

<p>DISTRICT COURT, FREMONT COUNTY, COLORADO Court Address: 136 Justice Center Rd., Rm. 103 Canon City, CO 81212 Court Phone: (719) 269-0100</p>	<p style="text-align: right;">DATE FILED: March 27, 2022</p>
<p>THE PEOPLE OF THE STATE OF COLORADO,  v.  BARRY LEE MORPHEW, Defendant.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/>
<p>Iris Eytan, #29505 Eytan Nielsen LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (720) 440-8155 Facsimile: (720) 440-8156 <a href="mailto:iris@eytan-nielsen.com">iris@eytan-nielsen.com</a></p> <p>Jane Fisher-Byrialsen, #49133 Fisher &amp; Byrialsen, PLLC 4600 South Syracuse St., 9th Floor, Denver, Colorado 80237 <a href="mailto:jane@fblaw.org">jane@fblaw.org</a></p> <p>Hollis Whitson, #32911 Samler and Whitson, PC 1600 Stout Street, Suite 1400 Denver, CO 80202 303-670-0575 <a href="mailto:Hollis@SamlerandWhitson.com">Hollis@SamlerandWhitson.com</a></p> <p><i>ATTORNEYS FOR DEFENDANT BARRY LEE MORPHEW</i></p>	<p>Case Number: 22CR47  Division: 1</p>
<p style="text-align: center;"><b>MOTION TO STRIKE THE PROSECUTION’S CRE 807 NOTICE AND ITS EXHIBITS [D-72]</b></p>	

Mr. Morphew requests that this Court strike the prosecution’s unnumbered “Notice of People’s Intent to Introduce Statements Pursuant to CRE 807 and Section 13-25-139, C.R.S.,” and Exhibits 1 and 2 to that Motion, submitted for filing on March 25, 2022.

CRE 807 does not provide for filing in the court file material that the prosecution seeks to introduce in court under CRE 807. The rule only requires notice to the defense:

“a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.”

When this Court set the deadline, it required “disclosure” – not filing in a public court file. See Transcript of 1/25/2022, p. 219 (“I’m going to make the deadline for disclosure under 807 March 21, 2022”). (That initial deadline was eventually moved to March 25, 2022. *See id.*, pp. 225-226 (referring to “disclosures” and making the deadline March 29, 2022); see also Tr. 2/10/22, p. 117 (moving date to 3/25/22).

The prosecution filing 98 pages of highly inflammatory, inadmissible and misleading material so close to commencement of the jury trial is reprehensible. The jury summons have already gone out. Admission of the material is hotly contested, and the prosecution knows it.

This Court should order the filings to be stricken and removed from the court file.

If the prosecution seeks to introduce legal argument in support of their request, this Court should rule that the prosecution can do that without inserting into the document the very material that it asks permission to introduce.

Mr. Morphey 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: 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, and RPC 3.8. Mr. Morphey cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

Respectfully submitted this 27th day of March 2022.

**EYTAN NIELSEN LLC**

*s/ Iris Eytan*  
Iris Eytan, #29505

**FISHER & BYRIALSEN, PLLC**

*s/ Jane Fisher-Byrialsen*  
Jane Fisher-Byrialsen, #49133

**SAMPLER AND WHITSON**

*s/ Hollis Whitson*  
Hollis Whitson, #32911

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of March 2022, a true and correct copy of the foregoing **MOTION [D-72]** was served via CCE as follows: 11<sup>th</sup> Judicial District Attorney's Office, 101 Crestone Ave., Salida, CO 81201

*s/ Hollis Whitson* \_\_\_\_\_  
Hollis Whitson