March 29, 2023

The Office of Attorney Regulation Counsel
1300 Broadway Unit 500,
Denver, CO 80203
(Hand Delivered)

RE: REQUEST FOR INVESTIGATION OF THE FOLLOWING COLORADO PROSECUTORS AND/OR CONTRACTED PROSECUTORS PERTAINING TO MISCONDUCT COMMITTED ON *PEOPLE V. MORPHEW*, CHAFFEE COUNTY CASE #21CR78 AND FREMONT COUNTY CASE #2022CR47 DURING TIMEFRAMES REFLECTED IN PARENTHESIS:

LINDA STANLEY, #45298 (April 2021-October 2022)
JEFF LINDSEY, #24664 (April 2021-January 2022)
MARK HURLBERT, #24606 (August 2021-October 2022)
AARON PEMBELETON, #53924 (May 2021-September 2021)
DAN EDWARDS, #7938 (September 2021-March 2022) BOB WEINER, #21572 (November 2021-April 2022) GRANT GROSEGEBAUER, #50229 (March 2022-April 2022)

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The following complaint and request for investigation is based upon facts, information, personal beliefs, and opinions of the signatories below which we allege occurred between April 2021 and October 2022:

Colorado Attorneys and prosecutors Linda Stanley, Jeff Lindsey, Aaron Pembleton, Mark Hurlbert, Bob Weiner, Dan Edwards, and Grant Grosgebauer on the People v. Barry Morphew homicide prosecution (who will be referred to collectively as "the DA's office") should be harshly disciplined by the Office of Attorney Regulation Counsel (OARC) for committing a pattern of ethical violations eviscerating public trust in the criminal legal system and disregarding the rights of Mr. Morphew and his daughters. Instead of abiding by their special prosecutorial ethical obligations to protect the presumption of innocence and to preserve and enhance the integrity and high standards of the bar, these prosecutors exhibited untrustworthiness and pursued a political agenda of locking up Mr. Morphew in response to a media frenzy that the prosecutors themselves helped create and perpetuate.

The DA's office was so wrongly convinced that Mr. Morphew was the only suspect in the disappearance of Mrs. Suzanne Morphew that they excused any evidence of innocence, concealed favorable evidence, manufactured evidence and opinions, and allowed witnesses to testify falsely. This type of entrenchment of mistaken convictions has been studied by social scientists and is known as "confirmation bias" or "cognitive dissonance."[1] Because the DAs are entrenched in their false belief that Mr. Morphew murdered his wife, they have and will continue to protect their professional self-worth to morally justify their wrongful actions; as exhibited during the nearly year long litigation of the case, there will be no conceivable evidence or rationale that will permit these prosecutors to admit they made mistakes, were wrong, or committed misconduct. *Id.* And, the real threat to the public remains as long as they are able to continue the practice of law without any significant discipline.

Mr. Morphew hired Eytan Nielsen LLC to represent him in May 2021 after elected District Attorney Linda Stanley and former Chief Deputy District Attorney Jeff Lindsey with the 11th Judicial District Attorney's Office filed a tabloid-like 129-page affidavit for arrest warrant ("Arrest Affidavit") to arrest Mr. Morphew. The Arrest Affidavit was signed by the 11th Judicial DA Investigator Alex Walker. The Arrest Affidavit was filled with falsities. It caused Mr. Morphew to be held without bond on charges of first-degree murder in connection with his wife, Suzanne Morphew's, disappearance on May 9-10, 2020. To date, Suzanne Morphew has not been found, nor has any forensic or other actual evidence revealed that Suzanne Morphew is in fact deceased. The prosecutors continually asserted that this "no body" homicide could be proved beyond a reasonable doubt without finding Suzanne Morphew.

In large part because of the pre-trial publicity generated by the DA's office, this case became a focus of local and national news. Once falsehoods were uttered by the prosecutors, the

[1] Suggested reading: See Matthew Syed, Black Box Thinking, 69-134 (2015).

falsehoods became the legend and lore of the case. The media frenzy reached a point where venue had to be changed from Salida to Canon City, protests at the courthouse were planned (complete with t-shirts emblazoned with evidence the court had excluded from trial). Opinion letters were published in local papers criticizing the judge for excluding evidence, repeated hacking of the Court's WebEx occurred, and various bloggers and YouTubers had published the judge's home address as well as private information related to defense counsel. The prosecutors were admonished and sanctioned for commission of numerous discovery violations, misrepresentation of facts, concealment/minimization of exculpatory information, and making unfounded claims again and again that caused substantial wasted resources of the court and the parties.

Ultimately, on April 19, 2022, nine days before the 1000 summoned jurors were set to appear for jury selection and commencement of trial, the prosecution admitted they could not prove their claims and dismissed the case without prejudice. Linda Stanley could not reveal that the case was dismissed due to the lack of evidence, or the sanctions imposed from their misconduct debilitating the DA's from putting on a case. Instead to convince the judge to allow the DA's office to dismiss the charges *without* prejudice, for the first time the DA's representing the People of the State of Colorado at the time, asserted that to successfully prosecute Barry Morphew, they needed to find Suzanne Morphew's body. And, in furtherance of that "good faith" assertion, the DA's advised District Court Judge Ramsey Lama that investigators had recently obtained new information that Suzanne Morphew's body was buried up in the mountains near the Morphew home, but that it was covered by five feet of snow and therefore inaccessible to reach prior to the commencement of the trial.

It is our belief that there is absolute proof that the elected District Attorney, Linda Stanley, her then-Chief DA Investigator Alex Walker, Chief Deputy DA Jeffrey Lindsey, Aaron Pembleton and all the deputies who were subsequently hired or contracted to engage in the prosecution of this case (including Deputy District Attorneys Mark Hurlbert, Robert Weiner, Daniel Edwards, and Grant Grosgebauer) committed ethical violations justifying severe discipline and disbarment. This type of unethical conduct cannot stand to go unpunished in this State or Country.

The Judges overseeing the case identified the prosecutors' numerous blatant violations of court orders and discovery rules, including providing false information to the Court. After numerous court admonitions spanning nine months, the prosecution did nothing to correct, remediate, or alter its conduct. Instead, the prosecution continued to dig deeper and violate more court orders, ethical obligations, and rules of discovery. Elected DA Linda Stanley caused additional harm by her dereliction of her duties and failing to supervise her deputies. The DA's committed the ethical violations including, but not limited to:

- All the DA's identified concealed documents from the defense and tribunal in violation of C.R.C.P. 3.3 and 3.4;

- All the DA's identified participated in falsifying/or counseling a witness to testify falsely, knowingly disobeying obligations under the rules of the court, failing to comply with legal and proper discovery requests, and/or requesting a person other than a client to refrain from voluntarily giving relevant information to another party, in violation of C.R.C.P. 3.4;
- All the DA's identified sought to influence a judge's decisions by presenting misleading evidence, omitting evidence, and misrepresenting the evidence, in violation of C.R.C.P. 3.5;
- All the DA's failed to make timely disclosure to the defense of all information known to the prosecutor regardless of admissibility that the prosecutor also knows or reasonably should know tends to negate the guilt of the accused or mitigates the offense, C.R.C.P. 3.8;
- All the DA's failed to make diligent efforts to obtain information (not just discovery) subject to C.R.C.P. 3.8 that they knew, should have known existed by making timely disclosure requests to agencies known to the DA's involved in the case before Mr. Morphew's arrest in May 2021, before the preliminary hearing/proof evident presumption great hearings in August 2021, before the multiple discovery sanctions hearings between November 2021-March 2022, before the pre-trial hearings in January-March 2022, and before the pre-trial conference in April 2022. The DA's also failed to alert the defense to the information when they were ostensibly unable to obtain it. C.R.C.P. 3.8.
- DA Linda Stanley (Chief Deputy Lindsey, Deputy DA Pembleton, Deputy DA Hurlbert) making extrajudicial statements to the media that did not serve a legitimate law enforcement purpose, but which heightened public condemnation of Mr. Morphew and carried a substantial likelihood of prejudicing Mr. Morphew's case in violation of C.R.C.P. 3.6 and 3.8;
- DA Linda Stanley, failing to take reasonable efforts to ensure that the 11th Judicial DA's office had measures in place to assure that all the Deputy DAs would conform to the Rules of Professional Conduct (and in fact ratifying the misconduct) in violation of C.R.C.P. 5.1;
- DA Linda Stanley, Chief DA Jeff Lindsey and Deputy DA Mark Hurlbert failing to manage DA Investigator and DA Witness Alex Walker to ensure the DA's office had measures in place to ensure their investigator's conduct was compatible with their professional obligations to disclose favorable evidence, and by ratifying and failing to mitigate Investigator Walker's misconduct in concealing favorable evidence. C.R.C.P. 5.3; and
- Al the DA's identified above violated or attempted to violate the Rules of Professional Conduct, including engaging in dishonesty, misrepresentation, untrustworthiness, and conduct that was prejudicial to the administration of justice in violation of C.R.C.P. 8.4.

