DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101	DATE FILED June 30, 2025 10:09 PM
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. BARRY LEE MORPHEW, Defendant.	
JANE FISHER-BYRIALSEN, #49133 FISHER & BYRIALSEN, PLLC 4600 S. Syracuse Street, 9th Floor Denver, CO 80237 (202)256-5664 Jane@fblaw.org DAVID BELLER, #35767 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 (303)573-1900 Fax: (303) 446-9400 david@rklawpc.com	Case Number: 25CR128 Division C

MOTION FOR PRESERVATION AND PRODUCTION OF MATERIAL (D-005)

COMES NOW Barry Morphew, by and through counsel, and hereby (1) notifies the District Attorney's Office and, through the District Attorney's Office, all law enforcement agencies, personnel, and reporting agencies of his demand to preserve material as set forth below, and (2) requests that this Court enter an order for preservation and production and order the prosecution to so instruct law enforcement, CBI, and all other reporting agencies.

1. This prosecution is a continuation of a previous prosecution brought in Chaffee County and later transferred to Fremont County. Whenever Mr. Morphew refers to "this case" or makes any reference to personnel, he is including the cases of Chaffee County District Court No. 21CR78 and Fremont County District Court No. 22CR47 by whatever court or agency case file numbers they are known.

2. The defense specifically demands the State preserve and produce to Mr. Morphew upon request all physical evidence in this matter, including but not limited to the following:

a. All remains, including clothing or any other material found with or associated with those remains, of Suzanne Morphew.

b. All cars which have been seized or searched.

b. All houses and buildings which have been seized or searched.

c. All physical evidence obtained.

d. All blood, tissue, bone material or other physical evidence that has in any way been obtained by law enforcement or the prosecution in this case.

e. All supposed trace evidence, including but not limited to hairs, fibers, blood, saliva, skin, gunshot residue of any description, blood spatter.

3. Mr. Morphew demands that the following, construed broadly, be preserved and produced to the defense:

a. All recordings produced or seized in connection with this case.

b. All law notes, including handwritten or typed or dictated notes and tapes of any and all contacts and statements of all people contacted or interviewed. Police handwritten or typed or dictated notes and tapes of all police activities and commentary and statements regarding this case.

Defense counsel is aware that it is the practice of law enforcement to destroy their notes. Defense counsel requests an order specifically ordering law enforcement agents to preserve all notes, diagrams, charts, or similar written or generated material.

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

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

e. All scientific reports, memoranda or notes produced in connection with the events.

f. All photographs made or seized.

g. Duplicates of all photographs, videotapes and/or audiotapes of any and all autopsies.

h. All biological samples and physical evidence made or seized in connection with this case.

i. All records and logs and receipts pertaining to the storage and movement of physical and/or documentary evidence.

j. All correspondence, including email and text mail correspondence by or to law enforcement and the prosecution concerning the investigation.

k. All records and logs and receipts pertaining to the storage and movement of physical evidence.

4. The state bears an obligation under Crim. P. 16 (I)(a)(IV) to make all of the physical evidence available to the accused.

5. The prosecution's duties to disclose potentially material and exculpatory evidence do not end within its own office: the duty applies to evidence in the possession of all of law enforcement agencies and all those who have reported directly or indirectly or assisted in the investigation. Crim. P. 16 (I)(3); *See also Brady v. Maryland*, 373 U.S. 83 (1963); *Smith v. Sec. of New Mexico Dep't Corr*., 50 F.3d 801, 824 (10th Cir. 1995).

6. The prosecution not only has a duty to learn and retrieve from law enforcement any evidence favorable to the defense they also have to produce it. *Kyles v. Whitley*, 514 U.S. 419, 437 38 (1995); Crim. P. 16 (I)(b)(4). Rule 16 and case law specifically designates that the prosecutors' obligations extends to material information in the control of any others who have participated in the investigation or evaluation of the case. Crim. P. 16(I)(a)(3), (I)(b)(4); *People v. District Court*, 793 P.2nd 163 (Colo. 1990); *People v. Bueno*, 409 P.3d 320, 328 (2018).

7. Mr. Morphew will be making independent evaluation of all items which are possible material evidence and potentially exculpatory in this case.

