

<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 8:05 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-011] MOTION FOR NOTICE OF THE PROSECUTION’S INTENTION TO INTRODUCE ANY EVIDENCE OR TESTIMONY UNDER CRE 807</p>	

Mr. Barry Morphew, by and through undersigned counsel, hereby requests that this Court order the prosecution to provide Mr. Morphew with written notice, within thirty (30) days of this Court’s order, of any evidence or testimony it seeks to introduce under CRE 807. It is imperative this notice be filed promptly to allow time to respond to and litigate at the Motions Hearings.

Further, Mr. Morphew requests that this Court rule that no such evidence will be admitted if said notice is not provided.

Mr. Morphew further requests this Court order that the prosecution’s notice is not to be filed in the public court file.

AS GROUNDS, Mr. Morphew states:

1. “ ‘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 is generally inadmissible. CRE 802.

2. C.R.E. 807 contains the “residual exception” to the hearsay rule. It provides, in pertinent part:

A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

3. Pre-trial notification of intent to introduce a statement under Rule 807 is essential. The rule states:

A statement may not be admitted under this exception unless the **proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it**, the proponent’s intention to offer the statement and the particulars of it, including the name and address of the declarant.

4. No time period is provided within the Rule for the pre-trial disclosure of statements sought to be introduced under Rule 807. The Defendant requests the Court direct the Prosecution to provide notice of the Prosecution’s intent to introduce statements under Rule 807, together with the particulars of the statements, including the names and addresses of the declarants, within thirty (30) days of this Court’s order.

5. Early notice is required in part because of the way the prosecution has provided discovery in this case. The volume of discovery and the manner in which it has been disclosed is insufficient to give notice. “[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.

6. The fact that the government has provided voluminous discovery does not remedy the notice issue. *Cf. United States v. Bortnovsky*, 820 F.2d 572, 574-75 (2d Cir. 1987)(ruling that

the trial court erred in refusing a motion for a bill of particulars)(“The Government did not fulfill its obligation merely by providing mountains of documents to defense counsel....”).

7. Under these circumstances, a “fair opportunity” must be interpreted to mean disclosure well in advance of trial, so that the defense has an opportunity to investigate and respond, as well as to interpose objections with this Court, and so this Court has sufficient time to hold necessary evidentiary hearings and issue findings.

8. CRE 807 is “to be used only rarely, and in exceptional circumstances and applies only when certain exceptional guarantees of trustworthiness exist and when high degrees of probativeness and necessity are present.” *People v. Shifrin*, 2014 COA 14, 59, 342 P.3d 506, 518, quoting *United States v. Turner*, 718 F.3d 226, 233 (3d Cir.2013) (internal quotation marks and alterations omitted). CRE 807 “is reserved for exceptional cases and is not intended as a broad license for judges to admit hearsay that does not fall within other specifically enumerated exceptions.” *People v. Tafoya*, 13CA1745, 21 (Colo. App. Dec. 15, 2016)(unpublished),¹ citing *Conoco Inc. v. Dep’t of Energy*, 99 F.3d 387, 392 (Fed. Cir. 1996); *People v. Shifrin*, 2014 COA 14, 59; *In re Steven D.*, 23 A.3d 1138, 1165 (R.I. 2011), and S. Rep. No. 93-1277 on bill (H.R. 5463) to establish rules of evidence, at 36 (Oct. 11, 1974) (exception applies “very rarely, and only in exceptional circumstances”).

9. If this Court decides to admit evidence under CRE 807, this Court is going to have to make “adequate findings on the record.” *People v. Shifrin, supra*, 60. Corroborating evidence of reliability is required, which is not the same thing as corroborating evidence about the alleged offense. See *Vasquez v. People*, 173 P.3d 1099, 1107 (Colo. 2007) (“Corroborating evidence is not an appropriate “circumstantial guarantee” supporting [] reliability.... The reliability of a statement should be determined by the circumstances that existed at the time the statement was made.”) (citing *Idaho v. Wright*, 497 U.S. 805, 822 (1990)). Sufficient notice will facilitate this Court’s ability to hold the necessary evidentiary hearings to assess reliability and to determine the issues.

10. 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. Any legal argument can be set forth without recitation of the evidence the prosecution seeks to admit.

11. 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

¹ Unpublished cases may be cited in this Court. *Patterson v James*, 2018 COA 173, 454 P.3d 345.

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. Barry Morphew, by and through undersigned counsel, hereby requests that this Court order the prosecution to provide Mr. Morphew with written notice, within thirty (30) days of this Court's order, of any evidence or testimony it seeks to introduce under CRE 807.

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