1. CLAIM GROUP ONE: PRE-TRIAL PUBLICITY - RULES 3.6 and 3.8

C.R.P.C 3.6 and 3.8: Pre-Trial Publicity – DA Linda Stanley, DDA Jeff Lindsey, DDA Aaron Pembleton, DDA Mark Hurlbert, DDA Dan Edwards

The above prosecutors made incredulous statements and held press conferences ripping apart Mr. Morphew's presumption of innocence *while they were* charging Mr. Morphew with Murder in the 1st Degree.

Each of these prosecutors violated Rules of Professional Conduct 3.6 and 3.8 and violated the Court's pre-trial publicity order issued on June 3, 2021, by making and participating in making extrajudicial statements to the media following Mr. Morphew's arrest and during the criminal pre-trial proceedings. Some of these statements were false and some misleading. All were unprofessional, violated the Rules of Professional Conduct, and were prejudicial. These statements significantly compromised Mr. Morphew's presumption of innocence and right to a fair trial.

On May 5, 2021, the same day Mr. Morphew was arrested and held without bond, elected DA Linda Stanley participated in a press conference alongside Chaffee County Sheriff John Spezze. DA Stanley made statements to the press attempting to maintain her ethical requirements to preserve Mr. Morphew's presumption of innocence. DA Stanley commented on her belief that law enforcement left no stone unturned and the decision to arrest Mr. Morphew was well grounded.[2] Additionally, and more egregious is that DA Stanley commented on Mr. Morphew's 5th and 6th Amendment Constitutional Rights to Remain Silent and Obtain Counsel by stating:

- "Alex Walker Investigator and Sheriff Spezze's Office in particular are consummate professionals and quite frankly some of the best I've ever worked with in my entire professional career *they followed every lead tip and every unanswered question no matter what direction it led them in* they never compromised the integrity of the investigation." Exhibit 1, Recording of Sheriff Spezze and DA Stanley May 5, 2021 Morphew Press Conference, Time 5:31-6:03.

- "He [Barry Morphew] was taken into custody and when asked questions he said he wanted a lawyer and all questioning ended." *Id.* at 13:53-14:09.

On June 3, 2021, pursuant to joint requests of the defense and prosecution the Court entered a Pre-Trial Publicity Order that set forth in detail and cited to 3.6 and 3.8 Rules of Professional Conduct. Among other portions of the Rules, the Court set forth in full C.R.P.C. 3.6, Comment [5]. Exhibit 2, Order re Motion to Limit Pretrial Publicity.

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[2] As the defense began to discover some nine (9) months later, at the time of the press conference, very substantial leads pointing to potential other suspects, including DNA evidence, had not been fully investigated.

August 8, 9, 23, and 24, 2021. A four-day Preliminary Hearing and Proof Evident Presumption Great Hearing (hereinafter "preliminary hearings") was conducted on August 8, 9, 23, and 24, 2021. Just prior to the hearings, buried in many terabytes of a recently released discovery, was a sliver of information about "unknown male DNA" that had been found at pertinent locations, including Suzanne Morphew's SUV and other key items. As discussed in much more depth below, the prosecution had been intensely involved in the investigation of this "unknown male DNA" for at least the preceding 10 months, and since at least October 2020. However, the prosecution ensured that the investigators who knew about this highly exculpatory evidence were not called to testify at the hearings. Defense counsel was able to present testimony by subpoenaing and calling to the stand the prosecution's lead investigator but even then, the depth and breadth of the DNA investigation would not be fully known to the defense for several more months, because the prosecutors deliberately withheld the information from the defense.

On August 24, 2021, at the conclusion of the preliminary hearing, the Court set oral argument and ruling for September 17, 2021. Mr. Morphew continued to be held without bail until September 17, 2021.

On August 24, 2021, immediately following the fourth day of the hearings, elected DA Stanley, and her subordinate attorneys (Mssrs. Lindsey, Pembleton, and Hurlbert participated in a press conference with Fox 21 news (billed as an "exclusive"). The press conference covered a wide range of topics regarding the case, their investigation, and next steps. Exhibits 3 and 4, Recording and Transcript of the August 24, 2021 Press Conference.

In addition to speaking about the case and the investigation, these prosecutors answered questions about the DNA investigation. Linda Stanley, we believe falsely, stated investigators had cleared all other alternate suspects. However, no such evidence of that was presented at the preliminary hearings; nor was it included in the affidavit for arrest warrant or identified in any of the discovery produced. The interviewer asked about the DNA investigation and Ms. Stanley responded:

> There may have been alternate suspects that they were able to look at and clear. Ultimately they weren't able to clear Barry Morphew. *Id.*

When DA Stanley was questioned by the reporter about the DNA profile linked to an unknown sex offender brought out by the defense in the preliminary hearings, DAs Stanley, Lindsey, Hurlbert and Pembleton sitting next to her made it clear that they had not, but would look into the evidence "they didn't know before" that was related to the leads obtained from DNA matching unsolved sex offense cases around the country. *Id.* This was prejudicial, as the prosecutors conveyed to the public that this was new to them and their arrest of Mr. Morphew was well-grounded and based on solid evidence. *Id.*

These statements were false. The truth about the DNA evidence was revealed only after numerous hearings and orders of the court to turn over favorable evidence to the defense. The evidence that had been hidden by the prosecutors prior to the preliminary hearings slowly trickled out over the next few months, after the critical preliminary hearings and after Mr. Morphew was locked in a jail cell for five months. The hidden evidence was highly exculpatory: as early as December 2020 – five months before Mr. Morphew's arrest – the DA's office and law enforcement learned that the unknown male DNA recovered from Suzanne's vehicle matched that from unsolved sex offenses around the country. This highly exculpatory information was concealed, not included in the affidavit for the arrest warrant, withheld from the judge who signed the arrest warrant, and not mentioned by the prosecution in the preliminary hearings.

In the same press conference on August 24, 2021, stripping away any notion of the presumption of innocence, the prosecutors also stated in sum and substance at this a widely televised event that justice for Suzanne was Barry's murder conviction:

> Deputy DA Aaron Pembleton: "It's not just us *four* as the attorneys that are, are putting on this case. It is everyone that has worked on the case. It's, it's been even the volunteers that have gone out and, um, searched and put in their time and effort into this case, so, um, it's all that coming to fruition to, to seek an end to, to this case. So to, to find out what happened to, uh, Suzanne.
>
> DA Linda Stanley: "To get justice for Suzanne." *Id.*

On **August 30, 2021**, DA Stanley appeared on a podcast called "Profiling Evil" with Mike King to break down the preliminary hearings and opinions regarding the strength of the evidence. Exhibit 5. While Mr. Morphew was held in jail without bond, and while the Judge contemplated his rulings, *DA Stanley appeared publicly on a podcast called "Profiling Evil" and spoke about Mr. Morphew's case.* This Podcast, which surrenders to the notion that all people who are charged are guilty and evil, has had over 20,000 views.

