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| DISTRICT COURT, ALAMOSA COUNTY, COLORADO<br>8955 Independence Way<br>Alamosa, CO 81101 | DATE FILED<br>November 2, 2026 8:47 PM |
| THE PEOPLE OF THE STATE OF COLORADO,<br>Plaintiff,<br><br>v.<br><br>BARRY MORPHEW,<br>Defendant | ▲ COURT USE ONLY ▲ |
| *Attorneys for Barry Morphew:*<br><br>JANE FISHER-BYRIALSEN, #49133<br>FISHER & BYRIALSEN, PLLC<br>4600 S. Syracuse Street, 9th Floor<br>Denver, CO 80237<br>(202)256-5664<br>Jane@fblaw.org<br><br>DAVID BELLER, #35767<br>RECHT KORNFELD, P.C.<br>1600 Stout Street, Suite 1400<br>Denver, CO 80202<br>(303)573-1900<br>david@rklawpc.com | Case Number: 25 CR 128 |

**[D-070] MOTION TO SUPPRESS ALL EVIDENCE OBTAINED FROM THE INITIAL SEARCH AND ALL SUBSEQUENT SEARCHES OF HP LAPTOP, MODEL# 14M-DH0001DX, S/N 8CG9315JS7**

Through counsel, Mr. Morphew moves this Court to suppress all evidence obtained from the initial search and all subsequent searches of HP laptop, Model# 14M-DH0001DX, S/N 8CG9315JS7. In support he states as follows:

## INTRODUCTION

1. On May 23, 2020, a warrant issued authorizing a search of HP laptop, Model# 14M-DH0001DX, S/N 8CG9315JS7. The warrant authorized officers to search for "[a]ny and all data stored within any computer storage device or other processing and/or storage devices," all documents, e-mail messages and attachments, internet browser files, deleted or partial files, and data stored by any application. Neither the warrant nor the affidavit was limited to the search and seizure of items created during a certain time period or to a certain type of evidence.

2. The Tenth Circuit held more than a decade before this warrant issued that a warrant authorizing the search of a computer for "any and all information, data, devices, programs, and other materials" was insufficiently particular and invalid. *United States v. Otero*, 563 F.3d 1127 (10th Cir. 2009). The warrant here authorized a search for "[a]ny and all data stored within any computer storage device."

3. The warrant is an unconstitutional general warrant. The remedy is suppression of all evidence seized pursuant to it. *People v. Roccaforte*, 919 P.2d 799, 802 (Colo. 1996).

## THE WARRANT AND AFFIDAVIT

4. The warrant issued May 23, 2020, requests access to the following without any temporal limitations:

1. Data that may identify the owner or user of the devices.
2. Address books and calendars.
3. Audio and video clips related to the pattern of life (Susanne, Barry, Mallory, Macy) and the disappearance of Susanne Morphew.
4. Call histories, call logs and visual voicemail related to the pattern of life (Susanne, Barry, Mallory, Macy) and the disappearance of Susanne Morphew.
5. Photographs and associated metadata related to the pattern of life (Susanne, Barry, Mallory, Macy) and the disappearance of Susanne Morphew.

6. Text messages (SMS), multimedia messages (MMS), recorded messages and information contained on a subscriber information module [SIM cards]
7. E-mail messages and attachments, whether read, unread, or deleted.
8. Internet World Wide Web (WWW) browser files including, but not limited to, browser history, browser cache, stored cookies, browser favorites, auto-complete form history, items searched for, stored pages, archived files, and stored passwords;
9. Mapping information, global position system (GPS) data including, but not limited to coordinates, way points and tracks, wireless access points;
10. Documents and other text-based files.
11. Applications (Apps) and other installed programs, including widgets, and any data stored by the application or remotely stored by application server or database server.
    a. Any and all computer software, to include but not limited to operating systems, applications, utilities, compilers, interpreters, communication programs, or any other digital information which can be interpreted by a computer or any related components, which may be stored in electronic, magnetic, optical or other digital form.
    b. Any and all data stored within any computer storage device or other processing and/or storage devices, to include, but not limited to, computer applications, images, videos, text, programs, encryption routines and algorithms, or any other data that may be decoded, reconstituted, or otherwise manipulated to produce, utilize, transmit, receive, encrypt, encode, or display such images, videos, text, programs, encryption routines, and algorithms.
12. Deleted or partial files located on the devices.
13. Devices event logs
14. Evidence of the attachment of other storage devices or similar containers for electronic evidence.
15. All electronic files, data, and communications, including related metadata and location data, stored, sent, received or deleted form social media applications such as, but not limited to, Facebook, Snapchat and Instagram.

