied is greater than probable cause-though less than that required for a conviction.' *Orona v. District Court*, (518 P.2d 839 (Colo. 1974)).

In *State v. Konigsburg*, 33 N.J. 367, 164 A.2d 740, 89 A.L.R.2d 345 (1960), the Supreme Court of New Jersey, in applying a constitutional provision almost identical to ours stated that 'bail should be denied when the circumstances disclosed indicate a fair likelihood that the defendant is in danger of a jury verdict of first degree murder.' See also *In re Steigler*, Del., 250 A.2d 379 (1969).

The Defendant's invitation to adopt a different standard should be rejected.

II. CIRCUMSTANTIAL EVIDENCE OF A HOMICIDE IS SUFFICIENT AND THE CORPUS DELICTI DOCTRINE HAS NEVER REQUIRED THE PRODUCTION OF A BODY

As the defense correctly points out, there is no requirement under the corpus delicti doctrine in a murder case that requires a dead body. Where there is no body, the unexplained disappearance of the victim connected with the other circumstances have been held sufficient not only for probable cause, not only for proof/presumption, but also to uphold convictions.

Similar to this case, the Wisconsin Court of Appeals affirmed a homicide conviction where the body was never found where there was "significant publicity of (the victim's) disappearance and a diligent search for (the victim), included computerized searches of criminal, social security, and credit records, she was never found." *State v Rickman*, 504 N.W.2d 874 (Wisc. Ct App 1993).

A review of the case law reveals cases where the **conviction** of a defendant for murder was uphold in light of circumstantial evidence.

"The fact that a murderer may successfully dispose of the body of the victim does not entitle him to acquittal. That is one form of success for which society has no reward." *People v Manon*, 71 Cal.App.3d 1, 139 Cal.Rptr. 275, 298 (1977). "Successful concealment or destruction of the victim's body should not preclude prosecution of hir or her killer where proof of guilt can be established beyond a reasonable doubt." *State v Zarinsky*, 362 A.2d 611, 621 (N.J. 1976).

In *Virgin Islands v Harris*, 938 F.2d 401, 411, 415 and notes 11-12[ii] (3rd Cir. 1991) (also cited by the Defendant) the court performed a survey of then existing cases that indicated that the majority rule is that there is a "no body required" rule – with a notable exception being Texas. The body of a missing person generally is not required to establish the corpus delicti for murder. *State v Hall*, 65 P.3d 90 ¶ 48 (Az. 2003). In fact,

circumstantial evidence of the disappearance of the victim is sufficient to justify a murder conviction. *People v Ruiz*, 44 Cal.3d 589, 244 Cal.Rptr. 200, 749 P.2d 854 (1988). In fact, because the body of the victim was never found, a reasonable inference of criminal agency could arise. *Id.* at 864.

The circumstances of the disappearance and thereafter can be sufficient for a conviction. In *State v Lindsey*, 738 So.2d 974 (Fl. Ct. App. 1999) the Court held that the facts surrounding the disappearance without contacting family or friends indicated that the absence was not voluntary or planned. "(T)he continued absence of the victims . . . indicate a death that resulted from the criminal agency of another." The Appellate Court reversed the trial court's dismissal of the murder charges.

Numerous States have even affirmed convictions, let alone probable cause or proof/presumption findings, in homicides where no body was ever produced: See *State v. Lewis*, 125 So. 802 (Ala.1930) (eyewitness, bone fragments found, blood splotches and stains and proof that body of deceased burned); *Deering v. State*, 273 Ark. 347, 619 S.W.2d 644 (1981) (State produced evidence of victim's routine, fact that victim last seen talking to someone fitting defendant's description and that defendant attempted to sell car similar to victim's); *People v. Bolinski*, 260 Cal.App.2d 705, 67 Cal.Rptr. 347 (1968) (victim disappeared, defendant arrested with victim's car and credit cards); *People v. Scott*, 176 Cal.App.2d 458, 1 Cal.Rptr. 600 (1960) (statements by defendant that he knew his wife was dead and proof that he had recently cleaned up car); *People v. Cullen*, 37 Cal.2d 614, 234 P.2d 1 (1951) (victim disappeared, proof that defendant forged victim's check, proof of bloodstains on rug and clothing and proof of defendant's incriminating statements); *People v. McMonigle*, 29 Cal.2d 730, 177 P.2d 745 (1947) (testimony of FBI agent recounting defendant's reconstruction of events and other admissions, evidence of victim's shoes and other personal possessions); *State v. Pyle*, 216 Kan. 423, 532 P.2d 1309 (1975) (house burned to ground, no trace of alleged victim); *Warmke v. Commonwealth*, 297 Ky. 649, 180 S.W.2d 872 (1944) (baby dropped in creek, only cap found); *State v. Zarinsky*, 143 N.J.Super. 35, 362 A.2d 611 (1976) (last saw victim drive away with man fitting defendant's description and admissions to cellmates); *State v. Dudley*, 19 Ohio App.2d 14, 249 N.E.2d 536 (1969) (victim's cap found on floor and defendant's car stained with blood as well as a crowbar found stained with blood); *State v. Williams*, 80 P. 655 (Or.1905) (victim disappeared but tufts of victim's hair and metallic articles worn by victim found); *Commonwealth v. Burns*, 409 Pa. 619, 187 A.2d 552 (1963) (proof of victim's consistent pattern of living and an abrupt termination, victim last seen on floor with blood on forehead and last seen in presence of defendant, defendant confessed to burying victim); *Commonwealth v. Lettrich*, 346 Pa. 497, 31 A.2d 155, 156 (1943) (defendant confessed to murder, no body was ever found, the court noted that fabrication of contradictory statements to divert inquiry was a circumstance indicating guilt); *Commonwealth v. Jones*, 297 Pa. 326, 146 A. 905 (1929) (victim last

seen with defendant, burned human bones and victim's clothing found in burned house, victim's clothing also found in defendant's residence); *Epperly v. Commonwealth*, 224 Va. 214, 294 S.E.2d 882 (1982) (evidence of bloodstains and broken ankle bracelet); *State v. Lung*, 70 Wash.2d 365, 423 P.2d 72 (1967) (evidence of coat with bullet hole and bloodstains).

Cases uphold the notion that circumstantial evidence, even where the victim's body is never found, is sufficient to infer deliberation and intent. In *People v Ream*, 2010 WL 1629081 (Mich. Ct. App. 2010) where the victim's body was never found, the Court held that the circumstances including the relationship between the defendant and the victim and the defendant's actions before and after the crime were sufficient. The Court held that "no direct evidence connecting the defendant to the crime is required: circumstantial evidence is enough." *Id.* page 1.

The Pennsylvania Supreme Court followed the majority rule in finding that a homicide need not be proven by direct evidence, rather the homicide can be proven by circumstantial evidence. *Commonwealth v Smith*, 58 A.2d at 581 (1989). The Court emphatically states that the prosecution "need not produce the body of the victim, if the corpus delicti is established circumstantially." *Id.* at 586.

The evidence presented at the four-day hearing in this case on these issues is more than sufficient to find probable cause and that the proof is evident or the presumption great.

Dated: September 06, 2021

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

CERTIFICATE OF SERVICE

I certify that on September 06, 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

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[i] ALABAMA, Art. 1 § 16; ARIZONA, A.R.S. 13-3961; CALIFORNIA, CA PENAL CODE § 1270.5; DELAWARE, Art. 1 § 12, For purposes of constitutional provision that all prisoners shall be bailable by sufficient sureties, unless for capital offenses when proof is positive or presumption great, the term "proof positive or presumption great" is not precise in its command, and defendant's burden is met if the court in its discretion concludes from evidence that state does not have a fair likelihood of convicting the accused of capital offense. 11 Del.C. § 2102(a, b); Del.C.Ann.Const. art. 1, § 12. In re Steigler, 1969, 250 A.2d 379; DE ST T1 11 § 2103(b) burden on defendant; FLORIDA, Art. 1 § 14; ILLINOIS, Il ST CH 725 § 5/110-4(a); KENTUCKY, BILL OF RIGHTS § 16; NEW YORK, Art. 1 § 7; NEVADA, NV ST 178.4851 ¶ 4; LOUISIANA, Art. 1 § 18; MAINE, Art. 1 § 10; MICHIGAN, Art. 1 § 15; MISSISSIPPI, Art. 3 § 29; MISSOURI, Art. 1 § 20; OKLAHOMA, Art. 2 § 8; OHIO, Art. 1 § 9; OH ST § 2937.222(b); MONTANA, Art. II § 21, MT ST 46-9-102(1); NEW HAMPSHIRE, NH ST 597:1-c ; PENNSYLVANIA; Art. 1 § 14; RHODE ISLAND, Art. 1 § 9

[ii] Notes 11 and 12 from the Harris case citing cases as they existed in 1999.

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There are relatively few cited federal cases; most are state law cases. See, e.g., United States v. Stabler, 490 F.2d 345, 346 (8th Cir.1974) (holding that circumstantial evidence was sufficient to establish the corpus delicti of the victim's murder: the victim was last seen on the Indian reservation in a car that was soon thereafter set on fire; the charred and unidentifiable body found in the car was human; and the victim had not been seen in the community since the fire occurred).

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The following states hold that the body of a missing person need not be produced to convict for murder: Alabama, Arkansas, California, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Mississippi, Montana, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, and Washington. We have cited only those published state law cases where the victim disappeared and was never heard from again and where a body was never produced or, in a minority of cases, the body was in a condition beyond any possible means of identification except that it was human. See Gilchrist v. State, 466 So.2d 988 (Ala.App.1984) (defendant made statements to his common law wife that he struck victim in the head with a large stick and then hid her body; victim had not contacted friends or family or picked up her paycheck; there was no evidence that victim was unhappy or contemplated suicide); Lewis v. State, 220 Ala. 461, 125 So. 802 (1930) (defendant admitted to police that he and others murdered the 70 year-old victim in the woods with an ax, found with bloodstains and white hairs; witness saw the murder; ashes found nearby containing fragments of bone and victim's clothing); Derring v. State, 273 Ark. 347, 619 S.W.2d 644 (1981) (defendant told acquaintances and cellmate he had shot and killed a man, had thrown him in a river or a ditch, and was found driving the man's car; victim was last seen stopping his car on a highway talking to a black man; defendant, who was black, was seen on highway near that time; defendant attempted to sell victim's car containing papers and a bible with victim's name on them; defendant had gun at time of arrest; victim was dependable, religious, kept to a rigid schedule, frequently contacted family and friends); People v. Manson, 71 Cal.App.3d 1, 139 Cal.Rptr. 275 (2nd Dist.1977) (defendant made statements to witnesses that he and others killed victim, that "they cut him up in nine pieces and buried him under some leaves" and that they cut his head off; witness heard defendant asking for lye to get rid of the body and had heard victim screaming the night before; victim's car and possessions were found), cert. denied, 435 U.S. 953, 98 S.Ct. 1582, 55 L.Ed.2d 803 (1978); People v. Scott, 274 Cal.App.2d 905, 79 Cal.Rptr. 587 (2nd Dist.1969) (defendant made statements that he had "gotten rid" of victim, his common law wife, and that he had shot her; defendant and victim had been heard arguing several times each month; defendant asked witness to carry a heavy cardboard box to his car and to help him bury it; on same weekend defendant sold victim's clothing and a rifle; victim ceased communication with family and did not show up for work); People v. Bolinski, 260 Cal.App.2d 705, 67 Cal.Rptr. 347 (4th Dist.1968) (defendant made no

admission; defendant was found by police driving victim's car and using his credit cards and cash; defendant said that victim picked him up while he was hitchhiking and loaned him the car; no weapon was found although defendant was known to have been armed with a revolver when he began hitchhiking; victim was soon to receive a retirement pension); People v. Scott, 176 Cal.App.2d 458, 1 Cal.Rptr. 600 (1959) (defendant made no admission; stated that victim, his wife, who had supported him, drove away one afternoon and never returned; no weapon uncovered; victim's dentures and glasses were buried near her home; victim in excellent mental and physical health although defendant told friends she was ill; defendant "pleased and satisfied" when wife left and spoke ill of her; tried to prevent investigation of his efforts to steal her large estate; fled country in fear of murder charge), cert. denied, 364 U.S. 471, 81 S.Ct. 245, 5 L.Ed.2d 222 (1960); People v. Cullen, 37 Cal.2d 614, 234 P.2d 1 (1951) (defendant made statements to police and witness that defendant's wife and father-in-law, with whom he lived, had died in their house and that he knew where the bodies were; he hoped the police "wouldn't get anywhere because they had no corpus delicti"; defendant forged his father-in-law's pension check; bloody clothing was found in the home and wet spots of human blood on the carpet; attempt was made to sand the floor and wash off the blood); People v. McMonigle, 29 Cal.2d 730, 177 P.2d 745 (1947) (defendant made written admission to police that he enticed victim, 14-year-old girl, into his car with false story; shot victim and dropped her body over a cliff into the ocean; police found blood-stained articles, gun, and victim's clothing and possessions; defendant stole serviceman's clothing that he wore on day of murder); People v. Faulkner, 186 Ill.App.3d 1013, 134 Ill.Dec. 683, 542 N.E.2d 1190 (1989) (defendant made no admission; defendant's son and daughter said that they saw defendant dump victim's body in a reservoir; son said that he saw defendant stab victim while victim was having sex with defendant's wife; red stains were found on mattress and trunk of defendant's car although blood tests were negative); Campbell v. State, 500 N.E.2d 174 (Ind.1986) (defendant admitted to crime on tape; accomplice testified that badly beaten victim was held under water and was last seen floating down the river; unsuccessful search for body did not begin until four years later; victim not seen since day of attack); State v. Pyle, 216 Kan. 423, 532 P.2d 1309 (1975) (defendant admitted to police and others burning victim's (his grandmother) home while she was inside or killing her in a gruesome way and disposing of her body elsewhere; no physical evidence of victim's body in ashes; defendant and victim had strained relations; defendant believed he was the primary beneficiary of victim's will; defendant attempted suicide; made inconsistent statements); Gibson v. Commonwealth, 301 Ky. 402, 192 S.W.2d 187 (1946) (defendant made no admission; victim's (defendant's neighbor) house had been burned and skeleton with bullet in head was thought to be victim; victim's money box was open; defendant had one of victim's guns and extra money); Warmke v. Commonwealth, 297 Ky. 649, 180 S.W.2d 872 (1944) (defendant confessed that she threw her baby into a flooded creek then stated it was accidental; child was illegitimate and defendant said she would be humiliated to go home; a coat the baby was wrapped in had been found); Hurley v. State, 60 Md.App. 539, 483 A.2d 1298 (1984) (defendant made no admission; daughter of defendant and victim (defendant's estranged wife) heard a scream and saw victim on floor of defendant's office; defendant made inconsistent statements concerning victim's disappearance; since disappearance, victim did not contact friends or family although defendant's evidence suggested that wife was suicidal and capable of disappearing without notification), cert. denied, 302 Md. 409, 488 A.2d 500 (1985); State v. Hicks, 495 A.2d 765 (Me.1985)
(defendant made no admission; evidence introduced that victim, defendant's wife, screamed on the morning of her disappearance that defendant was killing her and her body was awkwardly positioned on a seat later that morning with hair covering her face; defendant's behavior was peculiar on morning and his statements inconsistent about victim's location; no weapon or bloodstains were found; victim absent for six years; victim had made specific commitments with friends and family; loving mother); People v. Modelski, 164 Mich.App. 337, 416 N.W.2d 708 (1987) (defendant admitted to friends, a paramour, and police that he had shot and killed victim, his wife, in a rage following an argument, and then dumped the body; relationship was stormy with frequent arguments, instances of violence, and defendant's accusations that victim was unfaithful; marriage was deteriorating), appeal denied, 1987 WL 24489, 1988 Mich. LEXIS 836 (Mich.1988); King v. State, 251 Miss. 161, 168 So.2d 637 (1964) (defendant made no admission; defendant was arguing with victim, who had bought whiskey from him; three witnesses saw defendant beat victim whose "head was mashed in" and who had ceased breathing; witness helped defendant bury body but body could not be found later); State v. Lamb, 28 Mo. 218 (1859) (defendant made written admission that he never recanted stating that he drowned his wife in a river and tied down her body with stones; his prior attempts to poison her had made her ill; he soon married another woman; he said his wife was not his equal); People v. Curro, 161 A.D.2d 784, 556 N.Y.S.2d 364 (2d Dept.) (defendant stated to brother that he had strangled victim and cut her body into pieces in a bathtub, put them in a bag and "took them for a ride;" defendant believed victim, his girlfriend, was informing on him about drug dealing; relatives had not heard from victim for six years since her disappearance), appeal denied, 76 N.Y.2d 855, 560 N.Y.S.2d 994, 561 N.E.2d 894 (1990); People v. Seifert, 152 A.D.2d 433, 548 N.Y.S.2d 971 (App.Div., 4th Dept.1989) (defendant made statement that he would kill victim, his brother, who had

filed criminal charges against him; long history of hatred between brothers; defendant had lured brother to rural site where human blood (of brother's type) and brain tissue were found), appeal denied, 75 N.Y.2d 924, 555 N.Y.S.2d 43, 554 N.E.2d 80 (1990); People v. Lipsky, 57 N.Y.2d 560, 457 N.Y.S.2d 451, 443 N.E.2d 925 (1982) (defendant admitted murder of victim, a prostitute, whose body he had dumped in a gully; victim's belongings had been found in defendant's apartment), later appealed, 103 A.D.2d 1033, 478 N.Y.S.2d 441 (4th Dept.1984); State v. Nicely, 39 Ohio St.3d 147, 529 N.E.2d 1236 (1988) (defendant made no admission;
defendant and victim, his wife, had stormy marriage and victim wanted to leave him the night of her disappearance; human blood of victim's type was found on defendant's pants and other items as well as in and around victim's car, which defendant had abandoned; bag containing some of victim's items was found weighted in a creek); State v. Dudley, 19 Ohio App.2d 14, 48 Ohio Op.2d 19, 249 N.E.2d 536 (1969) (defendant made no admission; defendant at plant the night victim, a plant watchman disappeared; bloodstains were found in the plant, on victim's car and cap, and defendant's pants; defendant burned his pants and shoes; defendant seen with a crowbar which had some of victim's hair; witness saw defendant argue with victim and hit him with crowbar); Arnold v. State, 803 P.2d 1145 (Okla.Crim.1990) (defendant admitted to ex-wife and others that he had murdered victim while victim was sleeping in his car; victim had made violent threats toward defendant's stepdaughter; defendant was seen with blood and dirt on his pants the day victim disappeared and defendant stored and stripped victim's car); Rawlings v. State, 740 P.2d 153 (Okla.Crim.1987) (defendant made no admission; had told victim, his wife, whom he had beaten in the past, that next time she saw him she "would be dead;" near time of victim's disappearance, defendant purchased and used a gun, rented a car and plane, moved victim's possessions, wrote letters on her behalf, and possessed a suitcase with her belongings; human blood was found on the car, plane, and gun); State v. Brown, 310 Or. 347, 800 P.2d 259 (1990) (defendant told cellmate he had disposed of victim's body; had threatened to kill victim, a prospective witness in a case against him; victim was last seen being forced to leave her house with him; victim had not contacted her relatives and left possessions behind); State v. Lerch, 63 Or.App. 707, 666 P.2d 840 (1983) (defendant, a prison escapee, confessed that he had strangled victim, a seven-year-old boy and put his body in a dumpster; witness testified he had smelled the odor of decomposing human flesh coming from the dumpster; hair similar to victim's was found in defendant's home), aff'd 296 Or. 377, 677 P.2d 678 (1984); State v. Williams, 46 Or. 287, 80 P. 655 (Or.1905) (defendant made no admission; lived with victims, his wife and mother-in-law, and gave inconsistent reasons for their disappearance; married another woman whose name he said was that of his wife; forged a check with his wife's name and took over her land; finding of human blood and hair); State v. Owens, 293 S.C. 161, 359 S.E.2d 275 (defendant made statements to police investigator and three inmates indicating knowledge of victim's death and location of his body; victim, 72–years–old, was last seen at his residence where there were signs of a struggle; dragmarks, human bloodstains, victim's eyeglasses and needed medication, found at his residence; victim was dependable and had standing appointments; defendant picked up ransom money and his daughter and son sold victim's possessions; hairs similar to victim's found in defendant's car trunk), cert. denied, 484 U.S. 982, 108 S.Ct. 496, 98 L.Ed.2d 495 (1987); Williams v. State, 629 S.W.2d 791 (Tex.Ct.App.1981) (defendant admitted shooting and killing victim at trial and helping to conceal the body thereafter; eye-witness testified as to shooting and a neighbor called police about seeing body put in car trunk;
defendant refused to let police inside his home); State v. Rebeterano, 681 P.2d 1265 (Utah 1984) (no admission from defendant, ex-husband of witness, who became jealous because witness and victim were talking in a bar; witness heard defendant and victim scuffling and a groan; observation that defendant placed a large, wrapped bundle in victim's automobile; large amounts of type A blood found in witness's apartment and in trunk of victim's automobile; kitchen knife found on roof of victim's home); Epperly v. Commonwealth, 224 Va. 214, 294 S.E.2d 882 (1982) (defendant made no admission but made incriminating statements, such as a reference to victim's "body" before anyone thought she was dead; victim last seen with defendant whom she had just met; evidence of violent struggle and savage beating of victim; victim's hidden, blood-soaked clothing; human bloodstains and hair in home; defendant's lack of remorse and efforts to avoid detection; dog-tracker led to defendant's front door; victim's highly modest and careful conduct, close contact with family and friends); State v. Neslund, 50 Wash.App. 531, 749 P.2d 725 (1988) (defendant told niece and brother that she and their other brother had killed victim, her husband; witness-brother overheard conversations between defendant and other brother describing how victim had been shot, butchered, burned, and disposed of; blood was found on defendant's handgun and in home; victim indicated that he was afraid of defendant and feared for his life; defendant was familiar with firearms); State v. Quillin, 49 Wash.App. 155, 741 P.2d 589 (1987) (defendant admitted felony murder of robbery victim to police and to witnesses; took police to homicide scene where body had been thrown from bridge; knife thrown from car was not recovered but some of victim's possessions were); State v. Lung, 70 Wash.2d 365, 423 P.2d 72 (1967) (defendant signed statement admitting he "accidentally" shot his wife and disposed of her body in the river; victim's car contained some personal possessions including her coat which had a bullet hole and human bloodstains; defendant returned victim's car to its

usual place; attempted to remove bloodstains in his home; returned rifle to his workshop); but see Lemons v. State, 49 Md.App. 467, 433 A.2d 1179 (1981) (reversing first degree murder conviction for insufficient evidence independent of defendant's statements to establish corpus delicti; defendant, who was mentally unstable and had a history of drug and alcohol abuse, told police, his girlfriend, and girlfriend's daughter details about how he killed victim and disposed of her body eleven years earlier; victim had disappeared near the time defendant stated killing occurred; defendant said he desecrated the grave of another woman and grave was found to have been desecrated; psychiatrists stated that defendant could not tell between fantasy and reality; employer said victim was unreliable; state made limited efforts to attempt to locate victim or to find if anyone had reported her missing); Campbell v. People, 159 Ill. 9, 42 N.E. 123 (1895) (reversing murder conviction for insufficient evidence; defendant made no admission; conviction was based primarily on unmarried witness's inconsistent testimony that defendant, who was married, was the father of her baby and took the baby from her directly after its birth and she never saw it again; witness told defendant's friend that the baby was born dead; witness was jealous of defendant's wife).