This was not the first time Ms. Stanley appeared on the Profiling Evil podcast; she also participated in the podcast on **April 30, 2021** - just days before Mr. Morphew was arrested and long after she had prepared the 129-page affidavit in support of the arrest warrant - and commented about the ongoing Morphew investigation.[3] Exhibit 6, April 30, 2021 Profiling Evil Appearance. Ms. Stanley's long interviews and discussion about the Morphew case on both April 30 and August 30, 2021 were clear violations of the Rules of Professional Conduct and (with respect to the latter interview) a violation of the Court's Order of June 3, 2021. Following

[3] In addition, Ms. Stanley made another appearance on Profiling Evil on May 3, 2021. There were at least three appearances on "Profiling Evil": April 30, May 3, and August 30, 2021.

are some of DA Stanley's statements made in the August 30, 2021 Profiling Evil - Preliminary Hearing Podcast:

- Ms. Stanley stated that she is free to talk about anything that is out in the public.
- Mr. Morphew can always be charged again later, even if acquitted, if the Court dismisses the charges by State or Federal Authorities.
- A discussion of Ms. Stanley's opinion on the difference between circumstantial and real evidence, including presenting a jury instruction.
- In response to a comment that Barry Morphew was staring down the DA at the hearing, Ms. Stanley said she was staring back at "him" at "every chance I got"
- We [the DA's office] did not have it [the arrest affidavit] until after he [Barry] was arrested.

In **September 2021**, Ms. Stanley communicated and chastised people online who commented on the Profiling Evil podcast segment where she talked about Mr. Morphew's case. She literally argued her case in public. Exhibit 7, DA Stanley's comments and communications with Profiling Evil viewers.

On **August 31, 2021**, DA Stanley also communicated directly with another podcaster, with the show called "Another Day in the Car with Jules". The title of Ms. Stanley's episode was "I Got this - D.A. Linda Stanley". Exhibit 8, Recording of August 31, 2021 Podcast. Here are some of DA Stanley's comments negatively impacting Mr. Morphew's presumption of innocence and prejudicing his right to a fair trial:

- Mr. Morphew was "possibly getting ready to flee."

- Text response by Ms. Stanley of a "thumbs up" to a comment about why the spy pen recording was good evidence.[4]

- DA Stanley commented to laypeople on the podcast's written comment stream about the facts and their beliefs about the Morphew case.

On **September 14, 2021** "Jules" aired "Apology to DA Linda Stanley: Setting the Record Straight" on her "Another Day in the Car with Jules" Podcast. Exhibit 9, Recording of September 14, 2021 Podcast. In this Podcast, Jules comments that DA Linda Stanley contacted her and advised her that what DA Stanley may have said on the August 30, 2021 Profiling Evil Podcast regarding not reading the affidavit prior to Mr. Morphew's arrest was inaccurate.

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[4] The spy pen was a recording device purchased and surreptitiously placed in Barry's truck by Suzanne Morphew. While nothing incriminating was ever said, the spy pen did record Suzanne's conversations with a lover, as well as some "true crime" radio programs that Mr. Morphew listened to (amongst other radio programs) when driving his truck on an out of town trip.

Subsequently, in January, 2022, "Jules" aired a podcast where she discussed disturbing contacts DA Stanley had with her (Jules) in September, 2021. Jules had queried whether DA Stanley had read the affidavit for arrest warrant before Mr. Morphew's arrest. DA Stanley reached out to Jules directly to defend herself regarding whether or not DA Stanley actually read the affidavit before arresting Mr. Morphew, and DA Stanley gave Jules her personal cell phone number. Jules stated that she felt intimidated by Stanley. Exhibit 10, Recording of January 2022 "On the Road with Jules" Podcast. Later, a defense expert in the field of juror bias provided important findings describing the extent and effect of DA Stanley's extrajudicial statements. Exhibit 11, PowerPoint reporting Findings of Expert who investigated the impact of pretrial publicity on the jury pool, Exhibit 12, Declaration of Bryan Edelman, PhD.[5]

On **September 16, 2021**, the defense filed a Motion for Sanctions for violation of the Court's Pre-Trial Publicity Order of June 3, 2021. Exhibit 13, Motion for Contempt Sanctions for Violation of Court Order to Limit Pre-Trial Publicity (D-22).

On **September 17, 2021,** the Court ruled that there was probable cause, but not proof evident or presumption great; the defense requested a $50,000 bond, the DA's requested a 10 million dollar bond, and the Court set a $500,000 cash bond. The defense requested the Court address Defense Motion D-22 regarding a request for sanctions for the DA's extrajudicial statements. Judge Murphy stated he had not reviewed the defense motion but advised DA Stanley: "While I won't order it, it certainly seems reasonable to limit interaction and interviews with the media regarding a specific case that you are prosecuting. That is the normal route that I see most prosecutors take. So I'm not ruling on the motion, I'm not issuing an order other than the order I've already issued, but I am saying if there's a violation it's going to be a self-inflicted wound." Exhibit 14, September 17, 2021 Hearing Transcript, see pgs. 92-96.

On **October 15, 2021**, after the Court's reminder to Ms. Stanley about her extrajudicial statements, she was quoted in the Denver Gazette making inflammatory comments about Mr. Morphew's case. Chief Deputy District Attorney Jeff Lindsey had abruptly resigned from the DA's Office. Members of the press wondered about what impact that would have on the Morphew case, because Mr. Lindsey had been the lead deputy. After being questioned about DA Lindsey's decision to resign from the 11th Judicial District Attorney's office, Ms. Stanley reportedly said there are "other prosecutors on the team who are just as determined to put Morphew behind bars". Exhibit 15, October 15, 2021, Denver Gazette, Barry Morphew Trial: Top Prosecutor Leaving Case.[6] Later, the District Court would comment about the deeply troubling nature of these comments:

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[5] The expert who compiled the PowerPoint, Bryan Edelman, is a nationally renowned expert in the field. Because the district court granted a change of venue prior to the expert testifying on Mr. Morphew's venue motion (D-34), Expert Edelman did not testify. Later in the case, findings from this expert were introduced in support of requested jury procedures such as individual voir dire in an attempt to contain the widespread prejudice that had resulted from the prosecution's rampant violation of pretrial publicity orders.

[6] https://denvergazette.com/news/top-morphew-prosecutor-leaving-the-case/article_368710fa-2dd0-11ec-aa8c-878d25f81a9b.html Linda Stanley's comments were picked up and reported widely in such major

> One more worth noting, I find the comment putting Mr. Morphew behind bars particularly troubling, and I want to bring that one up. Here's why. The motion bringing this to Judge Murphy's attention was filed September 17th. That statement happened in October, and it was after the admonition from Judge Murphy that if any future violations of the order it will be a self-inflicted wound. So notwithstanding that the order was issued in June, notwithstanding Judge Murphy's admonition, which was clear, we still had a violation. So I think that was worth noting as well to round out the record. I do find that to be a violation. Exhibit 16, January 25, 2022 Hearing Transcript, see p. 146.