5. The warrant further provides:

> * With respect to the items listed above, the executing law enforcement officer(s) is\are authorized to view, photograph, record, copy, forensically image and conduct forensic analysis of any and all metadata, programs and applications on the above-described device(s), as well as on any data storage devices and or mediums

> attached or installed in those device(s). The executing law enforcement officer may enlist the aid of a law enforcement computer forensic laboratory in the searching, viewing, photographing, recording, copying, forensically image and analysis of any and all of the information described above.

6. Neither the warrant nor the affidavit was limited to the search and seizure of items created during a certain time period or to a certain type of evidence.

7. The affidavit is not incorporated by reference to the warrant.

## THE GOVERNING CONSTITUTIONAL REQUIREMENTS

### A. Both the United States and Colorado Constitutions forbid warrants that do not particularly describe the things to be seized.

8. Under U.S. Const. amend. IV, "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

9. Article II, Section 7 of the Colorado Constitution provides:

> The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place or seize any person or things shall issue without describing the place to be searched, or the person or thing to be seized, as near as may be, nor without probable cause, supported by oath or affirmation reduced to writing.

10. As with the Fourth Amendment to the United States Constitution, the purpose of the Colorado constitutional provision is to protect a person's legitimate expectation of privacy from unreasonable governmental intrusions. *E.g.*, *Charnes v. DiGiacomo*, 200 Colo. 94, 612 P.2d 1117 (1980); *People v. Bement*, 193 Colo. 435, 567 P.2d 382 (1977); *People v. Counterman*, 192 Colo. 152, 556 P.2d 481 (1976); *People v. Weisenberger*, 183 Colo. 353, 516 P.2d 1128 (1973).

## B. The Colorado Constitution provides greater privacy protection than the Fourth Amendment.

11. The Colorado Supreme Court has ruled that it is not bound by the U.S. Supreme Court's interpretation of the Fourth Amendment when determining the scope of state constitutional protections. *People v. McKnight*, 2019 CO 36 ¶ 38, 446 P.3d 397, *citing People v. Sporleder*, 666 P.2d 135, 143–44 (Colo. 1983).

12. The Colorado Supreme Court has held that article II, section 7 of the Colorado Constitution encompasses a broader definition of what constitutes a legitimate expectation of privacy from government intrusion than that of its federal counterpart. *McKnight*, *supra* ¶ 30 (collecting cases holding that article II, section 7 provides greater privacy protections than the Fourth Amendment); *People v. Galvadon*, 103 P.3d 923 (Colo. 2005) (A bank customer had a reasonable expectation of privacy in his bank records under the Colorado Constitution, despite Supreme Court precedent that no reasonable expectation of privacy in such records exists under the Fourth Amendment); *Charnes v. DiGiacomo*, 612 P.2d at 1119-21 (discussing and declining to follow *United States v. Miller*, 425 U.S. 435 (1976)); *cf. People v. Gutierrez*, 222 P.3d 925, 935 (Colo. 2009) (finding the third-party doctrine inapplicable and holding that taxpayers have a reasonable expectation of privacy in income tax returns even when they disclose them to the Internal Revenue Service, the state department of revenue, and tax preparers); *People v. Sporleder*, *supra*, at 142 (discussing and declining to follow *Smith v. Maryland*, 442 U.S. 735, 742-43 (1979)).

## C. The particularity requirement exists to prevent general, exploratory rummaging.

13. A court reviewing a challenged warrant determines (1) whether the four corners of the affidavit provided a substantial basis for concluding there was probable cause to search, and

(2) whether the warrant was sufficiently particular. *See People v. Randolph*, 4 P.3d 477, 481 (Colo. 2000).

14. "The particularity requirement ensures that a search is confined in scope to particularly described evidence relating to a specific crime for which there is demonstrated probable cause." *Voss v. Bergsgaard*, 774 F.2d 402, 404 (10th Cir. 1985).

15. Particularity "prevents a general search, the dreaded practice authorized by the colonial 'writ of assistance.'" *People v. Hearty*, 644 P.2d 302, 312 (Colo. 1982) (citations omitted). *Accord*, *People v. Roccaforte*, 919 P.2d 799 (Colo. 1996):

> The primary function of the particularity requirement of the Warrants Clause is to ensure that government searches are 'confined in scope to particularly described evidence relating to a specific crime for which there is demonstrated probable cause.'
>
> *Id.* at 802, *quoting Voss v. Bergsgaard*, 774 F.2d 402, 404 (10th Cir. 1985).

