

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-011] REPLY - MOTION FOR NOTICE OF THE PROSECUTION’S INTENTION TO INTRODUCE ANY EVIDENCE OR TESTIMONY UNDER CRE 807	

Mr. Barry Morphew, by and through undersigned counsel, hereby replies to the prosecution’s response to [D-011], Motion for Notice of Intent to Introduce Evidence or Testimony under CRE 807. The prosecution concedes the Rule requires the relief sought. Yet, without giving any reason, it asks this Court to deny the motion. The prosecution also attempts to bootstrap into Mr. Morphew’s motion a request for a hearing and for further relief.

In response, Mr. Morphew states:

1. Mr. Morphew’s motion is not mooted by the prosecution’s filing of P-001, because:
 - a. In its response to D-011, the prosecution asserts an unqualified right to “supplement” its notice, with no proposed deadline and no consequence for noncompliance. Response, p. 1 (“...the Notice will likely be supplemented...”). The prosecution provides no time limitation, nor does it cite authority for its

proposed “supplementation.”¹ The complexity of this case demands more. This Court should set a time limitation beyond which the prosecution may not introduce evidence under CRE 807.

- b. Mr. Morpew requests that this Court rule that “no such evidence will be admitted if said notice is not provided.” The prosecution does not disagree. Therefore, this Court should grant Mr. Morpew’s request and so order.
 - c. The prosecution does not address the filing of unadjudicated allegations in the public court file; nor does it disagree that the plain language of the rule provides for notice *to the defense*, not filing allegations *in a public court file*. Further, the prosecution provides no reason that it should be permitted to set forth its unadjudicated evidence in the public court file.
 - d. To the extent the prosecution agrees that it should provide notice, this Court should enter the requested order and rule that evidence shall not be admitted if notice was not provided.
- 2. Without having ever moved for an evidentiary hearing, the prosecution now, in its response to a defense motion, states it “anticipates” that admissibility of the content of its P-001 notice will be litigated on the July 6-10, 2026 hearing dates. In other words, the prosecution will seek a court order admitting certain evidence. Further, the prosecution states it “may call witnesses” to support its request for admission. (Response, p.1).
 - 3. To the extent this is a backdoor request for a hearing on P-001, this court should deny it at this time. As outlined in some detail in D-048 (Mr. Morpew’s motion to continue trial and motions hearings), the defense is cannot litigate this motion at this time because of the state of the defense investigation, discovery and preparation.
 - 4. The prosecution misperceives Mr. Morpew’s request. Mr. Morpew’s motion contains no request that this court “curtail” oral argument or presentation of evidence at a motions hearing.
 - 5. As Mr. Morpew indicated in his motion, legal argument is one thing; setting forth pages upon pages of unadjudicated, inadmissible “facts” is quite another thing.
 - 6. The prosecution implicitly admits that its preferred procedure – filing evidentiary allegations in the court file prior to admission of the evidence – risks prejudicing the jury. The prosecution suggests this Court permit them to cause the damage, and then that this Court should attempt to cure the damage by simply conducting a more probing voir dire.

¹ In P-001, the prosecution stated that any supplement would be filed by June 15, 2026. (P-001, last unnumbered page). That date passed without any supplement having been filed.

(Response, p. 2, citing change-of-venue cases). Mr. Morphew agrees that extensive voir dire will be necessary in this case. However, voir dire alone is not a panacea. A change of venue could be necessitated even with a probing voir dire. See § 16-6-101 (1)(a) (“When a fair trial cannot take place in the county or district in which the trial is pending”). See also e.g. *People v. Botham*, 629 P.2d 589 (Colo. 1981), where the court found that voir dire was “not dispositive of a defendant's claim that he was denied his constitutional right to a fair trial.” *Id.*, at 599. The question is not whether the potential jurors’ exposure was caused by judicial or extra-judicial information. “Where a defendant demonstrates the existence of a pattern of deep and bitter prejudice throughout the community where he is to be tried, a juror's assurance that he will be fair and impartial is not conclusive.” *Ibid.* In *Botham*, the Supreme Court reversed a conviction because, among other reasons, the trial court should have granted the motion to change venue based on animus in the community. Voir dire did not salvage Botham’s conviction.

7. The prosecution’s cases do not support the position that the prosecutor should file unadjudicated conduct or allegations in the public court file, on the theory that voir dire is a panacea. Their cases are decades old and not on the topic before the court.
 - a. In *People v. Bartowsheski*, 661 P.2d 235 (Colo. 1983), extensive voir dire was provided, but even then, the jury pool was too contaminated and a change of venue was required. After venue was changed, the press coverage was not “inordinate” and was “neither sensational nor inflammatory.” *Id.*, at 240.
 - b. *People v. McCrary*, 549 P.2d 1320 (Colo. 1976) is a 55-year-old venue case upholding the trial court’s refusal to change venue. The Court affirmed that, while voir dire is a useful tool, “a juror's assurances that he is equal to the task cannot be dispositive[.]” *Id.*, 549 P.2d at 1327. “[A] juror's exposure to highly inflammatory information that is inadmissible at trial can, in some cases, be sufficient to disbelieve a juror's assurances that he can lay it aside.” *Id.*, at 1328. This case has nothing to do with CRE 807 (having been decided years before the Colorado Rules of Evidence were adopted).
 - c. *People v. Gardenhire*, 903 P.2d 1165 (Colo. App. 1995) has nothing to do with the issue in D-011. There, during jury deliberations at a 1992 trial, a juror reported seeing a news article about a different case (not the case at bar). The judge inquired of the entire panel but didn’t poll the jury. The court of appeals found no error in this procedure. This case was decided a decade before Colorado’s seminal case on extraneous information – *People v. Harlan*, 109 P.3d 616, 624 (Colo. 2005) – so it is of limited utility even if it had anything to do with court filings.

WHEREFORE, Mr. Morphew requests the Court order the prosecution to give notice of intent to introduce any evidence or testimony under Rule 807 and order that no such evidence will be admitted if said notice is not provided. Mr. Morphew further requests this Court order that the prosecution's notice is not to be filed in the public court file.

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/ Abby Clement

Paralegal at Fisher & Byrialsen PLLC