

☐ County Court ☐ District Court Alamosa County, State of Colorado 8955 Independence Way Alamosa, CO 81101	
PEOPLE OF THE STATE OF COLORADO v. BARRY MORPHEW AKA: Barry Morphew Defendant	DATE FILED May 27, 2026 7:38 PM ▲ COURT USE ONLY ▲
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 FOR EVIDENTIARY HEARING TO EXCLUDE SUMMARY TESTIMONY [D-035]	

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

The Defendant seeks an evidentiary ruling regarding whether the People should be permitted to call a "summary witness" at trial. At the outset, the issue raised by the Defendant does not require an evidentiary hearing to resolve. A hearing requiring the People's "summary witness" to testify about his or her summary of the facts presented at trial would be akin to a pretrial deposition, something the Defendant is not entitled to. Moreover, it is axiomatic that a summary witness, who ostensibly would be called to summarize testimony and evidence at the end of the People's case, would not be able to perform that task at a pretrial motions hearing. Courts that have permitted summary evidence do not permit a pretrial evidentiary hearing, but rather, in the court's discretion, a voir dire of the witness prior to the witness taking the stand. *Murray v. Just In Case Bus. Lighthouse, LLC*, 374 P.3d 443, 454 (Colo. 2016). The People, therefore, object to the Defendant's request set an evidentiary hearing to resolve the issue raised.

The Defendant's request to summarily exclude summary testimony is not supported by Colorado law. Instead, Colorado courts have held that summary testimony would "benefit a jury because it could

‘help the jury organize and evaluate evidence which is factually complex.’” *Murray v. Just In Case Bus. Lighthouse, LLC*, 374 P.3d 443, 455 (Colo. 2016) citing *U.S. v. Lemire*, 720 F.3d 1327, 1349 (D.C. Cir. 1983). The People are permitted to present testimony that summarizes evidence and testimony so long as the witness presents the information “accurately, correctly and in a nonmisleading manner.” *Id.* In addition, summary testimony is appropriate where the information is “at least admissible, if not admitted.” *Id.*

While Colorado courts have not extensively addressed the use of summary testimony in criminal cases, federal courts in the Tenth Circuit have permitted the practice in cases, like this case, where the evidence, including the number of witnesses presented, is voluminous. *But see, People v. Pettigrew*, 2025 WL 1354055, *11-12 (Colo. App. 2025) (allowing summary exhibit where witnesses introducing exhibit had personal knowledge of the material included in the summary exhibit pursuant to CRE 1006); *People v. Frankel*, 2020 WL 14046037, *3 (Colo. App. 2020) (same). In *U.S. v. Ray*, the Tenth Circuit Court of Appeals held that summary testimony was appropriate in a trial that lasted twenty-three days and involved over fifty witnesses. *U.S. v. Ray*, 370 F.3d 1039, 10046-48 (10th Cir. 2004). The Court found that the summary testimony would aid the jury in ascertaining the truth, the witness was available for cross-examination and the Court provided a limiting instruction related to summary testimony. *Id.*; *see also U.S. v. Mann*, 884 F.2d 532, 538-39 (10th Cir. 1989); *U.S. v. Stiger*, 413 F.3d 1184, 1197-99 (10th Cir. 2005).

The People anticipate calling over fifty witnesses to testify in this case. The case is currently scheduled for thirty days. Due to the size of the investigation and the volume of information collected, the People believe that summary witness testimony would be materially helpful to a jury in ascertaining the facts. The witness will not testify regarding facts not in evidence that he does not have personal knowledge of. The Defendant will have a full opportunity to cross examine the witness on the accuracy of his summary. The Court is able to provide a limiting instruction regarding the appropriate nature and use of summary testimony.

Importantly, the Defendant has not clearly defined what he means by “summary testimony.” In the one Colorado case the Defendant relies upon, the Court defined summary testimony as testimony about

evidence already introduced at trial that provided the jury with an accurate, non-embellishing summary of complicated and voluminous material. *See Murray*. The Court in *Murray* approved the use of such testimony. The other authority cited by the Defendant, however, creates ambiguity about how the Defendant is defining “summary evidence.” For example, the Defendant cites to *Volkswagon of Am., Inc. v. Ramirez*, a case that did not mention the word “summary” at all, but rather discusses expert qualifications. *Volkswagon of America, Inc. v. Ramirez*, 159 S.W.3d 897 (Tex. 2004). *U.S. v. Dukagjini* discusses using case investigators as experts, not as designated “summary witnesses”. *U.S. v. Dukagjini*, 326 F.3d 45, 53 (2nd Cir. 2003). In *U.S. v. Casas*, *U.S. v. Aviles-Colon* and *U.S. v. Flores-De-Jesus*, the Courts rejected the use of prosecution’s use of “overview witnesses” or witnesses that testified at the *beginning* of the trial about what the evidence was *going* to be presented. *See U.S. v. Brooks*, 736 F.3d 921, 930-31 (10th Cir. 2003) (“Although conceptually similar to overview testimony-which comes at the beginning of a case-summary testimony comes towards the end of a case and is used to repackage complex testimony already admitted-admitted testimony for the jury.”). Federal Courts consistently hold that summary testimony is admissible.

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

Dated May 27, 2026

Anne E Kelly
District Attorney

/s/ Anne Kelly
Anne E Kelly, 38885