16. The Colorado Supreme Court explained the reasons for the constitution's particularity requirement: "The policy behind the requirement is to prevent officers from conducting a 'general, exploratory rummaging in a person's belongings.'" *Roccaforte*, at 802, quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971), and adding: "The principal means of effectuating the requirement is to suppress all evidence seized pursuant to an overbroad, general warrant." *Ibid.*, quoting *United States v. Christine*, 687 F.2d 749, 757 (3d Cir. 1982).

17. The particularity requirement requires a nexus between the evidence and the alleged crime; the warrant must be "confined in scope to particularly described evidence relating to a specific crime for which there is demonstrated probable cause." *People v. Seymour*, 2023 CO 53 ¶ 44, 536 P.3d 1260 (citation omitted). The affidavit must provide "a sufficient nexus between

criminal activity, the things to be seized, and the place to be searched." *People v. Kazmierski*, 25 P.3d 1207, 1211 (Colo. 2001). "[V]ague allegations that the defendant engaged in illegal activity without establishing a nexus between the alleged criminal activity and place to be searched cannot establish probable cause." *Id.*

## ARGUMENT

### I. Computers and cell phones demand the greatest care in description, and that principle was firmly established long before this warrant issued.

18. The Tenth Circuit recognized in 2009 that computers heighten the importance of the particularity requirement:

> The modern development of the personal computer and its ability to store and intermingle a huge array of one's personal papers in a single place increases law enforcement's ability to conduct a wide-ranging search into a person's private affairs and accordingly makes the particularity requirement that much more important.
>
> *United States v. Otero*, 563 F.3d 1127, 1132 (10th Cir. 2009).

19. In *Otero*, the warrant authorizing search of a computer for "any and all information, data, devices, programs, and other materials" was insufficiently particular and invalid. *Id.* Federal courts have continued to articulate the special importance of the particularity requirement as applied to computers and cell phones. *E.g.*, *United States v. Christie*, 717 F.3d 1156, 1164 (10th Cir. 2013) ("if any place or thing is especially vulnerable to a worrisome exploratory rummaging by the government, it may be our personal computers"); *United States v. Russian*, 848 F.3d 1239, 1245 (10th Cir. 2017) (applying heightened scrutiny to the particularity components of a warrant to search a cell phone).

20. Commentators agree that special protection applies to computer and phone searches. *E.g.*, Wayne R. LaFave, *2 Search & Seizure* § 4.6(a) (5th ed. 2012) ("The greatest care in description is required when…the place to be searched is a cell phone or a computer….").

21. In 2014, six years before the warrant here issued, the United States Supreme Court ruled that, because cell phones, "[w]ith all they contain and all they may reveal…hold for many Americans 'the privacies of life,'" a warrant is required before searching a cell phone seized incident to arrest. *Riley v. California*, 573 U.S. 373, 402-403 (2014) (citation omitted). The Court found it important that:

- First, a cell phone collects in one place many distinct types of information -- an address, a note, a prescription, a bank statement, a video -- that reveal much more in combination than any isolated record.
- Second, a cell phone's capacity allows even just one type of information to convey far more than previously possible. The sum of an individual's private life can be reconstructed….
- Third, the data on a phone can date back to the purchase of the phone, or even earlier.

*Riley*, 573 U.S. at 393-96.

22. The Supreme Court has since reaffirmed and extended these observations:

> Modern cell phones, we observed a dozen years ago, are 'such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.' *Riley v. California*, 573 U.S. 373, 385 (2014). Since then, the percentage of Americans who own smartphones has only increased. Today, more than nine in ten Americans own a smartphone. See W. Bishop, Pew Research Center, Mobile Fact Sheet (Nov. 20, 2025) (91%); compare A. Smith, Pew Research Center, Smartphone Ownership—2013 Update (June 5, 2013) (56%). That means they are likely addicted to apps and other services, many of which collect and store 'detailed information about all aspects of a person's life.' *Riley*, 573 U.S. at 396.

*Chatrie v. United States*, 146 S. Ct. 2193, 2200, 225 L.Ed.2d 793 (2026).

