

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 4:40 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-048] MOTION TO CONTINUE TRIAL AND HEARINGS SCHEDULED FOR JULY 6-11, 2026	

Mr. Barry Morpew, by and through undersigned counsel, requests that this Court continue the trial scheduled to commence October 13, 2026, and continue the motions hearings scheduled for July 6-11, 2026. This motion is made pursuant to U.S. Const., amends. VI, VIII, and XIV and Colo. Const., art. II, sections 3, 16, 23, and 25 in order to protect Mr. Morpew's state and federal constitutional rights to defend himself and to due process, a fair trial, and the effective assistance of counsel in pretrial and trial proceedings. If this Court requires additional information to enable it to grant this motion, Mr. Morpew requests the opportunity to make an *ex parte* showing to the Court.

In support, Mr. Morpew states:

Factual Background

1. Suzanne Morpew's remains were found in September 2023.
2. A Grand Jury was seated February 2, 2024. The prosecutors worked with that Grand Jury for twelve months, until the term ran pursuant to C.R.S. 13-71-120. The prosecution filed a motion on January 27, 2025 to extend the term to eighteen months, which is when the Grand Jury began hearing testimony.
3. The Grand Jury indictment was filed on June 18, 2025, nearly two years after the remains were found.
4. October 13, 2026 is the first trial setting. This is the first motion to continue trial.
5. The government has spent more than six years — with the combined resources of multiple federal, state, and local agencies — investigating and preparing this case. Despite diligent and continuous effort, defense counsel cannot be constitutionally prepared for trial by October 13, 2026. The reason is not lack of effort. It is the sheer, unprecedented volume of discovery, the complexity of the case, and the structural delays inherent in obtaining resources.

The volume of discovery and scope of investigation

6. The defense has been provided with 9.1 terabytes ("TB") of data. That discovery is spread out among 3,143,153 files. There are 845,157 individual Bates-stamped pages, however even that does not account for all the pages of documents in the discovery as considerable portions of it are not Bates-stamped, which is an issue that remains to be addressed/solved. Additionally, there are no less than 300,000 audio and video recordings.
7. Undersigned counsel, with their combined decades of practice in Colorado, are unaware of any Colorado state criminal prosecution that has produced discovery approaching this volume. It is, by any measure, extraordinary and includes:¹
 - Digital forensic data from cell phones, Ipads, laptops, routers, vehicles, and cloud services;

¹ By way of comparison, Mr. Morpew observes that in another murder case in this jurisdiction – a self-defense case that ended up in a 7-day trial – trial was continued for approximately four months so that DNA testing could be completed, and then was continued a second time for four additional months because, a month before trial, the defense received two CD's containing 3 x-ray files and 406 photo images. *See People v. Dustin Ferguson*, Saguache County No. 2022CR7 (Orders of 5/5/2023 and 12/6/2022). The discovery volume here dwarfs that which, in *Ferguson*, warranted nine months of continuances.

- Cell phone records, historical call data, and geospatial/telematics data on more than 12 devices;
 - DNA evidence, autopsy reports, toxicology from three separate laboratories, crime scene documentation;
 - Financial records, social media data, jail calls, Berla, Telematics and computer forensics reports;
 - Audio and video recordings from law enforcement, commercial establishments, and electronic devices; and
 - Reports and statements from nineteen expert witnesses spanning forensic pathology, toxicology, DNA, cell phone analysis, vehicle telematics, forensic anthropology, hydrology, botany, K-9 methodology, and more.
8. Discovery is not complete. It continues to be provided.
9. From just the beginning of March 2026, counsel have received ten (10) additional discovery productions, containing no less than 3,049 files, consisting of 32,174 individual Bates-stamped pages.
10. As counsel have poured over discovery, many missing items have been identified. Counsel have diligently provided the prosecution with written discovery requests for the missing information. From December 18, 2025 to June 22, 2026, seventeen such requests were provided to the prosecution. The prosecution has worked with counsel to provide the requested material. There is no question that, as counsel continue to review discovery, additional items will need to be requested, received, read/viewed, processed, analyzed, and used in the investigation and/or trial.
11. The matter does not end when counsel receives a response from the prosecution. At that point, counsel must review the new discovery, analyze it, and determine what is missing, and then the cycle repeats itself. This is very time-consuming and absolutely necessary to render effective assistance of counsel.
12. Counsel has been advised that Discovery Request number 14 is being partially answered with one more terabyte of discovery that must be reviewed by experts. This is material that law enforcement has had since 2020 and that was not turned over in the original discovery in this case. Furthermore, Discovery Request 14 was incomplete, and a follow up request has been sent.
13. These are not mere numbers in the abstract. Each of these pages and files represents an enormous amount of time and analysis. Connections between files, documents, witnesses, audiotapes, videotapes, photos, and all other material must be not merely read,

