

<p>DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101</p> <hr/> <p>THE PEOPLE OF THE STATE OF COLORADO Plaintiff,</p> <p>v.</p> <p>BARRY LEE MORPHEW, Defendant.</p>	<p>DATE FILED April 13, 2026 8:12 PM</p> <p>▲ COURT USE ONLY ▲</p>
<p>JANE FISHER-BYRIALSEN, #49133 FISHER &amp; BYRIALSEN, PLLC 4600 S. Syracuse Street, 9<sup>th</sup> Floor Denver, CO 80237 (202)256-5664 <a href="mailto:Jane@fblaw.org">Jane@fblaw.org</a></p> <p>DAVID BELLER, #35767 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 (303)573-1900 Fax: (303) 446-9400 <a href="mailto:david@rklawpc.com">david@rklawpc.com</a></p>	<p>Case Number: 25 CR 128</p>
<p align="center"><b>[D-014] MOTION FOR DISCOVERY—IMPEACHING INFORMATION</b></p>	

Mr. Barry Morphey, by and through counsel, moves this Court to order the production of any impeaching and exculpatory evidence and to order the prosecution to make an inquiry with the witnesses and police agencies involved in this case, including those in Chaffee County, Fremont County, Federal Bureau of Investigation, Colorado Bureau of Investigation and any other agencies involved in the investigation in this case, as well as other sources available to the prosecution, to discover and disclose this information. In support, Mr. Morphey states:

1. The use of discovery material for a defendant's impeachment purposes at trial implicates the due process and confrontation rights of the accused under the Colorado state constitution and the U.S. Constitution. *People v. Edgar*, 578 P.2d 666, 668 (Colo. App. 1978) (reversing convictions where prosecution failed to comply with a discovery order requiring the disclosure of witnesses by providing a list of 72 witness names just 18 days before trial); *People v. Thatcher*, 638 P.2d 760, 768 (Colo. 1981); *Goodwin v. District Court*, 197 Colo. 6, 588 P.2d 874 (1979); U.S. Const., Amends. V, VI, XIV; Colo. Const., art II, §§ 16, 25.

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

3. If the prosecution refuses to provide Mr. Morphey with material evidence which is favorable to the accused and relates to either the guilt or punishment of the accused, the prosecutor violates their ethical duty and due process is denied. *See Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Bagley*, 473 U.S. 667 (1985) (*Brady* encompasses both exculpatory and impeachment evidence; suppressed evidence is material if there is a reasonable probability that, had it been disclosed, the result would have been different). Due process mandates that a defendant be provided any evidence that is favorable to him and material to his guilt or punishment. *Brady*, 373 U.S. at 87; *People in Interest of A.D.T.*, 232 P.3d 313, 316 (Colo. App. 2010). *See also People v. Greathouse*, 742 P.2d 334 (Colo. 1987); *People v. Kilgore*, 2020 CO 2, 13, 455 P.3d 746, 750 (reaffirming that Crim. P. 16(I)(a)(2) is the mandatory vehicle for disclosure of evidence tending to negate guilt).

4. Late disclosure or nondisclosure undermines a defendant's ability to effectively cross-examine a witness — a fundamental constitutional right. *Pointer v. Texas*, 380 U.S. 400, 405 (1965). U.S. Const., Amends. V, XIV; Colo. Const., Art. II, § 25; Crim. P. 16(I)(a)(2); C.R.P.C. 3.8(d). It is irrelevant whether or not the prosecution acted in good faith. *People v. Sheppard*, 701 P.2d 49 51 (Colo. 1985).

5. Crim. P. 16(I)(a) imposes duties that must be automatically performed by the prosecution in a timely manner. *See People v. District Court*, 790 P.2d 332, 337 (Colo. 1990); *People v. Alberico*, 817 P.2d 573 (Colo. App. 1991). The prosecution must disclose all required materials as soon as practicable but no later than twenty-one days after the defendant's first appearance. Crim. P. 16(I)(b)(1). Trial courts have broad discretion to impose sanctions — including charge reduction — for willful or systemic failures to comply. *People v. Tippet*, 2023 CO 61, 37, 539 P.3d 547, 555 (the Colorado Supreme Court upheld charge reduction from first-degree to second-degree murder as a legitimate deterrent sanction for a pattern of discovery violations, before trial).

