

from three separate police agencies. The subject matter of the recordings varied across interactions. All of these recordings have been provided to the Defense in discovery.

LEGAL STANDARD AND ARGUMENT

I. *The Rule of Completeness Does Not Require Admission of the Many Hours of the Defendant's Recorded Interactions with Law Enforcement.*

Colorado Rule of Evidence 106 codified the common law rule that upon admission of a portion of an opponent's statement, the opponent was entitled to have the entirety of the statement introduced if admitting only a portion of the statement would be misleading. *People v. DelGuidice*, 606 P.2d 840, 844 (Colo. 1979); *People v. Manyik*, 383 P.3d 77, 85 (Colo. 2016) (“If admitting only one part of a written or recorded statement would be unfair or misleading, the rule of completeness favors admission of other parts of the statement.”). CRE 106 provides that “when 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 does not, however, allow wholesale admission of otherwise inadmissible hearsay. *People v. Davis*, 218 P.3d 718, 731 (Colo. App. 2008).

The People may introduce all or a portion of several interviews the Defendant had with police. The People do not intend to introduce all of the Defendant's recorded statements. In doing so, the People intend to play the entirety of the portion of the Defendant's recorded statement related to a specific topic. If that portion contains exculpatory words by the Defendant, the People will introduce those words within the context of the topic introduced. That method is sufficient to avoid the errors raised in *People v. Short*, 425 P.3d 1208 (Colo. App. 2018) and *People v. McLaughlin*, 530 P.3d 1206 (Colo. 2023). In *Short* and *McLaughlin*, the trial court permitted the prosecutor to redact a portion of a defendant's sentence (because it was self-serving) rendering the introduced statement clearly subject to misinterpretation. For example, the court in *Short* allowed the prosecutor to redact the bolded portion of the following statement by the defendant in a sex assault trial: “Someone's abusing [the victim], **but it ain't me.**” In *McLaughlin*, the trial court permitted the prosecution to redact a portion of a DUI defendant's statements mid-conversation

with an officer leaving the jury with the impression that the defendant had no idea how his vehicle arrived at its location when his allegation that the actual driver left the scene was redacted from the recording.

The key factor for the Courts in *Short* and *McLaughlin* in determining whether CRE 106 applies was whether the admitted statement, without the redacted portion, is misleading or subject to a misimpression of what the speaker actually sought to convey. *People v. Montoya*, 546 P.3d 605, 616-617 (Colo. 2024). The Defendant's suggestion here, that he should be permitted to play all sixty one of his separate interviews with police if the People introduce portions of his interviews, is not consistent with Colorado law or CRE 106. The Defendant's request is akin to the request rejected by the Court of Appeals in *People v. Davis*, 218 P.3d 718, 731 (Colo. App. 2008). In that case, the defendant was interviewed by police twice. In the first interview, the Defendant made several self-serving statements denying the crime. In the second interview, the Defendant made inculpatory statements when asked essentially the same questions she was asked during the first interview. The People chose to play only the second interview. The defendant argued that the first interview was necessary to provide context for the second interview. The Court rejected this argument and found that the first interview was not necessary to correct any misleading omissions created by the People's decision to play only one interview. *Id.* In making this finding, the Court also rejected the contention that the second interview was merely a continuation of the first separated by the administration of a polygraph test. *Id.* The court found that these were two separate, distinct interviews like the Defendant's numerous interviews in this case. *Id.* Finally, the Court noted that the defendant had the right to – and did – chose to testify consistently with the statements she made during the first interview. *Id.*

Courts have consistently interpreted Rule 106 to apply to statements made in close proximity to or in the same conversation as the “clarifying” statement. For example, in *People v. Manyik*, the Court upheld a trial court's decision to redact the recording of a defendant's phone calls to family members during a break from a police interview rejecting the defendant's argument that those statements were part of the *same interview* and should be admitted pursuant to CRE 106. 383 P.3d 77, 91 (Colo. App. 2018). In both *Short* and *McLaughlin*, the Court emphasized that admitting *part of contemporaneous statement*

led to the unfair result. The Court in *McLaughlin* emphasized that the purpose of CRE 106 is to “cure a misleading impression” or to ensure that statements are presented in a way that “reflects the statement accurately and fairly.” *Id.* The Court further emphasized that the rule is not designed to allow a defendant to “admit their own statements independently” but rather to “cure misleading impressions.” *Id.*; *See, e.g. People v. Taylor*, 2022 WL 22926488, *2 (Colo. App. 2022)

The Supreme Court’s recent decision in *People v. Montoya* similarly emphasizes the application of CRE 106 to statements made *in the same conversation* or in close proximity to the misleading statement. *Montoya*, 546 P.3d at 616-617. In that case, the defendant initially refused chemical testing in a DUI investigation. Just 15 minutes later, the Defendant recanted the refusal. The Supreme Court determined that redacting the recantation of the refusal so close in time to the initial refusal left the jury with a misleading impression of the defendant’s intentions. *Id.* at 618 (noting that the redacted statement here occurred “minutes after” the admitted statement and the statements in *McLaughlin* were “back-to-back”). “The purpose of Rule 106 is to prevent a party from misleading a jury by excluding *portions of a statement* that would clarify or explain the part already received.” *Id.* at 616 (emphasis added); *People v. McKinley*, 2025 WL 3676054 *4 (Colo. App. 2025); *People v. Weaver*, 2024 WL 4665442, *7 (Colo. App. 2024).