but analyzed and understood. Notes must be taken. The material must be organized to be utilized in an investigation and ultimately, at trial. Witnesses and avenues for investigation must be gleaned. Team members must discuss the material, the investigation, and the trial preparation.

14. These are not mere numbers in the abstract. The calculations above capture only the time required to read the material — and reading is merely the first, most superficial step. For every document, recording, and file reviewed, counsel must comprehend and analyze what it means in the context of the science underlying it and the theory of the case; cross-reference it against every related piece of evidence — reconciling cell tower data against witness statements, identifying where the prosecution's web of evidence has gaps or inconsistencies; investigate the new questions it raises, the new witnesses it reveals, and the new avenues of inquiry it opens; organize and index it so that it can actually be found and used under the pressure of live proceedings; and confer with co-counsel, investigators, and experts about its significance. Discovery does not just answer questions — it generates them. Sixteen written discovery requests have already resulted from counsel's review; numerous more are in the process of being drafted to go out this week.
15. To put these numbers in perspective: A stack of 845,157 pages would be the height of a 25-story skyscraper, approximately the same as the height of the Statue of Liberty. 845,157 pages of standard paper weighs approximately 4,226 kg (about 9,316 lbs.) — well over 9 tons — the combined weight of four adult African elephants.
16. 845,157 pages would take up 564 banker boxes and again, this is only accounting for the Bates-stamped pages, not the non-Bates discovery documents.
17. Just to **read** the 845,157 pages — not including time to analyze the material or use it in the investigation or defense of the case — would mean:
 - 845,157 pages of paper, read at 2 minutes per page, is 28,171,900 minutes of reading — roughly 22.4 years without a single break. Working 8-hour days, 5 days a week, it would take 59 years — an entire career, twice over.
 - If readers work in a team of 10 attorneys reviewing 200 documents a day each at 2 minutes per page only — without taking notes or organizing the material —, it would take over 4 years to read every digital file manually — before trial preparation even begins. Of course, Mr. Morpew does not have a team of 10 attorneys, and this court cannot wait four years to hold trial.
 - To simply glance at each of the 3,143,153 files for two seconds per file, nonstop — without reading the content, viewing the entire videotape, listening to the entire recording, taking any notes, or doing anything with the material — would take 72

days plus 8 hours – assuming the reader spent 24 hours per day on the task. If the reader glanced at each file for only 12 hours per day, still spending only two seconds to glance at each file, it would take 144 days, well after the commencement of the currently scheduled trial.

18. None of the strategic decisions that define the defense of a case — which witnesses to call, which evidence to challenge, how to cross-examine the prosecution's witnesses, which defenses to pursue — can be made responsibly until that work is complete. Strategy that is not grounded in a thorough review of the evidence is not strategy; it is guesswork. The reading-time calculations above, stark as they are, describe only the threshold requirement. The analysis, investigation, cross-referencing, conferral, and preparation that follows reading multiplies that burden many times over. No standard of constitutional effectiveness would accept "I read the documents" as adequate trial preparation in a first-degree murder case of this complexity.
19. Of course, going to trial after merely glancing at each page for two seconds would be per se ineffective assistance of trial counsel.

The evidence view is not complete

20. Counsel have diligently conducted a view of the evidence over 3 full days so far. Counsel still have at least two more days to view what is *known* to be held as evidence at Chaffee County Sheriff's Office (CCSO).
21. Counsel has only viewed evidence in the custody of the CCSO and has only been given an evidence log of evidence held at CCSO. Until recently, counsel was under the impression that all evidence was stored there. However, it came to light during the evidence viewings at CCSO that in September 2023, after Ms. Morphew's remains were found, Colorado Bureau of Investigation (CBI) took over evidence collection.
22. On June 11, 2026, counsel reached out to the prosecution to inquire about the additional evidence collected not held at CCSO. On June 18, the prosecution responded via email with the contact information of CBI Agent Shauna Flores and directed counsel to contact her.
23. On June 18, 2025, counsel reached out to Agent Flores requesting a copy of the evidence log and asking where the evidence was currently stored so as to make arrangements to view it. Agent Flores responded the same day indicating that "I will provide this request to my team. Once it's complete, I'll provide it to you, and we can schedule a time to meet." As of this filing we have yet to receive the list or location of the evidence collected by CBI.