On **January 25, 2022**, the Court heard arguments on the defense motion for sanctions for the pre-trial prejudicial statements made about Mr. Morphew. Exhibit 16. Deputy DA Daniel Edwards, working for the Attorney General's Office, and representing the 11th Judicial District Attorney's Office stood by all the DA's office's extrajudicial and pre-trial publicity statements and actions in the case. Mr. Edwards' argument was far outside of what an advocate - especially a prosecutor - is permitted to do under the Rules of Professional Conduct. Edwards failed to acknowledge the Rules of Professional Conduct and the Court's Orders and attempted to justify the 11th Judicial DA's office conduct. Mr. Edwards, with Mr. Hurlbert sitting alongside him, justified Ms. Stanley's statements quoted in the October 15, 2021 Denver Gazette article by stating that the role of a prosecutor was to "put people in jail," that's "what prosecutors do." Exhibit 16, pg. 136. See also Exhibit 17, People's Response to D-22 Defendant's Motion for Violation of Court Order to Limit Pretrial Publicity (filed Nov. 5, 2021) (arguing that the statements were permissible and that they did not risk "prejudicing" the proceedings and if they did, it was permissible because they were responsive to media comments).[7] Those statements offend every notion of fair dealing: "A prosecutor's ultimate goal is justice, which is not always synonymous with victory." *Garcia v. People*, 2022 CO 6, ¶18 n. 2, 503 P.3d 135, 140 n. 2, citing *Domingo-Gomez v. People*, 125 P.3d 1043, 1049 (Colo. 2005). These statements give a glimpse into the intentions and motivations of the prosecutorial team: They believed their conduct was permissible, indeed, laudatory.

In an oral ruling on **January 25, 2022**, the Court ruled that the 11th Judicial DA's office was in violation of Rules 3.6 and 3.8 and the Court's order of June 3, 2021. The Court found DA Stanley's statements were unprofessional and prejudiced Mr. Morphew. The Court's remedy was to once again instruct the DA's office to cease making any more extrajudicial statements. Exhibit 16, pgs. 141-147.

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news outlets as Colorado Springs and Denver, including 9 News. See e.g., "Lead prosecutor in Morphew case takes new job" (Oct. 15, 2021) (https://www.9news.com/article/news/local/morphew-prosecutor-leaving/73-ae1dd634-3ac2-4e3b-a3ad-1ba73d082917)

[7] Some of these comments were no doubt written by DDA Dan Edwards, who signed the Response to D-22 and made the remarks in court. But the fact that Dan Edwards also violated the Rules of Professional Conduct does not excuse Linda Stanley, under whose name and by whose authority (and supposedly, under whose supervision) Edwards was acting.

In part because of the massive pretrial publicity, including that in which DA's Linda Stanley, Jeff Lindsey, Mark Hurlbert, Aaron Pembleton and others participated, on January 31, 2022, the District Court changed venue to Fremont County. The Court's order regarding the venue change highlights that the prosecution's extrajudicial statements were a cause of the venue change. Exhibit 18, Court Order Granting Motion to Change Venue.[8] Among other conclusions, the Court found:

> Ms. Stanley also made other extrajudicial statements in violation of Judge Murphy's order, including discussing the case on a podcast called "Profiling Evil". See [D-22], ¶¶ 2, 6 (Sept. 16, 2021). A prosecuting attorney appearing on a show entitled "Profiling Evil" to discuss a pending criminal case prejudices Mr. Morphew's right to a fair and impartial jury. The title of the podcast alone is prejudicial. While this podcast is online and readily accessible by anyone, interest in Chaffee County is overwhelming. (Exhibit 18, Court Order Granting Motion to Change Venue, p. 5)

Throughout the history of Mr. Morphew's case, a loosely-affiliated group of private citizens engaged in internet and social media posts that ranged from vitriolic to threatening. These individuals portrayed Mr. Morphew as a murderer and his attorneys and the Court as some sort of accomplices. These individuals include: Lauren Scharf with Fox21, Mike King with Profiling Evil, Jules Wolf of Another Day in the Car (now known as Jules True Crime), X.D and X.S (Initials redacted for privacy but will be provided if requested).

Their accusations, threats, and fantastical statements had only a remote, distorted relationship to reality. Yet, they had the tacit endorsement of DA Stanley and her team who time and time again heightened public condemnation for Mr. Morphew appeared to intentionally "whip up" public animosity and refused to do anything to protect the integrity of the proceedings or the individuals associated with it. The prosecution team worked with some of these individuals identified above and even had X.D., Lauren Scharf and X.S. on their witness list. In one post, an individual publicized Judge Lama's property address. Defense counsel immediately alerted DDA Hurlbert, whose only response to counsel was: "Thank you for the information. I can pass that onto law enforcement, but I wonder if you can see a crime he committed?"). Exhibit 19, March 28, 2022 email exchange with DA's Stanley and Hurlbert regarding the prosecution witness' posting. At the earliest opportunity in court, it was Ms. Eytan - not the prosecutors - who brought this shocking conduct to the Judge's attention.

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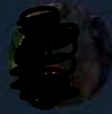
[8] The full title of the order is: "*Order Re: [D-34] Defendant's Motion to Change Venue and Request for Evidentiary Hearing Prior to Voir Dire Examination Because Mr. Morphew Cannot Receive a Fair Trial by an Impartial Jury in the Eleventh Judicial District due to Prejudicial Pre-Trial Press Coverage and Pervasive Community Involvement in the Search for Suzanne Morphew*."



Pinned Tweet

Hmmm. Turned east. For horns?? Helmet. Shirt? SIM card? Hmmm. Judge Ramsey Lama's property is within the turn around, spoke of, specifically. I'm sure it's nothing. BUT, I question everything. Including those in Robes who purposely defamed me.

Summary

Parcel Number	
Account Number	
Property Address	
Brief Tax Description (Note: Not to be used on legal documents)	
Class	Vacant Land
Subdivision	
Neighborhood	N/A
Tax District	
Millage Rate	
Acres	

Owner Name & Mailing Address

Disclaimer: Mailing address is used for Chaffee County ad-valorem taxation purposes.

8 3 24

2. CLAIM GROUP TWO - DISHONESTY AND UNETHICAL PRACTICES - RULES 3.3, 3.8, 5.1 AND 8.4

C.R.P.C. 3.3 (Candor toward the Tribunal), 3.8 (Special Responsibilities of a Prosecutor), 5.1(Responsibilities of a Supervisory Lawyer) and 8.4 (Misconduct):

- Knowing Disregard of Prosecutorial Obligations
- Failing to Make Reasonable Efforts to Ensure the 11th Judicial DA's office has in effect measures giving reasonable assurance all prosecutors conform to the RPC.
- Pattern of Concealing Favorable Evidence,
- Failing to Make Timely Disclosure of all Evidence and Information Known to the Prosecutor that Tends to Negate the Guilt of the Accused or Mitigates the Offense
- Failing to Correct False Statements to the Tribunal,
- Making False Representations to the Tribunal,
- Obstructing Access to Evidence Having Potential Evidentiary Value
- Knowingly Disobeying Rule 16 Obligations, and Failing to Make Reasonably Diligent Effort to Comply with a Legally Proper Discovery Request
- Request a Person other than a Client to Refrain From Voluntarily Giving Relevant Information to Another Party
- Improperly Influencing Witnesses

A. COURT ORDERS FINDING VIOLATIONS OF COURT ORDERS AND DISCOVERY RULES

July 22, 2022, Oral Order Finding Discovery Violations

On July 22, 2022, Judge Patrick Murphy issued a verbal order finding that the DA's Office prosecuting Mr. Morphew (Linda Stanley, Jeff Lindsey and Aaron Pembleton) violated Rule 16:

> There have been violations…If this becomes a pattern my response as far as sanctions might be different. I say that all in the context of Mr. Morphew being held without bail,

which raises the stakes here significantly in my opinion. Exhibit 20, July 22, 2021 Hearing Transcript, pgs. 55-58.[9]

January 25, 2022 Oral Order and January 31, 2022 Written order (Pretrial Publicity)

On January 25, 2022, Judge Ramsey Lama issued a verbal order finding that DA Linda Stanley had engaged in ethical violations and violations of court orders regarding pretrial publicity. Exhibit 16, pgs. 102-141 (argument outlining facts), Court Order pgs. 141-147 (court's order).