23. The Colorado Supreme Court embraced these principles in 2015. In *People v. Herrera*, 2015 CO 60 ¶ 19, 357 P.3d 1227, the Court invalidated a search of parts of a cell phone that were not explicitly authorized in the warrant because the search violated the Fourth Amendment. The particularity requirement, the Court emphasized, "is designed to 'prevent officers from conducting a 'general, exploratory rummaging in a person's belongings.'" *Id.* ¶ 19, quoting *Roccaforte*, *supra*, 919 P.2d at 802 and *citing Coolidge v. New Hampshire*, *supra*, 403 U.S. at 467.

24. Quoting *Riley*, the *Herrera* Court observed "'the Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity.'" *Herrera* ¶ 19 (quoting *Riley*, 573 U.S. at 403). Thus, a "limitless search" of a cell phone would invade the citizen's "privacies of life." *Herrera* ¶ 35 (quoting *Riley*, 573 U.S. at 403).

25. The Colorado Supreme Court reaffirmed Colorado's adoption of *Riley* in *People v. Davis*, 2019 CO 24 ¶¶ 17-21, 438 P.3d 266. Observing that "the quickly evolving technology of cell phones has complicated" application of "longstanding principles of search and seizure jurisprudence," the Court found that "the general trend of caselaw provides cell phones with *more* protection, not *less*." *Id.* ¶ 17 (emphasis added). Although *Davis* involved a consensual search, not a question about a search pursuant to a warrant, *id.* ¶ 22, the Court explained that "the nature of cell phones" magnifies the historical analysis:

> ‘Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee’s person.’ [*Riley*], at 393. Modern cell phones have an ‘immense storage capacity,’ collect[] in one place many distinct types of information,’ and store information that can be used to reconstruct [t]he sum of an individual’s private life.’ *Id.* at 393-94. ‘ ‘With all they contain and all they may reveal, [cell phones] hold for many Americans ‘the privacies of life.’ ’ *Id.* at 403 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)).
>
> *Davis* ¶ 18.

26. Then, on April 27, 2020, less than one month before the warrant here issued, the Colorado Supreme Court decided *People v. Coke*, 2020 CO 28, 461 P.3d 508, and emphasized the need for particularity when issuing a search warrant for a cell phone. In *Coke*, the trial court had found that a cell phone search warrant was overbroad because “phones ‘are a repository of almost everything that is private and personal and deserving of [heightened] protection’ and the warrant gave the officers virtually unfettered access to it.” *Coke* ¶ 36. The Supreme Court agreed, holding that cell phones are “entitled to special protections from searches” because of their “immense storage capacities and ability to collect and store many distinct types of data in one place.” *Id.* ¶¶ 37-38 (citing and quoting *Riley*, *Davis*, *Herrera*, and other cases cited above).

27. *Riley*, *Herrera*, *Davis*, and *Coke* were all decided before the warrant here issued on May 23, 2020. For these reasons the particularity requirement is of fundamental constitutional importance in the cell phone context.

## II. The warrant to search the HP laptop is an unconstitutional general warrant.

### A. A digital device warrant must contain specific limitations.

28. In the digital device warrant context, the court must consider whether there are “specific limitations based on (1) the type of alleged criminal activity; (2) the identity of the alleged

victim; and (3) if applicable, the timeframe within which the suspected crime occurred." *People v. Rodriguez-Ortiz*, 2025 COA 61 ¶ 27, *cert. granted in part on other issues*, 25SC467, 2026 WL 361864 (Colo. Feb. 9, 2026).

29. While a broad warrant in and of itself is not necessarily unconstitutional, there still needs to be some limiting factors:

> a warrant authorizing a search of a large area may still be sufficiently particularized if the description of the place to be searched allows an officer, with reasonable effort, to ascertain the place to be searched, see *Steele v. United States*, 267 U.S. 498, 503 (1925), and assures that the search is 'conducted in a manner that minimizes unwarranted intrusions upon privacy,' *Andresen v. Maryland*, 427 U.S. 463, 482 n.11 (1976).
>
> *People v. Seymour*, *supra*, 2023 CO 53 ¶ 46.

30. There is nothing in the warrant or the attached affidavit that limits the scope of the search to either particular items or to a particular time frame. This is an unconstitutional warrant. *See People v. Thompson*, 2021 CO 15 ¶ 19, 500 P.3d 1075:

> a warrant broadly authorizing police to search a cell phone for all texts, videos, pictures, contact lists, phone records, and any data showing ownership or possession violates the particularity demanded by the Fourth Amendment. *Coke* at ¶ 38.