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: September 15, 2021
THE PEOPLE OF THE STATE OF COLORADO v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78 Courtroom/Division: 2
Sean Connelly, #33600 Connelly Law LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (303) 302-7849 Email: sean@sconnellylaw.com *ATTORNEY FOR DEFENDANT BARRY LEE MORPHEW*	

ENTRY OF APPEARANCE OF SEAN CONNELLY

Sean Connelly hereby enters his appearance as co-counsel for Mr. Barry Morphew in the above-captioned matter, for the purpose of presenting oral argument on Friday, September 17.

Respectfully submitted this 15th day of September, 2021.

CONNELLY LAW LLC

s/ Sean Connelly
Sean Connelly, #33600

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2021, a true and correct copy of the foregoing **ENTRY OF APPEARANCE** was served via Colorado Courts E-filing to the following:

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

s/ Sean Connelly

Combined Courts, Chaffee County P.O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: September 16, 2021
THE PEOPLE OF THE STATE OF COLORADO vs. BARRY LEE MORPHEW, Defendant	▲ COURT USE ONLY ▲
LINDA STANLEY, District Attorney Attorney Reg. #45298 104 Crestone Avenue P.O. Box 699 Salida, CO 81201 Phone: 719-539-3563 Fax: 719-539-3565	Case No.: 21CR78 Div: 2 Courtroom:

D-21a PEOPLE'S ADDENDUM TO RESPONSE TO MOTION TO SET BOND, DISMISS MURDER CHARGES FOR LACK OF CORPUS DELECTI, PROOF EVIDENT, AND PROBABLE CAUSE: CORRECT LEGAL STANDARD

COMES NOW, the People of the State of Colorado, by and through LINDA STANLEY, DISTRICT ATTORNEY for the Eleventh Judicial District, and submits this Addendum setting forth the correct legal standard for proof evidence or presumption great. In preparing for argument on this motion, the undersigned Deputy District Attorney found the correct legal standard in *In re Losasso*, 15 Colo. 163, 172, 24 P. 1080, 1082 (1890), a case cited by both parties (opinion attached).

> "The burden should be so discharged as to satisfy the following test . . . "If the evidence is clear and strong, leading a well-guarded and dispassionate judgment to the conclusion that the offense has been committed, that the accused is the guilty agent, and that he would probably be punished capitally if the law is administered, bail is not a matter of right.""

While other parts of the opinion have since been overruled – e.g. the presumption from charging against bond and the burden on the defendant – this standard has never been overruled. *Losasso* is a hard opinion to read because while it is 10 pages long (15 Colo. 163-173) there are only three (3) paragraphs.

In *Gladney v District Court*, 188 Colo. 365, 368-69, 535 P.2d 190, 191 (1975) the Court also cited to a New Jersey case and held:

> "(B)ail should be denied when the circumstances disclosed indicate a fair likelihood that the defendant is in danger of a jury verdict of first degree murder."

Dated September 16, 2021

Respectfully Submitted,
LINDA STANLEY
/s/ Daniel W Edwards
Attorney Reg. #7938
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on September 16, 2021, a true and correct copy of the foregoing 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.

/s/ Daniel W Edwards

15 Colo. 163
Supreme Court of Colorado.
In re LOSASSO et al.

It is alleged, among other things, in the petition that Genaro Losasso and Gaetano Losasso are held in custody by the jailer of Arapahoe county upon a pretended indictment charging them with murder in the first degree; that they 'are not guilty of any crime or offense against the laws of this state,' and their imprisonment is illegal and unconstitutional. It is also averred that, though considerable time will elapse before trial can be had upon the pretended indictment, the district court refuses to entertain a motion for bail. The present application to the supreme court is made for the purpose of securing a hearing, and favorable action, upon this question.

[1] Bail Bailable Offenses

Section 19 of the Bill of Rights abrogates the common law rule as to felonies by making bail after indictment and before trial, in all cases not capital, a matter of absolute right.

[2] Bail Bailable Offenses

This constitutional provision further modifies the common law rule by providing, in effect, that in capital offenses also, even after indictment, if upon investigation it is found that the "proof is not evident or the presumption great," bail should be allowed.
10 Cases that cite this headnote

[3] Bail Bailable Offenses

Every indictment for murder in the first degree charges three subordinate grades of crime, each of which is unquestionably bailable.
1 Cases that cite this headnote

[4] Bail Bailable Offenses

The indictment creates a presumption that the prisoner is guilty of the capital offense. And courts must proceed with extreme caution in exercising the power of admitting to bail. Where the evidence is clear, suggesting conviction and a capital penalty, bail is not a matter of right.
2 Cases that cite this headnote

[5] Bail Bailable Offenses

Murder is bailable except when the proof is evident or the presumption strong.

[6] Bail Proceedings to Admit to Bail

It is the duty of the judges to hear evidence to determine whether or not a person charged with murder should be admitted to bail.

[7] Sentencing and Punishment Necessity of Conviction

The legal penalty for crime is inflicted only upon conviction, and the object of imprisonment before trial is safe-keeping, not punishment.

[8] Habeas Corpus Preference for Inferior Over Appellate Court

The supreme court, except in case of some extreme emergency, will not entertain proceedings for original relief when such relief may be granted by a subordinate tribunal. So held on petition for habeas corpus to let to bail.

1 Cases that cite this headnote

Attorneys and Law Firms

*164 **1080 Edgar Caypless, for petitioner.

H. Riddell amicus curiae.

Opinion

HELM, C. J., (after stating the facts as above.)

The question now presented for consideration is whether or not one charged with murder of the first degree, the punishment for which offense is death, may be admitted to bail after indictment and prior to trial. The practice in the different courts of the state with reference to this subject is not uniform. The present judges of the second judicial district, where petitioners are held in custody, are of opinion that the indictment is conclusive against the right to bail, and therefore decline to consider any application therefor. On the other hand, the judges in most, if not all, of the remaining districts frequently entertain such applications, hear evidence thereon, and occasionally admit to bail. In view of these conflicting opinions and inconsistent holdings, it is important that a definite rule should be announced, so that the procedure in the premises may be uniform throughout the state. It is difficult to determine precisely what the common-law rules on the subject of bail were when provisions, such as will be hereafter considered and are now made constitutional, were first adopted in this country. Mr. Blackstone says: 'It is agreed that the court of king's bench (or any judge thereof in vacation) may bail for any crime whatsoever, be it treason, murder, or any other offense, according to the circumstances of the case.' Book 4, c. 22, p. 299. And he mentions no exception predicated upon the finding of an indictment. But it seems to be well settled that that *165 court, as a matter

of course, refused bail in all capital cases after return of a true bill, unless some special circumstance, usually arising subsequent to such action, supervened; also, that in no felony, after indictment, was bail regarded or allowed as a matter of right. The foregoing practice of the court of king's bench, in relation to capital offenses, has become a fixed rule in California, Louisiana, New York, Iowa, and North Carolina. It is held in those states that after indictment for a capital felony the presumption of guilt is so strong as to be conclusive against admission to bail. State v. Mills, 2 Dev. & B. 552; Hight v. U.S., 1 Morris, (Iowa,) *407; Territory v. Benoit, 1 Mart. (La.) 142; People v. McLeod, 1 Hill, 377; People v. Tinder, 19 Cal. 539. We have only discovered two cases in the federal courts directly upon this question, viz., U. S. v. Jones, 3 Wash. C. C. 224, and the celebrated trial of Aaron Burr for treason. In the former case, Jones, one of the defendants, was admitted to bail upon the ground of illness; but as to Reese, another of the defendants, Mr. Justice WASHINGTON disposes of the application, without argument, in the following language: 'The bill of indictment being found, we do not feel ourselves at liberty to inquire into the evidence against it.' Upon return of the indictment against Aaron Burr, application for bail was made to Chief Justice MARSHALL, who presided throughout the trial. The learned chief justice remarked (see page 94) that he 'had never known a case similar to the present when such an examination had taken place.' He also insisted 'upon the necessity of producing adjudged cases to prove that the court could bail a party against whom an indictment had been found.' But on page 95, he is represented as saying: 'I have only stated my present impression. This subject is open for argument hereafter.' Mr. Burr was thereupon committed to jail, and whether subsequently any authorities were cited or arguments heard upon the question we are not advised. No ruling thereon, or further reference thereto, appears in the *166 volume. It is a significant circumstance that there was at this time (A. D. 1807) in Virginia, where Burr as tried, no such constitutional provision on the subject of bail as now exists in that and other states. In U. S. v. Stewart, 2 Dall. 343, (A. D. 1795,) upon this question, language is used which seems to concede the possibility of an examination for admission to bail in such cases, but the point was not necessarily involved, and the decision cannot be considered authority. Precedents from the federal courts upon the subject in hand thus appear to be extremely meager and unsatisfactory; but, so far as the federal cases go, they point to a sanction of the common-law rule. The supreme courts of the following states, however, have promulgated a different doctrine: Alabama, Arkansas, Florida, Illinois, Indiana, Mississippi, Ohio, South Carolina, and Texas. The view adopted in these states is that the indictment, even in capital cases, is simply presumptive evidence of the guilt of the party charged, and that courts should, upon application, hear proofs, and, if the presumption be overcome, admit to bail. Ex parte Hammock, 78 Ala. 414; Ex parte White, 9 Ark. 222; Thrasher v. State, (Fla., 1890,) 7 South. Rep. 847, **1081 Lynch v.

People, 38 Ill. 494; Ex parte Kendall, 100 Ind. 599; Street v. State, 43 Miss. 1; State v. Summons, 19 Ohio, 139; State v. Hill, 3 Brev. 89; Yarborough v. State, 2 Tex. 519. Each of the foregoing lists of cases from the state courts might be largely augmented by other decisions of the same tribunals; but, as the opinions referred to express what is believed to be the law at the present time in the states mentioned, additional citations therefrom are deemed unnecessary. Although the above reference to adjudicated cases shows contrariety of judicial opinion on the subject before us, it may fairly be said that the preponderance of authority in this country is against the common-law doctrine. And we think this preponderance of authority is more in harmony *167 with the policy and purposes of modern constitutional and legislative action. It must be borne in mind that the legal penalty for crime is inflicted only upon conviction, and that the object of imprisonment before trial is safe-keeping, not punishment. If the presence of the accused for trial could be otherwise assured, imprisonment would doubtless be entirely dispensed with. So anxious were the framers of the constitutions, state and federal, to guard against abuses in this direction, that they prohibited the exaction of 'excessive bail;' i. e., more than will be reasonably sufficient to prevent evasion of the law by flight or concealment. It is likewise to be remembered that trial does not and cannot, as a rule, so speedily follow presentment, in this and other rapidly growing western commonwealths, as in England, where the common-law doctrine under consideration had its origin. Most, if not all, of the state constitutions, now contain provisions substantially similar to section 19 of our bill of rights, which reads as follows: 'That all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident, or the presumption great.' It will be observed that this constitutional provision is entirely silent as to the status of the prosecution. It does not say that upon indictment for a felony, or for a particular kind of felony, the beneficent privilege conferred is withdrawn. On the contrary, its terms are broad enough to include persons accused of any crime whatever, after as well as before indictment. The only exception expressly made has reference to capital offenses, but this exception is wholly inoperative if the proof of guilt be not evident, and the presumption great. Had the framers of the constitution intended to provide that the indictment should be conclusive in capital cases, they would, in all probability, have said so. A simple declaration to this effect would have avoided all doubt and embarrassment. We must look outside of the language employed in the constitution for authority sustaining the position that in *168 any case the indictment alone is conclusive against the prisoner's right to bail. The view affirming such conclusiveness is doubtless drawn by supposed analogy and precedent from the common law. But it is universally conceded that the constitutional provision, in effect, though not in words, changes the common law so as to confer an absolute right to bail after indictment in all other felonies. Proofs may be required in determining the amount of bail, but the right thereto is no longer a matter of judicial

inquiry or discretion. Is it not equally reasonable, and equally in harmony with established rules of construction, to suppose that a change was also intended in the character of the presumption furnished by the indictment in capital cases? If the common-law rule is so relaxed that what was formerly, at most, a matter of judicial discretion is now a matter of absolute right, may it not be that that which formerly constituted a conclusive presumption should now be regarded as prima facie proof only? The language of the exception itself would seem to sustain this conclusion. It clearly implies an investigation by some tribunal into the sufficiency of the proofs. Bail as a matter of right is denied; but, when some competent authority ascertains by inquiry that the proof is not evident, and the presumption great, its allowance is imperatively commanded. That the tribunal, or authority possessing the power of admitting to bail, should make this inquiry, is not an unreasonable deduction.

Two principal grounds are mentioned for the view that in capital cases upon return of the bill bail must be denied with out investigation. The first, being the one relied on in the English decisions, is thus clearly given by the court in Lord Mohun's Case, 1 Salk. 104: 'If a man be found guilty of murder by the coroner's inquest, we sometimes bail him, because the coroner proceeds upon depositions taken in writing, which we may look into; otherwise if a man be found guilty of murder by a grand jury because the court cannot take notice of their evidence, which they, *169 by their oath, are bound to conceal.' The second ground is briefly stated in People v. Hyler, 2 Park. Crim. R. 570, as follows: 'Because to open the whole question of guilt or innocence to proof in an action to admit to bail would be attended with the most serious inconvenience.' Both of these objections are forcible, and would, under different circumstances, doubtless be worthy of grave consideration. The first is based, however, upon the established practice of the English courts of limiting the examination for bail to a review of evidence taken before the committing tribunal. No such practice is required by the constitutional provision under consideration; nor, so far as we are advised, is it generally adhered to by the courts of this country. The second objection is more serious, and, if the courts possessed entire freedom of action in regard to the matter, would be very persuasive. The regular trial is, to a limited extent at least, anticipated. While the guilt or innocence of the accused is not to be determined, the quantity and character of the proofs on this point are, for the special purpose in hand, necessarily considered. Occasionally much time is thus consumed, and the court's at attention is correspondingly diverted from other business. But these objections cannot avail against a positive constitutional command; if the **1082 constitution requires the court to determine for itself whether or not the proof is evident or presumption great in a given case, all considerations of expediency or convenience, however potent they might be at the common law, must give way. The English cases, and

the American cases adopting the English rule, all concede the right to be heard upon an application for bail after commitment by a coroner's inquest or an examining magistrate. The character and scope of the inquiry are in many instances circumscribed, yet the right to be heard is nevertheless unquestioned. But, under our practice, it would ordinarily accord more nearly with justice to hold the finding of a coroner's inquest or a committing magistrate conclusive as to the clearness of guilt *170 than the report of a grand jury. In the former cases, the accused may appear in person and by counsel. He may be heard in argument, may produce evidence, and make his own statement. But the proceedings of a grand jury are inviolably secret and wholly ex parte, evidence for the state being alone received. The accused is not present, and in many instances is ignorant of the fact that charges against him are being considered. He cannot be represented by counsel, or be heard upon the legality or bearing of the evidence adduced. The officer employed by the state to prosecute exercises a large influence in the selection of witnesses to testify; gives the only legal advice, unless the court be called upon; and usually directs to a considerable extent the entire proceeding. The rule that the proof of guilt thus offered and weighed should be pro forma treated as 'evident,' and that the presumption thus arising should in the same manner be pronounced 'great,' is largely a legal fiction. It finds little support in reason. Moreover, every indictment for murder in the first degree includes several lesser offenses. Under it the accused may be convicted of murder in the second degree, or of voluntary or involuntary manslaughter. In legal effect, therefore, every such indictment charges four crimes, three of which are unquestionably bailable. To deny the latter proposition would as plainly violate the constitutional mandate as to refuse bail where crimes against property are the subject of accusation. Why should the prisoner not be permitted to show, if he can, that his offense belongs to one of the lower grades? The presumption, treated in some cases as conclusive, that the grand jury would not have returned a bill for the higher grade if the evidence pointed more clearly to one of the lesser offenses, does not rest upon a very substantial foundation. It is a fact that prosecuting officers, actuated by motives of policy, generally endeavor to procure indictments for the higher rather than for either of the lesser grades of homicide. An indictment for murder is not, without reason, supposed to render a conviction *171 of manslaughter more certain. On the other hand, under the charge of manslaughter, a conviction for murder would be impossible; yet are evidence adduced at the trial may greatly exceed in strength that upon which the indictment was found, and fully warrant such conviction. In theory, these considerations should have no weight either with the prosecutor or grand jury; but in practice, we know that they often turn the scales in favor of the graver accusation. As already intimated, certain exceptions to the common-law rule in relation to bail in capital cases are recognized, even where this rule prevails most rigorously. Among these exceptions may be mentioned serious illness of the prisoner;

delay by the prosecution in bringing him to trial; consent of the prosecuting attorney to the taking of bail; the existence of public excitement at the time of the finding of the indictment, likely to prejudice the grand jury; the confession of another that he did the killing, and the like. These exceptions are, in the main, prompted by considerations of actual or probable hardship. Courts sometimes exercise a sound judicial discretion, and admit to bail in such cases, even when the proof appears to be evident or presumption great. But it occasionally happens that by means of malicious, or of prejudiced or perjured, testimony, or upon wholly insufficient proofs, indictments are procured charging the crime of murder, and a long period must elapse before a trial can be had. The same promptings of humanity, reinforced by strong considerations of justice, would also sanction the hearing of proofs on the question of bail, where such matters, or some of them, are alleged as a ground of the application. In our judgment, the foregoing considerations warrant the view that the absolute conclusiveness of the indictment as to guilt in capital cases should not be assumed.

Courts must, however, proceed with extreme caution in exercising the power of admitting to bail in this class of offenses. And, whenever bail is allowed, it must be reasonably *172 sufficient to secure the prisoner's presence at the trial. When life is suspended in the balance, the temptation to avoid trial is, in most instances, peculiarly great; and a release upon bail should not be permitted, unless the court feels clear that the constitutional exception does not apply. The indictment creates a strong presumption that the prisoner is guilty of the higher crime and not entitled to bail. The burden of overcoming this presumption is cast upon him. This burden should be so discharged as to satisfy the following test, laid down in Ex parte McAnally, 53 Ala. 495: 'If the evidence is clear and strong, leading a well-guarded and dispassionate judgment to the conclusion that the offense has been committed, that the accused is the guilty agent, and that he would probably be punished capitally if the law is administered, bail is not a matter of right.' By the concluding clause the learned judge undoubtedly means that bail should be denied in the absence of some special ground such as those above mentioned, wherein all courts exercise a judicial discretion. The foregoing criterion is not beyond criticism, nor is it possible to frame one that would be; but all things considered, it is more satisfactory than either of the others suggested. Judicial action, under any rule in the premises, **1083 will always be accompanied by embarrassment and perplexity; but with a careful, conservative, and fearless exercise of judgment in weighing the proofs, and of discretion in fixing the amount of bail, it is believed the rights of the prisoner and interest of the public will be sufficiently guarded. It is an invariable rule of this court, in the absence of some extreme emergency, not to entertain proceedings for original relief when such relief may be granted by a subordinate tribunal. The public as well as the private interests

confided to our care render the adoption and enforcement of this rule a necessity. The district court of Arapahoe county, where petitioners are imprisoned, possesses such jurisdiction in the present case, and doubtless, in pursuance *173 of the views above announced, will, notwithstanding its former practice, make the desired inquiry. We shall, therefore, for the present, decline to issue the writ of habeas corpus or enter into the investigation that would follow.

All Citations

15 Colo. 163, 24 P. 1080, 10 L.R.A. 847

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: September 16, 2021
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78 Courtroom/Division: 2
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*	

MOTION FOR CONTEMPT SANCTIONS FOR VIOLATION OF COURT ORDER TO LIMIT PRE-TRIAL PUBLICITY
[D-22]

Mr. Morphew, by and through counsel, moves the Court to issue a contempt citation and to further sanction the District Attorney for violation of the June 3, 2021 Order re: Motion to Limit Pre-trial Publicity (the "Court Order"). Mr. Morphew further requests that until the Court rules on this Motion, the Court issue a Gag Order precluding the District Attorney to comment on the case, or the Court's September 17, 2021 rulings. Mr. Morphew states the following as grounds:

1. On June 3, 2021 the Court entered an Order instructing the parties to refrain from making extrajudicial statements on the basis of the Colorado Rules of Professional Conduct 3.6 and 3.8.

2. DA Linda Stanley and her team have participated in numerous press conferences with the media and YouTube podcasts (including Exclusive Press Conferences with Fox 21, and podcasts "Profiling Evil" and "A Day in the Car", even exchanged disparaging comments to lay people about the Morphew case. The DA's have crossed the line, doing more than quoting and referring without comment to public records in violation of the Court Order sections I.D and I.E, and the Colorado Rule of Professional Conduct 3.8.