March 10, 2022 Order (Pattern of Discovery Violations: Experts)

On March 10, 2022, Judge Ramsey Lama issued a verbal order striking numerous prosecution proposed experts finding that DA Stanley and her deputies failed to comply with Rule 16 and Court Orders, and issued sanctions resulting from a pattern of neglect and violations of court orders. Exhibit 21, March 10, 2022 Hearing Transcript, pgs. 154-168 and 179-184 (court's order). Judge Lama ruled:

> The court finds a pattern of neglect demonstrating a need for modification of a party's discovery practices in this case… this is trial by ambush. That's exactly what the rules are designed to prevent. And I'm not finding it willful, but I'm finding a pattern and I'm finding prejudice. There's a record to support a pattern of neglect here and prejudice. *Id. at pgs. 161, 164-165.*

March 28, 2022 - Order (Discovery Violation - Expert)

On March 30, 2022, Judge Ramsey Lama issued a verbal order finding a "Rule 16 Violation….Rule 16 is quite clear that —and this is 16 part 1.a.3, The Prosecuting Attorney's Obligations under this section A extend to and information in the possession or control of members of his or her staff and any others who have participate in the investigation. this would fall under any others who participated in the investigation….I don't really have a record to indicate that you willfully did this, but certainly this is information that should have been turned over to the defense….the flow of information wasn't maintained." Exhibit 22, March 30, 2022, Hearing Transcript, pgs. 66-69 (court's order) and 60-66 (counsel's argument outlining facts).

[9] All exhibits referenced herein can be located on the accompanying flash drive.

April 8, 2022 Order (Pattern of Discovery Violations: General)

On April 8, 2022, Judge Ramsey Lama issued a 20 page written order titled *Order RE: [D-17] Defendant's Renewed Motion for Discovery and Contempt Sanctions and Forthwith Hearing; [D-17A] Supplement; [D-17B] Supplement; [D-17C] Supplement; and [D-17D] Supplement* (herein, "*Order of April 8, 2022"*) finding that the District Attorney had engaged in a pattern of discovery violations. Exhibit 23.

That order is a scathing rebuke of the DA's misconduct.

Judge Lama addresses the multiple defense motions filed starting in July 2021 (D-16, D-17a-d, and D-28) demanding discovery, requesting that the court impose sanctions for pattern discovery violations, including dismissal of the case. Exhibit 24, Motions D-16, D-17a-d responses and replies and D-28. While the Order is instructive regarding the discovery violations committed by the above listed DAs, it is not exhaustive, as the discovery violations were ongoing and still being litigated at the time of the surprising dismissal of the charges on April 19, 2022.

This April 8, 2022 order outlines some of the egregious discovery violations, including the opinion that if the Court and defense had known about the DNA issues prior to arrest, in the arrest affidavit, and at the hearings, Mr. Morphew may not have been arrested, or held in jail without bond for five months. See Exhibit 23, pgs. 12-13.

The April 8, 2022 order does not rule on all of the DA's discovery violations and violations of court orders that occurred, for two main reasons: (1) the violations were still ongoing, with new motions being filed even as the court was holding hearings and resolving finding prior discovery violations, and (2) the case was dismissed by the prosecution prior to resolution and findings on all outstanding motions. Exhibit 25, Outstanding Motions to Dismiss for Discovery and Brady Violations, Defense Motions D-17e, D-64, and D-75 (and any responses and replies). See also discussion of discovery violations related to expert witnesses, infra.[10]

While Judge Lama did not find the prosecutors acted "willfully" (one of the two permissible grounds for discovery violation sanctions), he did find a pattern of discovery violations (the other permissible ground for sanctions): "While the Court… does not find this pattern willful based on the record, the Court does find this pattern to be negligent, bordering on reckless." Exhibit 23, Order of April 8, 2022, p. 12.

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[10] At the time the Court ruled on D-28, D-16, and D-17 (a) through D-17 (d) in its April 8, 2022 order, the defense had already filed D-17 (e), D-64, D-75. Those motions were not included in the Court's April 8, 2022 order.

There is strong evidence of the DA's willfulness, knowing and/or reckless disregard for the Rules of Professional Conduct. [11] Finding violations of the Rules of Professional Conduct is unavoidable upon aggregating the DA's pattern of violations, dismissive claims, efforts to conceal, intentional misinterpretation and violations of Court Orders and Rule 16. The DA's statements, conduct, failures and omissions to timely disclose favorable evidence was not because they were inexperienced, but because their intent was to attempt to convict Mr. Morphew and conceal the truth, the evidence of innocence, and/or favorable evidence.

Additional discovery violations that would have been litigated had the case not been dismissed

On April 19, 2022, the date the DA abruptly dismissed the case, in addition to the motions noted in footnote 16 above, more were in the works. The defense planned on filing additional discovery sanctions motions as the prosecution continued to violate Rule 16 and withhold more favorable evidence.

One motion for sanctions that was going to be raised and filed on April 19, 2022 related to the cell phone data recovered from Suzanne Morphew's missing cell phone. Two weeks after the March 10, 2022, order sanctioning the prosecution for its pattern of discovery violations – excluding many of its experts for failure to disclose their expert's opinions, reports, and summaries, including its Cell Phone Data expert - and after a March 28, 2022 *Shreck*[12] *h*earing on the prosecution's remaining experts where additional discovery violations were discovered, the DA produced a new report from their FBI cell data expert ("CAST" report). This new report was provided to the defense on March 31, 2022.[13] It included new exculpatory, favorable, and *Brady* information,[14] including information indicating Suzanne Morphew's missing phone was initiating and receiving calls *after* the time that the prosecution theorized she was murdered. However, this expert CAST report disclosed on March 31, 2022 did not include the supporting data or analysis by the prosecution's expert, importantly the phone numbers that were dialed and/or the names of the people who originated or received these phone calls. We tried to contact the CAST expert numerous times to obtain this information but did not receive any response.

We believe the DA's intentionally withheld the underlying data from the defense. We further believe that DA Hurlbert intentionally obstructed the defense' ability to talk about the data with their FBI CAST expert. If it wasn't obvious by this time that the DA's did not respect

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[11] *In re Attorney C*, 47 P.2d 1167 (Colo. 2002) was effectively overturned by amended C.R.P.C. 3.8(d) in 2022. The amended rule eliminates requiring proof of a prosecutor's intentionality in withholding favorable evidence or of proving materiality of the withheld evidence. See *In re Disciplinary Action Against Feland*, 820 N.W.2nd 672 (N.D. 2012), rejecting the now outdated Colorado standard, and using a standard akin to amended C.R.P.C. 3.8(d) finding that a prosecutor be suspended for negligently withholding evidence that negated the guilt of the accused.

[12] *People v. Shreck*, 22 P.3d 68, 70 (Colo. 2001) and its progeny govern admissibility of expert testimony.

[13] A CAST report identified by the expert as a Draft CAST report was provided through discovery in June 2021.

[14] *Brady v. Maryland*, 373 U.S. 83 (1963).

the Rule of Law or Court's Orders, it was obvious on March 31, 2022. Exhibit 26, Affidavit of Investigator Rachel Roberts, and Exhibit 27, Affidavit of Defense Expert Matt Erickson.

B. FACTUAL SUMMARY OF CLAIM GROUP 2

1. When the DA's Office filed the 129-page Arrest Affidavit, they asserted that Mr. Morphew committed Murder in the First Degree based upon "supposition" justifying Mr. Morphew's May 5, 2021 arrest and to be held without a bond.[15]

2. After Mr. Morphew was incarcerated for 5 months, and then throughout the next six months the defense learned through arduous, time consuming, and expensive discovery motions filing, hearings, and arguments, that although the prosecutors claimed time and time again that they produced all mandated information, they instead had systematically concealed and omitted favorable and exculpatory evidence from the Arrest Affidavit, from the Preliminary Hearing, and subsequent discovery sanction hearings, and had misrepresented critical facts both in the affidavit and in critical court hearings.