The number of witnesses, including experts that require investigation, interviews, and responsive witnesses

24. The prosecution has noticed no less than 243 witnesses.
25. The sheer number of law enforcement witnesses — over 66 witnesses, drawn from multiple agencies at the federal, state, and local level — demands significant preparation time.
26. In *Morphew I*, the prosecution endorsed no less than 23 expert witnesses. *Morphew II*, is expected to be similar in the number of prosecution experts.
27. If the prosecution offered such witnesses as experts at trial, the defense would need to locate, retain, consult with, and possibly prepare its own experts for trial.

Unique circumstances related to the case

28. In the last decade over 40 deceased bodies have been found in the San Luis Valley. Some discovery relating to other bodies has been produced, however, that discovery appears to be incomplete. To provide effective assistance, counsel must cross reference and review those cases. As an example, the remains of Suzanne Morphew were found based on a tip that came regarding the missing woman Edna Quintana (who was later determined to be deceased).
29. The prosecution has marshaled the combined resources of the Chaffee, Alamosa, and Saguache County Sheriff's Offices, Salida Police Department, the FBI, the CBI, the RMRCFL, and numerous experts over a period of over six years. Mr. Morphew was assigned current counsel a year ago.

The inherent delays in obtaining funding from OADC

30. When a client is indigent and represented by OADC, there are specific processes for obtaining funds for supportive resources – investigation, experts, discovery processing, etc. These processes inherently take time. In a case with this much discovery and investigative material, these processes take much more time.
31. Counsel have worked diligently to go through the processes to retain necessary personnel, however, they are still not in place and it is now apparent that some supportive case services will not be in place in time for counsel to utilize them in the investigation and preparation of the case for an October trial date.

Evidentiary motions hearings are premature and cannot be accomplished by undersigned counsel

32. At the outset of the case, in order to facilitate a trial commencing in October 2026, this Court set a week aside for motions hearings July 6-11, 2026.
33. The fact that counsel is inundated with the volume of material in this case has rendered both the trial date *and* the motions hearing dates impractical, if not impossible to the extent that the prosecution intends to put on witnesses and believes P01 and P02 require the calling of witnesses.
34. The prosecution has indicated it may call witnesses to support its notice to introduce hearsay evidence under CRE 807. To counter that presentation and provide evidence to this court for its CRE 807 decisions, counsel must be thoroughly versed in the discovery, to be able to locate necessary portions, and to bring those portions to bear before the court. Because of the barriers discussed above and which can be presented at the *ex parte* showing (if this Court needs more information), counsel will not be prepared to do so.
35. As an example, the prosecution's CRE 807 notice (P-001) proposes hearsay testimony admitted through Sheila Oliver. However, the prosecution has still not provided the Cellebrite Report for this witness. It is premature to contemplate an evidentiary hearing when the defense does not have the necessary tools to investigate and prepare for this hearing.

SUMMARY OF LEGAL AND CONSTITUTIONAL AUTHORITY

The Sixth Amendment guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense.” The Court has long recognized that the right to assistance necessarily includes the right to “effective and substantial aid.” *Powell v. Alabama*, 287 U.S. 45, 53 (1932). See *Gideon v. Wainwright*, 372 U.S. 335 (1963). Mr. Morphey has a federal and state constitutional right to effective assistance of counsel at trial, and in all proceedings leading up to it. See *Strickland v. Washington*, 466 U.S. 668, 688 (1984). Defense counsel have a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. See *Strickland*, 466 U.S. at 691; *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986). To perform effectively, counsel must conduct sufficient investigation and engage in sufficient preparation. A strategic decision can be reasonable only when the attorney has investigated the options.

Colorado courts have long recognized that among “the vital services that a defendant is entitled to receive” is “pre-trial preparation and pre-trial investigation, sufficient to reveal potential defenses and weaknesses in the prosecution’s case[.]” *People v. Danley*, 758 P.2d 686, 687-88 (Colo. App. 1988). See also e.g. *People v. Moya*, 504 P.2d 352, 354 (Colo. 1972); *Wiggins v. Smith*, *supra*.

