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DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101 --- THE PEOPLE OF THE STATE OF COLORADO Plaintiff, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲
JANE FISHER-BYRIALSEN, #49133 FISHER & BYRIALSEN, PLLC 4600 S. Syracuse Street, 9th 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-062] MOTION TO SUPPRESS POST-ARREST STATEMENTS AND INVOCATION OF CONSTITUTIONAL RIGHTS

Mr. Morphew, by and through counsel, moves for this Court to suppress any statements and evidence from the illegal interrogation of him while he was under arrest and to prohibit any reference to them by the prosecution at trial. Mr. Morphew requests this Court: (1) bar for any purpose at trial statements Mr. Morphew made on May 5, 2021, (2) bar for any purpose at trial any other statements Mr. Morphew made while in custody, (3) bar for any purpose his silence and invocation of counsel, and (4) prohibit the prosecution from referencing any such interrogation, interaction or statements.

In support, Mr. Morphew states:

1. At all times pertinent to this motion, Mr. Morphew was indisputably under arrest. Mr. Morphew is aware only of statements made on May 5, 2021, and those are addressed herein. If there are additional statements at other times, it is Mr. Morphew's intention that they are included in this motion and he moves to suppress any such statements whenever made.

2. Mr. Morphew was arrested on May 5, 2021, when officers came to his home with an arrest warrant, handcuffed him, and transported him to the police station.

3. The officers had a lengthy discussion with Mr. Morphew without providing any *Miranda* warnings or advisement. When they did advise him, they gave an incomplete advisement.

4. Mr. Morphew made numerous statements to the officers.

5. Even after Mr. Morphew invoked his right to counsel, the officers continued questioning him and obtained additional statements.

6. The Fifth Amendment and Colorado's corollary right protects citizens from coerced self-incrimination. U.S. Const., amend. V; Colo. Const., Art. II, § 18. Those provisions state "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." *Id*. This right codifies and enforces the constitutional demand that "the government seeking to punish an individual produce the evidence by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth." *Miranda v. Arizona*, 384 U.S. 436, 460 (1966). To ensure this fundamental guarantee, a court must suppress evidence obtained from a custodial interrogation unless the government proves that the police provided a valid advisement and the suspect gives an uncoerced waiver. *Id*. at 478–79. These protections apply whenever a suspect is (1) in custody and (2) subjected to interrogation. *Id*.

7. An accused person's statements are also included within the safeguards of Due Process. U.S. Const. amend. V, XIV; Colo. Const. art. II, § 25. To satisfy the constitutional requirements of Due Process, the accused person's statements must be given voluntarily. *Lego v. Twomey*, 404 U.S. 477, 483 (1972); *People v. Klinck,* 259 P.3d 489, 495 (Colo.2011). Regardless of whether the confession is truthful or fabricated, it is "axiomatic…that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession." *Lego*, 404 U.S. at 483 (internal citations omitted).

8. Once a suspect is in custody, police must not interrogate him until they have provided an advisement pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and obtained a knowing,

intelligent, and voluntary waiver of those rights by the suspect. *People v. Hopkins*, 774 P.2d 849 (Colo. 1989).

9. "*Miranda* prohibits the prosecution from introducing in its case-in-chief any statement ... procured by custodial interrogation, unless the police precede their interrogation with [*Miranda*] warnings." *People v. Matheny*, 46 P.3d ¶ 453, 462 (Colo. 2002) (citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)). Therefore, before undergoing a custodial interrogation, a suspect must be advised of his *Miranda* rights, which includes the Fifth Amendment right to have an attorney present. *People v. Arroya*, 988 P.2d ¶ 1124, 1130 (Colo. 1999). This right must be communicated to the suspect to permit him "a full opportunity to exercise the privilege against self-incrimination." *Miranda*, 384 U.S. at 467.

10. "A person has been seized for constitutional purposes when, 'in view of all of the circumstances surrounding the incident,' a reasonable person wouldn't feel free to leave." *People v. Castro-Velasquez*, 2026 CO 49, ¶ 13, 591 P.3d 457, 461, quoting *People v. Brown*, 2022 CO 11, ¶ 16, 504 P.3d 970, 975 (quoting *Brendlin v. California*, 551 U.S. 249, 255 (2007). Custody is a restraint of freedom "to the degree associated with formal arrest." *Stansbury v. California,* 511 U.S. 318, 322 (1994). "A person is in custody for *Miranda* purposes if [he] has been formally arrested or if, under the totality of the circumstances, a reasonable person in the suspect's position would have felt that [his] freedom of action had been curtailed to a degree associated with formal arrest." *People v. Garcia*, 2017 CO 106, ¶ 20. *See also People v. Plander*, 41 P.3d 698, 705 (Colo.2001).

11. Interrogation, for the purposes of *Miranda* protections, refers both to express questioning by a police officer, and to any words or actions on the part of the officer that he or she should know are reasonably likely to elicit an incriminating response from the defendant. *Rhode Island v. Innis,* 446 U.S. 291, 301 (1980); *People v. Madrid,* 179 P.3d 1010, 1014 (Colo. 2008); *In re J.C.,* 844 P.2d 1185, 1189 (Colo. 1993); *People v. Trujillo*, 784 P.2d 788, 790 (Colo. 1990).