3. The defense repeatedly made the Court aware of this prosecutorial misconduct, the DAs did nothing to remedy the misrepresentations and omissions. The DAs continued to deny their wrongdoing, as they presumably will do in an OARC investigation. The DA's continued to conceal, misrepresent and falsify the evidence in the case against Mr. Morphew, and worse - accused the defense of being the ones who committed misrepresentations. The defense did not rely on the DA's representations that they had produced all discovery and interviewed the prosecution witnesses. Through these interviews, the defense discovered the DA's were withholding favorable evidence and evidence of innocence. And, instead of opening up their files, and encouraging their witnesses to talk openly with the defense, the DA's knee jerk reaction was to file a frivolous motion for sanctions **against the defense** for conducting investigation and advised their witnesses to avoid providing the defense any information without first going through the DAs.

4. Unfortunately, over defense objection, the Arrest Affidavit was released to the public after the preliminary hearings, and before the prosecution reluctantly produced thousands of gigabytes of discovery to the defense. It is a certainty that all discovery was not produced even at the time of the dismissal[16], but the discovery that was produced (nine months after the court-ordered deadline) revealed that the DAs misrepresented information presented in the Arrest Affidavit, preliminary hearings, and subsequent Discovery Sanctions Hearings. Because of the prosecution's commitment to make extrajudicial and prejudicial statements to the media, Mr.

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[15] Exhibit 74, Affidavit for Arrest Warrant, p. 2 ("Based upon legal supposition, Suzanne Morphew, based on this lack of proof of life, is deceased.").

[16] Emails between DA Linda Stanley, DA Investigator Alex Walker, Chief Deputy DA Jeff Lindsey, Deputy DA's Hurlbert, Weiner, Grosgebauer and witnesses were never produced. Sheriff Spezze, CBI Director, Assistant Director, and Head of Major Crimes emails between themselves, law enforcement and the DA's office were never produced.

Morphew was already determined to be guilty in the eyes of the public, the jurors, and frankly, the court.

5. Specifically, after the preliminary hearings, the defense started to discover that favorable evidence was being withheld and omitted from the defense and not mentioned in the Arrest Affidavit or at the preliminary hearings. Even more troubling, based on information and belief the DA's office was working in conjunction with CBI and the FBI to conceal the evidence. We understand these are substantial allegations. It will require detail to fully explain these egregious violations, and that detail is set forth below. We also suggest reading the transcripts from the hearings identified below to provide even greater detail supporting these claims. As an overview and introduction, these are examples of the types of favorable information that the prosecutors withheld from the defense and court:

- Extent and duration of the DA's knowledge of the CODIS matches[17] to the unknown male DNA found on critical locations and evidence.

- The DA's and Law Enforcement's many substantive meetings with the CODIS experts regarding the CODIS matches and unknown male DNA found on critical locations and evidence.

- The DA's concerns surrounding the unknown male DNA swabbed from many critical pieces of evidence.

- The fact that the DA had not fully investigated whether Suzanne Morphew was a victim of a stranger abduction or had walked away.

- **All the raw data** from Call Detail Records "CDR" which was referred to in the prosecution expert's report indicating that Mrs. Morphew's phone was making and receiving calls late at night on May 9, 2020 at a time when the prosecution claimed she was deceased.[18]

- Vehicle Event Data Hard Drive from Suzanne's car which would have revealed if Suzanne was alive and/or abducted on May 10, 2021.

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[17] CODIS is the acronym for the "**Combined DNA Index System**" and is the generic term used to describe the FBI's program of support for criminal justice DNA databases, as well as the software used to run these databases. The Index was created in 1998 and has approximately 20 million accused or convicted offenders DNA samples on the database. Unbeknownst to the defense, the prosecutors, particularly Ms. Stanley, Mr. Lindsey and Mr. Hurlbert, were relentless in trying to convince the DNA/CODIS experts and law enforcement witnesses, even after they had received CODIS match letters, to falsely state that the matches weren't really "matches," and/or that a CODIS match was not really a big deal. To their credit, the experts and investigators refused to do so. As a result, the prosecutor would end up releasing the witness just prior to the hearing(s). As discussed further below, Linda Stanley had one investigator terminated from the case when he wouldn't testify falsely as he was being urged to do.

[18] The prosecution theorized that Barry killed Suzanne in the afternoon on May 9, 2020.

- Mrs. Morphew's personal laptop computer showing personal activity late in the evening on May 9, 2020 when the prosecution claimed she was deceased.

- Contrary to the DA's representations in Court and in the Arrest Affidavit, the prosecution's expert did not opine that Mr. Morphew's phone was on airplane mode for multiple hours.[19]

- Contrary to the DA's representations in Court and in the Arrest Affidavit, the Prosecution expert's opinion that the GPS data of the movement of Mr. Morphew's phone was not that he was moving around at 35 miles an hour, but in fact the GPS data was not reliable and it is likely Mr. Morphew's phone was sitting stationary in his home.[20] [21]

6. The DA's made many material misrepresentations and omissions in the Arrest Affidavit, at the Preliminary Hearing, subsequent hearings and filings. Here are some examples:

- The Arrest Affidavit (e.g., p. 23) states the hotel room in which Barry Morphew stayed May 10, 2020 smelled like chlorine, but fails to include the hotel manager's statement made to law enforcement that that room always smelled like chlorine because it was right above the fully functioning indoor pool at the hotel and that, in fact, in September 2020 it still smelled strongly of chlorine.

- Numerous K-9's (trained investigative dogs) were used to attempt to find a scent of Suzanne Morphew, both at the location of where her bike was found, and in the Morphew's vehicles and home. DA's failed to inform the Court in the affidavit and at the preliminary hearing that a K-9 tracked a scent from Suzanne Morphew's abandoned bike to the river (meaning likely the bike was not tossed by Mr. Morphew as the DA claimed), and

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[19] The prosecution theorized that Mr. Morphew had intentionally changed the settings on his cell phone to "airplane mode" to conceal his activity.

[20] The prosecution theorized that Mr. Morphew's phone was moving erratically and extremely rapidly – at least 35 MPH – around the exterior and interior of the Morphew home on the afternoon of May 9, 2020. They came up with a map "tracking" these movements which they used to claim that he must have been chasing Mrs. Morphew around the house at that time.

[21] The DA's have and will continue to claim that any information the defense claims is favorable is not favorable. For example, the DAs will likely contend that they eventually and thoroughly investigated the CODIS matches. And when they did they determined the DNA CODIS matches were not favorable, so in the end their "discovery violations" were harmless. But, it is the DA's perspective whether they thoroughly investigated the CODIS matches and any other alternate suspect information - and the strength of that evidence. Their theories and perspectives are just that, and they were going to be tested and refuted by the defense premier expert if the case had gone to trial. Herein lies the danger of DAs self-determining what information tends to be favorable. However, although this information would be clearly material, this is not the standard for finding either a discovery or ethical violation. As explained in *Black Box Thinking*, because the DA's have convinced themselves that Mr. Morphew is guilty, any information that points away from his culpability is faulty.

the K-9's did not pick up any scent of a decomposed body in the Morphew home or in any of the Morphew vehicles.

- Throughout the Arrest Affidavit and at the Preliminary Hearing, the prosecution theorized that Barry Morphew used his dart rifle to subdue Suzanne Morphew with animal tranquilizer.[22] What the prosecution didn't disclose, but knew, was that in fact the dart rifle was inoperable.

- In March 2021, Mr. Morphew handed over a short rifle to investigators. Ms. Stanley and Mr. Edwards stated in a court filing that there was an "inference that he may have used it [short rifle] to murder his wife."[23] Ms. Stanley and Mr. Edwards wrote the false statement: "These darts can be shot from the dangerous weapon; It is the People's position that one method the defendant may have used was the dangerous weapon to shoot the victim with a dart to tranquilizer her before he murdered her and/or with the dart to murder her." But, in fact, that was an impossibility, as a different Deputy District Attorney confessed to at the hearing on that motion on February 24, 2022.[24] Ms. Stanley and Mr. Edwards made this false assertion in order to attempt to convince the judge to let the jury to hear that Mr. Morphew allegedly owned an illegal weapon, thus he must be a murderer.

