☐ 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 8:14 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 TO EXCLUDE "VICTIMOLOGY" TESTIMONY [D-037]

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 any "victimology" evidence at his murder trial. To support the request, the Defendant relies on a "concession" that a prosecutor made in "*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 should bind the People to their prior concession."

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, his argument fares no better: the Defendant has not defined what "victomoloy" evidence is, nor has he identified any proposed evidence that would be objectionable. In sum, 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 motions sought to exclude "victimology" evidence at trial. At a motions hearing on February 24, 2022, without any discussion or litigation about what "victimology" 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 "victimology" evidence.[1] With the prosecutors' stipulation, the inquiry ended there: the Fremont court ruled that any amorphous "victimology" 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 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.

[1] Without more discussion or clarification from the Defendant in the Chaffee County case, the Judge stated that "The Court knows what [victimology evidence] is. I think the People know what that is. Certainly the defense does." In that record, neither party actually articulated what the "victimology evidence" they were discussing actually was. Nor did the Defendant articulate any purpose the People might have in introducing the undefined evidence: "The Court didn't have to really consider how the People were going to use it because they told the Court today Judge, were not using that testimony."

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*).[2]

II. The Court Should Not Blanketly Exclude an Undefined Category of Evidence.

There is no legal definition of "victimology evidence" nor does the Defendant offer one. The term has been used in several different factual settings in Colorado courts to describe different types of testimony. For example, the Supreme Court in *People v. Hampton* held that a victim advocate could testify about rape trauma syndrome as an expert in "victimology". *People v. Hampton,* 746 P.2d 947, 949-50 (Colo. 1987). The Court in *People v. Garza* used the term "victimology" to describe a blind clinical psychologist expert endorsed to testify about "child sex assault trauma, outcries, dynamics and effects." *People v. Garza*, 2021 WL 12341164, *1 (Colo. App. 2021). The Court of Appeals addressed a trial court's decision to allow an expert in a domestic violence case to "assist the jury in understanding

[2] 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").

'cycle of violence' and 'victimology'." *People v. Velasquez-Trinidad,* 2018 WL 11713914, *6 (Colo. App. 2018).

In other states, the term "victimology" has been used to describe expert testimony into certain victim characteristics that led to victimization. *Simmons v. State*, 797 So.2d 1134, 1154-56 (Ala. Crim. App. 1999) (holding that the field of "victimology" is a reliable field of specialized knowledge rendering the expert's testimony relevant and admissible); *State v. Spaulding*, 2018-Ohio-3663, 119 N.E.859, 892 (permitting testimony regarding the "victimology" of the murder victim, or testimony regarding what aspects of the victim's life "would make him the target of that crime"); *People v. Mouser*, 2004 WL 114687, *18-19 (Cal. Ct. App. Jan. 26, 2004). Like Colorado, states have labeled testimony regarding victim trauma and behavior as "victimology." *State v. Graceffo*, No. 55553, 1989 WL 85144, *1 (Ohio Ct. App. July 27, 1989); *State v. Freeney*, 228 Conn. 582, 590-91 (1994). Federal Courts have accepted "victimology" testimony in human trafficking cases to describe common, research supported characteristics of trafficking victims. *United States v. Jackson*, 2025 WL 2754031, *1-2 (D. Oregon, 2025). Federal Courts have upheld the trial court's admission of "victimology" testimony defining it as testimony addressing the murder victims' relative risk factors for victimization and what the crime scene suggested about the motivation for murder. *Duvardo v. Guirbino*, 649 F.Supp.2d 980, 997-98 (N.D. Cal. 2009). In *U.S. v. Alzanki*, the Court of Appeals held that expert "victimology" testimony was admissible to explain the behavior of an involuntary servitude victim. *U.S. v. Alzanki*, 54 F.3d 994, 1005 (5th Cir. 1995).

In the cases cited above, the trial courts' decisions to *admit* "victimology" evidence, however that is defined, were upheld on appeal. There is no legal support for the Defendant's request that the Court blanketly suppress all "victimology" evidence without knowing what that evidence would be and how it would be used. Specifically, "victimology" evidence was found to be helpful to a jury to understand victim trauma. In other cases, "victimology" evidence was found to be helpful to a jury to understand a crime scene and advance investigative avenues. Asking that all "victimology" evidence be excluded without any discussion about theories of admissibility or proof is untenable.

Here, the Defendant makes no attempt to explain what he means by "victimology" testimony in this case. It is anticipated that the Defendant will argue that the police were myopic in their focus on the Defendant. If the Defendant advances this argument, testimony regarding decision making backed by research and experience, would rebut this argument. *People v. Conyac*, 361 P.3d 1005 (Colo. App. 2014) (upholding the admission of modus operandi evidence of sex offenders where defendant denied committing the sex assault); *People v. Salcedo*, 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 more object and widely accepted in the field).

In any event, the Defendant has not identified what he seeks to exclude. Nor have the People yet submitted their expert disclosures that may fall under any amorphous definition of "victimology." Therefore, the Court is not in a position to decide this Motion.

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
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