

RELEVANT FACTS

In 2021, the Defendant was charged with a series of crimes in the Eleventh Judicial District related to the murder of Suzanne Morpew. When that case was filed, Ms. Morpew'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 motions sought to exclude "profiling evidence" at trial. At a motions hearing on February 24, 2022, without any discussion or litigation about what "profiling evidence" was or how any such evidence would be proffered by the Eleventh Judicial District Attorney in that case, the prosecutors indicated that they were not seeking to introduce "profiling evidence." With the prosecutors' stipulation, the inquiry ended there: the Fremont court ruled that any amorphous "profiling evidence" would be excluded.

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 Morpew'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. *The Defendant’s motion should be denied because it has not presented anything concrete for the Court to rule on.*

On the merits, the Defendant’s motion fails. It does not provide any definition of what the Defendant labels as “profiling evidence.” It does not provide any examples of “profiling evidence” that the People intend to introduce. And it does not attempt to distinguish potential purposes or admissibility theories for this unidentified “profiling evidence.” Without a clear definition, an actual piece of evidence, or an argument distinguished by the purpose of admission, this Court cannot meaningfully decide this motion.

“The ‘profile’ label is not helpful in distinguishing admissible from inadmissible expert testimony.” *People v. Conyac*, 361 P.3d 1005, 1016 (Colo. App. 2014). Rather,

courts focus on the purpose for which the evidence is offered: whether it is improper propensity evidence designed to show the defendant’s character, or whether it instead seeks to aid the jury in understanding a pattern of behavior beyond its normal experience. Thus, experts may testify regarding the modus operandi of a certain category of criminals where those criminals’ behavior is not ordinarily familiar to the average layperson.

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”).

Id. (internal quotation marks omitted); *see also People v. Williams*, 2019 WL 13573590, at *2 (Colo. App. 2019); *People v. Peacock*, 2022 WL 22928658, at *2 (Colo. 2022). In *Salcedo v. People*, the Colorado Supreme Court recognized the distinction that the Defendant fails to acknowledge here. 999 P.2d 833, 840-41 (Colo. 2000) (recognizing that drug courier characteristic evidence may be admissible if offered to rebut a defense or if the evidence was objective and widely accepted in the field). There, the prosecution introduced expert evidence regarding the “profile” of a drug courier. The expert witness testified that he “looks for” certain characteristics of a drug courier that he is familiar with. He did not rely on any research or material developed in his field, only his own experience. Moreover, the expert witness opined that the defendant in that case “fit” the characteristics and the prosecutor argued the same during closing argument. The *Salcedo* Court distinguished the inadmissible evidence in that case from admissible expert testimony that would be offered to rebut a defense or was supported by objective research. *Id.* at 840-41.

In this case, the People anticipate that the defense will argue that law enforcement was myopic in their focus on the Defendant, for example. Expert testimony supported by substantial experience and research in criminology will be helpful to the jury to put law enforcement’s decisions in context and rebut that allegation.

Ultimately, without a definition of what the Defendant means by the term “profiling evidence” and without offers of proof of any proposed evidence, the Court is not in a position to decide this motion in a vacuum. Therefore, the People request that the Court deny the Motion and address evidentiary issues as they are raised at trial.

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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