

☐ County Court ☐ District Court Alamosa County, State of Colorado 8955 Independence Way Alamosa, CO 81101	DATE FILED May 29, 2026 1:35 PM
PEOPLE OF THE STATE OF COLORADO v. BARRY MORPHEW AKA: Barry Morphew Defendant	
Anne E Kelly, District Attorney Fred Johnson, Special Deputy District Attorney Office of the District Attorney 601 Main Street Alamosa, CO 81101 Phone Number: (719) 589-3691 Attorney Reg. 38885	Case No. D0022025CR000128 Div: D Ctrm:
PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO CLARIFY COURT ORDER REGARDING NOTICE OF INTENT TO INTRODUCE CHARACTER EVIDENCE [D-012]	

Anne Kelly, District Attorney in and for the Twelfth Judicial District, State of Colorado, respectfully responds to Defendant's Motion and states as follows:

SUMMARY OF ARGUMENT

The Defendant has asked the Court to exclude certain evidence admissible pursuant to Colorado Rule of Evidence 404(b) at his murder trial. To support the request, the Defendant relies on a decision in what the Defendant is calling “*Morphew I*”—a previous case from the Eleventh Judicial District that ended in a dismissal without prejudice. The Defendant insists that the law of the case doctrine serves to preclude this Court from considering the admissibility of evidence at issue in a separate case.

As a procedural matter, the Defendant's argument fails: the law of the case doctrine has no application to separate cases from separate jurisdictions litigated by different district attorney's offices before different judges. As a substantive matter, evidence of prior acts pursuant to Rule 404(b), which will be presented in the People's Notice, is relevant and admissible in this case. Without actually articulating the evidence the Defendant challenges, the Defendant fails to provide any legal issue on which the Court could effectively rule.

The motion should be denied.

RELEVANT FACTS

In 2021, the Defendant was charged with a series of crimes in the Eleventh Judicial District related to the murder of Suzanne Morphew. When that case was filed, Ms. Morphew's remains had not been located. Those charges were initiated by information and complaint, litigated, and ultimately dismissed without prejudice before the case ever went to trial.

During the pendency of that former case, the Defendant raised a wide variety of issues with the Fremont County District Court (e.g., discovery violations, requests for evidentiary rulings, etc.). One of those issues was an objection to the People's notice of their intent to introduce evidence pursuant to CRE Rule 404(b). The Court made evidentiary rulings on that issue specific to the evidence the People proffered, the evidentiary theory proffered and the attorneys' arguments.

Two months later, in April 2022, the Eleventh Judicial District prosecutors filed a motion to dismiss the case without prejudice. That motion was granted.

Almost a year and a half after the Fremont County case ended, Suzanne Morphew's remains were discovered in Saguache County, Colorado—an area that falls within the Twelfth Judicial District. The Twelfth Judicial District Attorney's Office sought an indictment on the single count of murder in the first degree against the Defendant. The current case is being prosecuted by attorneys who were not involved in the Eleventh Judicial District case, and the case is being heard by a separate judicial officer presiding in a separate judicial district.

LEGAL STANDARD AND ARGUMENT

I. The “law of the case” doctrine does not apply between two different cases.

The Defendant's motion suggests that, based on the “law of the case,” this Court must adopt and enforce rulings made by a different judge from a different jurisdiction in a different case. That doctrine, however, has no bearing on this situation.

The “law of the case” generally provides that “prior relevant rulings made *in the same case* are to be followed.” *People v. Dunlap*, 975 P.2d 723, 758 (Colo. 1999) (emphasis added). The concept is

mandatory when evaluating a previous pronouncement of an appellate court in a case that has been remanded back to the trial court. (There, the trial court must follow the appellate court's directive.) It is discretionary when a trial court is thinking about reconsidering one of its own rulings. (There, the doctrine is flexible, and allows a trial court to rethink its previous orders.) *See, e.g., People v. Roybal*, 672 P.2d 1003, 1006 n.5 (1983).

The Defendant's motion, however, fails to recognize a foundational principle of this doctrine: these concepts guide a court when it has been asked to reconsider a ruling *in the same case*, whereas the Defendant here is asking this Court to import a ruling *from a different case*. But, as the Sixth Circuit put it, the "defining feature of the law-of-the-case doctrine is that it applies only within the same case." *Edmonds v. Smith*, 922 F.3d 737, 739 (6th Cir. 2019); *Sherley v. Sebelius*, 689 F.3d 776, 780 (D.C. Cir. 2012) ("The purpose of the law-of-the-case doctrine is to ensure that 'the *same* issue presented a second time in the *same case* in the *same court* should lead to the *same result*.'" (emphasis in original)). This baseline requirement has been repeatedly announced by Colorado appellate courts. *E.g., People v. District Court*, 666 P.2d 550, 553 (Colo. 1993) ("Although a trial court is not inexorably bound by its *own* precedents, prior relevant rulings *made in the same case* are generally followed." (emphasis added)); *Kuhn v. State*, 897 P.2d 792, 795 (Colo. 1995) (recognizing that the law of the case applies "to final decisions that affect parties *in the same case*" (emphasis added)); *Verzuh v. Rouse*, 660 P.2d 1301, 1303 (Colo. App. 1982) ("[T]he law of the case applies to final decisions affecting the same parties *to the same case*." (emphasis added)); *see also Farina v. Nokia Inc.*, 625 F.3d 97, 117 n.21 (3d Cir. 2010) (recognizing that the law of the case doctrine "only applies within the same case").