**B. The warrant reaches any and all data on the laptop.**

31. The warrant authorizes officers (and/or their forensic laboratories) to search for any and all data stored within any computer storage device or other processing and/or storage devices.

32. The warrant authorized search for all documents that may be on the computer.

33. The warrant authorizes any and all internet searches including, but not limited to, browser history, browser cache, stored cookies, browser favorites, auto-complete form history,

items searched for, stored pages, archived files, and stored passwords without any temporal or other limitations.

34. The *Coke* Court found the warrant overbroad (lacking in particularity) because it "permitted the officers to search all texts, videos, pictures, contact lists, phone records, and any data that showed ownership or possession." *Coke* ¶ 38. The warrant here (especially when read in conjunction with the affidavit) is even broader. It authorizes law enforcement officers to access anything and everything that might be on the computer with no temporal limitations.

**C. The warrant contains no temporal limitation.**

35. Neither the warrant nor the affidavit was limited to the search and seizure of items created during a certain time period. Specifically:

- The warrant authorized a search of all photographs and associated metadata related to the "pattern of life (Susanne, Barry, Mallory, Macy)" without any temporal limitations or limitations that the photographs be in any way relevant to the criminal investigation.
- The warrant authorized a search of all deleted or partial files located on the devices regardless of when they were created or deleted.

36. When Colorado courts uphold broad warrants, they do so only when there are temporal limits in place. *See People v. Rodriguez-Ortiz*, 2025 COA 61 ¶ 18, 574 P.3d 1196 (warrant limited to a six-month time period in which all the crimes under investigation occurred), *cert. granted in part on other issues*, 25SC467, 2026 WL 361864 (Colo. Feb. 9, 2026).

37. As the *Herrera* Court recognized, the Supreme Court has previously "sustained some fairly broad searches against particularity challenges." *Herrera* ¶ 20. But it has done so when the affidavit "narrowed the search to business documents pertaining to particular dates that were

related to a particular alleged crime." *Ibid.*, *citing Roccaforte*, 919 P.2d at 801-02, 804. The warrant here contains no dates at all.

38. None of the items listed in the warrant here have any temporal or other limitation. The warrant is therefore constitutionally overbroad. *See also Armendariz v. City of Colorado Springs*, 169 F.4th 1036, 1058 (10th Cir. 2026) (Warrant authorizing search of electronic devices was overbroad because it did not limit the scope of the search to the crime under investigation but allowed officers to search for and seize data completely unrelated to any crime, failed to distinguish between data officers could search for and data they could seize, and did not impose any temporal limit on the data even though officers had sufficient information to narrow the warrant's scope but chose not to do so).

**D. The affidavit cannot save the warrant.**

39. The affidavit is not incorporated by reference to the warrant.

40. Even if it were attached, that would not save the warrant because there is nothing in the warrant that indicates what information is being sought, what the nexus is to the criminal investigation, and why they believe there is any information on the computer that is relevant to the criminal investigation.

**E. The warrant authorized exactly the general, exploratory rummaging the Constitution forbids.**

41. The warrant authorized the electronic equivalent of "rummag[ing] through homes in an unrestrained search for evidence of criminal activity." *Riley*, 573 U.S. at 403.

42. The warrant authorizes law enforcement officers to access anything and everything that might be on the computer with no temporal limitations. Thus, it is an unconstitutional general

warrant lacking in particularity. *See* U.S. Const. amend. IV; Colo. Const. art. II, § 7; *Coke* ¶¶ 35-38; *Herrera* ¶¶ 19-20.

**III. All evidence obtained from the laptop must be suppressed.**

43. As the Colorado Supreme Court recognized in *Roccaforte*, 919 P.2d at 802: "The principal means of effectuating the [particularity] requirement is to suppress all evidence seized pursuant to an overbroad, general warrant." *See Massachusetts v. Sheppard*, 468 U.S. 981, 988 (1984) (The uniformly applied rule is that a search conducted under a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional. *Stanford v. Texas*, 379 U.S. 476 (1965).).

**CONTINUING OBJECTION AND REQUEST FOR HEARING**

44. 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, right to be free of unreasonable searches and seizures, 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, and RPC 3.8. Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and case law cited therein and at oral argument.

45. Mr. Morphew requests an evidentiary hearing on this motion.

WHEREFORE, for these reasons, this Court should find that the warrant was constitutionally defective and therefore all evidence obtained directly from the search and all other evidence from the search must be suppressed.

Respectfully submitted this 2nd day of November, 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 November 2, 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