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PEOPLE OF THE STATE OF COLORADO v. BARRY MORPHEW AKA: Barry Morphey Defendant	DATE FILED May 27, 2026 ▲ 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 OUT OF COURT STATEMENTS ATTRIBUTABLE TO SUZANNE MORPHEW	

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

The Defendant seeks a pretrial order excluding “all statements” attributable to Suzanne Morphey. Without identifying the particular statements at issue or raising objections based upon the specific context of those statements, the Court cannot rule on this Motion.

The People have filed a Notice of Intent to introduce statements made by Suzanne Morphey admissible pursuant to Colorado Rule of Evidence 807. The statements proffered are not testimonial statements. The Confrontation Clause prohibits the admission of hearsay statements, regardless of the exception, that are testimonial in nature. A statement is “testimonial” when “made under circumstances that would lead an objective witness reasonably to believe that the statement would be available for use at a later trial. *Crawford v. Washington*, 541 U.S. 36, 51-53 (2004). Statements that do not fit this definition are governed only by hearsay rules and exceptions.

The vast majority of Suzanne Morphey’s statements that the People will proffer for admission are not made to law enforcement, nor are they made in the anticipation of her future murder trial. *Raile v. People*, 148 P.3d 126, 130-31 (Colo. 2006) (statements are testimonial if the “primary purpose” is to create

an “out of court substitute for trial testimony”) *citing People v. McFee*, 412 P.3d 848, 857 (Colo. App. 2016) and *Ohio v. Clark*, 576 U.S. 237 (2015).

The only statement that comes close, but does not meet, the definition of “testimonial” is a 911 call Suzanne Morpew made before she was murdered unrelated to the murder. The statements will be noticed in the People’s 807 and 404(b) Notice. Those statements are akin to statements identified as “non-testimonial” by the Supreme Court in *People v. Davis*. 547 U.S. 821-25 (2006). In November, 2018, Suzanne Morpew was home with her best friend, Sheila Oliver. The individuals at home, including Suzanne, noticed alarming activity outside her home late into the evening. Suzanne’s home was secluded by forest and access to her property was restricted. Suzanne saw headlights in her driveway and then noticed an individual standing on the hillside to the south of the house looking at the house. Suzanne called 911 for assistance in an ongoing urgent situation, someone “scoping out” her home. The call ended when she learned it was the Defendant. The intent of Suzanne’s call was not to report the facts of a past crime. Rather, Suzanne was “describ[ing] current circumstances requiring police or medical assistance.” Those statements are not testimonial. *People v. Harris*, 2026 WL 784818, *2 (Colo. App. 2026); *see also Davis*, 547 U.S. 821-25; *People v. Welsh*, 176 P.3d 781, 792 (Colo. App. 2007) (recognizing the applicability of *Davis* to the analysis of statements made on a 911 call in Colorado). Thus, the statements are admissible if the statements constitute a hearsay exception (CRE 807).

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