3. The podcasts the DA's office has participated in or provided comments appear to have been viewed over 25,000 times. It is unknown how many times or people viewed the DA's exclusive press conferences with Fox News.

4. The DA's extrajudicial statements in the media and social media have the great likelihood of influencing the jury panel and materially prejudicing Mr. Morphew's case. The numerous comments violate the Order, as the DA's have villainized Mr. Morphew, improperly cited the Rule of Law which will certainly cause public mistrust of this Court, and indicated that not only is Mr. Morphew is charged, but inferred he is guilty, without any reference to the fact that Mr. Morphew is presumed innocent until and unless proven guilty.

5. Ms. Stanley and her team have misstated their ethical obligations and mandates by this Court by repeatedly justifying statements to the press and social media outlets on many occasions that she is free to talk about anything that is out in the public. (August 30, 2021, Profiling Evil Preliminary Hearing with DA Linda Stanley, at 53:00 and 61:25). However, as the Court ordered, the DA can only make limited statements without elaboration (I.A), and quote from or refer without comment to public records (I.D).

6. Ms. Stanley's lengthy interview on the Profiling Evil Podcast called "Preliminary Hearing with DA Linda Stanley" included the following statements:

- Mr. Morphew can always be charged again later, even if acquitted, if the Court dismisses the charges by State or Federal Authorities. 49:34.
- A discussion of Ms. Stanley's opinion on the difference between circumstantial and real evidence, including presenting a jury instruction. 35:00-36:00.
- In response to a comment that Barry Morphew was staring down the DA at the hearing, Ms. Stanley said she was staring back at "him" at "every chance I got" 46:55.
- We [the DA's office] did not have it [the arrest affidavit] until after he [Barry] was arrested. 52:09 -52:19

7. On September 14, 2021, Linda Stanley was interviewed by Julez Wolf and then the interview was disseminated on the YouTube show called "Another Day in the Car with Julez",

titled "I got this - DA Linda Stanley". The podcaster indicated she interviewed DA Stanley, and also produced text messages the podcaster and DA Stanley exchanged:

- DA did not read the arrest affidavit before Mr. Morphew was arrested. 00:47.
- Mr. Morphew was "possibly getting ready to flee." 2:44.
- Suzanne Morphew was a beginner at bike riding.
- Text response by Ms. Stanley of a "thumbs up" to a comment about why the spy pen recording was good evidence.
- Ms. Stanley stated, "we only know of one helmet."
- A person who uses Linda Stanley's photograph and her name on the YouTube comments section of the Profiling Evil Podcast, strikes back at a few lay people about the facts and their beliefs about the Morphew case. *See* Exhibit A and Exhibit B.

8. The above DA's statements are just a sampling of the DA's many prejudicial comments made to the public. The time it takes to review the DA's many public statements and comments and write motions to this Court is onerous. However, it is more than just onerous - the DA's extrajudicial statements have violated the Court Order, the Rules of Professional Conduct, and Mr. Morphew's Constitutional rights to a fair trial and due process.

9. Mr. Morphew requests the Court order the following contempt sanctions: 1) The Impose a gag order immediately, unless the DA can show cause why it should continue to taint the jury pool; 2) Order the DA to reimburse Mr. Morphew for attorney's fees and costs related to the research and filing of this motion, and 3) if this case proceeds to trial and if the case is tried in Chaffee County, the District Attorney shall pay for a jury poll conducted by a firm of defense counsel's choosing closer to trial to determine whether a fair and impartial can be seated.

Respectfully submitted this 16th day of September, 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 16th day of September, 2021, a true and correct copy of the foregoing **MOTION FOR CONTEMPT SANCTIONS FOR VIOLATION OF COURT ORDER TO LIMIT PRE-TRIAL PUBLICITY [D-22]** 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

☐ 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 - 000449

DATE FILED: September 17, 2021

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
MOORMAN BAUMUNK, MELINDA	4/30/1933	F	W	MOORMAN, ANDREW	6/09/1962	M	W
MOORMAN, DAVID	1/25/1955	M	W	LIBLER, JEFF	2/18/1970	M	W
OLIVER, SHEILA	6/01/1972	F	W	RITTER, MARTIN	9/18/1948	M	W
RITTER, JEANNE	12/17/1949	F	W	OSSWALD, BRAD	3/15/1966	M	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 probable cause statement or arrest warrant ☒does ☐ does not include a crime that includes an act of domestic violence, as defined by 18-6-800.3(1).

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 24 hours (24, unless the court finds good cause to provide additional time) of being served with this order, excluding legal holidays and weekends. 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 complete an affidavit and file it along with proof of relinquishment with the court within 7 business days of the date of this order as required by statute.

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

☐ 8. **Is further ordered that:** _____

No Contact except NONE

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

Date: 9/17/2021

☒ Judge ☐ Magistrate

MURPHY, PATRICK W

Printed Name of Judicial Officer

By signing, I acknowledge receipt of this Order

Date: 9/20/2021

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

Defendant

Date: 9/20/2021

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.

☐ 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 - 000451

DATE FILED: September 17, 2021

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
CORDOVA, CASSIDY	6/02/1993	M	W	GENTILE, MORGAN	10/28/1992	F	W
WILSON, HOLLY	4/14/1978	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 probable cause statement or arrest warrant ☒does ☐ does not include a crime that includes an act of domestic violence, as defined by 18-6-800.3(1).

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.

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☒ 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 24 hours (24, unless the court finds good cause to provide additional time) of being served with this order, excluding legal holidays and weekends. 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 complete an affidavit and file it along with proof of relinquishment with the court within 7 business days of the date of this order as required by statute.

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

☐ 8. **Is further ordered that:**

No Contact except NONE

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

Date: 9/20/2021

☒ Judge ☐ Magistrate

MURPHY, PATRICK W

Printed Name of Judicial Officer

By signing, I acknowledge receipt of this Order

Date: 9/20/2021

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

Defendant

Date: 9/20/2021

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)

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NOTICE TO DEFENDANT

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- 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 AVENUE, P.O. BOX 279, SALIDA, CO, 81201	DATE FILED: September 20, 2021 8:14 AM
THE PEOPLE OF THE STATE OF COLORADO v. **Defendant(s)** BARRY LEE MORPHEW	⚠ **COURT USE ONLY** ⚠ Case Number: 2021CR78 Division: 2 Courtroom:

Order Amending Bond Conditions

After speaking with probation supervisor Katy Post over the weekend, the Court has learned two things.

First, Intervention Inc. (the private probation provider in the 11th Judicial District) can provide a GPS monitor. The Court was told otherwise last week.

Second, the Intervention coordinator in Chaffee County has a social relationship with one of the Morphew children.

Therefore the Court Orders:

1. Location monitoring with be through a GPS unit
2. Maintenance of the GPS unit will be through the Fremont County office of Intervention Inc., and monitoring will be through the Jefferson County office of Intervention Inc.
3. In addition to travelling outside of Chaffee County to meet with his attorneys, Mr. Morphew may also travel outside of Chaffee County to service and maintain the GPS unit.

Issue Date: 9/20/2021

PATRICK W MURPHY
District Court Judge

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: September 20, 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 RETURN OF DRIVER'S LICENSE AND TRUCK
[D-23]

On September 17, 2021, the Court did not find that there was Proof Evident or Presumption Great that Mr. Morphew would be convicted of Murder in the 1st Degree and set a $500,000.00 cash bond. After the Court adjourned, but while all parties and the public were still in the courtroom, defense counsel asked the five (5) prosecutors if they would return Mr. Morphew's driver's license to him.

DA Jeff Lindsey refused and stated the driver's license was evidence and would not be returned without a court order. Counsel asked the Judge's clerk if the Court could come back out to the courtroom to address this issue. Although the prosecutors heard counsel make this request,

Counsel also directly advised the prosecutors they asked the Court to come back out to the courtroom. While making the request, all five prosecutors quickly gathered their belongings to leave the courtroom.

Some of the prosecutors were in the threshold between the courtroom doors and the hallway when the court clerk came out of chambers and tried to address the prosecutors. DA Stanley finally turned around, and the court clerk asked if the DA's office would turn over the driver's license without a court order. DA Stanley said no. The court clerk advised counsel to file a motion and it would be handled quickly.

Defense files this motion requesting Mr. Morphew's driver's license and truck (purchased after Mrs. Morphew disappeared) be returned to him immediately, and states the following grounds:

1. Mr. Morphew cannot live a life, support himself and his daughters without proof of his identity. Mr. Morphew's passport will be surrendered, thus he will need his driver's license for both identification and to drive.

2. It is unclear how Mr. Morphew's driver's license seized on May 5, 2021 is evidence in this case. There was no mention made of the driver's license in the probable cause hearing, or in the Affidavit to Arrest Mr. Morphew.

3. However, if it is necessary to prove a fact in the case at trial, Mr. Morphew will stipulate that a copy of the driver's license will serve as the best evidence.

4. On May 5, 2021, law enforcement also seized Mr. Morphew's 2020 Ford F-350 King Ranch, and the contents of the truck, *that he purchased in June 2020, after Suzanne disappeared*. This truck is not part the prosecution's case. This truck was not alleged or mentioned in the Affidavit, nor in the probable cause hearing, to be a component of the case against Mr. Morphew. The value of the truck is approximately $80,000, and is necessary for Mr. Morphew to do contracting work in order to support himself and his daughters. The truck contained $6,000 in cash, as well as Mr. Morphew's tools.

5. Mr. Morphew will need to drive not only for work, but to travel to comply with bond conditions and meet with counsel. Mr. Morphew's bond conditions include him working with Fremont and Jefferson Counties to obtain a GPS monitor, and Mr. Morphew's attorneys' office is in Denver, Colorado.

6. Again, if the prosecution alleges this truck is evidence in the case, the defense will stipulate to its existence and seizure on May 5, 2021.

7. Last, the defense is concerned about the unprofessional conduct of the DA's office, and their inefficient and unnecessary involvement of the Court in matters which should be able to be resolved by the parties. The defense requests that the Court encourage the DA's to work with the defense on matters that do not need court involvement.

WHEREFORE, Mr. Morphew respectfully requests the Court order the DA's to return Mr. Morphew's driver's license and his 2020 Ford-350 King Ranch to Mr. Morphew by September 21, 2021.

Respectfully submitted this 20th day of September, 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 20th day of September, 2021, a true and correct copy of the foregoing **MOTION FOR RETURN OF DRIVER'S LICENSE AND TRUCK [D-23]** 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

Combined Courts, Chaffee County P. O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: September 20, 2021 11:39 AM
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:
MOTION FOR PROTECTION ORDER AND CONDITION OF BOND	

COME NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District pursuant to the provisions of C.R.S. § 18-1-1001, and requests this Honorable Court consider additional terms and conditions of the mandatory protection order and conditions of bond issued in this case.

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

1. On behalf of the current residents of 19057 Puma Path, Salida, Colorado, the People hereby request that this Court issue a bond condition and no contact provision of the mandatory protection order prohibiting the Defendant from contacting them or going to their Salida, Colorado residence.

2. After the sale of the property, the Defendant appeared at the residence uninvited. The current residents are concerned he will do the same if he makes bond.

3. For purposes of this request, C.R.S. 18-1-1001(3) provides in pertinent part: "Nothing in this section shall preclude….the district attorney from applying to the court at any time for further orders, additional provisions under the protection order, or modification….of the same."

4. The residents of 19057 Puma Path, Salida, Colorado, support this request for a no contact protection order and condition of bond to stay off the property and remain outside the gate of the private drive leading to the residence.

Dated: September 20, 2021

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

CERTIFICATE OF SERVICE

I certify that on September 20, 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/ Crystal Keim

☐ 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 - 000449

DATE FILED: September 20, 2021 1:45 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
MOORMAN BAUMUNK, MELINDA	4/30/1933	F	W	MOORMAN, ANDREW	6/09/1962	M	W
MOORMAN, DAVID	1/25/1955	M	W	LIBLER, JEFF	2/18/1970	M	W
OLIVER, SHEILA	6/01/1972	F	W	RITTER, MARTIN	9/18/1948	M	W
RITTER, JEANNE	12/17/1949	F	W	OSSWALD, BRAD	3/15/1966	M	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 probable cause statement or arrest warrant ☒does ☐ does not include a crime that includes an act of domestic violence, as defined by 18-6-800.3(1).

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 24 hours (24, unless the court finds good cause to provide additional time) of being served with this order, excluding legal holidays and weekends. 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 complete an affidavit and file it along with proof of relinquishment with the court within 7 business days of the date of this order as required by statute.

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

☐ 8. **Is further ordered that:**

No Contact except NONE

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

Date: 9/17/2021

☒ Judge ☐ Magistrate

MURPHY, PATRICK W

Printed Name of Judicial Officer

By signing, I acknowledge receipt of this Order

Date: 9/20/2021

Defendant

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

Date: 9/20/2021

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

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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.

☐ 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 - 000451

DATE FILED: September 20, 2021 1:46 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
CORDOVA, CASSIDY	6/02/1993	M	W	GENTILE, MORGAN	10/28/1992	F	W
WILSON, HOLLY	4/14/1978	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 probable cause statement or arrest warrant ☒does ☐ does not include a crime that includes an act of domestic violence, as defined by 18-6-800.3(1).

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 24 hours (24, unless the court finds good cause to provide additional time) of being served with this order, excluding legal holidays and weekends. 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 complete an affidavit and file it along with proof of relinquishment with the court within 7 business days of the date of this order as required by statute.

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

☐ 8. **Is further ordered that:**

No Contact except NONE

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

Date: 9/20/2021

☒ Judge ☐ Magistrate

MURPHY, PATRICK W

Printed Name of Judicial Officer

By signing, I acknowledge receipt of this Order

Date: 9/20/2021

Defendant

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

Date: 9/20/2021

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.

Chaffee County Detention Center.

By: _____ D5 A.Pugh D5
Deputy Clerk/Sheriff (As to Surety/Bonding Agent) DATE FILED: September 20, 2021 2:43 PM

Date: 9-20-2021 Time: 12:15 P.M.

District Court Chaffee County, Colorado Court Address: 142 Crestone Avenue Salida, CO 81201	FILED IN COMBINED COURTS SEP 20 2021 CHAFFEE COUNTY, COLORADO ▲ COURT USE ONLY ▲
PEOPLE OF THE STATE OF COLORADO v. **Defendant: Barry Lee Morphew**	Case Number:20000911 Arrest Number: Warrant Number:D0082021CR000078
Attorney or Party Without Attorney (Name and Address) Phone number: Email: FAX number: Atty. Reg. #:	Division Courtroom

WAIVER OF EXTRADITION AS A CONDITION OF BAIL BOND PURSUANT TO §16-4-103, C.R.S

I Barry Lee Morphew (NAME OF Defendant) have been arrested for a Felony offense on 5-5-2021 (date) and as a condition of my bail bond consent to the following:

1. I understand that it is a violation of my bond to leave Colorado without the approval of the Court and the surety and that if I am arrested in another state, I can be returned to Colorado through the extradition process.
2. I will not resist or fight any effort by any state to return me to Colorado and waive all formal extraditions proceedings.
3. I understand I shall not be admitted to bail in any other state pending extradition to Colorado.
4. I agree to waive any right I may have to contest my extradition and I waive this right freely, voluntarily and intelligently.

Date: 9-20-2021

_____
Signature of Defendant

Barry Morphew
Printed Full Name

I certify the foregoing Waiver of Extradition as a Condition of Bail Bond was executed and subscribed before me.

Date: 9-20-2021

_____
Signature

Cortright

Chaffee County, Colorado ☒ County Court ☐ District Court Court Address: PO Box 279 Salida, CO 81201 Phone Number : 719-539-2561	DATE FILED: September 21, 2021 9:23 AM
PEOPLE OF THE STATE OF COLORADO VS. **Morphew, Barry Lee** Defendant	▲ COURT USE ONLY ▲
Intervention, Inc PO Box 279 Salida, CO 81201 Phone Number: 719-539-2855	Case Number: 21CR78 Division 2 Courtroom 2

INTERVENTION TECHNOLOGY REPORT

The above-named defendant was ordered to comply with GPS Monitoring.

I HEREBY CERTIFY that as of this date, September 21, 2021:

The Defendant reported to Intervention on September 20, 2021, as ordered by the Court, to begin GPS monitoring.

Intervention respectfully informs the Court that the GPS monitor is unable to pickup a GPS or cell signal in the area of the Defendant's home. Due to this lack of GPS and cell signal the GPS monitor is unable to provide any communication information or location points when the Defendant reaches the area of his current residence. Due to the lack of communication and location points, Intervention is unable to provide the court with any battery or tamper alert information when the Defendant is at or near his residence.

Intervention respectfully requests further direction from the Court on continued GPS monitoring requirements.

J. STRANSKY

Julie Stransky, Executive Director
Intervention, Inc.

Combined Courts, Chaffee County P. O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: September 21, 2021 10:22 AM
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 MOTION TO MODIFY BOND CONDITIONS P-24	

COME NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District, and respectfully request the Court to Modify Bond Conditions in order to prevent the Defendant from residing at 10987 Puma Path Dr., Maysville, CO, also known as the Cushman residence.

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

1. The People have been made aware that the Defendant has proposed he will live at a vacant residence (frequently used as a AirBnB or vacation rental) at 10987 Puma Path Dr., Maysville, CO, in the Monarch Estates subdivision (Cushman residence).
2. The People request the Court to enter an order that would prohibit the Defendant from residing at that location for the following reasons:
    a. The Cushman residence is only a few hundred yards away from the 10957 Puma Path residence. The People have requested the Defendant be ordered to stay away

from the Puma Path residence (See Motion filed 9/19/21 requesting modification of bond conditions).

b. The Cushman residence is in the same neighborhood and is near the Ritter residence located at 10969 Monarch River Dr., Maysville, CO.

c. The Ritters have been very clear that they do not want to have ANY contact with the Defendant, therefore, if the Defendant is allowed to reside in their neighborhood this will undoubtedly make the Ritters, at the very least, uncomfortable, and possibly not wanting to continue to reside at their home any longer.

d. If the Defendant resides at the Cushman residence, he will undoubtedly find it difficult, if not impossible, to abide by the orders of the Court.

3. The People have every reason to believe the Defendant is paying rent at a residence in Salida, 315 Poncha Boulevard, near the Courthouse. It makes sense for the Defendant to reside at this residence instead.

Dated: September 21, 2021

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

CERTIFICATE OF SERVICE

I certify that on September 21, 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/ Crystal Keim

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: September 21, 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

RESPONSE TO PEOPLE'S MOTION TO MODIFY BOND CONDITIONS [D-24]

Mr. Barry Morphew, by and through undersigned counsel, hereby responds to People's Motion to Modify Bond Conditions [P-24], and asserts the following:

1. On September 17, 2021, Mr. Morphew was granted bond. After being jailed for 138 days, Mr. Morphew was released on September 20, 2021 on a $500,000 cash bond with a condition that he reside in Chaffee County. Mr. Morphew intends to fully comply with all Court orders.

2. As the Court is aware, Mr. Morphew did not have a residence in Chaffee County as of September 20, 2021. Mr. Morphew requested to reside at his daughter's residence in Gunnison Colorado. Fortunately, Mr. Morphew's friends and former neighbors, the Cushmans, offered to allow Mr. Morphew to reside on their property in Chaffee County in a rental unit. Mr. Morphew does not have a better option for a residence in Chaffee County.

3. Contrary to the DA's belief, Mr. Morphew does not pay rent at a Poncha Boulevard address, nor has he ever spent the night at that address. The address is Shoshana Darke's. The Court should not order Mr. Morphew to live at an unrelated woman's home, whom the DA's wrongly implied he had an affair with before Suzanne disappeared.

4. At the DA's request, the Court entered a protection order against Barry Morphew prohibiting him from contact with numerous witnesses in the case, including Jeanne and Martin Ritter.

5. On September 20, 2021, the prosecution requested that the Court enter a protection order preventing Mr. Morphew from entering onto the 19057 Puma Path property. Of course, Mr. Morphew has no intention or permission to enter that property.

6. Today, the prosecution asks this Court to order that Mr. Morphew be required to move from private property as the Ritters may be "uncomfortable" with Mr. Morphew living nearby. The Ritters and Cushman's homes are not visible from one another, they are located on different roads that do not intersect, and they are located across from each other separated by a rushing river.

7. Protection orders are designed to protect those who must present evidence in the criminal justice system and protect the safety of people in volatile settings. C.R.S. 18-1001 (3)(f); *People v. Brockleman*, 862 P.2d 1040 (Colo. App. 1993).

8. There is no authority for a Court to issue a protection order because a person may be uncomfortable. There is no indication that Mr. Morphew has posed or poses any threat to the Ritters or that Mr. Morphew has been volatile towards them.

9. The residents of Mr. Morphew's former house are not witnesses in the case and have no standing to request a protection order in this criminal case. Mr. Morphew has not threatened, intimidated, or harassed the residents of 19057 Puma Path.

10. Many residents of Chaffee County may feel uncomfortable with Mr. Morphew living nearby and occasioning their public spaces and businesses. However, the Court has no

authority to grant a protection order against Mr. Morphew for all uncomfortable residents of Chaffee County. Mr. Morphew was given the standard general orders to refrain from harassing and intimidating witnesses in the case.

11. It is unorthodox to order an accused to live in a certain perimeter or county, much less one who has posted a $500,000 cash bond and who has forfeited their passport. Given that there are less than 17,000 adult residents of Chaffee County, and given what the DA's office has publicly indicated about Mr. Morphew and the case, the defense has great concerns about Mr. Morphew's ability to obtain a fair and impartial jury when he and the criminal allegations are well known to most of the residents of Chaffee County, who Mr. Morphew is required to live amongst.

12. However, Mr. Morphew's requests to live in Gunnison County were denied, and Mr. Morphew is in full compliance with the Court's orders.

