

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-014] REPLY - MOTION FOR DISCOVERY—IMPEACHING INFORMATION	

The prosecution completely ignores the constitutional foundation for Mr. Morphew’s motion. It acknowledges only its obligations under Rule 16 of the Colorado Rule of Criminal Procedure. The relief Mr. Morphew requests is compelled by the due process and confrontation clauses of the Colorado state Constitution and the U.S. Constitution and the plethora of constitutional caselaw in his motion. Any failure to disclose must therefore be recognized as an intentional suppression of evidence.

The prosecution objects to an order requiring the prosecution, in fulfilling its constitutional and rule-based discovery obligations, to “make an inquiry with... other sources available to the prosecution,” because the prosecution views this as a request that “the People do additional investigation to seek out material beyond what is currently in the possession of law enforcement.” Response, ¶ 1. In other words, the prosecution believes it can be relieved of its obligations if it simply defines an agency or person as being outside the prosecution’s definition of “law enforcement.”

As an example: In a small close-knit community, the prosecution may have numerous sources available to them with substantial impeaching information that comes to them through acquaintances, friends, co-workers, co-parishioners, or similar sources that is not in their immediate possession – and that law enforcement may intentionally endeavor to keep out of their immediate possession. Such information is not exempt from the constitutional and rule-based requirements and from notions of fair play and due process.

The prosecution objects to providing two specific categories of information, apparently even if they possess it: 1) psychiatric and psychological information and 2) drug and alcohol use, evaluations, or treatment of its witnesses (see Motion D-014, ¶¶ 7(j), 7(k)). Ignoring all of the authority cited by Mr. Morphew, the prosecution relies upon *People v. Covington*, 19 P.3d 15, 19 (Colo. 2001), which quotes¹ a 1984 Colorado case (*People v. Deadmond*, 683 P.2d 763, 771 (Colo. 1984)), in which the court found testimony of an emergency room doctor was not barred by the physician-patient privilege. In *Covington*, the court ruled that the physician-patient privilege did not bar admission of a photograph of the victim's gunshot injury.

Mr. Morphew is fully aware of the protections afforded by the physician-patient privilege. However, the privilege does not protect against the disclosure of medical records when the patient has made an express or implied waiver, both of which constitute “consent” to disclosure. *Gadeco, LLC v. Grynberg*, 2018 CO 22, 415 P.3d 323. Obviously, if the prosecution were aware of the treatment/evaluation and/or in possession of it, there would have been a waiver to some extent.

The privilege does not shield information regarding the use or abuse of drugs and there are a wide variety of related exceptions. *E.g.*, *People v. Moon*, 2015 COA 23, 411 P.3d 130 (physician-patient privilege did not apply to information communicated in an unlawful effort to procure a controlled substance); *People v. Cavanaugh*, No. 20CA0316, 2023 WL 12047801, at *5 (evidence of a witness's drug use may be relevant to the extent that it bears on the witness's perception and memory of an event); *People v. Dunham*, 2016 COA 73, 381 P.3d 415 (trial court erred in prohibiting defendant from cross-examining victim regarding alleged methamphetamine use); *People v. Roberts*, 37 Colo. App. 490, 553 P.2d 93 (1976) (permitting defense counsel to cross-examine two prosecution witnesses about their alleged use of heroin was proper). The same issue arises with a witness who has a mental disability. *People v. Borrelli*, 624 P.2d 900, 904 (Colo. App. 1980) (proffered evidence regarding the witness' mental incapacity related to his intellectual functioning and memory and, therefore, was relevant to the question of credibility and should have been admitted); *People v. Schuemann*, 190 Colo. 474, 548 P.2d 911 (1976) (refusal to permit psychiatrist to testify regarding witness' mental condition was grounds for reversal).

¹ In its response, the prosecution neither discloses that its quotation is actually from *People v. Deadmond* nor sets forth the quotation accurately.

Under these circumstances, this Court should reject the prosecution's blanket claim that it is exempt from providing impeachment material that relates to the items identified in Motion D-014.

WHEREFORE, Mr. Morpew requests the Court order the production of any impeaching and exculpatory evidence and to order the prosecution to make an inquiry with the witnesses and law enforcement agencies involved in this case, including those in Chaffee County, Fremont County, Federal Bureau of Investigation, Colorado Bureau of Investigation and any other agencies involved in the investigation in this case, as well as other sources available to the prosecution, to discover and disclose this information.

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