<table>
<tr><td>DISTRICT COURT, ALAMOSA COUNTY, COLORADO,
8955 Independence Way
Alamosa, CO 81101<hr>THE PEOPLE OF THE STATE OF COLORADO
Plaintiff,

v.

BARRY LEE MORPHEW, Defendant.</td><td>DATE FILED
April 13, 2026 8:40 PM

▲ COURT USE ONLY ▲</td></tr>
<tr><td>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</td><td>Case Number: 25 CR 128</td></tr>
<tr><td colspan="2">[D-017] MOTION TO REQUIRE NOTICE OF STATEMENTS BY MR. MORPHEW THAT THE PROSECUTION SEEK TO INTRODUCE AT TRIAL</td></tr>
</table>

Mr. Barry Morphew, by and through undersigned counsel, hereby requests that this Court require the prosecution to give notice of which portions of Mr. Morphew's statements the prosecution intends to introduce. This motion applies to written statements as well as recorded ones. AS GROUNDS, Mr. Morphew states:

1. Barry Morphew was interrogated at great length by law enforcement investigators in this case. These interrogations were video/audio recorded and, in this motion, will be referred to collectively as the "interrogation recordings."

2. It is anticipated that the prosecution will attempt to introduce snippets of the interrogations during the trial of this case, either through law enforcement witnesses or playing parts of the interrogation recordings, or both.

3. It is also anticipated, based on the prosecutor's approach at the Grand Jury, that the prosecution will attempt to introduce testimony about Mr. Morphew's alleged demeanor around law enforcement personnel.

4. If the prosecution succeeds in introducing any part of the interrogation statements, or testimony about Mr. Morphew's demeanor around law enforcement personnel, the prosecutor will make all of Mr. Morphew's other statements and demonstrations of demeanor admissible. It is probable that the defense will move that the prosecution introduce the entire interrogation recordings for the jury's view, or the defense will introduce the entire interrogation records in their case.

5. The prosecution's obligation to provide pre-trial notice of which statement excerpts it intends to introduce is firmly grounded in Colorado Rule of Criminal Procedure 16(I)(a)(1)(VIII), which requires mandatory automatic disclosure of all written or recorded statements of the accused. That obligation is self-executing and requires no court order. *See People v. District Court*, 790 P.2d 332, 337 (Colo. 1990). Requiring the prosecution to then *identify* which portions of those already-disclosed materials it intends to use at trial is not an expansion of the court's discovery authority — it is a reasonable exercise of trial management authority that furthers, rather than exceeds, the purposes of Rule 16(I). *Cf. People v. Kilgore*, 2020 CO 6, ¶¶ 1, 26, 455 P.3d 746, 747–51 (while a court may not expand Rule 16 *against* a defendant's constitutional rights, the rule's Part I prosecution-disclosure framework is broad and self-executing). Nothing in *Kilgore* limits the court's power to manage the orderly production of evidence the prosecution is already obligated to disclose. *Cf. People v. Dye,* 2024 CO 2, ¶60, 541 P.3d 1167, 1179. *Kilgore* expressly condemned "trial by ambush" and the "fox-and-hounds approach to litigation" as inconsistent with the search for truth. *Id.* 30, 455 P.3d at 751.

6. This motion does not ask this Court to expand discovery beyond Rule 16 — it asks the Court to manage the orderly introduction of materials the prosecution is already required to produce. *Kilgore* addressed whether a court could compel the *defense* to disclose *defense exhibits* to the *prosecution* — a disclosure Rule 16(II) does not authorize and one that would unconstitutionally assist the prosecution in meeting its burden of proof. *Kilgore*, 2020 CO 6, ¶¶ 26–29, 455 P.3d at 751. That concern has no application here. The prosecution's burden of proof is not implicated by requiring it to identify, in advance, which portions of Mr. Morphew's statements it intends to use. What *is* implicated — and what this motion seeks to protect — is Mr. Morphew's right to prepare a complete defense, including his rights under CRE 106 and the rule of completeness, without being sandbagged mid-trial by the prosecution's selective presentation of forty-plus hours of recordings. The court's authority to manage pretrial identification of exhibits and statement excerpts is well within its inherent case-management

authority, which *Kilgore* did not curtail as to the prosecution's already-produced materials. *Id.* 1, 455 P.3d at 747.

7. Under these circumstances, Mr. Morphew will have the right to do so under the Rule of Completeness and/or the doctrine commonly referred to as "opening the door." The prosecutor will not be permitted to leave jurors with an incomplete, distorted and misleading account of what occurred.