6. A district court has authority to order all discovery specifically authorized by Rule 16. *People v. Kilgore, supra*, 17. The discovery sought is authorized by the rule. *See* Crim. P. 16(I)(d)(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.”) The reasonableness of this request is self-evident from the nature of the investigation itself: this case spans multiple jurisdictions and agencies — including Chaffee County, Fremont County, the FBI, the CBI, and many other agencies — each of which may independently possess material bearing on the credibility of

witnesses, the conduct of the investigation, or the existence of alternative suspects. The defense cannot be expected to identify, let alone obtain, such material without court-ordered disclosure; and the prosecution, as the party with existing relationships with and access to those agencies, is uniquely positioned to retrieve it.

7. The material that the prosecution must provide to the accused includes, but is not limited to:

a. disclosure of the prior convictions and adjudications of the witnesses the prosecution will call;

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

c. evidence of the misdemeanor convictions of a prosecution witness that are probative of untruthfulness or dishonesty or that are related to this case in any way *See People v. Armstrong*, 704 P.2d 877 (Colo. App. 1985) (cross-examination of witness concerning his or her prior conviction for the misdemeanor offense of making a false police report is permissible);

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

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

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

g. any evidence or records that relate to the untruthful reputation of the prosecution witnesses, or evidence of specific instances of untruthfulness of the witnesses. *See* CRE 608;

h. information concerning alternative suspects for any conduct in this case that were considered by the police or prosecution. *See Bowen v. Maynard*, 799 F.2d 593, 611 (10th Cir. 1986), *cert. denied*, 479 U.S. 962 (1986) (state violated due process by failing to disclose list of other suspects because a released suspect resembled the accused and

matched the description of the perpetrator); *see also A.D.T., supra*, at 317. See also *People v. Williams*, No. 15CA0122, 2019 WL 13573107, at \*6 (Colo. App. Mar. 21, 2019) (not published) (the district court erred by not disclosing, after its in camera review, evidence to the defense that could have been “favorable to his assertion of an alternate suspect defense, or could lead to discovery of other evidence related to that assertion, and was therefore material to his guilt.”) (citing *Brady*, 373 U.S. at 87 and *Zoll v. People*, 2018 CO 70, ¶ 11 (“[D]efense counsel is ... in the most suitable position to evaluate whether additional evidence may have been discovered before trial as a result of the undisclosed information.”)).

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

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

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

8. Material in the possession of all law enforcement agencies that have participated in the investigation or provided reports concerning the case, is constructively in the "possession or control" of the prosecuting attorney under Crim. P. 16(I)(a)(1). *People v. District Court*, 793 P.2d 163 (Colo. 1990) (the prosecuting attorney's obligations extend to material and information in the possession or control of his staff or others that have participated in the investigation); *Solano v. Newman*, 2024 COA 93, ¶¶ 38–44, 559 P.3d 259 (Colo. App. 2024) (affirming that the prosecutor's Rule 16(I)(b)(4) duty to maintain a flow of information with all investigative personnel extends to all participating law enforcement agencies, including sheriff's offices; the prosecutor is in constructive possession of evidence held by those agencies and bears responsibility for timely disclosure); *Chambers v. People*, 682 P.2d 1173, 1180 n.13 (Colo. 1984); *Ortega v. People*, 162 Colo. 358, 426 P.2d 180 (1967); *People v. Lucero*, 623 P.2d 424 (Colo. App. 1980); Crim. P. 16(I)(c). See also *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (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"; the State remains responsible regardless of any failure by police to bring favorable evidence to the prosecutor's attention). This

is particularly significant here, where the investigation spans Chaffee County, Fremont County, the FBI, the CBI and numerous other agencies.