- The prosecution's "smoking gun" needle sheath found in the dryer (which the prosecution theorized was connected to the dart gun and its theory that Barry shot Suzanne with a tranquilizer dart) did not have Barry's DNA on it.

- The needle sheath was not inside of the sheets in the dryer, or in Barry's shorts in the dryer, but instead was found at the bottom of the dryer drum on its own 10 days after law enforcement removed the sheets and clothes from the dryer.

- Contrary to the affirmations in the Arrest Affidavit, it was Suzanne Morphew and not Barry Morphew who was Facebook-friending at least twenty males in the days leading up to her disappearance. Mr. Lindsey confessed it was Suzanne Morphew on September 17, 2021 at the Preliminary Hearing Argument/Ruling.

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[22] See e.g. Exhibit 28, August 24, 2021 Hearing Transcript, p. 42:17-22 ("Q [Stanley]: And did you find empty tranquilizer darts as part of that search? A (Dpty Himschoot): Yes, ma'am. Q. Did you also find a dart gun as part of the search on May 13th? A. Yes, ma'am."

[23] D-58 People's Response Motion To Sever Counts For Trial (filed 1/18/2022), p. 1.

[24] Exhibit 59, February 24, 2022 Hearing Transcript, pgs. 109-110, 130-131.

- The Arrest Affidavit had glaring omissions and misrepresentations regarding the unknown DNA that was found on key items in the case including: Suzanne Morphew's bedside, on one of the stairs of the home, the sheets in the dryer, on Suzanne Morphew's bike and helmet including her bicycle grips, bicycle brakes and handlebars, bicycle helmet exterior, bike helmet interior cushions, Suzanne Morphew's car including her front driver door, front passenger door, rear seat cushion, rear driver side seat cushion.

- The DA's did not present what they knew in the Arrest Affidavit or in the Preliminary Hearing about the DNA collected from Suzanne's glove compartment. That swab indicated at least one unknown male contributed to the profile and was submitted in October 2020 to CODIS (pursuant to Agent Cahill and FBI Agent Grusing's request). It was discovered there were multiple matches from unsolved sexual assault crimes in Tempe, Phoenix, and Chicago as confirmed in October 2020, November 2020, and April 2021. As the District Court would later find:

  > The Judge who found probable cause and set a no bond hold was not told that unknown foreign male DNA was found on various items at the crime scene or in the alleged victim's car at the time of signing the warrant for Mr. Morphew's arrest. See *Aff.*, at 44-45 (discussing CBI laboratory results related to DNA analysis of various items). If the Judge had known at the time of reviewing the arrest warrant about foreign unknown male DNA and CODIS matches to out-of-state cases, he may not have required Mr. Morphew to sit in jail for five months pending the PEPG and Hearings.[25]

- The Affidavit related to the DNA included is extremely misleading and fails to inform the judge that any "low level" DNA profile contribution is actually scientifically insignificant and unlikely to ever be admitted in a trial. Not only does it not contain this proviso, but it includes the following:
  - It includes the DNA profile of a dart found in the garage in a box was relevant when it had no relevance at all; and the Affidavit failed to reference that Deputy Scot Himschoot was an equally likely "low level" contributor to the DNA found on the dart in the garage as Mallory's "low level" contribution. Only Mallory was

[25] Order re: [D-17] Defendant's Renewed Motion for Discovery and Contempt Sanctions and Forthwith Hearing; [D-17a] Supplement; [D-17b] Supplement; [D-17c] Supplement; and [D-17d] Supplement (filed 4/8/2022), p. 12. This Report is referenced frequently in this Complaint and will be referred to as "4/8/2022 Order re: [D-17]." The District Court uses "*Aff.*" to denote the Affidavit for Arrest Warrant.

mentioned in the affidavit. The Affidavit did identify that Suzanne and Macy Morphew were possible low-level contributors to the DNA profile collected from the plastic hypodermic needle cover recovered on its own in the dryer. But, DA Investigator Alex Walker failed to identify in the Arrest Affidavit that he was also a low-level possible DNA contributor identified on the needle cover. (The Affidavit did indicate that Barry and Suzanne Morphew's DNA was developed from the interior cushions but did not explain how insignificant a factor of 6.2 times is in the world of DNA.)

- The District Court would later find:

  It is important to note that Chief Judge Murphy did not learn about the unknown foreign male DNA and CODIS matches in the Arrest Affidavit or through the People's elicited testimony at the PEPG and Hearings. Over four days of testimony, the People did not discuss the CODIS matches throughout their case-in-chief. Chief Judge Murphy learned about the evidence because the defense presented it by calling and examining Agent Cahill.[26]

7. Mr. Morphew did not harm his wife; however, this is irrelevant for purposes of this request to investigate and discipline the DA's involved in the Morphew case. What is relevant is the prosecutors' abuse of their power and absolute disregard for their ethics and obligations. This is not a series of oopsies or mistakes; there were too many not to be intentional, willful, and/or a knowing pattern of discovery and ethical violations. These prosecutors still believe they have done nothing wrong. They will continue to violate their ethical obligations, harm other people, until and unless the OARC disciplines them, up to and including disbarment.

C. TIMELINE AND FACTUAL DETAILS OF CLAIM 2

8. On May 27, 2021, the Court reviewed and made orders regarding the defense Motions for Discovery [D-10, filed May 18, 2021] and Preservation of Evidence [D-6, filed May 5, 2021]. DA Lindsey assured the court and the defense that the DA's office would comply with Rule 16.

[26] Exhibit 23, April 8, 2022 Order re: [D-17], p. 12.

9. On May 27, 2021, the Court ordered that discovery be produced by June 2, 2021.[27] DA Lindsey assured the Court he would do so, and would be bate stamping the discovery.[28]

10. Although Mr. Morphew was being held without bond, on a flimsy case based upon the misleading Arrest Affidavit, he waived his right to conduct the Preliminary Hearing and Proof Evident Hearing (bond hearing)within 35 days of the filing of charges, and set the hearings to be conducted over a series of four days in August 2021 (August 8, 9, 23, 24).

11. On June 2, 2021, the prosecution produced a 285 GB hard drive consisting of documents, audio, and video evidence. The discovery contained within it was not bates stamped – in other words, there were no page numbers – was disorganized, and incomplete. This 285 GB was only 7% of the total discovery that was produced by September 29, 2021 well after the Preliminary Hearing and well after multiple assertions that all discovery had been produced. For perspective, 1 GB = 620,000 PDF pages. 285 GB of PDF pages is about 171,000,000 pages and would fill about 15 forty-foot shipping containers.[29]

12. On June 3, 2021, the Court issued written discovery orders commensurate with the verbal rulings made on May 27, 2021.[30] The Court issued a written order on the defense request for email and text message communications between witnesses: "it is ordered that any electronic communications created or received by law enforcement officers related to this case must be disclosed to the defense if they are to the prosecution of the case or if they contain any evidence that would be in any way favorable to the defense."[31] Exhibit 29, June 3, 2021 Court Order.

13. The Arrest Affidavit referred to information that was purportedly found on multiple devices and electronic sources pursuant to search warrants issued in May 2020: Barry Morphew's phone, Suzanne Morphew's iCloud account, hotel surveillance footage, and Sheila Oliver's cellular phone. But, in wading through the disorganized discovery, it was clear the

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[27] Exhibit 75, May 27, 2021 Hearing Transcript, p. 30:18-19 ("discovery to be provided to the defense by close of business Wednesday, June 2nd.") The Court took into account that Mr. Morphew was already incarcerated, having been arrested on May 5, 2021.