8. The "opening the door" concept strongly favors admission of evidence made relevant by the opponent's opening of the door. The entire premise underlying the doctrine is that admission of the evidence is necessary to cure the unfair prejudice that inheres when one party uses evidence as both a sword and a shield: the "opening the door" concept serves to "prevent one party in a criminal trial from gaining and maintaining an unfair advantage by the selective presentation of facts that, without being elaborated or placed in context, create an incorrect or misleading presentation." *Golob v. People*, 180 P.3d 1006, 1012 (Colo.2008). "If the prosecution wants to admit part of a statement, it ought, in fairness, to 'pay the costs' of admitting it in its (relevant) entirety under the rule of completeness. If it is not willing to pay the costs, it should not be permitted to admit any portion of the statement." *People v. Short,* 2018 COA 47, ¶49, 425 P.3d 1208, 1221. *Cf. King v. People*, 785 P.2d 596, 604 (Colo. 1990)(after the People had introduced some of the defendant's statements under CRE 803(4), it erred by not permitting introduction of the rest of them). *People v. Cohen,* 2019 COA 38, 440 P.3d 1256 teaches that the opening-the-door doctrine allows "otherwise inadmissible rebuttal evidence" necessary to "'rebut any adverse inferences which might have resulted,'" or to correct "'an incorrect or misleading impression.'" *Id*. ¶23, quoting *People v. Tenorio*, 590 P.2d 952, 958 (1979) and *Golob*, at 1012. Rebuttal evidence is "any competent evidence which explains, refutes, counteracts, or disproves the evidence put on by the other party." *People v. Rowerdink,* 756 P.2d 986, 994 (Colo.1988). This is a broad standard.

9. In *Golob v. People*, *supra,* the Colorado Supreme Court ruled that the trial court committed reversible error by unduly limiting the defense expert's testimony because the prosecution's evidence had opened the door. In *Venalonzo v. People*, 2017 CO 9, ¶44, 388 P.3d 868, 880 and *People v. Heredia-Cobos*, 2017 COA 130, ¶19, 415 P.3d 860, 865 (Colo.App.2017), the Supreme Court and the Court of Appeals ruled that the defense had opened the door.

10. In *People v. Tenorio,* even though the officer's testimony about why he drew his gun was not initially relevant, it became relevant when the defense asked if he drew his gun. *Tenorio,* at 958. This is because the prosecutor "had a right to explain or rebut any adverse inferences which might have resulted" from that question. *Ibid*, quoted in *Cohen,* ¶24. In this

case, the situation would be reversed, with the prosecution opening the door and Mr. Morphew having the right to explain or rebut any adverse inference from the prosecution's evidence.

11. The Rule of Completeness also provides a right for Mr. Morphew to introduce his entire interrogation recordings (as well as, of course, to have his statements introduced through law enforcement personnel). *People v. McLaughlin,* 2023 CO 38, ¶4, 530 P.3d 1206. "The common-law rule of completeness is codified in CRE 106." *People v. Melillo*, 25 P.3d 769, 775 n.4 (Colo. 2001). *See People v. Short, supra*, ¶40. CRE 106 provides that "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." The rule applies to oral as well as written statements. *McClaughlin, supra*; *People v. Short*, 50.[1]

12. "[U]nder CRE 106, if the prosecution creates a misleading impression by excluding a defendant's statements that ought in fairness to be considered contemporaneously with the proffered evidence, then the rule of completeness requires the prosecution to introduce such statements." *People v. McLaughlin,* at ¶4, 530 P.3d at 1207. *McLaughlin* held that when the prosecution introduces edited or partial recordings that create a misleading impression, CRE 106 requires the prosecution itself to introduce the completing portions, and that such completing statements are not subject to hearsay objections or CRE 806 impeachment. "[B]y its plain language, CRE 106 contemplates that the proponent of the original evidence that creates a misleading impression is also the proponent of the additional evidence that ought in fairness to be considered contemporaneously with the original evidence." *McLaughlin*, 27.

13. The hearsay rules will not bar Mr. Morphew's introduction of his own statements if the prosecution triggers either CRE 106 or the opening-the-door doctrine. This was made clear by the *Short* Court, which stated unequivocally: ""[W]e conclude that the trial court properly determined that Short's otherwise inadmissible self-serving hearsay was admissible under the rule of completeness to qualify, explain, or place into context the evidence proffered by the prosecution." *Short,* ¶46.

[1]Effective April 4, 2024, the rule was amended to remove any ambiguity and make clear it applies to oral as well as written statements. CRE 106 now provides: "When a statement or part thereof is introduced by a party, an adverse party may require introduction of any other part or any other statement which ought in fairness to be considered contemporaneously with it." Even before the 2024 amendments, the *Short* Court applied it to both through CRE 611 and observed that the Rule's application to both oral and written statements was already the majority rule throughout the country. *Short,* at 50 ("the principles of the rule of completeness apply to oral testimony" under CRE 611(a)). *Ibid* (collecting cases).

14. "A party should not be able to admit an incomplete statement that gives an unfair impression, and then object on hearsay grounds to completing statements that would rectify the unfairness." 2 Stephen A. Saltzburg et al., Federal Rules of Evidence Manual § 106.02 (11th ed. 2015)(footnotes omitted), *quoted in McLaughlin,* ¶31 and *Short,* ¶45.