12. To be adequate, the advisement must precede the questioning and inform the suspect that (1) he has the right to remain silent; (2) anything he says can be used against him in a court of law; (3) he has the right to the presence of an attorney; and (4) an attorney will be appointed for him prior to any questioning if he cannot afford one and wants one. *Miranda,* 384 U.S. at 479; *People v. Carrion,* 2015 CO 13, ¶ 7, 343 P.3d 972. As to the latter, a suspect must "be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." *Miranda.,* at 471. This warning "is an absolute prerequisite to interrogation" and must instruct the suspect that the right to the presence of an attorney begins before, and continues

throughout, the interrogation. *Ibid; People v. Carter*, 2015 COA 36, ¶ 29, 414 P.3d 15, 19, *aff'd*, 2017 CO 59M, 398 P.3d 124.

13. An unconstitutional "two-step interrogation" takes place when officers elicit incriminating statements from an in-custody suspect without giving him his *Miranda* rights and then interviewing him again later after securing a waiver of *Miranda* rights. *Phillips v. People*, 2019 CO 72, ¶ 41.

14. If the *Miranda* requirements are not complied with, the statements made by the suspect must be suppressed at trial. *Oregon v. Elstad,* 470 U.S. 298 (1985); *People v. Viduya,* 703 P.2d 1281 (Colo. 1985); Colorado Constitution, Article II, § 18 and 25; *Sanchez v. People*, 2014 CO 56, ¶ 11.

15. If the statements were not made voluntarily, they may not be used for any purpose at trial – not even impeachment. The prosecution bears the burden of proving by a "preponderance of the evidence", that the accused made a voluntary waiver of his rights. *Colorado v. Connelly*, 479 U.S. 157 (1986).

16. The voluntariness inquiry examines whether the government used physically or psychologically coercive techniques to overcome the will of the defendant. *Ibid*; *People v. Zadran,* 314 P.3d 830, 833 (Colo. 2013). Voluntary statements are those that are the product of a person's "rational intellect and free will." *Mincey v. Arizona,* 437 U.S. 385, 398 (1978); *People v. Raffaelli,* 647 P.2d 230, 235 (1982) ("the product of an essentially free and unconstrained choice").

17. Voluntariness is a two-step inquiry. *Colorado v. Connelly,* 479 U.S. at 167. First, the government conduct must be coercive. *Id*. Second, the coercive conduct must play a significant role in inducing the statements. *People v. Medina*, 25 P.3d 1216, 1222–23 (Colo. 2013). These questions must be answered in disregard to whether the person spoke the truth. *Effland,* 240 P.3d at 877. It is a totality of the circumstances test. *People v. Gennings*, 808 P.2d 839, 844 (Colo. 1991). Courts consider a number of factors, including:

a. Whether the defendant was in custody;
b. Whether the defendant was free to leave;
c. Whether the defendant was aware of the situation;
d. Whether the police read *Miranda* rights to the defendant;
e. Whether the defendant understood and waived *Miranda* rights;

f. Whether the defendant had an opportunity to confer with counsel or anyone else prior to or during the interrogation;
g. Whether the statement was made during the interrogation or volunteered later;
h. Whether the police threatened the defendant or promised anything directly or impliedly;
i. The method or style of the interrogation;
j. The defendant's mental and physical condition just prior to the interrogation;
k. The length of the interrogation;
l. The location of the interrogation; and
m. The physical conditions of the location where the interrogation occurred.

People v. Medina, 25 P.3d 1216, 1222-23 (2001).

18. Improper coercion includes police exploitation of a person's psychological weaknesses. *Arizona v. Fulminante*, 499 U.S. 279 (1991); *People v. Gennings*, 808 P.2d 839, 843-44 (Colo. 1991). Courts should "consider the significant details surrounding or inhering in the interrogation" and examine whether the police conduct created an atmosphere of unconstitutional coercion such that the conduct "play[ed] a significant role in inducing the statement." *Id.* at 1222.

19. Here, Mr. Morphew was in custody, never free to leave. He was not read his *Miranda* rights until well into the questioning. The *Miranda* warnings were inadequate. His interrogators did not respond in a constitutional manner when he invoked his right to counsel.

20. Mr. Morphew never signed a consent or waiver form and never waived his rights.

21. All statements made by Mr. Morphew were involuntary and must be suppressed.

22. It is improper for a prosecutor to allude to a defendant's exercise of his right to remain silent "as indicating a consciousness of guilt," *People v. Wright*, 511 P.2d 460, 462 (Colo. 1973), "because the *Miranda* warnings implicitly assure the defendant that his silence will carry no penalty," *People v. Davis*, 312 P.3d 193, 198 (Colo. App. 2010) (citing *Doyle v. Ohio*, 426 U.S. 610, 619 (1976)), *aff'd*, 2013 CO 57. Similarly, neither prosecutors nor witnesses may comment on a defendant's invocation of counsel.

23. In Motion D-044, Mr. Morphew previously requested that this Court prohibit the prosecution from introducing any observations, evidence, and statements made in and around the subject of Mr. Morphew's post-arrest silence or his invocation of his constitutional rights, including but not limited to his right to remain silent, request for an attorney, or assertion of any

other constitutional or statutory right. Mr. Morphew incorporates by reference that motion by reference.

24. Mr. Morphew makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, Crim. P. 16, RPC 3.8, and the Colorado Rules of Evidence (including CREs 401, 402, 403, 404, 608, 801, 802, 803, 804, and 901). Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, including but not limited to D-17 and D-44 and case law cited therein and at oral argument.

WHEREFORE, Mr. Morphew requests this Court (1) bar for any purpose at trial statements Mr. Morphew made on May 5, 2021, (2) bar for any purpose at trial any other statements Mr. Morphew made while in custody, (3) bar for any purpose his silence and invocation of counsel, and (4) prohibit the prosecution from referencing any such interrogation, interaction or statements.

Respectfully submitted this 29th day of October, 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 October 29, 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