“Counsel’s failure to review certain portions of discovery is deficient performance as a matter of law.” *State v. Thiel*, 2003 WI 111, ¶37, 665 N.W.2d 305 (trial counsel was deficient in failing to read all discovery materials). While counsel may not need to read every page in every case, “it falls below objective standards of reasonableness to fail to read all portions of discovery that may have the potential to elude information that is either beneficial or damaging to the client’s cause.” *Id.* If unread portions of discovery have the possibility of providing “insight into other facets of the case that deserve[] more thorough investigation,” *see id.*, ¶38, counsel renders deficient performance by not carefully reviewing those portions. See *In re A.T.H.-T.*, 2026 WI App 27, ¶ 15, 2026 WL 795769 (March 23, 2026) (unpublished).²

Failure to review discovery, to conduct an investigation, and to prepare adequately for trial are all hallmarks of constitutional ineffectiveness of counsel. A failure to read all discovery and to investigate and prepare the case is not the type of “strategy” that excuses deficient performance. “Strategy” must be based on a reasonable investigation into the facts and the law. *Wiggins v. Smith*, 539 U.S. 510, 521 (2003); *Strickland v. Washington*, 466 U.S. 668, 691 (1984); *Kimmelman v. Morrison*, 477 U.S. 365, 386-87 (1986). “*Strickland* does not establish that a cursory investigation automatically justifies a tactical decision.... Rather, a reviewing court must consider the reasonableness of the investigation said to support that strategy.” *Wiggins*, at 527. Prior to any incantation of “strategy,” counsel must make a reasonable investigation in the preparation of a case or make a reasonable decision not to conduct a particular investigation. See *Strickland*, at 691. Failing to review, analyze, and utilize the discovery in this case is not strategy, it is reality given the exceptional volume of material and the circumstances of this case.

Mr. Morphew’s request for continuance implicates these fundamental rights and is absolutely necessary under the circumstances of this case. Under these circumstances, “a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right

² This Opinion may be cited in this Court. See Wis. Stat. Ann. § 809.23(3).

to defend with counsel an empty formality.” *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964), *citing Chandler v. Fretag*, 348 U.S. 3 (1954)(The trial court deprived the petitioner of due process by denying his request for continuance). E.g., *Commonwealth v. Ross*, 57 A.3d 85, 98 (Pa. Super. Ct. 2012) (vacating murder conviction because trial judge refused to grant defense counsel's requests for a continuance of trial) (“[A] as a result of the trial court's unreasonable insistence on rushing the case to trial, [counsel] was put in the untenable position of having to prepare his case at the same time that he was trying it.”).

There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied. *Ungar v. Sarafite*, at 589. There are several factors that courts consider in deciding whether to grant a continuance, among them: the timeliness of the request, the diligence of the party in preparing for trial, the availability of witnesses at another date, and interference with the other necessary work of the court are all factors on which the trial court may base its decision. 15 Colo. Prac., Criminal Practice & Procedure § 16.20 (2d ed.). *See also People v. Brown*, 2014 CO 25, 322 P.3d 214 (Colo. 2014)(factors suggested when a continuance is requested to facilitate a change in counsel). Mr. Morpew’s motion satisfies all relevant criteria:

- Mr. Morpew faces the most serious charge in the criminal code, carrying the most severe penalty under Colorado law;
- His request is timely, coming well before trial and hearings date, and after a diligent attempt to meet the current trial schedule;
- Defense counsel have been diligent in preparing for trial. They have interviewed dozens of witnesses, reviewed thousands of pages of discovery and hundreds of hours of video/audio recordings. They have filed many motions and continue to work to file motions as soon as they arise and research is conducted. They have sought funding and are working diligently with OADC to secure the supportive services necessary on this case on a continuing basis;
- This is a first trial setting. No prior continuance has been sought.
- The request is consistent with preserving the integrity of the judicial process – recognizing that a trial with unprepared counsel who have not reviewed all the

discovery, prepared for trial, and secured necessary witnesses serves neither Mr. Morphew nor the integrity of the judicial system.

- The victim's daughters do not oppose this request.
- The continuance is necessary to obtain resources essential to a defense of this case for Mr. Morphew, who is indigent and cannot obtain them on his own.