8. The evidence seized includes items that are material and potentially exculpatory, *Brady v. Maryland*, 373 U.S. 83 (1963), and are necessary to the effective defense of this case. *Garcia v. District Court*, 589 P.2d 924 (1979). Due process and Mr. Morphew's right to confront his accuser require that he be allowed to obtain such evidence. *People v. Harmes*, 560 P.2d 70 (1976), *People v. Norwood*, 547 P.2d 273 (1973); *People v. Sheppard*, 701 P.2d 49 (Colo. 1985). U.S. Const., amend. VI, XIV; Colo. Const., art. II, §§ 3, 16, 25.

9. The due process guarantee of fundamental fairness also entitles a defendant the right to access evidence. *See Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) ("[A] criminal trial is fundamentally unfair if the State proceeds against [a] . . . defendant without making certain that he has access to the raw materials integral to the building of an effective defense.").

10. The Colorado Constitution imposes a heightened reliability requirement in capital cases over and above that provided by the Federal Constitution. *People v. Young*, 814 P.2d 834, 842-43 (Colo. 1991); *see* Colo. Const. Art. II, §§ 20, 25.

11. Given the rights at stake, "there is a strong presumption that possibly exculpatory evidence should be given to the defendant." *People v. Rodriguez (Rodriguez II)*, 786 P.2d 1079, 1082 (Colo. 1989). Thus, even evidence that is not material must be disclosed, absent proof of a compelling interest. *Id*. at 1082.

12. This discovery is authorized by the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, Article II, §§ 3, 16, and 25 of the Constitution of the State of Colorado, and Crim. P. 16, Part I (c) and (d).

13. The due process guarantee of fundamental fairness also entitles a defendant the right to access evidence. *See Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) ("[A] criminal trial is fundamentally unfair if the State proceeds against [a] . . . defendant without making certain that he has access to the raw materials integral to the building of an effective defense.").

14. The Colorado Constitution imposes a heightened reliability requirement in capital cases over and above that provided by the Federal Constitution. *People v. Young*, 814 P.2d 834, 842-43 (Colo. 1991); *see* Colo. Const. Art. II, §§ 20, 25.

15. Given the rights at stake, "there is a strong presumption that possibly exculpatory evidence should be given to the defendant." *People v. Rodriguez (Rodriguez II)*,

786 P.2d 1079, 1082 (Colo. 1989). Thus, even evidence that is not material must be disclosed, absent proof of a compelling interest. *Id*. at 1082. The purpose of discovery is to ensure fair process, aid the accuracy and efficiency in the search for the truth, reduce the risk of trial by ambush, and to protect innocence. *People v. Arapahoe County Court,* 74 P.3d 429, 431 (Colo. App. 2003), *Lanari v. People*, 827 P.2d 495, 499 (Colo. 1992), and *People v. Edgar,* 578 P.2d 666 (Colo. App. 1978).

16. This motion is intended to be construed broadly to include all District Attorney(s) and their contract and employed personnel (regardless of judicial district or prosecuting agency, thus including those in Chaffee and/or Fremont County), all law enforcement and/or investigative agencies and their contract and employed personnel, all investigative agencies including government agencies such as the Colorado Bureau of Investigations, the Department of Public Safety, any private contractors or experts consulting with or conducting any work for any prosecuting and/or law enforcement agency.

17. Law enforcement, investigative agencies, prosecutors, and other contract and employed personnel from a wide variety of jurisdictions worked on and/or were consulted in the prosecution of Mr. Morphew. These other personnel and agencies must be regarded as "reporting agencies" and within the purview of this Court's order for preservation. See Crim. P. Rule 16 (I)(b)(3), which states:

> The prosecuting attorney's obligations under this section (a) extend to material and information in the possession or control of members of his or her staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his or her office.

18. Whenever Mr. Morphew uses the term "law enforcement," "State," or "prosecution", he intends to include any person or agency described in this paragraph. Whenever Mr. Morphew uses the term "law enforcement", he means all of these agencies in whatever jurisdiction they are located and by whatever name they are known.

Respectfully submitted this 30th day of June, 2025.

FISHER & BYRIALSEN, LLC

/s/ Jane Fisher-Byrialsen
Jane Fisher-Byrialsen, #49133

RECHT KORNFELD, P.C.

/s/ David Beller
David Beller, #35767

Certificate of Service
I hereby certify that on June 30, 2025 I caused the foregoing to be filed with the Alamosa County District Court and a copy of the same to be served on the Alamosa County District Attorney's office via CCE-File Service.

/s/ David Beller