15. There is no *per se* rule prohibiting the admission of self-serving hearsay by a criminal defendant. *People v. Vanderpauye*, 2021 COA 121, 500 P.3d 1146. "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. The *Vanderpauye* Court supported its rulings with numerous citations from federal cases, other state cases, and learned treatises.

16. More to the point, when the prosecution is required to introduce a defendant's additional statements under CRE 106, those statements are not hearsay. *McLaughlin*, ¶¶ 29-30.

17. The *Vanderpauye* Court also observed that exclusion of evidence simply because it is the defendant's own statement (aka "self-serving hearsay") would violate a defendant's constitutional right to present a defense. See *Vanderpauye*, ¶29, footnote 4. That is correct. Mr. Morphew has a constitutional right to a meaningful opportunity to present a complete defense. U.S. Const. amends. VI, XIV; Colo. Const. art. II, §16; *Holmes v. South Carolina,* 547 U.S. 319, 324-326 (2006); *Krutsinger v. People*, 219 P.3d 1054, 1061 (Colo. 2009) (quoting *Crane v. Kentucky,* 476 U.S. 683, 690–91 (1986)). "Few rights are more fundamental than the accused's right to present evidence that might influence the jury's determination of guilt." *People v. Zubiate*, 2013 COA 69, ¶¶ 10. The Colorado Constitution even contains an explicit provision protecting Mr. Morphew's right to defend his liberty. Colo. Const., art. II, section 3. Restriction on Mr. Morphew's presentation of exculpatory evidence would violate his constitutional right to present a complete defense and would "effectively bar[ ] the defendant from *meaningfully* testing evidence central to establishing his guilt." *Krutsinger*, 219 P.3d at 1062; *Crane*, 476 U.S. at 690-91. Preventing Mr. Morphew from introducing such evidence, especially after the prosecution opens the door and presents an incomplete, misleading picture, would eviscerate Mr. Morphew's ability to defend against the charges and to present a defense, causing reversal of any ensuing conviction.

18. The forty-some hours of interrogation recordings contain some information that would be inadmissible under any analysis. Mr. Morphew requires notice of what portions the prosecution intends to introduce in order to craft appropriate defense motions.

19. As a first step, Mr. Morphew requests that this Court require the prosecution to give notice of which portion(s) of the statements it intends to introduce. Such notice will enable

this Court to address the admissibility issues in a reasonable fashion to ensure that the redaction/addition process is complete before trial.

20. After receiving the prosecution's notice, the defense would provide the prosecution with the additional statements that must be introduced contemporaneously with the prosecution's portion(s). The defense would also be able to make objections and/or proposed redactions to the prosecution's identified portions.

21. Upon receiving the defense objections, redactions, and additions, the prosecution should be required to make any objections or additions pretrial, and this Court should rule on these matters pretrial.

22. If the prosecution waits until trial, this Court should refuse to consider the prosecution's objections/additions. If prosecution fails to identify any portions it wishes to be redacted (or conversely, objects to any of the defense redactions) and waits until the middle of trial to object, this Court should deny its objections. *See e.g.*, *People v. Banks*, 2012 COA 157, ¶¶ 63, 412 P.3d 417, 431 (because the defendant did not request the court to make any further redactions to the videotapes prior to trial, but waited until the middle of trial and the length of the videotapes made mid-trial redactions not a feasible solution, the trial court did not err in admitting all five of the videotapes in their entirety), *aff'd in part, rev'd in part (on other grounds related to sentencing) sub nom. People v. Tate,* 2015 CO 42, 352 P.3d 959.

23. The *Kilgore* Court noted that Rule 16(II)'s requirements are designed to ensure "that the prosecution is not ambushed at trial." *Kilgore,* ¶30. The converse — protecting the defense from mid-trial ambush with respect to forty-plus hours of recordings — is equally compelling and is expressly what this Court has the authority and responsibility to prevent.

24. This Court should order the prosecution to provide the notice to defense counsel but to NOT file it in the public court file. This is appropriate because, at the time the notice would be filed, this Court would not have ruled on its admissibility. Potential jurors should not be exposed to inadmissible evidence – or even to admissible evidence in advance of trial.

25. If the prosecution seeks to introduce legal argument in support of their notice, this Court should rule that the prosecution can do that without inserting into the document the very material that it asks permission to introduce.

26. 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, CREs 106, 401, 402, 403, 404, 608, 801, 802, 901, and other applicable Rules of Evidence or Criminal Procedure. 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 require the prosecution to give notice, on or before June 15, 2026, of which portions of Mr. Morphew's statements the prosecution intends to introduce at trial, thereby enabling the defense to make any necessary objections and proposed additions/redactions in writing before the July 6, 2026 hearings week.

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