WHEREFORE, Mr. Morphew respectfully requests the Court deny the People's Motion to Modify Bond Conditions.

Respectfully submitted this 21st day of September, 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 21st day of September, 2021, a true and correct copy of the foregoing **RESPONSE TO PEOPLE'S MOTION TO MODIFY BOND CONDITIONS [D-24]** 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: September 22, 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

SUPPLEMENT TO RESPONSE TO PEOPLE'S MOTION TO MODIFY BOND CONDITIONS
[D-24 (a)]

Mr. Barry Morphew, by and through undersigned counsel, hereby supplements his response to the People's Motion to Modify Bond Conditions based on learning new information that the prosecutors and their law enforcement are attempting to or have improperly influenced witnesses and potential witnesses in this case.

1. Upon information and belief, DA Lindsey and FBI Harris have recently contacted parties and witnesses involved in this case and 1) encouraged them to read the arrest affidavit as proof that Barry is guilty of Murder in the 1st Degree; 2) attempted to or did scare witnesses into believing Barry is dangerous and they need protection orders from Mr. Morphew; and 3) attempted

to convince the homeowners where Mr. Morphew is currently living to kick him out, and advised them that since Mr. Morphew had enough money to bond out, he has enough money to rent a hotel room for the duration of the case.

2. As instructed by the ABA, Criminal Justice Standards, Prosecution Function 3-3.4(c) the prosecutor or the prosecutor's agents should should not act to intimidate or unduly influence any witness.

3. The Court should not entertain the prosecution's Motion to Modify Bond Conditions because it is unjustified and unreasonable. Additionally, it is apparent that they may be in violation of the Colorado Rules of Professional Conduct and the ABA Criminal Justice Standards by creating this irrational fear with essential witnesses in the case that Mr. Morphew is a danger to the public while he is on bond; and attempting to convince them that Mr. Morphew is a murderer.

4. Since it appears that prosecutors and law enforcement have audio recorded or videotaped nearly every conversation it has had with witnesses, the prosecution should produce the tapes of conversations they had with individuals who they attempted to or did obtain protection orders for and other witnesses they have contacted about Mr. Morphew's living arrangements. This includes, but is not limited to conversations with the Wexlers (new homeowners of the Morphew Puma Path home), the Ritters and the Cushmans. If the recordings or notes exist of these conversations with witnesses and potential witnesses, and they are not immediately produced to the defense, the DA's will be in further violation of the June 4, 2021 Court order and C.R.CP Rule 16.

WHEREFORE, Mr. Morphew respectfully requests the Court deny the People's Motion to Modify Bond Conditions.

Respectfully submitted this 22nd day of September, 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 22nd day of September, 2021, a true and correct copy of the foregoing **SUPPLEMENT TO RESPONSE TO PEOPLE'S MOTION TO MODIFY BOND CONDITIONS [D-24 (a)]** 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

Combined Courts, Chaffee County P. O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: October 1, 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:
MOTION REQUESTING THE DEFENDANT VACATE THE CUSHMAN PREMISES FOR TIME CERTAIN (D20)	

COME NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District request the Court enter an order requiring the Defendant and his girlfriend, Shoshona Darke, vacate the Cushman premises for a date a time certain as listed below.

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

1. The People believe the Defendant is residing at the Cushman residence (10987 Puma Path Dr., Maysville, CO), during the time he is out on bond. The Cushman residence near the residence where the Morphew's previously lived (10957 Puma Path Drive).[1]

2. The family at the 10957 Puma Path Drive has requested that the Defendant be restrained from contacting them and to stay off their property. Since the Defendant has moved to the Cushman residence and the recent arrest of Shoshona Darke for trespassing on their property, the family has stopped using this residence.

[1] See attached exhibit that shows the layout of the neighborhood and the location of the neighborhood security gate.

3. The neighborhood association has been in the process of installing an electronic security gate in the housing area for quite some time. There have been delays associated with materials that have prevented the gate from being fully installed.

4. Martin and Jean Ritter, who reside at 10969 Monarch River Dr., Maysville, CO, and a group of other residents have secured the materials to install the gate. The Ritters and other residents are doing the actual labor. The Court should note that the gate is less than 100 yards from the Cushman residence and is the gate that allows residents into the properties.[2]

5. The process for the completion of the gate involves digging trenches, laying wires and other time-consuming activities.

6. The Defendant has been ordered to not have any contact with Martin and Jean Ritter.

7. The installation of the gate will involve the potential of the Defendant having contact with Martin and Jean Ritter. The Ritter's have made it clear they want no contact with the Defendant.

8. The Ritters have requested the Defendant to vacate the Cushman residence on the following dates and times; 10/5, 10/6 10/7 from 8 am to 5 pm. The work party should have ample time during this three-day period to safely install the residential security gate.

9. It is imperative the Ritters and other neighbors be able to install the gate prior to the winter season.

WHEREFORE, the People request the Court enter an order requiring the Defendant to vacate the Cushman residence on the above-mentioned dates and times.

Dated: October 01, 2021,

Respectfully submitted,
LINDA STANLEY
/s/ Jeffrey D. Lindsey
Jeffrey D. Lindsey, #24664

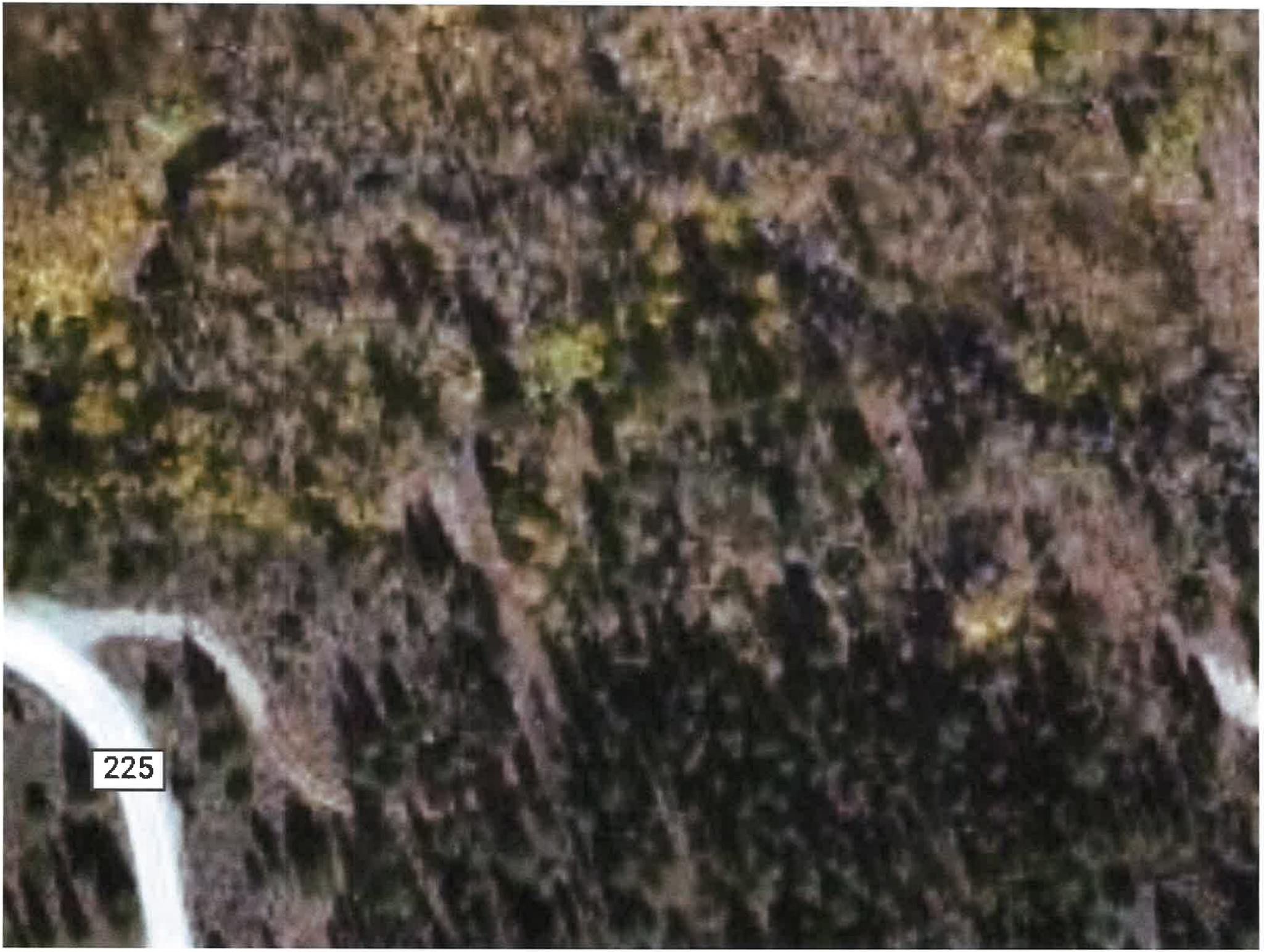
[2] The neighbors are in a triangle and can see each other's properties. The Cushman property is on the west side of the triangle. The former Morphew home is the east side of the triangle, and the Ritter property is to the south of the the two properties. The development shares a common dumpster and mailboxes. During the time the Defendant has resided at the Cushman residence, the Ritters and the newest family have curtailed their activities in the neighborhood out of fear of seeing the Defendant and now Ms. Darke.

Senior Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on October 01, 2021, a true and correct copy of the foregoing Motion was served via Colorado Courts E-Filing all parties who appear of record and have entered their appearance herein according to Colorado Courts E-Filing.

By: /s/ Jeffrey Lindsey


225

Combined Court, Chaffee County P.O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: October 4, 2021
THE PEOPLE OF THE STATE OF COLORADO vs. BARRY LEE MORPHEW, Defendant	▲ COURT USE ONLY ▲
LINDA STANLEY, DISTRICT ATTORNEY Attorney Reg. # 45298 104 Crestone Avenue P.O. Box 699 Salida, CO 81201 Phone: 719-539-3563 FAX: 719-539-3565	CASE NO.: D0082021CR00078 DIV.: 2 Courtroom:

D-20 PEOPLE'S RESPONSE TO DEFENDANT'S MOTION FOR PROSECUTION TO INVENTORY DISCOVERY

COME NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District, hereby submits this "D-20 People's Response to Defendant's Motion for Prosecution to Inventory Discovery Produced After June 2, 2021." The defense took upon themselves the responsibility for inventorying discovery at the August 6, 2021 hearing. The defense now seeks to have the Court order the People to take on that responsibility on the authority that it would be "more fair and cost efficient." The Court's authority concerning discovery is limited by the Constitutions, the rules, and the statutes. *People v Kilgore*, 2020 CO 6 ¶15. The People have sought to comply with the duty to "make available" or "disclose" the required materials. Crim.P. Rule 16(I). There is no Constitutional, statutory, or rule authority for this Court to Order the People to perform and provide an inventory of discovery. The People respectfully request that this Motion be denied.

1. On August 6, 2021, the Court requested and the defense consented to an inventory of discovery that has been provided by the People. D-20 ¶2. The defense now has

abandoned and broke their promise to this Court and insists instead that the Court should enter an Order requiring the People to undertake such a task. Without citing any authority whatsoever, the defense alleges the Court has authority to enter the Order because it is "more fair and cost efficient." D-20 ¶4.

2. The obligations of the prosecution to the defendant for discovery is required and limited by the Constitutions of the United States and Colorado, statutes, court rules, and the Rules of Professional Conduct. "Thus, under Colorado law, district courts have 'no freestanding authority to grant criminal discovery beyond what is authorized by the Constitution, the rules, or by statute.'" *People v Kilgore*, 2020 CO 6 ¶ 15, 455 P.3d 746, 749 (holding no authority to order exchange of exhibits because it was not required by Rule 16) citing *People in Interest of E.G.*, 2016 CO 19 ¶ 13, 368 P.3d 946, 950 (holding a trial court has no authority to grant a defendant access to a private residence that was a crime scene). "(C)olorado remains one of the few states that has never deviated from the traditional doctrine holding that courts lack power to grant discovery outside of those statutes or rules." *E.G.*, ¶ 12, citing *Walker v People*, 126 Colo. 135, 248 P.2d 287, 302 (1952). *Brady v Maryland*, 373 U.S. 83 (1963), and its progeny require disclosure of materials that are exculpatory, impeaching or mitigating.[1]

3. Crim.P. Rule 16 requires the prosecution to "make available" or "disclose" certain enumerated materials. Rule 16(I)(a)(1). Rule 16(I) concerning the People's responsibilities require the disclosure of substantive material. The People have complied with the requirement that discovery has been "made available" or "disclosed" to the defense. The Rule does not address providing an "inventory" of such materials.

4. The defense does not have the right to compel the state to search out and gather evidence in his behalf. *People v Moore*, 701 P.2d 1249, 1254 (Colo. App. 1985). The People having complied with discovery, it is the defendant's responsibility to independently conduct his own investigation. *People v Spykstra*, 234 P.3d 662, 672 (Colo. 2010) (re Crim.P. 17(c)). It is the defense's responsibility to review and structure the discovery as they see fit: it is not the responsibility of the People.

For the foregoing reasons, the People respectfully request that this Court deny the Motion.

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[1] The Brady requirements are echoed in Crim.P. 16(I)(a)(2) and Rules of Professional Conduct, Rule 3.8(d).

Respectfully Submitted:

_____/s/_____
Daniel W Edwards, Reg. 7938
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via Colorado Courts' e-filing on all parties who appear of record and have entered their appearance.

By: /s/ Daniel W Edwards

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: October 4, 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 TO SCHEDULE AN ADDITIONAL WEEK FOR TRIAL
[D-25]

Mr. Barry Morphew, by and through undersigned counsel, hereby requests that this Court amend its trial scheduling order to schedule a total of 5 weeks for trial.

1. Previously, in open court, this Court stated that four weeks would be set aside for trial of this case.

2. Since that time, in reviewing discovery and pertinent case law regarding admission of Mr. Morphew's statements, it has become apparent that time will be needed for the jurors to view in their entirety the videotape(s) of Mr. Morphew's police interrogation.

3. It is counsel's understanding that the prosecution will seek to introduce significant portions, if not all, of the interrogation statements.

4. It is anticipated that Mr. Morphew will introduce the remainder of the statements.

5. The prosecution cannot be heard to argue that any rule against "self-serving hearsay" will make the remainder of the interrogation video(s) inadmissible. On September 13, 2021, the Colorado Court of Appeals ruled that there is no per se rule prohibiting the admission of self-serving hearsay by a criminal defendant. *People v. Vanderpauye*, 2021 COA 121, 2021 WL 4096977. "We hold that neither the Colorado Rules of Evidence nor the precedents of the Colorado Supreme Court establish a per se rule prohibiting the admission of self-serving hearsay by a criminal defendant." *Id.*, at ¶ 3.

6. After appropriate redactions, it is estimated that there will still be approximately thirty (30) hours of interrogation audio and video(s) to be presented in open court.

7. Previous estimates of the time required for trial were based upon jury selection and witness testimony. Counsel had not included the time for the playing of the videotapes.

WHEREFORE, Mr. Morphew respectfully requests the Court add an additional week commencing on April 25, 2021 onto the time reserved for trial, to five weeks for the trial of this case.

Respectfully submitted this 4th day of October, 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 4th day of October, 2021, a true and correct copy of the foregoing **MOTION TO SCHEDULE AN ADDITIONAL WEEK FOR TRIAL [D-25]** 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: October 4, 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

RESPONSE TO DA'S MOTION FOR MR. MORPHEW TO VACATE HIS RESIDENCE FOR TIME CERTAIN
[D-26]

Mr. Morphew, by and through counsel, requests that the Court deny the People's Motion Requesting Mr. Morphew Vacate the Cushman Premises for Time Certain, for the following reasons:

1. The People do not just "believe" Mr. Morphew is a resident at the Cushman residence, they know exactly where he is living. The People have called the Cushmans and encouraged them to kick Mr. Morphew out of their home, and the People have installed a game camera (without a warrant) not far from the residence to monitor the movements of Mr. Morphew and all residents on Puma Path.

2. The People's misstatements to the Court are important, as the Ritters have been great friends and supporters of Barry Morphew and the Morphew family from May 10, 2020 until September 2021. The timing of the Ritters' newfound fear of Mr. Morphew is concerning. Their fear and claimed need for protection against Mr. Morphew appear to be only after the People contacted the Ritter's about the case against Barry Morphew. The Ritters are essential witnesses in the case, and the prosecution has yet to produce any of these conversations regarding the Ritters newfound fear of Mr. Morphew through discovery.

3. The People are also making it appear that Mr. Morphew's presence has caused the neighbors to flee their homes. Upon information and belief, many of the residents in the area including the residents at 10957 Puma Path (the Wexlers) and the Ritters use their homes (as do the Cushmans) as vacation homes, and/or live elsewhere in the winter. For example, the Wexlers were out of town when Ms. Darke allegedly retrieved a package from their doorstep that had been mis-delivered to their home.

4. It is true that the neighborhood association has been in the process of installing an electronic security gate on Puma Path Road leading to the Cushmans' two properties and the Wexler's property at 10957 Puma Path Drive.

5. But there are two important pieces to this. First, the Ritters do not live on Puma Path Road. They live on Monarch River Drive. The Ritters' road directly connects to Highway 50 (not seen in the DA's Motion Exhibit). *See* Exhibit A. The Ritters do not use Puma Path, unless they want to use the trash dumpster that the Cushmans arranged and pay for near their property.

6. There is a gate at Monarch River Drive which precludes non-residents from driving on the Ritters' road.

7. Mr. Morphew is residing in the Cushmans' cottage - approximately 100 yards away from Cushman's main residence. The Ritters cannot see the Cushmans' cottage from their property, and cannot access it as there is a forest and a rushing river between the two homes. They only way the Ritters can get to the Cushmans' properties is by going through their electronic/solar gate on Monarch Drive, driving to Highway 50, driving West on Highway 50 (away from Salida), taking a left onto CCR 225, then taking a left onto Puma Path Drive.

8. Second, the installation of the gates came about after Suzanne disappeared and at the behest of Mr. Morphew. Mr. Morphew was concerned about the safety of his daughters and

talked to the Ritters (the President of the HOA), to get the neighbors to install gates on their respective roads.

9. The Puma Path gate is currently installed; it just does not have power attached to it, so it is rope tied to the pole. The Cushmans' understanding is that a solar panel will be installed to operate the gate. The gate is approximately 100 yards from the Cushman cottage, and upon information and belief the gate is not visible from the Cushman cottage.

10. With the understanding that the Ritters are claiming that they will be personally installing the solar wiring, Mr. Morphew will be sure to abide by the protection order.

11. The People allege that the Ritters will not be able to "safely install" the gate with Mr. Morphew living near gate. This absurd statement provides insight into what the People are telling witnesses in the case. Mr. Morphew presents no danger whatsoever to these neighbors or anyone else.

12. The prosecution is playing fast-and-loose with the facts in an attempt to inflame the Court (and perhaps the neighbors) against Mr. Morphew. This Court should reject this attempt. "A lawyer who is not candid with the court gravely affects the effective administration of justice." *People v. Trogani*, 203 P.3d 643, 652 (Colo. O.P.D.J. 2008). "A lawyer shall not engage in conduct prejudicial to the administration of justice," Colo. RPC 8.4(d), and that includes a duty of candor to the court. Colo. RPC 3.3 (Candor Toward the Tribunal).

13. To assuage any unnecessary concerns, Mr. Morphew will not walk to the Puma Path gate over the next few days, and if he is in a vehicle going to Highway 50, he will not communicate with them in any form.

14. The Cushmans' two sons (aged 50) are two professionals. They are in town and currently staying at the Cushman residence. The Ritters have the Cushmans' house number and are free to contact the Cushman sons if they want to advise them that they are at the gate, or have left the gate area for the day.

WHEREFORE, Mr. Morphew respectfully requests the Court reject the prosecution's attempts to have this Court micro-manage Mr. Morphew's conditions of release and deny its Motion Requesting the Defendant Vacate the Cushman Premises for Time Certain.

Respectfully submitted this 4th day of October, 2021.