The current case may charge the same defendant with a crime related to the same murder, but it is clearly not "the same case." It was filed by different prosecutors in a different court after previous charges were dismissed without prejudice and new evidence was uncovered, namely, the discovery of Ms. Morphew's body, which had been disposed of in a different judicial district, and which had a chemical in the bones that only the Defendant had access to in the area. *See People v. Small*, 631 P.2d 148, 154 (Colo. 1981) (recognizing that a dismissal of criminal charges without prejudice "leaves the matter in the same

condition as before the charges were filed”). The Defendant has not, because he cannot, point to any legal authority to support his claim that pretrial evidentiary rulings made in a different jurisdiction in a different case have any control over the Court’s decisions here. *See, e.g., Jones v. Samora*, 395 P.3d 1165, 1175 (Colo. App. 2016) (recognizing that the law of the case applies only to rulings made during the pendency of a *single proceeding*).¹

II. Rule 404(b) Evidence Is Relevant and Necessary in this Case.

The Defendant files this Motion recognizing that the People have not yet provided notice to the Court of its intention to introduce evidence pursuant to Rule 404(b). The Defendant’s Motion is not ripe for consideration. The People will introduce evidence that is, among other things, relevant to the Defendant’s motive for killing his wife and his state of mind when committing the act. In addition, the evidence the People will provide notice of evidence relevant to rebut the Defendant’s statements to police that his marriage was free of conflict suggesting that he had no motive to kill his wife. The evidence will demonstrate the Defendant’s attempts to conceal relevant information about his marriage in several ways. The People will introduce evidence of prior acts to demonstrate that the Defendant had relatively exclusive access to the unique murder weapon in this case, a regulated chemical compound the Defendant admitted to possessing and using prior to the murder. The proffered evidence will also be relevant to demonstrating the Defendant was familiar with the area Suzanne Morpew’s remains were discovered. *People v. Rath*, 44 P.3d 1033, 1039-44 (evidence of prior conduct is admissible if relevant to prove a material fact and its relevance is not outweighed by the danger of unfair prejudice). The People will more fully articulate the permissible probative value of this evidence in their Notice.

III. There is No Legal Support For Defendant’s Request to Restrict Public Filings

¹ If a party wants to take a ruling from one case and try to apply it in another, in theory, the proper tool would be collateral estoppel (also known as “issue preclusion”). *See, e.g., People v. District Court*, 666 P.2d 550, 554 (Colo. 1983) (“Collateral estoppel bars relitigation between the same parties of issues actually determined at a previous trial.”). But that concept wouldn’t apply here, either: four elements must be met for the doctrine to apply, one of which is that “there must have been a final judgment on the merits at the first proceeding.” *Id.*; *see also Williamsen v. People*, 735 P.2d 176, 182 (Colo. 1987). And a dismissal without prejudice is not a “final judgment on the merits.” *See id.*; *People v. Small*, 631 P.2d 148, 154-55 (Colo. 1981) (recognizing that a dismissal without prejudice of criminal charges (an order of nolle prosequi) “is not the final disposition of a criminal case, but leaves the matter in the same condition as before the charges were filed”).

The Defendant suggests in his Motion that “the Court should order the prosecution to provide the notice to defense counsel but to NOT file it in the public file.” The People are unclear about whether the Defendant is seeking, as he had in other motions, that the People leave out any facts in their arguments at the public motions hearing. The People believe the Defendant is suggesting that the presentation of evidence in support of the admission of evidence pursuant to 404b should be curtailed to avoid potential jury exposure to evidence. The Defendant provides no legal authority for the proposition that advocates should be limited in their advocacy on a motions issue to avoid influencing the public who may be called to serve on a jury. No such authority exists. Rather, the Court has already made clear that the parties shall not make or disseminate an *extrajudicial* statement that the lawyer knows or reasonably should know will have a likelihood of prejudicing a criminal proceeding. The People have complied with that Order. Moreover, Colorado courts consistently hold that proper voir dire of a jury panel is sufficient to overcome any suggestion of prejudice created by extensive media coverage. *People v. Bartowsheski*, 661 P.2d 235 (Colo. 1983); *People v. McCrary*, 549 P.2d 1320 (Colo. 1976); *People v. Gardenhire*, 903 P.2d 1165 (Colo. App. 1995).

Wherefore, based on the above the People respectfully request that this Honorable Court DENY the Defendant’s Motion.

Dated May 29, 2026

Anne E Kelly
District Attorney

/s/ Anne Kelly
Anne E Kelly, 38885