The court must ensure a criminal defendant, regardless of poverty, has access to the “raw materials integral to the building of an effective defense.” *Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) *see also Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”). Even if necessary resources are obtained, if they are obtained too close to trial, a defendant's right to due process can still be violated because there is insufficient time to “use the expert for the evaluation of the case and preparation for trial, including preparing defense counsel to cross-examine the prosecution's experts or make any evidentiary challenge to the scientific evidence.” *People v. Vargas*, 2024 Guam 1, ¶ 25, 2023 WL 11798445 (Guam May 21, 2024).

Rushing to trial in the face of the circumstances outlined above would make a mockery of federal and state constitutional standards. It would likely result in a mistrial during trial. This court should not subject Mr. Morphew to a trial for which defense counsel are, by their own admission, wholly unprepared. Mr. Morphew would be denied his federal constitutional right to effective assistance of counsel at the point in the judicial process where he is most in need of it. Denial of a continuance in light of the circumstances here would be arbitrary and unreasonable and would materially prejudice Mr. Morphew's defense and violate his rights to due process and the effective assistance of counsel.

A Further Offer of Proof must be Provided Confidentially

An *ex parte* hearing is warranted because Mr. Morphew's attorneys must present to the court statements of counsel that implicate confidential work-product and attorney-client issues. Counsel's further explanation of the reasons for the continuance will provide support for this request, but would reveal ongoing thought processes, conclusions, and strategies of defense counsel. Thus, Mr. Morphew requests an *ex parte* hearing if this Court needs additional information prior to granting this request.

Mr. Morphew's request for an *ex parte* hearing is grounded in the state and federal constitutional right to an independent and confidential investigation. Barry Morphew has the right under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and article II, sections 16 and 25 of the Colorado Constitution to have his attorneys conduct an investigation in secret and without disclosure to, or interference from, the prosecuting attorneys. *See Hutchinson v. People*, 742 P.2d 875, 880-881 (Colo. 1987); *Ake v. Oklahoma*, 470 U.S. 68 (1985); *United States v. Cronin*, 466 U.S. 648 (1984); Crim. P. 16(I)(e)(J) (work product). "[W]hen the judicial process loses its character as confrontation between adversaries, the right to counsel has been violated." *Hutchinson v. People*, 742 P.2d at 882. Any details about the need for additional time and the nature of the reasons are protected because these details would reveal potential defense strategy. It would give the State a potential roadmap of how the defense plans to investigate and litigate this case. Defense work product is not discoverable. *See People v. Ullery*, 1999, 984 P.2d 586 (Colo. 1999) (Rule 16 protects work product of defense counsel). *See also e.g., People v. Quitugua*, 2021 Guam 20, ¶ 12, 2021 WL 5918910 (Guam Dec. 10, 2021) ("While there is no explicit statutory requirement to provide *ex parte* hearings, we find that, in the interest of due process and fairness, our trial courts must grant an indigent defendant's request to hold a hearing for expert funding *ex parte*, and the substantive reasons for this request should be made under seal."); *Morrison v. State*, 575 S.W.3d 1, 14 (Tex. App. 2019) (giving the State access to information about financing the defense would disadvantage an indigent defendant on the basis of indigency by allowing the State to information it would not otherwise be entitled to discover).

An *ex parte* hearing on Mr. Morphew's motion to continue is required to provide due process, prevent the premature disclosure of a defense strategy, protect his privileges, and preserve the right to effective assistance of counsel.

An important part of Mr. Morphew's request for continuance concerns the inherent delays in working through the OADC to obtain necessary funding for the defense. Disclosure of these reasons involves sensitive defense investigation information. The process would not be necessary but for Mr. Morphew's indigency. If he were not indigent, case resources could be quickly and efficiently brought to bear without delay. Thus, he should not be disadvantaged on account of his indigency and made to reveal the defense investigation to the prosecution simply to enable him to advise this Court of the indigency-related reasons for delay. It is in this spirit

that counsel requests an opportunity to make an *ex parte* showing regarding conduct and status of the defense preparation, to demonstrate the need for a continuance of trial.

WHEREFORE, Mr. Morpew requests that this Court continue the trial scheduled to commence October 13, 2026 and continue the motions hearings scheduled for July 6-11, 2026. If this Court requires additional information to enable it to grant this motion, Mr. Morpew requests the opportunity to make an *ex parte* showing.

Respectfully submitted this 22 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