EYTAN NIELSEN LLC

s/ Iris Eytan
Iris Eytan, #29505

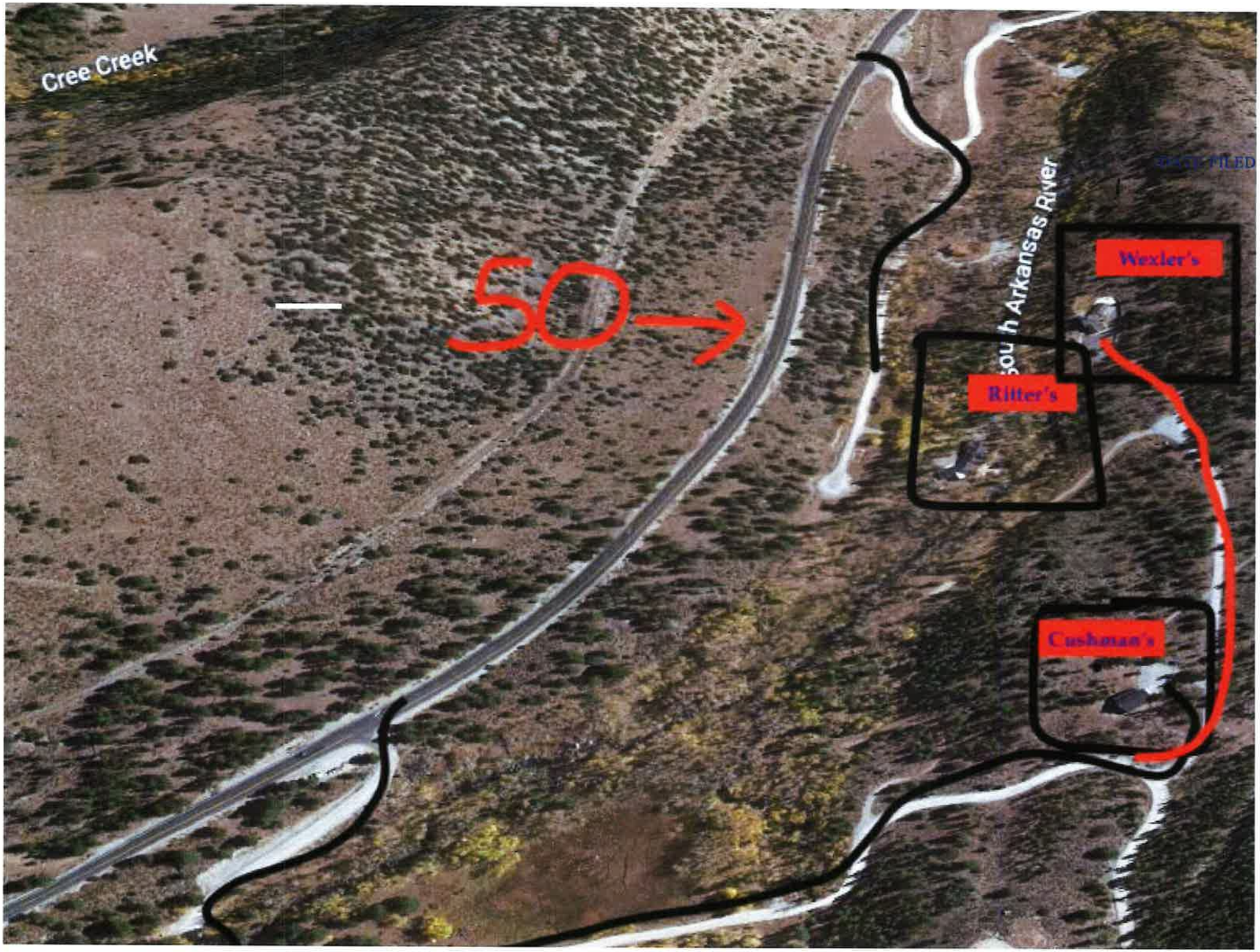
s/ Dru Nielsen
Dru Nielsen, #28775

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2021, a true and correct copy of the foregoing **RESPONSE TO DA'S MOTION FOR MR. MORPHEW TO VACATE HIS RESIDENCE [D-26]** 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


Cree Creek
50
South Arkansas River
Wexler's
Ritter's
Cushman's

Combined Court, Chaffee County P.O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: October 5, 2021 9:20 AM
THE PEOPLE OF THE STATE OF COLORADO vs. BARRY LEE MORPHEW, Defendant	▲ COURT USE ONLY ▲
LINDA STANLEY, DISTRICT ATTORNEY Attorney Reg. # 45298 104 Crestone Avenue P.O. Box 699 Salida, CO 81201 Phone: 719-539-3563 FAX: 719-539-3565	CASE NO.: D0082021CR00078 DIV.: 2 Courtroom:

P-25

PEOPLE'S MOTION TO SET A DEADLINE FOR DEFENSE DISCLOSURES AND FOR A PRETRIAL READINESS CONFERENCE

COME NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District, hereby submits this motion to set a deadline for defense disclosures and for a pretrial readiness conference. To promote accuracy and efficiency in the search for the truth, to prevent trial by ambush, and to minimize gamesmanship, Crim.P. 16 requires not only discovery from the People to the defense, but discovery from the defense to the People as well. To further justice, the People move for an Order requiring the defense to provide disclosure no less than 70 days before trial. Further, a pretrial readiness conference would be set more than 35 days before trial. The disclosure deadlines for both parties would be extended if a continuance of the trial is sought and granted by either party.

1. The essential need for an effective justice system is that discovery be provided not only from the prosecution to the defense, but from the defense to the prosecution as well. In *United States v Nixon*, 418 U.S. 683, 709 (1974), the Court held:

> "We have elected to employ an adversary system of criminal justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution *or by the defense*." (emphasis added).

2. Thus, it is Constitutional to set deadlines for defense disclosures. It has been over 45 years since the Colorado Supreme Court held that "trial by ambush, or the old fox-and-hounds approach to litigation, does not promote accuracy or efficiency in the search for truth." See *People by and through VanMeveren v District Court*, 187 Colo. 333, 337, 531 P.2d 626, 628 (1975), citing *Dennis v. United States*, 384 U.S. 855 (1966)

3. "The discovery rules in criminal proceedings are designed to further the truth-seeking process. By permitting the prosecution and defense to obtain relevant information prior to trial, the rules also promote fairness in the criminal process by reducing the risk of trial by ambush." *Lanari v. People*, 827 P.2d 495, 499 (Colo.1992); see *People v. District Court*, 793 P.2d 163, 168 (Colo.1990) (holding that the purpose of discovery is to advance the search for truth).

4. Crim.P. Rule 16(II)(c) requires that the defense disclose the names and addresses of all witnesses the defense intends to call at trial. Subsection (c) of the discovery rule seeks to prevent prejudice to the prosecution that may occur when the defendant endorses witnesses on the eve of trial.

5. The court, by the rule, is required to set a deadline for the disclosures. In a felony trial, defense disclosures shall not be less than 35 days before trial. "In no case

shall such disclosure be less than 35 days before trial for a felony trial . . . ." Crim.P. 16(II)(c).

6. This case involves disclosures by the People of thousands of pages of discovery and endorsement of many, many witnesses. It is conceivable that the defense will call many witnesses as well. Based upon the complexity of discovery provided by the People and possibly by the defense, it is only proper that this Court order the defense to provide discovery more than a mere 35 days before trial. In order to advance the search for truth in this case, the People request that the defense be required to provide those required items no later than 70 days before trial.

7. Defense counsel in other case have waited until the People have totally complied with the 35-day requirement before seeking a continuance of trial – and thus delaying the defense's required disclosures until 35-days before the next trial setting. The People request that the Court set a hearing in advance of 35 days before the trial date at which time the parties would be required to announce whether they are prepared to proceed on the date set for trial. If a continuance is sought and granted, no matter the party requesting it, the discovery deadline for both parties would extended.

The People respectfully request an Order from this Court that requires defense disclosures at a minimum of 70 days before trial and the setting of a pretrial readiness conference at least 35 days before trial.

Respectfully Submitted
LINDA STANDLEY, District Attorney

_____/s/_____
Daniel W Edwards 7938
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via Colorado Courts' e-filing on all parties who appear of record and have entered their appearance.

By: /s/ Daniel W Edwards

COUNTY COURT, CHAFFEE COUNTY COLORADO 142 Crestone Avenue P.O. Box 279 Salida, CO 81201	DATE FILED: October 7, 2021 11:21 AM FILED IN COMBINED COURTS OCT - 7 2021 CHAFFEE COUNTY, COLORADO ▲ **COURT USE ONLY** ▲
Plaintiff: People of State of Colorado **Defendant:** Barry Morphew	**Case Number:** 21CR78 Div.: Ctrm.:

RECEIPT FOR EXHIBITS

I, _____ from the office of DA, are now in the receipt of the Original Exhibits from the Chaffee Combined Court as listed below: From Preliminary Hearing 8/9 8/10 8/23 8/24

2-23 25-26 28-56 59-94 96-97

Date: 10-7-2021 _____

Signature of Person Picking Up

_____

Clerk

On, _____(date) such Original Exhibits listed above have been returned to the Chaffee Combined Court by _____.

_____

Signature of Person Dropping Off

_____

Clerk

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: October 8, 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

DEFENSE PROPOSED PRE-TRIAL CASE MANAGEMENT ORDER [D-27]

To facilitate efficiency and fairness in what will be a lengthy trial, the defense submits this proposed Pre-Trial Case Management Order [D-27].

I. PRETRIAL MOTIONS

1. Given the voluminous discovery and numerous warrants, the defense requests that the Court extend the motion filing deadline. The defense proposes that all motions (except motions in limine and motions directed to expert testimony as addressed in the subsequent sections) shall be filed no later than **December 7, 2021**. The nonmoving party shall have **30 days** thereafter to respond to any motion. Motions *in limine* shall be filed no later than **28 days before trial,** and the nonmoving party shall have **14 days** to respond thereto. Any motion filed after these deadlines must

state with particularity the reasons that the motion was not timely filed. **The defense suggests the court set aside five (5) days of motions hearings in late January or early February 2022.**

II. EXPERT DISCLOSURES

1. Mr. Morphew moves for the court to order the prosecution to disclose its experts, disclosing the underlying facts or data supporting the opinion, as well as providing a written summary of the testimony describing the witness' testimony (if no report has been prepared by the expert). Rule 16 I(a)(d)(3). This includes the production of the experts' 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*, 388 P.3d 868 (Colo. 2017). Expert testimony is that which goes beyond the realm of common experience an ordinary person would have. *Id.* at 874.

2. As the burden of proof rests with the prosecution, the defense requests that the prosecution disclose its experts sufficiently in advance of any defense requirement to disclose its potential experts, and then requiring the prosecution to produce any supplemental endorsements after the defense disclosures and prior to any motions hearings regarding expert testimony.

3. The defense suggests the following timeframes for production:

a. **Prosecution shall file its expert disclosures** pursuant to Crim. P. 16 I(a)(d)(3) and all other materials ordered by the court related to that expert as soon as practicable, but in no event **no later than January 14, 2022.**
b. **Defense file its expert disclosures** all materials ordered by the court related to that expert by **February 4, 2022**.
c. **Prosecution** shall produce any **supplemental expert disclosures by February 11, 2022.**
d. **If any party intends to objec**t to the admissibility of any expert testimony under C.R.E. 702 (*e.g., People v. Shreck*, 22 P.3d 68 (Colo. 2001)), or for any other reason, such objection must be addressed in a C.R.E. 104 motion **filed by February 25, 2022**. If such a motion is filed, the court will decide whether a hearing is required. However, **the defense suggests that the Court set aside two hearing dates in March 2022** for that purpose.

III. LIST OF WITNESSES AND EXHIBITS AND EVIDENCE PROSECUTION INTENDS TO ADMIT AT TRIAL

1. Crim.P. 16 (I)(a)(1)(VII) requires the prosecution to provide a written list of the names and addresses of the witnesses then known to the district attorney whom he or she intends to call to trial no later than 21 days after the defendant's first appearance. Although the rule is mandatory, the following timeframes will ensure the prosecution will comply with its obligations and ensure the defense is prepared for trial. As such, Mr. Morphew requests the court order the following deadlines:

a. **The State shall submit its written witness list as mandated by Crim. P. Rule 16 by November 9, 2021.**

b. The State shall submit updates to the witness list when the prosecution knows it may call additional witnesses.

c. The State shall produce a good faith witness list of witnesses it intends to call no later than **10 days before commencement of trial** with the name and, if known, the address and telephone number of each individual. Given the anticipated number of witnesses, the prosecution shall list the witnesses in the order they are intended to be called.

d. The State shall provide the Defense with an exhibit list no later than **10 days before commencement of trial**, this shall include a list of all physical or documentary evidence that the State intends to introduce at trial. All such evidence and exhibits shall also be made available to the defense for inspection and copying, including any proposed excerpted or highlighted exhibits. The exhibits shall be designated by numbers and each exhibit shall be pre-marked with these designations prior to trial.

IV. JURY QUESTIONNAIRES

1. The parties shall exchange their proposed juror questionnaires by April 1, 2022. The parties shall file the stipulated and non-stipulated portions of the proposed questionnaires with the Court in an editable format by April 8, 2022.

2. The defense suggests the Court consider **setting aside two (2) days in April 2022** for any argument and or rulings on trial procedures, jury selection issues, and motions-in-limine.

V. JURY INSTRUCTIONS

1. Proposed jury instructions and verdict forms should be prepared in accordance with Crim. P.30 and submitted to the court and opposing counsel **on the morning of day one of trial.** Proposed jury instructions and verdict forms should also be **e-filed the day before trial commences** and should be produced in an editable format (i.e. .doc or .docx). The court's staff may have time to modify the jury instructions during trial, but counsel should be prepared to make any modifications or additions to jury instructions before the conclusion of trial.

WHEREFORE, Mr. Morphew respectfully submits this proposed Pre-Trial Management Order [D-27].

Respectfully submitted this 8th day of October, 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 8th day of October, 2021, a true and correct copy of the foregoing **DEFENSE PROPOSED CASE PRE-TRIAL MANAGEMENT ORDER [D-27]** was served via CCE as follows:

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

s/ Iris Eytan
Iris Eytan

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: October 11, 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

SUPPLEMENTAL MOTION FOR A COURT ORDER THAT THE PROSECUTION MUST PROPERLY IDENTIFY DISCOVERY
[D-20(a)]

Mr. Barry Morphew, by and through undersigned counsel, hereby requests that this Court order the prosecution to provide discovery in a searchable, meaningful manner prior to the November 9, 2021 hearing. Specifically, Mr. Morphew requests that the prosecution:

1. Produce an Index of the Court Ordered Discovery;[1] the Index shall include the date of the relevant event (e.g., the interview date, the date the report was generated, the date of the lab test, etc.), and the date it was produced to the defense.

2. Create a separate folder, or within the Index, identify the information that is provided in response to this Court's orders,[2] i.e., information that is material to the prosecution or which tends to negate Mr. Morphew's guilt to the offenses charged or would tend to reduce his punishment or would lead to such evidence. *See* this Court's Orders on D-10 and D-13.

FACTUAL BACKGROUND

The prosecutor has provided discovery in a format that is effectively unsearchable, making it impossible to identify information in any meaningful manner.

1. Because the prosecution does not report on, introduce, or include exculpatory material information when it seeks the Court's blessings to their affidavits, search warrants or motions, the defense has to either believe that all relevant evidence is being highlighted by the prosecution, or must spend hours scouring the discovery for exculpatory evidence. In this case, the defense team spent months scouring and uncovering exculpatory information not presented by the prosecution, and exculpatory information that is wholly inconsistent with the prosecution's assertions. For example, the defense uncovered the following late-produced evidence for the court's consideration: September 2020 email to the prosecution from the Holiday Inn Hotel Manager asserting that the hotel room above the indoor pool always smells like chlorine due to the location above the pool; Deputy Himschoot's May 2020 statement that the dart gun seized at Mr. Morphew's house was inoperable and had not worked in a long time; and the late production of the CODIS matches and investigation.

2. No amount of diligence, much less reasonable diligence, can accomplish the task of meaningfully reviewing the discovery provided. It would take scores of attorneys, working *around-the-clock* for several *years* to complete the job.

[1] When Mr. Morphew uses the phrase "court's orders", he is referencing this Court's oral orders of May 27, 2021 and this Court's written order of June 3, 2021. This Court's orders were its rulings on Motions D-10 and D-13. In addition, this court entered an oral order on July 22, 2021 when ruling on Motion D-16.

[2] See footnote 1.

LEGAL ANALYSIS

1. Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, the government is required to disclose evidence that is both favorable to an accused and material to either guilt or punishment. This requirement includes the disclosure of evidence that could potentially impeach or discredit a government witness. *Giglio v. United States*, 405 U.S. 150, 154 (1972). *Brady* obligations include disclosure of information that may lead to the possible discovery of other evidence. *People v. Bueno*, 2018 CO 4, ¶44 n. 12, 409 P.3d 320, 329 n. 12, citing *Wood v. Bartholomew*, 516 U.S. 1, 6 (1995) (analyzing whether the undisclosed evidence "might have led [defendant's] counsel to conduct additional discovery that might have led to some additional evidence that could have been utilized").2

2. While the Colorado Supreme Court has not yet confronted this issue squarely, other courts have recognized that there may be circumstances where the prosecutor's duty to disclose exculpatory evidence "may be unfulfilled by disclosing too much," without any meaningful index or identification of *Brady* material within the morass of disclosed material. *United States v. Salyer*, 271 F.R.D. 148, 155 (E.D. Cal. 2010)("*Salyer I*"), *opinion adhered to on reconsideration,* No. S-10-0061 LKK (GGH), 2010 WL 3036444 (Aug. 2, 2010))("*Salyer II*"). At some point, "'disclosure,' in order to be meaningful, requires 'identification' as well." *United States v. Cutting*, No. 14-cr-00139-SI-1, 2017 WL 132403, *8 (N.D. Calif. Jan. 12, 2017)(*quoting Salyer I,* at 155). In *Cutting,* the Court "order[ed] the government to identify by Bates number the *Brady/Giglio* material in the discovery." *Cutting*, at 10. *See id.,* at 11.

3. In *Salyer*, the Government amassed "a massive amount of documentary information." The electronic information consisted of multiple gigabytes, pages numbering into the millions. A vast amount of acquired documentary material was useless, if even reviewed at all. "It remains unclear precisely how much of the acquired information in this case has actually been reviewed by the government." *Salyer II*, at *3. The government claimed it satisfied *Brady* because "every document acquired or seized by the government has been made available to the defense." *Ibid.* The court disagreed: "If the government argues that it is now 'impossible' to comply with the burden of reviewing evidence for identification purposes, the government more or less made its own bed in this matter by making it impossible." *Ibid.*, at *4-5. The Court concluded, as should this court:

> Obviously, under the government's reasoning, the defense burden is even more impossible. What the government is actually arguing, in effect and for practical purposes, is—that logistics in the "big documents" case render *Brady/Giglio* a dead letter no matter who has the burden of ascertaining the information. There is no authority to support this evisceration of constitutional rights just because the case has voluminous documentation.

Ibid. The prosecution is using the same tactics here – eviscerating Mr. Morphew's constitutional rights by burying pertinent information like a needle in haystack.

4. "[T]he defense need not search for a needle in a haystack" *People v. Bueno*, 2018 CO 4, ¶ 40, 409 P.3d 320, 328, *citing Banks v. Dretke*, 540 U.S. 668 (2004). "'A rule thus declaring 'prosecutor may hide, defendant must seek,' the [*Banks*] Court further reasoned, 'is not tenable in a system constitutionally bound to accord defendants due process.'" *Bueno*, at ¶ 40, quoting *Banks*, at 696. In Bueno, among other rulings, the Colorado Supreme Court found that Brady was not satisfied simply by permitting the defense to comb through voluminous files, i.e. 9600 separate incident reports. *Bueno*, at ¶ 41.[3]

5. The prosecution's approach has been resoundingly condemned in large document cases. In *United States vs. Hsia*, 24 F. Supp. 2d 14, 29 (D.D.C. 1998), *reversed in part on other grounds*, 176 F.3d 517 (D.C. Cir. 1999), the Court faced a situation not unlike this case. The Government claimed it satisfied its *Brady* obligations by providing the defendant access to over 600,000 documents. The Court disagreed: "The government cannot meet its *Brady* obligations by providing [the defendant] with access to 600,000 documents and then claiming that she should have been able to find the exculpatory information in the haystack." *See also People v. Wagstaffe*, 120 A.D.3d 1361, 1363, 1365, 992 N.Y.S.2d 340, 343-344 (2014) (finding a *Brady* violation where the prosecutor delivered the subject documents interspersed throughout a voluminous amount of other documentation, without specifically identifying the documents at issue at the time of the delivery; "the burying of the subject documents by the prosecution during the exchange of discovery" constituted a material *Brady* violation).

6. This is the approach taken by courts facing discovery tactics such as that used in Mr. Morphew's case. It is well settled that courts have the discretion to order the Prosecution to

[3] It is worth noting that Dan Edwards, who is assisting the local prosecutors in this case, was also assisting the prosecutors who were found to have violated *Brady* in the *Bueno* case.

identify *Brady* material for the defense as a matter of case management and fairness and that courts may order the prosecution to provide indexes and other search tools in big document cases.

7. In *United States v. Blankenship*, No. 14-cr-00244, 2015 WL 3687864, at *7 (S.D. W. Va. June 12, 2015), the U.S. District Court required the government to identify *Brady* material contained in the millions of pages of discovery it had provided and held: "the United States does not comply with the requirement of *Brady* by merely including all known *Brady* material within the four million plus pages of discovery." In words that should guide this Court, the federal district court stated that obvious: that the Government, "having determined the nature of the charges and having knowledge of the evidence and witnesses it intends to produce to prove those charges, is in a far better position than the Defendant to know what evidence might be exculpatory and/or impeachment material under *Brady*." *Ibid.* The *Blankenship* Court ruled that the Government doesn't satisfy its *Brady* obligation "merely including all known Brady material within the four million plus pages of discovery." In *United States v. Saffarinia*, 424 F. Supp. 3d 46, 90–91 (D.D.C. 2020), the district court exercised its discretion "in the interest of fundamental fairness and as a matter of case management, to grant Mr. Saffarinia's request that the government specifically identify any known *Brady* material contained in its previously-disclosed production of approximately 3.5 million pages of documents."

8. Good or bad faith of the prosecutor is irrelevant. Suppression by the prosecution of exculpatory evidence violates *Brady* "irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. "'[I]f there is a non-disclosure occasioned by the massiveness of the document production to which the defense is given access, it should make no difference whether such was accompanied by good or bad faith—a non-disclosure is a non-disclosure no matter what the motivation.'" *Saffarinia*, *supra,* 424 F. Supp. 3d at 90 (*quoting Salyer II*, at *7.) Under *Brady*, the lawyers representing the People "must inform themselves about everything that is known in all of the archives and all of the data banks of all of the agencies collecting information which could assist in the construction of alternative scenarios to that which [the Government lawyers] intend to prove at trial." *United States v. McVeigh,* 954 F. Supp. 1441, 1450 (D. Colo. 1997). The U.S. Supreme Court's commands are unequivocal: "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). Regardless of whether the failure to disclose is in good faith or bad faith, "the prosecution's responsibility for failing to disclose

known, favorable evidence rising to a material level of importance is inescapable." *Id.*, at 437-438, citing *Brady,* 373 U.S. at 87.

