

DISTRICT COURT, COUNTY OF CHAFFEE, STATE OF COLORADO

CASE NO. 2021 CR 000078, DIV. 2

DATE FILED: February 9, 2022

TRANSCRIPT OF PROCEEDINGS (Preliminary Hearing)

IN THE MATTER OF

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

v.

BARRY LEE MORPHEW,

Defendant.

The above-entitled matter came on for hearing on Tuesday, August 24, 2021 at 9:17 a.m. before the HONORABLE PATRICK W. MURPHY, District Judge.

APPEARANCES:

FOR THE PLAINTIFF:

JEFF LINDSEY
LINDA STANLEY
MARK HURLBERT

FOR THE DEFENDANT:

IRIS EYTAN
DRU NIELSEN

ALSO PRESENT:

BARRY LEE MORPHEW
ALEXANDER WALKER
KENNETH HARRIS
JONATHAN GRUSING
SCOTT HIMSCHOOT
JOSEPH CAHILL

1 THE WITNESS: Yes, sir.

2 Whereupon,

3 JOSEPH CAHILL

4 was duly sworn.

5 THE COURT: Have a seat here. If you could state
6 your name and spell your last name.

7 THE WITNESS: Joseph Cahill, C-A-H-I-L-L.

8 THE COURT: Oh, Cahill. I was saying Kale. Go
9 ahead.

10 DIRECT EXAMINATION

11 BY MS. EYTAN:

12 Q. Agent Cahill, in the Morphew case did law
13 enforcement swab and collect numerous DNA samples?

14 A. Yes.

15 Q. And in a missing person case is it important to
16 consider all DNA unknown and known as a stranger could be
17 involved in the disappearance?

18 A. Yes.

19 Q. Was there unknown DNA -- male DNA -- on the glove
20 box in Suzanne's car?

21 A. I can't speak to the gender of the sample. If you
22 have the document I could review that for you.

23 Q. Sure.

24 MR. HURLBERT: Judge, what is she showing him?

25 MS. EYTAN: I'm refreshing his memory with the DNA

1 report.

2 A. I want to be clear I'm not the author of this
3 report. I have read the highlighted section that you
4 provided me on page nine of eleven.

5 Q. And does that refresh your memory?

6 A. It does not but I can read what is stated though.

7 Q. You reviewed the DNA in this case, right?

8 A. I have not.

9 Q. Well, you actually reviewed and edited the
10 affidavit that this judge signed, correct?

11 A. The one that was signed by the Court?

12 Q. Yeah.

13 A. I can't answer to that. The version which was
14 presented to me, I can't verify that was the one that was
15 presented to the Court.

16 Q. Well the affidavit states, on page two --

17 MR. HURLBERT: Objection, leading.

18 THE COURT: I haven't heard a question yet.

19 BY MS. EYTAN:

20 Q. The affidavit says on page two whether or not you
21 reviewed and edited the submitted affidavit, doesn't it?

22 A. I have not seen the affidavit that was submitted
23 to the Court for the arrest of Barry Morpew.

24 Q. So --

25 A. The final version that was submitted to this

1 court.

2 Q. So you know there was unknown male DNA on the
3 glove box in Suzanne's vehicle, correct?

4 A. Referencing page number nine of eleven that you
5 just showed me from that report that would be correct for
6 item 27.1.

7 Q. And you know that Barry -- and was Barry excluded
8 from -- I'll ask you in an alternative way. Was Barry
9 excluded from this DNA mixture?

10 A. For that specific item number?

11 Q. Yes.

12 A. Can I see the report again please?

13 Q. Yes.

14 A. Yes, the final bullet of that paragraph states
15 that Barry Morphey was excluded as a contributor to that
16 profile.

17 Q. Thank you.

18 A. You're welcome.

19 Q. Was there also unknown DNA on the bike grips?

20 A. I'd have to see the report.

21 Q. I'm going to show you the affidavit. I'm showing
22 you page --

23 MR. HURLBERT: Judge, he said that he did not read
24 the last affidavit. I don't know how this is going to
25 refresh his recollection, assuming that's where she's going.

1 THE COURT: Can you ask him that question?

2 MS. EYTAN: Well can't I refresh his memory with
3 any document?

4 THE COURT: Not -- you usually ask if you look at
5 this will this refresh your memory?

6 BY MS. EYTAN:

7 Q. If you look at the affidavit might it refresh your
8 memory?

9 A. Unlikely. As I previously stated, the affidavit
10 that was submitted to this Court I have not yet seen in its
11 entirety.

12 Q. So have you seen -- the affidavit version that you
13 saw, did that affidavit version say this affidavit was
14 edited and reviewed by CBI Agent Joseph Cahill?

15 A. Did --

16 Q. Is that the one you saw?

17 A. I'm sorry, could you --

18 Q. Yeah --

19 A. Did it state that?

20 Q. Yeah.

21 A. No --

22 Q. So --

23 A. -- it did not.

24 THE COURT: Hold on. So question and answer. Go
25 ahead.

1 BY MS. EYTAN:

2 Q. Did you -- the version of the affidavit that you
3 reviewed --

4 A. Correct.

5 Q. Did it say this affidavit was edited and reviewed
6 by CBI Agent Joseph Cahill?

7 A. It did not.

8 Q. The version of the affidavit that you reviewed,
9 did it contain CBI laboratory results?

10 A. I'd have to look at the version I reviewed. That
11 was -- I don't recall.

12 Q. And do you have that version?

13 A. Not here on the stand.

14 Q. Well I'm going to try and refresh your memory with
15 the affidavit that this judge signed and see if that might
16 refresh your memory.

17 A. Fair enough.

18 Q. Does that refresh your memory?

19 A. No it does not. I'm referring to page 44 of 129,
20 the section under CBI laboratory results.

21 Q. Okay, it doesn't refresh your memory?

22 A. No, ma'am. It does not.

23 MS. EYTAN: Your Honor, I'd ask the Court pursuant
24 to 611 to lead this witness. He's an adverse witness, and
25 in order to proceed I guess more efficiently with this

1 witness, and considering the position of this witness to my
2 client I'm asking permission to lead.

3 THE COURT: I think I need to know (inaudible) get
4 there. The affidavit that you reviewed, I'm assuming close
5 to the arrest of Mr. Morpew. How long was that affidavit?

6 THE WITNESS: In page length, Your Honor?

7 THE COURT: Yeah.

8 THE WITNESS: I believe it was around 126 of which
9 I got to page 19. I was away on military leave when I
10 reviewed it and I got to page 19 and sent that portion back
11 to Investigator Walker.

12 THE COURT: Did you make it through the other 100
13 and some pages?

14 THE WITNESS: Not in detail. No, Your Honor.

15 THE COURT: That might be the problem. He did not
16 read the bulk of the affidavit.

17 MS. EYTAN: Right. I guess it's a little honestly
18 misleading when I read the affidavit because it doesn't say
19 that he only read part of it.

20 THE COURT: I understand but for purposes of what
21 we're talking about he's not being recalcitrant. He's just
22 saying I don't -- it doesn't refresh because I didn't
23 read --

24 MS. EYTAN: Sure. I can continue with my
25 questioning outside of that.