9. The prosecution must make efforts to locate and deliver copies of this material to the defense and “[i]t is incumbent upon the prosecutor to promulgate and enforce rigorous and systematic procedures designed to preserve all discoverable evidence gathered in the course of the criminal investigation.” *People v. District Court*, 793 P.2d 163 (Colo. 1990); Crim. P. 16(I)(b)(4). The Court of Appeals confirmed in 2024 that this duty is enforceable as to all agencies involved in the investigation, including through injunctive relief where an agency repeatedly fails to provide timely discovery. *Solano v. Newman*, 2024COA93, ¶¶ 42–44 (Colo. App. 2024). *People v. Tippet*, 2023 CO 61, ¶¶ 37, 539 P.3d 547, 555 (courts must impose at minimum the least severe sanction ensuring full compliance with discovery orders).

10. The notes of investigators must be preserved and disclosed to the defense if they contain the substance of recitals of oral statements made by witnesses. *See People v. Shaw*, 646 P.2d 375, 381 (Colo. 1982); *People v. Thatcher*, 638 P.2d 760, 767 (Colo. 1981). Although the work product of a prosecuting attorney is not discoverable, see Crim. P. 16(I)(e)(1), non-discoverable material may be excised and the remainder provided to the accused. *People v. District Court*, 790 P.2d 332, 336 (Colo. 1990). Witness statements included in a prosecutor's notes and emails are automatically discoverable if exculpatory under Crim. P. 16, Part I(a)(2); additionally, the court may order disclosure under Crim. P. 16, Part I(d)(1) upon a showing that the request is reasonable, i.e., that it is relevant to the conduct of the defense, and unavailable from any source other than the prosecution. *People v. Vlassis*, 247 P.3d 196, 198 (Colo. 2011).

11. The prosecution has a duty to timely comply with its discovery obligations, Crim. P. 16(I)(b); *see People v. Terry*, 720 P.2d 125, 130-31 (Colo. 1986). The constitutional right to counsel includes a guarantee that defense counsel shall have sufficient time to prepare effectively in order to protect his or her client's constitutional rights. *See Reece v. Georgia*, 350 U.S. 85, 89-91 (1955); *People v. Meyers*, 617 P.2d 808, 813 (Colo. 1980); U.S. Const., Amend. VI, Colo. Const., Art. II, § 16. Timely disclosure is especially critical in a case of this complexity; delay in producing material bearing on witness credibility or alternative suspects cannot be remedied by a continuance alone where trial preparation has been significantly impaired.

12. In addition, the prosecution is under a continuing duty to disclose additional information as it is discovered. Crim. P. 16(III)(b); *see Mooney v. Holohan*, 294 U.S. 103, 108 (1935) (due process violated where the prosecutor learned that a witness committed perjury during the trial, but did not disclose this fact to defense counsel). This continuing duty encompasses newly discovered impeachment material as well as exculpatory evidence. *See United States v. Bagley*, 473 U.S. 667, 676 (1985).

13. The prosecution cannot elect to not disclose material simply because it believes the defense will not be able to use it productively. *See Zoll v. People*, 2018 CO 70, ¶ 11

(“[D]efense counsel is ... in the most suitable position to evaluate whether additional evidence may have been discovered before trial as a result of the undisclosed information.”).

14. 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 case law cited therein and at oral argument.

**WHEREFORE**, Mr. Morphew respectfully moves this Court to order the prosecution to produce all impeaching and exculpatory evidence and to require the prosecution to make a diligent inquiry of all agencies involved in the investigation—including Chaffee County, Fremont County, the FBI, and the CBI—for all such material, and to order its immediate and continuing disclosure to the defense.

Respectfully submitted this 13th day of April, 2026.

**FISHER & BYRIALSEN, PLLC**

/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 April 13, 2026, 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/ Abby Clement  
Paralegal at Fisher & Byrialsen PLLC