9. This Court should reject the prosecution's anticipated argument that it is the job of defense counsel, not the prosecutor, to identify pertinent information in the morass of discovery provided. The government has the affirmative duty to resolve doubtful questions in favor of disclosure. "[T]he prosecutor's role transcends that of an adversary: he [or she] 'is the representative not of an ordinary party to a controversy, but of a sovereignty.... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done.' " *United States v. Bagley*, 473 U.S. at 675 n. 6 (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

10. This Court should also reject any notion that the Government's *Brady* obligations are diminished in a "big documents case" because simply because the Government alleges that complying with *Brady* would be "burdensome." That is not a proper objection. *Brady* is not subject to a cost benefit analysis. *McVeigh, supra*, at 1450. Shifting the burden to defense counsel is not permitted by *Brady*, which puts the obligation squarely upon the prosecutor. *Ibid.*

CONCLUSION

Mr. Morphew makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, Crim. P. 16, RPC 3.8. Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

WHEREFORE, Mr. Morphew respectfully requests the Court order and direct the prosecution to provide discovery in a usable form, index the discovery, and identify the Crim. P. 16 I(a)(2) discovery prior to November 9, 2021 and to meaningfully comply with its constitutional obligations as set forth within.

Respectfully submitted this 11th day of October, 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 11th day of October, 2021, a true and correct copy of the foregoing **SUPPLEMENTAL MOTION FOR A COURT ORDER THAT THE PROSECUTION MUST PROPERLY IDENTIFY DISCOVERY [D-20(a)]** 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: October 11, 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

DEFENSE RESPONSE TO PROSECUTION MOTION TO MODIFY BOND CONDITIONS [P-24]

Mr. Barry Morphew, by and through undersigned counsel, RESPONDS to the Prosecution's Motion to Modify Bond Conditions (P-24) and in objection states:

FACTUAL BACKGROUND

1. The prosecution has submitted a report from Julie Stransky, Executive Director of Intervention, Inc., stating that she is "unable to pickup a GPS or cell signal in the area of the Defendant's home."

2. Ms. Stransky does not give specifics, for example, how she defines "the area."

3. The prosecution does not address this Report in its motion.

4. Rather, in its motion, the prosecution asks that the Court order Mr. Morphew to not live at his current residence because residents at a different home in the neighborhood are "uncomfortable" and "possibly" contributes to them "not want[ ] to continue to reside at their home any longer."

5. The prosecution claims that the home of the neighbors who are "uncomfortable" is "nearby." In fact, the only way to reach the neighbor's home is by car, getting on State Highway 50, having access to the community's security gate. And the neighbor's home is over a mile away.

6. The prosecution fails to mention that Government agents approached neighbors and told them things and that this contact is a substantial reason that the neighbors mentioned in the prosecution's motion are "uncomfortable."

7. The prosecution does not allege that there is any actual danger, risk, or reason for the neighbors to have any concerns whatsoever about Mr. Morphew.

8. The prosecution does not allege that Mr. Morphew presents a flight risk or that he will not appear in court or follow this Court's orders.

9. The prosecution suggests that this Court order Mr. Morphew to live in a different residence. The prosecution fails to disclose to this Court that the residence is already occupied by someone else.

10. The prosecution does not inform this Court that the Chaffee County Sheriff's Office checks on Mr. Morphew regularly.

11. The prosecution does not inform this Court that a game camera has been set up near Mr. Morphew's residence to purportedly monitor Mr. Morphew's movements.

12. There is no guarantee that if Mr. Morphew is forced to live somewhere else, that a cell signal would be reached at that location, or that members of the prosecution team wouldn't simply go talk to his new neighbors and make them feel "uncomfortable" also.

LEGAL ANALYSIS

13. The Colorado State Constitutional protects all persons, even those accused of murder: "All persons shall be bailable by sufficient sureties pending disposition of charges," even those accused of murder unless "proof is evident or presumption is great." Colo. Const. art. II, § 19 (1)(a). This Court has already ruled that the prosecution's proof does not satisfy the exception, meaning that Mr. Morphew has a constitutionally-protected right to release on bail pending trial.

14. Conditions of release must be focused on the twin goals of "reasonably ensur[ing] the appearance of the person as required" and "protect[ing] the safety of any person or the community." §16-4-103 (3)(a). This Court is required by law to presume that Mr. Morphew is entitled to the least-restrictive conditions that will ensure these twin goals. §16-4-103 (4)(a).[1] For this Court to impose a "condition of conduct not mandated by statute," any such condition "must be tailored to address a specific concern." *Ibid.* *See also* §16-4-105 (8) ("the court may impose any additional conditions on the conduct of the person released that will assist in obtaining the appearance of the person in court and the safety of any person or persons and the community.").

15. Courts are not supposed to simply impose conditions that sound good but have no practical value in meeting the twin goals. Indeed, time and again, the General Assembly has expressed a preference for evidence-based decision making when it comes to conditions of release. See e.g., §16-4-105 (8) (i) (authorizing imposition of additional "supervision techniques shown by research to increase court appearance and public safety rates for persons released on bond").

16. The prosecution makes no allegation whatsoever that the current conditions of release are not sufficient to both ensure both Mr. Morphew's appearance in court and the safety of the community.

17. With respect to the prosecution's vague allegation that it would be "difficult, if not impossible" for Mr. Morphew to comply with his conditions of release, this is not a specific enough allegation to warrant the order requested. If the prosecutor is suggesting that the requested order can be justified simply because a neighbor does "not want to have ANY contact" with Mr. Morphew (all-caps in the prosecutor's motion). "Contact" in the context of a protective order or condition of release has a well-defined meaning: To constitute a violation of a "no contact" provision of a protection order, "the defendant's conduct must involve physical touching or some element of direct or indirect communication, or attempted communication, with the victim. Consequently, *incidental contact that occurs unintentionally and is unavoidable* is not sufficient, by itself, to establish a violation." *People v. Serra*, 2015 COA 130, ¶ 34, 361 P.3d 1122, 1131 (emphasis added).

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[1] "When the type of bond and conditions of release are determined by the court, the court shall: (a) Presume that all persons in custody are eligible for release on bond with the appropriate and least-restrictive conditions consistent with provisions in paragraph (a) of subsection (3) of this section...."

18. In *People v. Serra*, the Court of Appeals reversed the conviction for violation of bond conditions and violation of a protection order because the court had given a jury instruction that "allowed the jury to speculate on what conduct could constitute contact without any meaningful limits on the concept." *Id.*, ¶ 54, 361 P.3d at 1131. The Court of Appeals observed that, "[a]lthough common usage of the term ["contact"] encompasses a broad spectrum of conduct, we do not believe that the General Assembly contemplated that conduct that does not constitute contact under the plain and ordinary meaning of the term, although possibly contact in some other sense of the word, would be sufficient to establish a violation of a bond condition or protection order. Rather, the term must be construed to effectuate the legislative purpose in proscribing contact in specific situations." *Ibid.*

19. For example, if a defendant out on bond was driving down State Highway 50 and a protected person were driving the other way on State Highway 50, that might be "ANY contact" (capitalization in the prosecution's motion), but it would be "*incidental contact that occurs unintentionally and is unavoidable*" that would not be sufficient, by itself, to establish a violation of a bail bond condition. *People v. Serra*, at ¶ 34, 361 P.3d 1122. In *Serra*, the defendant happened to go into a clothing store at the time the protected person was starting to leave; the protected person stayed in the store, reportedly hiding in the men's department, which was the department of the store that *Serra* approached to shop in. It was not clear whether he ever saw her and even if he did, the contact was incidental, unintentional, and/or unavoidable. Therefore, in addition to the jury instruction error, the COA found the evidence was insufficient for conviction of violation of a bail bond condition or violation of a protection order.

20. With respect to the allegation that Intervention, Inc, does not have sufficient reception for its device to work "in the area of the Defendant's home" – notwithstanding the lack of specificity – this Court's first move cannot be to force Mr. Morphew to move somewhere else. First, absent an address-specific coverage map for Intervention, Inc. in Chaffee County, there is no basis to conclude that forcing Mr. Morphew to move would provide the type of reception that Intervention, Inc. seems to need. Upon information and belief, there would not be sufficient reception in many areas of Chaffee County. Is the Court supposed to pull out a coverage map and go about ordering defendants to live only in certain areas of the County? This hardly seems to comply with the "least restrictive alternative" statutory commandment.

21. More to the point, this Court must consider whether continuous GPS monitoring of Mr. Morphew's every move – even inside his residence – is necessary to either ensure his presence in court or protect the community, or whether it is the least restrictive alternative. The prosecution makes absolutely no argument on this point and this Court has no facts before it to justify the type of bizarre order the prosecution seeks.[2]

22. The same is true of the prosecution's suggestion that because a neighbor is "uncomfortable" with where Mr. Morphew lives, this Court can or should order Mr. Morphew to live somewhere else. Put simply, this is not a public safety concern.

23. Not only does the prosecution offer no logical reason for its requests, it offers no caselaw, statutory authority, or constitutional authority.

CONCLUSION

Mr. Morphew makes this motion based upon his constitutional right to bail under Article II, Section 19 of the Colorado Constitution, the statutes listed above, the due process, right to counsel, equal protection, equal access to and administration of justice, and right to defend liberty clauses of the federal and Colorado Constitutions, including but not limited to the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 19, 20, 23, 25, and 28 of the Colorado Constitution. Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

WHEREFORE, Mr. Morphew respectfully objects to the prosecution's request that this Court order him to find a place to live where others won't be uncomfortable and where Intervention, Inc. has GPS reception.

[2] The deficiencies in the prosecution's argument extend even to the form of the order requested: to satisfy the prosecution, this Court would have to order that Mr. Morphew find a place to live where Intervention, Inc. has GPS reception and where others wouldn't feel "uncomfortable." Such an order would be unprecedented, of course.

Respectfully submitted this 11th day of October, 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 11th day of October, 2021, a true and correct copy of the foregoing **DEFENSE RESPONSE TO PROSECUTION MOTION TO MODIFY BOND CONDITIONS [P-24]** 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: October 11, 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 WITHHELD DISCOVERY AND FOR SANCTIONS, INCLUDING A CONTEMPT CITATION, FOR VIOLATIONS OF THIS COURT'S ORDER, CRIM. P. 16 AND *BRADY V. MARYLAND,* 373 U.S. 83 (1963)[D-28]

The Defendant, Barry Morphew, by and through undersigned counsel, hereby requests the DA be ordered to immediately produce the following withheld and previously ordered Crim. P. 16 discovery (*See* June 3, 2021 written orders pertaining to Motions D-10 and D-13, and July 22, 2021 verbal orders) and moves for sanctions for the prosecution's pattern of discovery violations. As Grounds:

1. The Defense does not know what the prosecution has it its possession and has not produced. However, based upon the prosecution's filings and testimony of the prosecution team, it is apparent the prosecution has made representations to the Court

regarding witness testimony, or elicited witness testimony while withholding the following discovery in violation of Court Orders and Crim P. 16:

a. All reports, recordings, and statements by all witnesses (includes law enforcements statements and the witnesses/individuals' statements whom the prosecution has sought protection orders for, and/or whom the prosecutors represented to this Court alleged fear for their safety or expressed "discomfort" about Mr. Morphew's existence or presence).

b. The version of the Affidavit for Arrest Warrant which CBI Agent Joe Cahill testified that he reviewed. (*See* Attached Exhibit A, PH Transcript: August 23, 2021, Page 55-56).

c. Investigation and analysis regarding the unknown DNA and CODIS matches.

d. Communications regarding the game camera positioned near Barry Morphew's residence, and copies of the surveillance footage.

2. All of the above material is clearly discoverable under *Brady v. Maryland*, 373 U.S. 83, 87 (1963), Crim. P. Rule 16, and orders entered by this Court. See *People v. Bueno*, 2018 CO 4, ¶28, 409 P.3d 320 (Colo. 2018). In *Bueno*, the Colorado Supreme Court affirmed the trial court's order granting a new trial to David Bueno because "the prosecution did not satisfy its Rule 16 obligations and that it instead suppressed this evidence for *Brady* purposes." *Id.*, ¶42.[1]

3. The CODIS match material, the unknown DNA, and the draft affidavit were available and known to the prosecution and its witnesses before the preliminary hearing. However, this exculpatory material was not produced prior to the hearing or relevant witness testimony.

3. The prosecution cannot be allowed to pick and choose when it discloses exculpatory and material evidence. The prosecution was obligated to provide this information prior to the preliminary hearing. "We conclude that if evidence is material to the outcome of the trial, then the prosecutor must disclose that evidence in advance of the next critical stage of the proceeding—whether the evidence would particularly affect

[1] "Under Crim. P. 16(I)(a)(2), prosecutors in Colorado are obligated to disclose *Brady* material to an accused...." *People v. Bueno*, 2013 COA 151, ¶ 11, 411 P.3d 62, 67, *affirmed* 2018 CO 4, 409 P.3d 320 (*quoting People v. Dist. Court*, 790 P.2d 332, 338 (Colo. 1990))).

that hearing or not." *In re Attorney C*, 47 P.3d 1167, 1171 (Colo. 2002). *Id.*, at 1167, 1174.

4. In Attorney C., the Colorado Supreme Court explained that Brady materiality is not bound by the focus of the upcoming procedure, rather, the court asks if the evidence is material in the context of the entire case – at a pretrial hearing or at trial. If the answer is yes, then the prosecutor must turn over that information right away, before the next critical stage in the proceedings:

> the materiality standard relates not to a specific proceeding in the criminal case, which could be a hearing on a bond or a hearing on the admissibility of certain evidence unrelated to the withheld evidence, but rather to the broader criminal proceeding itself. Material evidence, in this sense, is any evidence tending to be outcome determinative at trial. However, materiality itself is not time-sensitive, and does not come and go depending upon the nature of the next hearing. We do not accept the argument that the evidence need only be disclosed in advance of a proceeding at which that evidence would be specifically determinative. Rather, we conclude that if evidence is material to the outcome of the trial, then the prosecutor must disclose that evidence in advance of the next critical stage of the proceeding—whether the evidence would particularly affect that hearing or not.

In re Attorney C., 47 P.3d at 1171. Materiality does not change depending upon whether the case is in a pre-preliminary hearing, pre-trial, or trial posture. Materiality doesn't "come and go depending upon the nature of the next hearing." *Id.*

5. This Court has already found the prosecution to be in violation of Crim. P. 16 and continues to violate Crim. P. 16. Courts regularly rule across the jurisdiction that sanctions will be imposed for discovery violations and have broad discretion to fashion an appropriate remedy. *See e.g. People v. Jeffery Smith*, Fremont County No. 19CR53, Order Granting in Part, Defense Motions 31 and 32 (filed Sept. 12, 2021)(reducing the level of charge from a class 1 felony to a class 2 felony as a sanction for the prosecutor's discovery violations). *See People v. Lee*, 18 P.3d 192 (Colo. 2001). In *People v. Alberico*, 817 P.2d 573 (Colo. App. 1991), the Court ruled that dismissal was an appropriate sanction when witness statements which can impeach the alleged victim were not produced in a timely manner. This Court is empowered to severely sanction parties to preserve the dignity and integrity of proceedings. *See, e.g., People v. Auld*, 815 P.2d 956, 958 (Colo. App. 1991) (upholding trial court's dismissal of charges because the prosecution initiated a sham

prosecution and presented perjured testimony to the court); *People v. Dist. Ct.*, 656 P.2d 1287, 1293 (Colo. 1983) (trial court did not abuse discretion in reducing charge from first-degree murder to second-degree murder as reasonable remedy for loss of material evidence as result of due process violation). As the Supreme Court stated in People v. Dist. Ct.,

> 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 destroying material evidence. In furtherance of these purposes, the trial court has broad discretion in fashioning an appropriate remedy to protect a defendant's rights where a due process violation has denied him access to evidence.

Id. The exclusion of evidence or even complete dismissal can be the proper remedies to assure compliance with discovery orders. *People v. Lee*, 18 P.3d 192 (Colo. 2001) (citing to *People v. Thurman*, 787 P.2d 646, 655 (Colo. 1990). This Court possesses the inherent power to strike charges. "The inherent powers which courts possess consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence, and integrity, and to make its lawful actions effective." *Peña v. District Court*, 681 P.2d 953, 956 (Colo. 1984) (internal quotation marks omitted) (emphasis added).

6. In the *Lee* case, the Supreme Court allowed that a deterrent sanction is appropriate where there is what the court calls "willful misconduct or a pattern of neglect demonstrating a need for modification of a party's discovery practices." *Lee*, 18 P.3d at 196. Here, the prosecution has shown not only willful misconduct and a pattern of neglect demonstrating a need for modification of the Government's discovery practices, but also deception, perjury, and unethical conduct.

7. In addition to cases the defense has cited authorizing sanctions, these courts have also ruled that *Brady* and its progeny authorize this Court to take corrective action including sanctions prior to trial. *See e.g. Warembourg v. Excel Elec., Inc.*, 471 P.3d 1213 (district court didn't err in giving an adverse inference jury instruction as a sanction for the party's spoliation of evidence); *United States v. Yepa*, No. 15–2018, 608 F. App'x 672 (10th Cir. June 17, 2015) (district court did not abuse its discretion by excluding the prosecutor's evidence as a sanction for the government's late disclosure rather than granting a continuance, even though the prosecution's oversight was merely negligent); *United States v. Red Elk*, 185 F. App'x 716, 725 (10th Cir. 2006) (district court did not abuse its discretion in suppressing portions of the testimony of the prosecution expert as a sanction for discovery violations). In *United*

States v. Wicker, the Tenth Circuit affirmed the district court's decision to exclude testimony and a lab report due to late disclosure. 848 F.2d at 1060, 1062 (10th Cir. 1988). This Court has the inherent power to control and supervise its own proceedings. When bad faith is involved, for example, exclusion of evidence is proper regardless of prejudice or the feasibility of a continuance. *United States v. Russell*, 109 F.3d 1503, 1512 (10th Cir. 1997), *citing Taylor v. Illinois*, 484 U.S. 400, 413 (1988) (excluding defense witness in a case suggesting bad faith and willfulness notwithstanding the availability of less drastic sanctions).

8. Strong action by this Court is necessary because the prosecution continues to violate its orders and Crim. P. 16, and this Court can have no confidence that the prosecution has cured all of the violations and or has taken corrective action to ensure that it will comply with Crim. P. 16 in the future.

9. Mr. Morphew makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, Crim. P. 16, and RPC 3.8. Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

WHEREFORE, Mr. Morphew moves that the Court Order the production of the discovery identified above immediately and to sanction the prosecution for its pattern of violations of Crim. P. 16, *Brady v. Maryland*, *In re Attorney C.*, and prior Court Orders.

Respectfully submitted this 11th day of October, 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 11th day of October, 2021, a true and correct copy of the foregoing **[D-28]** was served via CCE as follows:

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

s/ Iris Eytan
Iris Eytan

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: October 11, 2021
THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78
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DEFENSE RESPONSE TO PROSECUTION MOTION TO SET A DEADLINE FOR DEFENSE DISCLOSURES AND FOR A PRETRIAL READINESS CONFERENCE [P-25]

Mr. Barry Morphew, by and through undersigned counsel, RESPONDS to the Prosecution's Motion to Set a Deadline for Defense Disclosures and for a Pretrial Readiness Conference (P-25) and in objection states:

1. The prosecution's motion is premature. Until the defense receives the discovery in a coherent, usable format, the defense cannot adequately prepare for this case and certainly is not in a position to hire experts, determine trial witnesses, and disclose them.

2. The prosecution stands in violation of its own obligations under the Rules of Criminal Procedure, the due process clause of the state and federal constitutions, and the Rules of Professional Conduct. Until the prosecution complies with its obligations, it is impossible for the defense to even begin the process of preparing for trial, determining what would be introduced and determining what, if any, experts would be necessary for the defense.

3. The prosecution cites no authority for its requested relief. The prosecution cites four cases, none of which have anything to do with the timing of defense discovery obligations:

- In *United States v Nixon*, 418 U.S. 683, 709 (1974), the U.S. Supreme Court ruled that a president's claim of executive privilege and the need to protect state secrets was outweighed by the special prosecutor's demonstrated, specific need for the tape recordings and documents in the prosecution of President Nixon's henchmen in the Watergate break in. This case has nothing to do with pretrial discovery deadlines.

- *People by and through VanMeveren v District Court*, 187 Colo. 333, 337, 531 P.2d 626, 628 (1975) has nothing to do with defense discovery deadlines. It involved a defense challenge to the constitutionality of the discovery rules. This case isn't about timing – it's about whether defense discovery obligations violate constitutional provisions such as the Fifth Amendment's protection of the right to remain silent. The Supreme Court upheld Rule 16 in large part because it contains the limiting language, "Subject to constitutional limitations...." The Supreme Court observed that "the commentary to the rule recognizes that limitless prosecutorial discovery may well be unconstitutional." *Id.*, at 341, 531 P.2d at 630–31.

  VanMeveren involved two men's cases. In one of them (Bellmann), the district court was reversed because it had "ordered discovery without considering the effect of its decision on the constitutional rights of the defendant." *Ibid.* In the other (VanMeveren), to the extent the trial court had made a blanket ruling that all defense discovery obligations were unconstitutional, the order was reversed and the case remanded for further proceedings.

  Thus, *VanMeveren* says nothing about the timing of defense disclosures. It does not discuss or authorize the Order the prosecution seeks in this case.

- *Lanari v. People*, 827 P.2d 495 (Colo.1992) has nothing to do with defense discovery deadlines. It involves a dispute about whether the prosecutor could impeach the defendant with statements he made to a psychiatrist. The Court ruled that the prosecution's use for impeachment purposes of the challenged statements did not violate the defendant's right to effective assistance of counsel, or his constitutionally protected privileges against self-incrimination.

- *People v. District Court*, 793 P.2d 163 (Colo.1990) has nothing to do with defense discovery deadlines. The prosecutor was found to have violated the discovery rules and the question was whether the district court could exclude one of his witnesses as a sanction.

4. The prosecutor offers no justification for its request, saying only that 1) the prosecution has provided thousands of pages of discovery, and 2) the defense might seek a continuance in the future. (P-25, p. 3). These are not reasons for the requested relief. In fact, the volume of discovery provided would tend to support a request for additional, not less, time for the defense to make disclosures.

5. The prosecutor does not cite any case holding that, particularly at this early stage of the proceedings, these two claimed reasons warrant the relief they speak. Nor does the prosecutor show a body of examples of courts having taken this step.

