

DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101 THE PEOPLE OF THE STATE OF COLORADO Plaintiff, v. BARRY LEE MORPHEW, Defendant.	DATE FILED June 22, 2026 4:21 PM ▲ COURT USE ONLY ▲
JANE FISHER-BYRIALSEN, #49133 FISHER & BYRIALSEN, PLLC 4600 S. Syracuse Street, 9 th Floor Denver, CO 80237 (202)256-5664 Jane@fblaw.org DAVID BELLER, #35767 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 (303)573-1900 Fax: (303) 446-9400 david@rklawpc.com	Case Number: 25 CR 128
[D-040] REPLY - MOTION TO EXCLUDE OUT OF COURT STATEMENTS ATTRIBUTED TO SUZANNE MORPHEW	

Mr. Morphey provides the following Reply to the prosecution's response to his motion to preclude out of court statements attributed to Suzanne Morphey:

1. The prosecution addresses only one specific statement – a call made to law enforcement in November 2018. Further, the prosecution addresses only the constitutional issue – whether admission of the call would violate the confrontation clause – without addressing the hearsay issue.

2. On the confrontation clause issue, the prosecution concedes that statements to law enforcement are generally regarded as testimonial hearsay and therefore not admissible pursuant to the Confrontation Clauses of the state and federal constitutions. The prosecution claims an

exemption from that rule based on *Davis v. Washington*, 547 U.S. 813 (2006)¹ and Colorado cases that cite *Davis*.

3. 911 calls, however, are not automatically excludable. “[W]hether a 911 call is testimonial must be decided on a case-by-case basis,” *People v. Welsh*, 176 P.3d 781, 792 (Colo. App. 2007).² Here, the prosecution does not present the call or its contents to this Court so it can decide whether or not the statements are testimonial. In *Welsh* and the unpublished case the prosecution cites – *People v. Harris*, No. 24CA1208, 2026 WL 784818 (Colo. App. Mar. 19, 2026) (not published pursuant to C.A.R. 35(e))³ – the court reviewed the call before issuing any ruling. In *Welsh*, the trial court excluded the 911 call; in *Harris*, the trial court admitted it.

4. Further, the prosecution addresses only the constitutional issue – whether admission of the call would violate the confrontation clause – without addressing the hearsay issue. The prosecution makes no claim that the call satisfies a hearsay exception.

5. The prosecution states that the call will be included in its Notice of proposed CRE 404(b) evidence. Thus, Mr. Morphew does not discuss admissibility issues in this motion to preclude hearsay. He notes, however, that the events surrounding the call, and the call itself, will fail to satisfy CRE 401, 402, and 404 and would violate CRE 403 if admitted.

6. The prosecution urges this Court to not rule on the motion because the defense has not identified the out-of-court statements the prosecution may seek to introduce. That turns the burdens upside-down. The prosecution should not be allowed to talk about unadjudicated hearsay statements in opening statements and should not be allowed to introduce said statements without approaching the bench and explaining why it believes said statements are not hearsay and why the confrontation clause does not bar admission of the statement.

7. This motion in *limine* must be decided pretrial to prevent mention of the information (and information derived from it) in remarks or questions to prospective jurors or in the prosecution’s Opening Statement. The damage will be done long before the prosecution even calls the witness to the stand.

8. This motion in *limine* must be decided pretrial to prevent the prejudice that would ensue from the prosecution presenting a witness, starting to question that witness about hearsay, and then forcing the defense to object in front of the jury. The jury would certainly view this as if

¹ The prosecution cites this case as “*People v. Davis*.” (D-040 Response, p.2). It is “*Davis v. Washington*.”

² The prosecution cites *Welsh* in its Response. In *Welsh*, the prosecution cross-appealed, asking the Court of Appeals to disapprove of the trial court’s exclusion of the 911 call. The Court of Appeals did not issue any ruling but merely discussed intervening caselaw. It declined to address the confrontation issue. *Welsh*, at 792.

³ *Harris* is not binding precedent, see *Patterson v. James*, 2018 COA 173, ¶ 40, 454 P.3d 345, 353 (unpublished cases may be cited, but they have no precedential value).

the defense were trying to hide something. The prosecution should have to approach the bench beforehand so that any dispute is resolved outside the presence of the jury.

WHEREFORE, Mr. Morphew respectfully requests that this Court exclude from trial for any purpose Suzanne Morphew's out of court statement and prohibit mention of any such statements in voir dire, opening or closing statements, and testimony.

Respectfully submitted this 22nd day of June, 2026.

FISHER & BYRIALSEN, PLLC

/s/ Jane Fisher-Byrialsen

Jane Fisher-Byrialsen, #49133

RECHT & KORNFELD, P.C.

/s/ David Beller

David Beller, #35767

Certificate of Service

I hereby certify that on June 22, 2026, I caused the foregoing to be filed with the Alamosa County District Court and a copy of the same to be served on the Alamosa County District Attorney's office via CCE-File Service.

/s/ Abigail Clement

Paralegal at Fisher & Byrialsen PLLC