In *People v. DeJesus*, the Court of Appeals again focused on the fact that redacting a *contemporaneous* statement from a defendant disavowing knowledge of the contraband at issue left the jury with a misleading impression that the defendant had, *at that moment*, no explanation for the contraband. 2024 WL 4903219, *4 (Colo. App. 2024) The Court held that CRE 106 is intended to cure a contemporaneous “misimpression.” The Rule does not to allow, as the Defendant suggests here, self-serving interviews made weeks or months after an initial interview. *People v. Thompson*, 2025 WL 3295843, *7 (Colo. App. 2025) (quoting *Montoya* stating that the “passage of time between statements ‘should inform the court’s assessment of what is fair.’”).

Recorded out-of-court statements by the Defendant that are not necessary to cure a misimpression or are unrelated to the statements the People seek to introduce as statements by a party opponent are inadmissible hearsay if the statement does not otherwise satisfy a hearsay-rule exception. *People v.*

Vanderpauye, 530 P.3d 1214, 1223 (Colo. 2023); *People v. Cunningham*, 570 P.2d 1086, 1089 (Colo. 1977). The Court in *Cunningham* held consistent with treatises on the rules of evidence that “a self-serving declaration is excluded because there is nothing to guarantee its testimonial trustworthiness. If such evidence were admissible, the door would be thrown open to obvious abuse: an accused could create evidence for himself by making statements in his favor for subsequent use at his trial to show his innocence.” *Cunningham*, 570 P.3d at 1089 quoting 2 Wharton’s Criminal Evidence s 303 (13th Ed., 1972), at 97-98. The Supreme Court clarified *Cunningham* in *Vanderpauye* by holding that a criminal defendant’s statement could qualify for admission pursuant to another evidentiary rule. The Supreme Court did not, however, reject the fundamental holding in *Cunningham* that a defendant cannot simply seek to admit his self-serving hearsay without some other hearsay exception. *Vanderpauye*, at 1223-24. Here, the Defendant “created” many ever changing statements over the course of the investigation in this case. Like the defendant in *Davis*, the Defendant here cannot seek to build his defense on preserved out of court statements unexposed to the rigors of cross examination.

II. *The People Are Not Required to Disclose Their Trial Strategy.*

At the outset, there is not requirement under Rule 16 that compels the People to provide a pretrial roadmap of the People’s trial strategy. *People v. Kilgore*, 455 P.3d 746, 747-48 (Colo. 2020). That is what the Defendant is requesting the Court order here by seeking a preview of what recorded statements the People will introduce. The People intend to introduce the Defendant’s recorded interactions with law enforcement that are relevant to the People’s case. The People do not intend to introduce all fifty hours of the Defendant’s recorded interactions with law enforcement. Similarly, the People intend to introduce some, but not all, of the evidence developed during the investigation. The People will introduce the evidence that is relevant to the People’s case. By requiring the People to disclose in advance of trial what evidence the People deem relevant would be akin to requiring the People to share their trial strategy. No such requirement exists because such a requirement would be unfairly prejudicial to the People.

III. *Evidence of a Declarant’s Demeanor is Not Hearsay.*

In the Defendant's request for notice of statements herein, the Defendant also contends that his arguments regarding statement admissibility should apply to "testimony about the Defendant's demeanor around law enforcement personnel." The Defendant offers not legal authority for this inclusion. Indeed, the Defendant conflates statements subject to hearsay restrictions with non-hearsay evidence. "A person's demeanor is generally not hearsay." *People v. Lujan*, 484 P.3d 718, 723 (Colo. App. 2018) *reversed on separate grounds*; *see also People v. Davidson*, 2022 WL 229291140, *2 (Colo. App. 2022) (victim's demeanor and non-verbal conduct was not hearsay); *People v. Acosta*, 338 P.3d 472, 479 (Colo. App. 2014) (holding that a witness's "sensory impressions" of another's behavior is admissible).

IV. *This Court Should Not Limit Argument Regarding Proposed Evidence.*

The Defendant suggests in his Motion that "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 is asks permission to introduce." The People believe the Defendant is suggesting that any argument or presentation of evidence in support its response to Defendant's motion should be curtailed to avoid potential jury expose 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 27, 2026

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/s/ Anne Kelly

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