6. Even when Colorado had a death penalty, defense disclosures were not due under those rules until 35 days before trial. See e.g., Crim. P. Rule 32.1 (d)(7)(A) (2019). No doubt, death penalty cases present a level of unparalleled complexity. The prosecutors here have certainly made no case for why they need more time than the Supreme Court rules provide even for death penalty cases.

7. The number of days before trial that the prosecutor proposes as the deadline – 70 days before trial – does not appear to have been based on anything. The prosecutor appears to have picked this number out of thin air. Adopting this arbitrary, made-up number would surely be an abuse of discretion.

8. The prosecution's general statements about the importance of truth ignore the fact that the Colorado Supreme Court, by adopting the 30-day-before-trial rule for defense disclosures, has already performed the balancing. In *People v. Kilgore*, 2020 CO 6, 455 P.3d 746, the Colorado Supreme Court reversed a discovery order entered by La Plata Judge Carlson in a pending felony sex assault case. The trial judge had ordered the parties to exchange exhibits thirty days before trial. The defense filed a Rule 21 petition, which was granted. The Colorado Supreme Court ruled that a district court may not rely on its case-management discretion to order disclosures that exceed the discovery authorized by Rules of Criminal Procedure. By ordering parties to exchange exhibits 30 days before trial, the district court, at a minimum, potentially infringed on defendant's right to due process. Further, the district court was devoid of authority

to require the defendant to disclose his exhibits to the prosecution before trial. There is one obvious difference here, because of course this court does have authority to enter timing orders if warranted by the specific facts of a specific case. However, at this point, the prosecution offers no such specifics and simply asks that this Court trump the determinations set forth in Rule 16 in the name of a "search for truth." That platitude wasn't good enough for the Supreme Court in *People v. Kilgore*, and it isn't good enough in this Court.

9. The words of the Supreme Court should be heeded by this Court:

> District courts enjoy ample discretion in managing cases before trial, but that discretion is not unfettered. In criminal cases, a district court may not rely on its case-management discretion to order disclosures that exceed the discovery authorized by Rule 16 of the Colorado Rules of Criminal Procedure. Nor may a court require disclosures that infringe on an accused's constitutional rights.

People v. Kilgore, ¶1.

10. The prosecution's request that this Court cut corners on defense preparation time in furtherance of a "search for truth" completely ignores the fact that in a criminal case, the rules, the federal constitution, and the state constitution are all designed to protect the citizen from the overwhelming power of the Government. The citizen, not the prosecution, has due process rights under Brady and progeny. The citizen, not the prosecution, has the right to confront witnesses face to face. The citizen, not the prosecution, has the right to defend his liberty. The prosecution, not the citizen, has the burden of proof. This prosecution is not, as the prosecution implies, a mere "search for truth" designed to help the prosecution prove its case at trial.

11. The Rules of Criminal Procedure follow these same principles. The prosecutor must make its disclosures "not later than 21 days after the defendant's first appearance at the time of or following the filing of charges." Crim. P. Rule 16 (I)(b)(1). If later, it must be "as soon as practicable." Crim. P. Rule 16 (I)(b)(3). Even the defense disclosure provisions of Rule 16 are conditioned on "constitutional limitations." Not so the prosecution's obligations.

12. The prosecution's request for a "pretrial readiness conference" to be 35 days before trial is equally unsupported. It is not clear what legal significance the prosecution attaches to a "pretrial readiness conference." See *People v. Taylor,* 2020 COA 79, 467 P.3d 1272 (A pretrial readiness conference was not "trial date," within meaning of statute allowing for extension of speedy trial period for missing "trial date."). Courts seem to hold them from within

a few days to two weeks out from trial. See, e.g., *Taylor, supra* (conference held the day before the scheduled trial); *People v. Nunez*, 2021 CO 31, 486 P.3d 1149 (conference held on April 30th with trial scheduled for May 4th); *People v. Zimmer*, 491 P.3d 5542021 COA 40, 491 P.3d 554 (in a case involving competency to stand trial issues, one conference was held about a month out from trial and another two weeks later). *Cf. also Kallis v. Spinozzi*, 2014 COA 164, 342 P.3d 607 (in a civil malpractice action, a conference was held March 29th for a trial set to proceed on April 15th).

13. It is far too early in the proceedings at this point to know what could or could not be accomplished at such a conference set so far out from trial. If this court wishes to hold such a conference, it should determine the date for that event based on developments in the case. This Court should reject the prosecution's arbitrary proposed schedule at this time.

14. The Defense requests the Court utilize D-27 Defense Proposed Pre-Trial Case Management Order as a guide to impose deadlines to ensure that the parties will be prepared to proceed to trial as it is currently set.

CONCLUSION

Mr. Morphew makes this Response and Objection, as he does all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, Crim. P. 16, RPC 3.8 and other authorities cited. Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

WHEREFORE, Mr. Morphew requests that this Court deny the prosecution's motion and to utilize D-27 Defense Proposed Pre-Trial Case Management Order as a guide to impose deadlines to ensure the parties will be prepared to proceed to trial as it is currently set.

Respectfully submitted this 11th day of October, 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 11th day of October, 2021, a true and correct copy of the foregoing **[Response and Objection to Motion P-25]** was served via CCE as follows:

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

s/ Iris Eytan
Iris Eytan

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 CRESTONE AVENUE, P.O. BOX 279, SALIDA, CO, 81201	DATE FILED: October 12, 2021 3:35 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 October 13, 2021

The Court has set a brief hearing on October 13, 2021 at 3:30. At the time the hearing was set, there were several matters that required the Court's attention. Since that time, additional filings have been received. The purpose of this Order is to delineate what issues will be addressed at the hearing on October 13, 2021.

Issues to be addressed:

1. Defense Motion For Prosecution to Inventory Discovery
2. Prosecution Motion to Modify Bond Conditions
3. Defense Motion for Return of Truck and Driver's License
4. Prosecution Request for Deadline for Defense Disclosures
5. Defense Request for Pretrial Case Management Order
6. Defense Request to Increase Trial Length

The Court will also address the issue of pleadings being filed in a manner that does not allow public access to the pleadings.

The hearing is not eligible for expanded media coverage. Therefore the hearing will not be broadcast to the general public via WebEx.

The hearing will be broadcast via a locked WebEx feed. Attorneys, Victims (as defined under the V.R.A.), court personnel and witnesses may appear via WebEx.

Public seating will be available but limited due to COVID distancing requirements. Seating will be first come, first served.

Issue Date: 10/12/2021

Pat Murphy

PATRICK W MURPHY
District Court Judge

Combined Court, Chaffee County P.O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: October 12, 2021
THE PEOPLE OF THE STATE OF COLORADO vs. BARRY LEE MORPHEW, Defendant	▲ COURT USE ONLY ▲
LINDA STANLEY, DISTRICT ATTORNEY Attorney Reg. # 45298 104 Crestone Avenue P.O. Box 699 Salida, CO 81201 Phone: 719-539-3563 FAX: 719-539-3565	CASE NO.: D0082021CR00078 DIV.: 2 Courtroom:
D-27 PEOPLE'S RESPONSE TO PROPOSED PRETRIAL MANAGEMENT ORDER	

COME NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District, hereby submits this D-27 People's Response to Defense's Proposed Pretrial Case Management Order. The People state their positions and alternate suggestions for the Court's consideration.

1. PRETRIAL MOTIONS.
   a. The People have no objection to the proposed pretrial motion filing of 12/2/21
   b. The People suggest 35 days for Responses (defense suggested 37)
   c. The People suggest 14 days for Replies (no defense suggestion)

2. MOTIONS IN LIMINE
   a. The People suggest 70 days before trial (defense suggested 28 days)
   b. The People suggest 35 days for Responses (defense suggested 14 days)
   c. The People suggest 14 days for Replies (no defense suggestion)

3. EXPERT DISCLOSURES
   a. For Prosecution expert disclosures, the People suggest 70 days before trial (defense suggested 1/14/22).
   b. For Defense expert disclosures, the People suggest 49 days before trial (defense suggested 2/4/22).
   c. For supplemental Prosecution disclosures, the People suggest 14 days after defense disclosure, 35 days before trial.
   d. For pretrial expert motions, the People suggest 35 days before trial

4. WITNESS LIST
   a. The People recognize the continuing duty to disclose witnesses as they are developed. It is unclear why the defense is requesting a date of 11/9/21. If this is intended as a cutoff of witness endorsements, the People object.
   b. The People suggest that good-faith-witness lists be provided by both the defense and the People 14 days before trial.

5. EXHIBIT LISTS
   The People object to an Order requiring the exchange of witness lists. See, People v Kilgore, 2020 CO 6, 455 P.3d 746 (holding the district trial court has no authority to order witness lists)

6. JUROR QUESTIONNAIRES
   The People have no objection to the defense's proposed deadlines.

7. JURY INSTRUCTIONS
   The People have no objection to the defense's proposal for a preliminary packet of jury instructions to be provided the first morning of trial.

Respectfully Submitted

Daniel W Edwards #7938
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via Colorado Courts' e-filing on all parties who appear of record and have entered their appearance.

By: /s/ Daniel W Edwards

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: October 12, 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 ORDER TO SHOW CAUSE WHY THE CHAFFEE COUNTY SHERIFF SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S D-8 ORDER AND REQUEST FOR DISCOVERY ORDER
[D-29]

Mr. Barry Morphew, by and through undersigned counsel, requests that this Court issue an Order to Show Cause why the Chaffee County Sheriff should not be held in contempt for deliberate violation of this Court's Order re Motion to Limit Pretrial Publicity, filed June 3, 2021. Mr. Morphew also requests an order that the prosecution and law enforcement preserve any and all information about the misconduct and that they disclose said information to the defense and the court. In support, Mr. Morphew states as follows:

1. On June 3, 2021, this Court ordered:

> **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 restrictions as set forth above for attorneys in Section I regarding extrajudicial statements.

In the cross-referenced section of this Court's Order – "Section I regarding extrajudicial statements" – this court prohibits statements including but not limited to those concerning:

> (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;
>
> ....
>
> (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.

2. Defense investigation has revealed the law enforcement personnel have violated this Order by discussing with witness(es) in this case non-public and untrue information related to the investigation of this case, including alleged results of examinations and tests and the nature of physical evidence in the case.

3. The violation of these orders is willful.

4. This Court possesses the inherent power to enforce its order and ensure that Mr. Morphew can receive a fair trial free from witness tampering by law enforcement or prosecutorial agents. "The inherent powers which courts possess consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence, and integrity, and to make its lawful actions effective." *Peña v. District Court*, 681 P.2d 953, 956 (Colo. 1984) (internal quotation marks omitted) (emphasis added).

5. Mr. Morphew's request for preservation and disclosure of information related to these violations and witness tampering is based on the U.S. Constitution and the Colorado Constitution. Due process guarantees that a criminal defendant will be treated with "that fundamental fairness essential to the very concept of justice." *United States v. Valenzuela–Bernal*, 458 U.S. 858, 872 (1982) (*quoting Lisbena v. California*, 314 U.S. 219, 236 (1941)). *See People v. Bueno,* 2018 CO 4, ¶28, 409 P.3d 320 (Colo. 2018). In *Bueno*, the Colorado Supreme Court affirmed the trial court's order granting a new trial to David Bueno because "the prosecution did not satisfy its Rule 16 obligations and that it instead suppressed this evidence for *Brady* purposes." Id., ¶42.9.

6. The state has a constitutional duty to preserve evidence that "might be expected to play a significant role in the suspect's defense." *California v. Trombetta*, 467 U.S. 479, 488 (1984). *See also Arizona v. Youngblood, supra; People v. Wyman*, 788 P.2d 1278 (Colo.1990). To satisfy this standard, the evidence must: (1) possess an exculpatory value that was apparent before the evidence was destroyed; and (2) be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.

7. All of these principles apply here. Evidence that law enforcement personnel tampered with witnesses by telling them untrue things about the evidence in this case, including scientific evidence, will be highly pertinent in cross-examination of both the officers and the tampered-with witness(es). The requirements of *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny includes the disclosure of evidence that could potentially impeach or discredit a government witness. *Giglio v. United States*, 405 U.S. 150, 154 (1972). Mr. Morphew has every right to confront and cross-examine the witnesses on this subject.

8. This Court must order that ALL contacts between law enforcement and witnesses in this case be documented and disclosed to the defense, in order for this Court to assess the scope of the damage done by law enforcement's violation of the D-8 Order, in order for this Court to fashion an appropriate remedy for this misconduct, and in order for the defense to be able to introduce this material at trial.

CONCLUSION

Mr. Morphew makes this Motion, as he does all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the

due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, Crim. P. 16, RPC 3.8 and other authorities cited. Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

WHEREFORE, Mr. Morphew requests that this Court Order a Show Cause why the Chaffee County Sheriff should not be held in contempt for violation of this Court's D-8 order and request for discovery order to produce all reports and recordings of contacts and interviews with all witnesses in this case.

Respectfully submitted this 12th day of October, 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 12th day of October, 2021, a true and correct copy of the foregoing **MOTION ORDER TO SHOW CAUSE WHY THE CHAFFEE COUNTY SHERIFF SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S D-8 ORDER AND REQUEST FOR DISCOVERY ORDER [D-29]** 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: October 12, 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

SUPPLEMENT TO MOTION TO RETURN TRUCK AND DRIVERS LICENSE [D-23(a)]

Mr. Barry Morphew, by and through undersigned counsel, supplements his Motion for Return of his Truck and Driver's License and in support of that request states:

1. On September 20, 2021, Mr. Morphew filed a motion requesting that this Court order the return of his driver's license and 2020 Ford 350 Truck. ("the truck").

2. The prosecution has not acknowledged or responded to that Motion.

3. On May 6, 2021, this Court issued a search warrant, authorizing search of the truck for certain identified items. The warrant authorized seizure of those listed items "if found."

4. The search warrant did not purport to authorize indefinite seizure of the vehicle.

5. On May 7, 2021, the truck was searched and an Items Seized Report was completed. Eleven items are listed. Mr. Morphew is not seeking return of those items at this time. The truck itself is not listed on the Items Seized Report.

6. On May 13, 2021, the Inventory, including the attached Items Seized Report, was filed with this Court.

7. Mr. Morphew has demanded return of his truck and the prosecution and law enforcement have refused to comply, without giving any reason.

8. The retention of Mr. Morphew's truck by the Chaffee County Sheriff constitutes a seizure without a warrant in violation of the Fourth Amendment to the U.S. Constitution and Article II, Section 7 of the Colorado Constitution. Further, the unauthorized retention constitutions a taking without due process of law in violation of the Fourteenth Amendment to the U.S. Constitution and Article II, Sections 3 and 25 of the Colorado Constitution.

9. This Court has jurisdiction to order that his truck be returned to him. Crim. P. 41(e) provides the mechanism for the return of property following an unlawful search and seizure: "A person aggrieved by an unlawful search and seizure may move the district court for the county where the property was seized for the return of the property .... If the motion is granted the property shall be restored unless otherwise subject to lawful detention ...." Colo. Crim. P. Rule 41 (e). *See discussion, Strepka v. People*, 2021 CO 58, ¶ 12, 489 P.3d 1227, 1230.

9. Rule 41 (e) of the Colorado Rules of Criminal Procedure provides for return of property as follows:

> (e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the county where the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:
>
> (1) The property was illegally seized without warrant; or
>
> (2) The warrant is insufficient on its face; or
>
> (3) The property seized is not that described in the warrant; or
>
> (4) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or
>
> (5) The warrant was illegally executed.

> The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention.

Crim. P. Rule 41 (e).

10. Almost all of the grounds for return of property listed in the rule apply here. There has never been an order for seizure of the truck and certainly no order after the search was completed in early May, 2021. Rule 41(e)(1). The property seized – the truck -- is not the object of the search described in the warrant, rather, only the contents are to be searched or seized. Rule 41(e)(3).

11. No law permits indefinite retention of Mr. Morphew's truck without the prosecution seeking an order from the court and the court providing notice and an opportunity to be heard. *Compare People v. Thomas*, 2021 COA 23, ¶ 27, 488 P.3d 1191, 1199 ("particularized evidence of a likelihood of vandalism or theft [is required] to justify impounding the vehicle for safekeeping").[1]

12. Once a defendant has made a *prima facie* showing of ownership of the seized property, *see People v. Buggs,* 631 P.2d 1200 (Colo.App.1981), the burden shifts to the prosecution to show that the property was the fruit of an illegal activity, *see People v. Stewart,* 38 Colo. App. 6, 553 P.2d 74 (1976), *aff'd on other grounds,* 193 Colo. 399, 566 P.2d 1069 (1977), or to show a connection between the seized property and criminal activity. *See People v. Bustam,* 641 P.2d 968 (Colo.1982).

13. There is no probable cause for retention of the truck, and more importantly, the prosecution has not made any allegation of probable cause to a court, and no court has found probable cause to seize and retain the truck. Rule 41(e)(4). See *People v. Brethauer*, 1971, 482

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[1] The rule that property cannot be seized without notice and an opportunity to be heard is near-universal. "It is, however, well established that a court has inherent power to direct the return of property seized from a criminal defendant if that property is no longer needed as evidence against him." *Coon v. State*, 585 So. 2d 1079, 1080 (Fla. Dist. Ct. App. 1991). Accord *Sanchez v. State*, 88 So. 3d 389 (Fla. Dist. Ct. App. 2012) (court must return property to pretrial defendant if the seized property belongs to the defendant and it is not actually being withheld for prosecutorial purposes in his upcoming trial).

P.2d 369, 174 Colo. 29 (1971)(The existence of probable cause for issuance of a search warrant must be determined by a member of the judiciary rather than by a law enforcement officer.); *People v. Moreno*, 491 P.2d 575, 176 Colo. 488 (1971)(same).

14. The burden is on the prosecution to establish probable cause that the truck itself is "contraband," *People v. Rautenkranz*, 641 P.2d 317, 319 (Colo. App. 1982) "is of an incriminating character." *People v. Franklin*, 640 P.2d 226, 230 n. 5 (Colo. 1982). This the prosecutor cannot do even if he were to try. The truck is not contraband, nor is it evidence of a crime.

15. All of the above arguments apply to Mr. Morphew's Driver's License as well.

CONCLUSION

Mr. Morphew makes this Response and Objection, as he does all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, Crim. P. 16, RPC 3.8 and other authorities cited. Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

WHEREFORE, Mr. Morphew requests that this Court issue an order returning Mr. Morphew's driver's license and his 2020 Ford 350 King Ranch truck.

Respectfully submitted this 12th day of October, 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 12th day of October, 2021, a true and correct copy of the foregoing **SUPPLEMENT TO MOTION TO RETURN TRUCK AND DRIVERS LICENSE [D-23(a)]** was served via CCE as follows:

Mr. Jeffrey Lindsey
Mr. Daniel Edwards
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: October 13, 2021 9:45 AM
THE PEOPLE OF THE STATE OF COLORADO v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲ Case Number: 21CR78 Courtroom/Division: 2
Sean Connelly, #33600 Connelly Law LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (303) 302-7849 Email: sean@sconnellylaw.com *CO-COUNSEL FOR DEFENDANT BARRY LEE MORPHEW*	

NOTICE OF WITHDRAWAL OF SEAN CONNELLY

Attorney Sean Connelly hereby withdraws, for now, as co-counsel for Defendant Barry Morphew. The original entry was to represent a presumptively innocent individual at the "proof evident" hearing and any resulting appeal. That purpose now concluded, and no appeal being necessary, co-counsel now withdraws.

Respectfully submitted this 13th day of October, 2021.

CONNELLY LAW LLC

s/ Sean Connelly
Sean Connelly, #33600

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October 2021, this Notice a was served via Colorado Courts E-filing on all counsel entered herein.

s/ Sean Connelly

Combined Court, Chaffee County P.O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: October 13, 2021
THE PEOPLE OF THE STATE OF COLORADO vs. BARRY LEE MORPHEW, Defendant	▲ COURT USE ONLY ▲
LINDA STANLEY, DISTRICT ATTORNEY Attorney Reg. # 45298 104 Crestone Avenue P.O. Box 699 Salida, CO 81201 Phone: 719-539-3563 FAX: 719-539-3565	CASE NO.: D0082021CR00078 DIV.: 2 Courtroom:

D-20(a) PEOPLE'S RESPONSE TO MOTION FOR A COURT ORDER THAT THE PROSECUTION MUST PROPERLY IDENTIFY DISCOVERY

COME NOW, the People of the State of Colorado, by and through LINDA STANLEY, District Attorney for the Eleventh Judicial District, hereby submits this D-20(a) Response that the Prosecution Must Properly Identify Discovery. First, as the Colorado Supreme Court has made clear, the authority of a court under Crim.P. Rule 16 is strictly limited to the terms of the Rule. *People v Kilgore*, 2020 CO 6 ¶ 15, 455 P.3d 746. Second, the defense misconstrues the holding in *People v Bueno*, 2018 CO 4, 409 P.3d 320, 328.

I. NO AUTHORITY TO ORDER PROSECUTION TO IDENTIFY DISCOVERY FOR THE DEFENSE

1. "Colorado remains one of the few states that has never deviated from the traditional doctrine holding that courts lack power to grant discovery outside of (the) statutes or rules. Thus, under Colorado Law, district courts have 'no

freestanding authority to grant criminal discovery beyond what is authorized by the Constitution, the rules, or by statute." *Kilgore*, 2020 CO 6 ¶15, 455 P.3d 746 (holding no authority to require pretrial listing of exhibits) citing *People in the Interest of E.G.*, 2016 CO 19 ¶11, 12, 368 P.3d 946, 949, 950 (holding no authority to grant access to private home to defense). There is no authority in the Colorado Constitution, statutes, or rules that permit the Court to order what the defense has requested – and the defense cites none.

2. Thus, no matter how many cases the defense chooses to quote from other jurisdictions, those authorities simply do not apply in Colorado.

II. BUENO IS MISCONSTRUED

3. In one place, the defense takes a single sentence our of the *Bueno* decision to make it appear that the opinion supports their position: it does not. *Bueno* concerns the deliberate suppression of evidence from the defense.

