

<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 11:52 PM</p> <p>▲ COURT USE ONLY ▲</p>
<p>JANE FISHER-BYRIALSEN, #49133 FISHER & BYRIALSEN, PLLC 4600 S. Syracuse Street, 9th Floor Denver, CO 80237 (202)256-5664 Jane@fblaw.org</p> <p>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</p>	<p>Case Number: 25 CR 128</p>
<p align="center">[D-040] MOTION TO EXCLUDE OUT OF COURT STATEMENTS ATTRIBUTED TO SUZANNE MORPHEW</p>	

Mr. Barry Mophew, by and through counsel, requests that this Court exclude from trial for any purpose Suzanne Mophew’s out of court statements and prohibit mention of any such statements in voir dire, opening or closing statements, and testimony.

In support, Mr. Mophew states:

1. A defendant in a criminal case has a constitutional right to confront witnesses against him. *See* U.S. Const. amends. VI, XIV; Colo. Const. art. II, § 16. The Confrontation Clause bars the admission of testimonial statements of a witness who doesn't appear at trial and wasn't previously subject to cross-examination. *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004); *People v. Fry*, 92 P.3d 970, 976 (Colo. 2004) (adopting *Crawford*'s Confrontation Clause inquiry); *see also Nicholls v. People*, 2017 CO 71, 31 (“Colorado's Confrontation Clause [is] commensurate with the federal Confrontation Clause.”).

2. If those statements were made for the purpose of providing a substitute for testimony, they are testimonial and violate the confrontation clause of the U.S. Constitution and Article II, Section 16 of the Colorado Constitution. “[S]tatements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial” are generally considered testimonial. *Crawford v. Washington*, 541 U.S. 36, 52 (2004). Nontestimonial hearsay statements are subject to the Colorado rules of evidence; testimonial hearsay statements are subject to exclusion under the Confrontation Clause. *Raile v. People*, 148 P.3d 126, 130 (Colo. 2006).

3. The prosecution is expected to seek introduction of statements that were “made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.” *Crawford*, at 52. Such statements are testimonial hearsay and their admission would violate the confrontation clauses of the state and federal constitutions.

4. Admission of the statements would also violate the rules that make hearsay inadmissible. Hearsay is a “statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” CRE 801(c). Hearsay isn't admissible unless an exception applies. If the prosecution wants to introduce hearsay, it should have to come forward and identify the exception it seeks to have this Court apply. Out of court statements are presumptively hearsay and inadmissible.

5. The prosecution should not be able to mention any out of court statement in voir dire or Opening Statement, or at any point in the trial prior to this court's ruling.

6. Mr. Morpew 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. Morpew 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. Morpew respectfully requests that this Court exclude from trial for any purpose Suzanne Morpew's out of court statement and prohibit mention of any such statements in voir dire, opening or closing statements, and testimony.

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