4. Bueno, a murder prosecution, concerned the discovery of a note that had been discovered the day after the murder in question that stated "killers Beuno and Alehanro 1st and 2nd teirs." *Id.* at ¶ 5, 409 P.3d at 322. A second not was found that detailed threats by a white supremacist group to kill "men of the white race who refuse to accept their proud race" and identified two inmates who would carry out the executions. *Id.*

5. The notes could have provided alternate suspects for the murder. In fact, the defense spent a lot of time looking for evidence related to that theory. *Id.* ¶10, 409 P.3d at 323. The defense searched through 9,600 incident reports. *Id.*

6. Two months after the conviction, the co-defendant provided Bueno's attorneys with the two notes. *Id.* ¶12, 409 P.3d at 323-24. Based upon this evidence, over one year later the defendant moved for a new trial based upon newly discovered evidence. *Id.* ¶14.

7. The prosecution admitted that the two notes were in the prosecution's "working file." *Id.* ¶13, 409 P.3d at 327. The trial court made findings that the prosecution failed to provide copies of the reports. *Id.* ¶37. The trial court made findings that the prosecution had made a conscious decision not to include the notes in discovery. *Id.*

8. In another instance, the defense again misconstrues the holding in Bueno. The quotation from the Bueno case, D-26a ¶4, is of no support to the motion. The quotation is not even a correct statement of what the opinion states. Compare what the defense claims the case holds versus what the case actually held:

> ¶40 The Court affirmed the notion that the defense need not search for a needle in a haystack in *Banks v. Dretke*, 540 U.S. 668, 124 S.Ct. 1256, 157 L.Ed.2d 1166 (2004). There, it rejected the State's argument that the defendant would have discovered evidence to impeach a key witness had he sought to interview the witness or the investigating officers. *Id.* at 695–96, 124 S.Ct. 1256. That argument, the Court reasoned, was inconsistent with its Brady precedent, which "lend[s] no support to the notion that defendants must scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed." *Id.* at 695, 124 S.Ct. 1256. "A rule thus declaring 'prosecutor may hide, defendant must seek,' " the Court further reasoned, "is not tenable in a system constitutionally bound to accord defendants due process." *Id.* at 696, 124 S.Ct. 1256.

   The quotation is clear: the defendant does not have to search out discovery, it is the prosecutions responsibility to provide it. The case in no manner can be construed to support the defendant's position.

9. The defense further contends that somehow the prosecution's responsibility to provide discovery as a Constitutional and rule matter requires that discovery be "properly identified." There is no such requirement.

The People respectfully request that the defense's motion D-20(a) be denied.

Respectfully Submitted:

_____/s/_____
Daniel W Edwards #7938
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via Colorado Courts' e-filing on all parties who appear of record and have entered their appearance.

By: /s/ Daniel W Edwards

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: October 13, 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

REPLY TO PROSECUTION RESPONSE -- SUPPLEMENTAL MOTION FOR A COURT ORDER THAT THE PROSECUTION MUST PROPERLY IDENTIFY DISCOVERY [D-20(b)]

Mr. Barry Morphew, by and through undersigned counsel, hereby REPLIES to the prosecution's response to Mr. Morphew's Motion D-20(a), requesting that this Court order the prosecution to provide discovery in a searchable, meaningful manner prior to the November 9, 2021 hearing. In response, Mr. Morphew states:

1. The prosecution does not dispute the fact that it has provided discovery without bates numbers on the majority of the paper documents. The discovery has missing pages and is unindexed and virtually impossible to decipher.

2. Instead, the prosecution states that it is free to do so and this Court can do nothing about it.

3. This Court should reject this repugnant position.

4. The prosecution's citation to *People v. Kilgore*, 2020 CO 6, 455 P.3d 746 is unavailing. In *Kilgore*, over the defense objection, the trial court ordered disclosure of defense exhibits prior to trial. The Court held that such an order was not provided in the Rules of Criminal Procedure.

5. Kilgore does not give the prosecution the right to turn over voluminous electronic discovery that is not searchable or indexed. *Kilgore* concerned only defense obligation to the prosecution, not the prosecution's obligations to the defense. *Kilgore*, ¶17 ("In this case, we are concerned only with Part (II)…"). This matters because, as the *Kilgore* Opinion states, forcing a defendant to provide material to the prosecution always risks lessening the prosecution's burden of proof:

> ¶29 The disclosure order compels Kilgore to reveal exculpatory evidence and to tip his hand vis-à-vis his investigation and the theory of his defense. In effect, it forces Kilgore to share with the prosecution his trial strategy — i.e., how he plans to defend against the charges brought against him. This is problematic. Gaining access to Kilgore's exhibits prior to trial may help the prosecution meet its burden of proof. Put differently, the disclosure requirement rests on shaky constitutional ground because it improperly risks lessening the prosecution's burden of proof.

Thus, the fact that *Kilgore* is about the scope of defense disclosures distinguishes it entirely from the situation here: When the Supreme Court ruled that "the provisions in Rule 16(II) adequately ensure that the prosecution is not ambushed at trial without infringing on a defendant's constitutional rights," it was not authorizing the prosecution to flout its obligations by turning over discovery in a manner that thwarts a defendant's ability to actually review it.

6. The Rules of Criminal Procedure already require the prosecution to turn over discovery, and the only question is whether this Court has the ability to require it to be provided in a coherent, indexed, searchable manner:

Rule 16 (Part I) (a)(1):

(a) Prosecutor's Obligations.
(1) The prosecuting attorney shall **make available** to the defense the following material and information which is within the possession or control of the prosecuting attorney, and shall provide duplicates upon request, and concerning the pending case:

(I) Police, arrest and crime or offense reports, including statements of all witnesses;...

(d) Discretionary Disclosures.
(1) The court in its discretion may, upon motion, require disclosure to the defense of relevant material and information not covered by Parts I(a), (b), and (c), upon a showing by the defense that the request is reasonable.

7. As far as Mr. Morphew's reliance on *Bueno v. People*, 2018 CO 4, defense counsel stand by their citation of this case. The *Bueno* case speaks for itself, and this Court will no doubt become very familiar with this case. The fact is that when a prosecutor violates *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150, 154 (1972), *Bueno v. People, supra,* and their progeny, the consequences must be borne by the prosecutor.

8. It is true that Mr. Morphew brings federal cases to this Court's attention. The prosecution does not explain why federal cases interpreting *Brady, Giglio*, and similar cases do not apply in Colorado.

9. The prosecutor does not cite a single case that precludes the relief sought.

10. This Court should reject the prosecution's suggestion that this Court must stand by helplessly as it fails to comply with its discovery obligations.

WHEREFORE, Mr. Morphew respectfully requests the Court order and direct the prosecution to provide discovery in a usable form, index the discovery, and identify the Crim. P. 16 I(a)(2) discovery prior to November 9, 2021 and to meaningfully comply with its constitutional obligations as set forth within.

Respectfully submitted this 13th day of October, 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 13th day of October, 2021, a true and correct copy of the foregoing **REPLY TO PROSECUTION RESPONSE -- SUPPLEMENTAL MOTION FOR A COURT ORDER THAT THE PROSECUTION MUST PROPERLY IDENTIFY DISCOVERY [D-20(b)]**was served via CCE as follows:

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

s/ Tonya Holliday
Tonya Holliday

Print Minute Orders 11/02/21 3:07 PM
Status: RSTD MROG District Court, Chaffee County
Case #: 2021 CR 000078 Div/Room: 2 Type: Homicide
The People of the State of Colorado vs. MORPHEW, BARRY LEE

FILE DATE	EVENT/FILING/PROCEEDING
10/13/2021	**Minute Order (print)**

DATE FILED: October 13, 2021

JUDGE: PWM CLERK: REPORTER:

334 DEF APPEARS OUT CUSTODY IN PERSON W/ATTY EYTAN IN PERSON, ATY NEILSEN BY PHONE, DDA LINDSEY DDA
HURLBERT AND DDA EDWARDS IN PERSON, DDA PEMBLETON BY AV, JULIE STRANSKY (LNTERVENTION LNC) AV.
THE COURT ADDRESSES MOTION P-24 AND DEF RESPONSE TO P-24. DDA LINDSEY MAKES RECORD, EYTAN MAKES
RECORD. THE COURT ORDERS: 1) IT IS A CONDITION OF BOND THAT THE DEFENDANT NOT BE AT THE 19057 PUMA PATH
HOME OR PREMISES 2) GPS MONITORING TO CONTINUE WITH THE ADDED CONDITION THAT THE DEFENDANT TRAVEL TO
PONCHA SPRINGS ONE TLME PER DAY, EVERY DAY FOR GPS DATA TO DOWNLOAD.
3)DEFENDANT IS NOT ORDERED TO
VACATE CUSHMAN PROPERTY. COURT REMINDS THE DEFENDANT THAT A NO-CONTACT PROTECTION ORDER REMAINS IN
EFFECT FOR THE RITTERS.
THE COURT ADDRESSES THE ISSUE REGARDING INSTALLATION OF THE COMMUNITY GATE. TO AVOID CONTACT WITH THE
RITTERS, THE COURT ORDERS FOR THE DEFENDANT TO NOT TRAVEL IN OR OUT OF THE ROAD DURING DAYLIGHT ON
10/19/21.
THE COURT ADDRESSES D-20-A, AND THE COURT HEARS FROM THE PARTIES. THE COURT DOES NOT BELIEVE IT HAS THE
AUTHORITY UNDER CRCP RULE 15 TO REQUIRE THE PROSECUTION TO CREATE AND PRODUCE AND INVENTORY OF
DISCOVERY. HOWEVER, THE COURT DOES HAVE TO AUTHORITY TO ORDER A CERTIFICATE OF COMPLIANCE (16(V)(D)(1))
AND DOES SO. THE COFC WILL LIST EACH LTEM FURNISHED BY THE PROSECUTION TO THE DEFENSE AND THE DATE OF
THE DISCLOSURE. LF THE DEFENSE HAS PROVIDED DISCOVERY TO THE PROSECUTION, THEY MUST DO THE SAME. THE
COFC IS DUE BY 11/01/21.
THE COURT DENIES THE REQUEST TO PROVLDE AN INVENTORY OF BRADY MATERIAL AS NOT ALLOWED UNDER RULE 16.
THE PROSECUTION HAS NO OBJECTION TO RETURNING BOTH TRUCK AND DRIVER'S LICENSE (D-23). THE PARTIES WILL
FACILITATE.
THE PARTIES DISCUSSED AND EVENTUALLY AGREED UPON A CMO. DEFENSE WILL REDUCE TO WRITING AND PRESENT TO
COURT.
FUTURE HEARINGS, AS WILL BE INCLUDED IN THE CMO:
FIRST DAY OF TRIAL (5/3/22) WILL BE USED TO ADDRESS MOTIONS IN LIMINE JURORS WILL REPORT 5/3 AND RECEIVE
QUESTIONNAIRE THAT DAY. JURY SELECTION WILL BEGIN 5/4.
SUBSTANTIVE MOTION HEARING 1/25/22 AT 8:OO,2/1/22 AT 9:30 AND 2/8/22 AT 8:OO
HEARING REGARDING EXPERT TESTIMONY 4/7/22 AT 8:OO
TRIAL MANAGEMENT CONFERENCE 4/8/22 AT 8:00
THE COURT ORDERS WITNESS LISTS TO BE PROVIDED BY THE PROSECUTION TO THE DEFENSE BY 11/9/21 AND DEFENSE
TO PROSECUTION BV 3/4/22

Print Minute Orders 11/02/21 3:07 PM
Status: RSTD MROG District Court, Chaffee County
Case #: 2021 CR 000078 Div/Room: 2 Type: Homicide
The People of the State of Colorado vs. MORPHEW, BARRY LEE

FILE DATE EVENT/FILING/PROCEEDING

10/13/2021 Minute Order (print)

JUDGE: PWM CLERK: REPORTER:

THE COURT DENIES REQUEST TO EXCHANGE EXHIBITS LISTS BEFORE TRIAL
AGREED UPON JUROR QUESTIONS TO BE PROVIDED TO THE COUTT BY 4/1/22.
ADDITIONAL, NON-STIPULATED
QUESTIONS WILL BE DISCUSSED AT THE HEARIN]. ON 4/8/22.
PROPOSED JURY INSTRUCTIONS WILL BE PROVIDED TO THE COURT BY MAY 2, 2022.
PEOPLE'S MOTION FOR DEFENSE DISCLOSURES (P-25) IS MOOT DUE TO CMO
THE COURT ADDRESSED THE LARGE NUMBER OF FILINGS IN THE CASE THAT ARE NOT
ACCESSIBLE TO THE PUBLIC. AFTER
DISCUSSION WITH THE PARTIES, THE COURT BELIEVES THAT THE PARTIES WERE UNDER
THE MISCONCEPTION THAT THE
COURT HAD ORDERED THAT PLEADINGS IN THE CASE NEEDED TO BE FILED AS SUPPRESSED.
THE COURT DID NOT ISSUE
SUCH AN ORDER. THE PARTIES WERE ORDERED TO REVIEW PRIOR FILINGS AND INFORM
THE COURT OF ANY PLEADINGS
THAT SHOULD NOT BE MADE PUBLIC AND INFORM THE CLERK OF COURT WHAT NEEDS TO BE
REDACTED FROM PROTECTED
FILINGS. ALL FUTURE PLEADINGS WILL BE PRESUMED TO BE FILED AS PUBLIC OR
PROTECTED. PAST AND FUTURE
PLEADINGS THAT ARE FILED AS SUPPRESSED OR SEALED-THE PARTIES ARE TO FOLLOW
THE REQUIREMENTS OF CRCP
RULE 55.1. EYTAN MAKES RECORD THAT NONE OF THE DEFENSE MOTIONS CURRENTLY
FILED AS SUPPRESSED WILL NEED
TO STAY SUPPRESSED. THE CLERK OF COURT WILL CHANGE THE STATUS OF ALL
SUPPRESSED RECORDS TO PUBLIC UNLESS A
MOTION IS FILED PURSUANT TO RULE 55.1
THE CASE REMAINS SET ON THE COURT'S DOCKET NOVEMBER 9 AT 1:30. /LFH

DISTRICT COURT, CHAFFEE COUNTY, COLORADO Court Address: 142 Crestone Ave. Salida, CO 81201 Court Phone: (719) 539-2561	DATE FILED: October 14, 2021 2:56 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

[PROPOSED] PRE-TRIAL CASE MANAGEMENT ORDER

On October 13, 2021, the Court heard arguments from the parties regarding Defense Proposed Pre-Trial Case Management Order D-27, and Request for the Prosecution to Inventory the Discovery D-20 and hereby enters the following Orders:

I. DISCOVERY

1. Pursuant to Crim. P. 16 V.(d), the parties shall each submit a Compliance Certificate by **November 1, 2021**. The prosecution's certificate should identify the discovery, bates numbering if applicable and the date the discovery was furnished to the defense.

II. PRE-TRIAL MOTIONS AND MOTIONS HEARINGS

1. Pre-Trial Motions (except motions *in limine* and motions directed to expert testimony as addressed in the subsequent sections) shall be filed no later than **December 7, 2021**. Responses to Pre-Trial Motions are due **January 7, 2022**. Replies to Responses to Pre-Trial Motions are due **January 21, 2022**.

2. Motions Hearings are scheduled for **January 25, 2022 at 8 a.m., February 1, 2022 at 9:30 a.m.**, and **February 8, 2022 at 8:00 a.m.**

III. EXPERT DISCLOSURES

1. Prosecution expert disclosures are due **February 14, 2022** and supplement expert disclosures are due **March 21, 2022**. Defense expert disclosures are due **March 7, 2022**. These disclosures should include the underlying facts or data supporting the opinion, as well as providing a written summary of the testimony describing the witness' testimony (if no report has been prepared by the expert). Rule 16 I(a)(d)(3). Objections to the admissibility of any expert testimony under C.R.E. 702 (*e.g., People v. Shreck*, 22 P.3d 68 (Colo. 2001)), or for any other reason, shall be filed by the parties by **March 29, 2022**.

2. A hearing on any expert objections is scheduled for **April 7, 2022 at 8:00 a.m**.

IV. MOTIONS *IN LIMINE*

1. Motions *in limine* shall be filed no later than **April 5, 2022,** and the nonmoving party shall have **14 days** to respond thereto. Any motion filed after these deadlines must state with particularity the reasons that the motion was not timely filed.

V. PRE-TRIAL CONFERENCE

1. A Pre-Trial Conference is scheduled for **April 8, 2022 at 8:00 a.m.**

VI. LIST OF WITNESSES AND EXHIBITS AND EVIDENCE PROSECUTION INTENDS TO ADMIT AT TRIAL

1. The prosecution should have submitted a written witness list on June 21, 2021 as mandated by Crim. P. Rule 16 I(b)(1)(VIII) twenty-one (21) days following Mr. Morphew's May 27, 2021 filing of charges. The prosecution is in violation of Crim. P. 16.

2. The prosecution shall provide a witness list of the names and addresses of the witnesses known to the district attorney whom he or she intends to call at trial by **November 9, 2021**. Crim. P. Rule 16 I(b)1)(VIII).

3. The prosecution shall submit updates to the witness list when the prosecution knows it may call additional witnesses.

4. The parties shall submit their good faith written witness lists by **March 4, 2022.**

5. The prosecution shall submit its good faith witness list for trial on **April 18, 2022.**

VII. JURY QUESTIONNAIRES

1. The parties shall exchange their proposed juror questionnaires by **April 1, 2022** and be prepared to present to the Court any non-agreed upon questions on **April 8, 2022**.

VIII. JURY INSTRUCTIONS

1. Proposed jury instructions and verdict forms should be prepared in accordance with Crim. P. 30 and submitted to the court and opposing counsel on or before **May 2, 2022.**

IX. OUTSTANDING ISSUES

1. On May 3, 2022, the jury will be summoned to appear to fill out the questionnaires. The parties will be provided with the completed jury questionnaires on May 3, 2022.

2. On May 3, 2022, the parties may address the court with other last-minute motions and issues.

3. The Court's Jury Instructions and Jury Selection will begin on **May 4, 2022.**

WHEREFORE, Mr. Morphew respectfully submits this Proposed Pre-Trial Case Management Order.

Respectfully submitted this 14th day of October, 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 14th day of October, 2021, a true and correct copy of the foregoing **[PROPOSED] PRE-TRIAL CASE MANAGEMENT ORDER** was served via CCE as follows:

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

s/ Tonya Holliday
Tonya Holliday

Combined Court, Chaffee County P.O. Box 279 142 Crestone Avenue Salida, CO 81201	DATE FILED: October 14, 2021 5:26 PM
THE PEOPLE OF THE STATE OF COLORADO vs. BARRY LEE MORPHEW, Defendant	▲ COURT USE ONLY ▲
LINDA STANLEY, DISTRICT ATTORNEY Attorney Reg. # 45298 104 Crestone Avenue P.O. Box 699 Salida, CO 81201 Phone: 719-539-3563 FAX: 719-539-3565	CASE NO.: D0082021CR00078 DIV.: 2 Courtroom:
P-26 MOTION FOR CONSISTENT NUMBERING OF COURT FILINGS	

COME NOW, the People of the State of Colorado, by and through LINDA STANLEY, District Attorney for the Eleventh Judicial District, hereby submits this Motion The People move for an Order of this Court requiring the consistent numbering of court filings. It is crucial, both at the trial level and the appellate level, if any, that the parties and attorneys have one straight-forward and consistent numbering of filings in court.

1. Currently the parties appear to be using designations "P" and "D," using the number of the motion. For example, confusingly, the prosecution's motion for Mr. Morphew to Vacate his Residence is enumerated D-20, although the defense's response is enumerated D-26. The defense filed a motion for the prosecution to inventory discovery and enumerated it D-20. The prosecution filed a response that is enumerated as D-20. Thus, not only the letter designation, but also the number of the motion has become unhinged from the specific filing.

2. People's filing of motions, defense responses, and prosecution replies should be entitled:

   P-(number) Motion (or People's Motion) for . . . .
   P-(same number) Response (or Defense's Response) to People's Motion for . . . .
   P-(same number) Reply (or People's Reply) to Motion for . . . .

   An example:

   P-25 People's Motion to Set Deadline . . . , would be followed by
   P-25 Defense's Response to Set Deadline . . . , which could be followed by
   P-25 People's Reply to Motion to Set Deadline

3. Defense motions, prosecution responses, and replies should be entitled:

   D-(number) Motion (of Defense's Motion) for . . . .
   D-(same number) Response (or People's Response) to Defense's Motion for . . . .
   D-(same number) Reply to Motion for . . . .

4. This procedure has been successfully utilized in numerous homicide cases in the State of Colorado.

Respectfully Submitted:

_____/s/_____
Daniel W Edwards #7948
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via Colorado Courts' e-filing on all parties who appear of record and have entered their appearance.

By: /s/ Daniel W Edwards

COUNTY COURT, CHAFFEE COUNTY COLORADO 142 Crestone Avenue P.O. Box 279 Salida, CO 81201	~~DATE FILED: October 15, 2021~~ FILED IN COMBINED COURTS OCT 15 2021 CHAFFEE COUNTY COLORADO ▲ **COURT USE ONLY** ▲
Plaintiff: People of State of Colorado	**Case Number:** 21CR 78
Defendant: Barry Mayhew	Div.: 2 Ctrm.:

RECEIPT FOR EXHIBITS

I, Abby Jefferson from the office of Eytan-Nielsen, law firm are now in the receipt of the Original Exhibits from the Chaffee Combined Court as listed below:

D, G-T, X, DD, EE, FF, HH, II, JJ, KK, LL, MM
PP, QQ, ZZ, AAA, BBB, CCC, DDD, XXX, ZZZ, AAAA

Date: 10-15-21

Signature of Person Picking Up

P. Jane

Clerk

On, __ _____(date) such Original Exhibits listed above have been returned to the Chaffee Combined Court by_____.

Signature of Person Dropping Off

Clerk