[28] Exhibit 75, p. 28 ("had hoped to have that done today but it just didn't happen."..."we are re-numbering the documents, so if there's an issue between documents both parties will have numbered PDF copies. That's what we're endeavoring to do. It takes some time. My expectation is next Wednesday is when we'll be able to get all that information to the defense."

[29] How Many Pages Of Text Can Fit In A Gigabyte? How Much Is One Gigabyte Of Data?

Text files: Nearly 678,000 pages per gigabyte.

Emails: More than 100,000 pages.

Microsoft Word files: Almost 65,000 pages.

PowerPoint Slide Decks: Roughly 17,500 pages.

Images: Close to 15,500 pages.

https://www.digitalwarroom.com/blog/how-many-pages-in-a-gigabyte

[30] Exhibit 29, Order re: Hearing of May 27, 2021 (filed June 3, 2021).

[31] Exhibit 29, Order re: Hearing of May 27, 2021 (filed June 3, 2021), pp. 1-2.

forensic images from these sources were not produced with the hard drive. What was produced were law enforcements' myopic summaries of what was on these devices, and snapshots of the devices themselves. What wasn't produced was what was on the entire device, what preceded certain alleged texts, when data was created, what came after, who was texted and when. In other words, what was produced was worthless and unreliable.

14. Even with the defense demanding the actual forensic evidence, on July 6, 2021,[32] the District Attorney's Office continued to offer what appeared to be genuine assurances to the court that all discovery had been produced:

> 10. The People have been in contact with counsel for the Defendant and have been responding to their requests. The People have not failed to provide the information but have endeavored to provide it as quickly as possible. Moreover, the People intend on continuing to provide discovery as contemplated by the Rules.

15. This is the second assertion of many until the DAs dismissed the case that attempted to frame the defense as creating unreasonable distractions and technicalities– and intended to deflect the fact that the DAs were concealing favorable evidence. Sometimes, these arguments came down to semantics, the DA's would deny knowing what we meant by asking for a forensic image of a device.

16. As a result of determining discovery was withheld, the defense attempted to confer with the prosecution. With no success, the defense was forced to start filing discovery sanctions motions based on what the defense knew existed but did not appear to have.

17. To give context, after the June 2, 2021 deadline to produce all mandated discovery and up to July 22, 2021, an additional 125 GB of discovery was produced (which was not new investigation), some of which was clearly relevant and to the arrest of Mr. Morphew. This additional 125 GB comprised an additional 21% of the total discovery that was produced by September 29, 2021. In other words, a majority of the discovery was produced during the month of the Preliminary Hearing and after the Court ruled. Some of this discovery was bates stamped --- and that remained the procedure for the remainder of the case. Of the nearly 4 TB produced over the course of the year, some of the discovery was bates stamped, then re-bates stamped with a new numbering system, and some of the discovery was never bates stamped. In other words, unusable, something Deputy Hurlbert admitted to in February 2022.

18. On July 22, 2021, the Court held a hearing on the Defense Motion for Sanctions [D-16], and determined the prosecution was in violation of his court orders and Rule 16 obligations. The Court found that "there are violations here," but not yet a pattern. The Court cautioned the prosecutors:

[32] Exhibit 24, People's Response to Motion for Discovery and Sanctions [D-16] (filed 7/6/2021), p. 4.

> “I'm glad that these discovery issues have been brought to my attention because if this does appear to be a pattern my response might be different going forward. But at this time I can't really find that it's a pattern. I'm hoping that this is just a result of the enormous amount of information that had to be disclosed within those few weeks, and not a situation where as new evidence is being generated, new reports being generated, that there's delay in providing those to the defense. We will see.”[33]

Mr. Lindsey continued to repeat the DAs were in compliance, accused the defense of misstating the facts, and assured the Court the DA’s office would comply.[34]

19. Subsequent to July 22, 2021 hearing through August 24, 2021, DAs Stanley, Lindsey and Pembleton who continued to claim they had produced everything to the defense, provided another 2,300 GB of discovery which comprised largely of pre-arrest investigation.

20. Included in that 2,300 GB, were more than a dozen CDs and a few flash drives. One was a non-bates stamped CD from the CBI lab produced on July 27, 2021. Contained in this CD was a letter now known as the CODIS Letter dated May 19, 2021. The CODIS Letter identified that DNA from a swab taken from Suzanne Morphew’s glovebox (lab item 27.1) had DNA that matched three unsolved sexual offense cases around the country (hereinafter “CODIS matches”). It is important to note that this letter was not produced on May 19, or June 1, or July 1, but on July 27, 2021 embedded in thousands and thousands of pages and in a disc copied from the CBI lab. It did not come from the DA’s Stanley or Lindsey, FBI Agents Grusing or Harris, CBI Agents Cahill or Graham, Chaffee County Sheriff’s Office Detectives Burgess or Hysjulien or DA Investigator Walker, who had knowledge of or were investigating the CODIS matches.

21. This CD also contained a few documents related to this May 19, 2021 CODIS letter, including the DNA match letters exchanged with the Phoenix, Tempe, and Illinois labs.

22. The documents indicated that as early as October 2020 and November 2020, DNA matches were identified with the Tempe and Phoenix labs. The Illinois CODIS match was confirmed in April 2021.

23. This CODIS Letter prompted the defense filing, on August 2, 2021, of a defense Motion for Sanctions for Discovery Violation seeking all discovery and investigation related to the CODIS matches and other discovery not mentioned in the Arrest Affidavit and still not produced.[35]

24. Based on the lack of evidence that Suzanne was murdered, it was eminently clear that Suzanne could have been abducted. The information is exculpatory and favorable to the

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[33] Exhibit 20, July 22, 2021 Hearing Transcript, p. 56:3-13.
[34] Exhibit 20, pgs. 45-48.
[35] Exhibit 24, Renewed Motion for Discovery and Contempt Sanctions and Forthwith Hearing [D-17] (filed 8/2/2021).

defense. This was confirmed by both Judges who handled the case. The DAs have all maintained that this information is not tending to be favorable or exculpatory, and thus nothing related to it needed to be disclosed to the defense.

25. The DA's response to Motion D-17 was a denial that discovery was being withheld and a claim that was later proven false:

> 1. Shortly after the hearing the People met with all law enforcement agencies involved in this case. At that time, the undersigned ordered all agencies to conduct an audit of their files and evidence being held. Undersigned trusted all agencies to do the audit/inventory.

Response to Defense Motion for Contempt (filed August 3, 2021).

26. The defense asked for emails and texts to be produced as ordered by the court back on May 27, 2021. *The DA did not produce a single email or text* later claiming none of the emails or texts were to the prosecution or tended to be favorable to the defense in any way.

27. On August 6, 2021, three days before the Preliminary Hearing was set to commence, the Court convened a Webex hearing as a result of the Defense Motions for Sanctions [D-17]. The Court indicated it had no additional time to set a testimonial hearing on the Defense Motion for Discovery Sanctions prior to the four-day Preliminary Hearing/Proof Evident hearing ("Hearings") set in August.[36] Mr. Morphew was given a choice: to either go forward to hearings in August, or to have a testimonial hearing on the discovery sanctions motion which would cause the Hearings to conclude in November 2021 (the judge's next available hearing date).

28. On August 6, 2021, in response to the defense accusations that discovery was being withheld, not only the CODIS match information, but also a copy of all the surveillance camera footage and copy of the forensic image of Sheila Oliver's phone both referred to and relied upon in the Arrest Affidavit, Mr. Lindsey once again claimed the defense had all the discovery, and advised the Court it was the defense that was committing misconduct by make false accusations:

> "MR. LINDSEY: Judge, her [Ms. Eytan's] statement is not accurate, and I guess that's why the Court suggests we have a hearing, because the surveillance has been provided. It was in the PC affidavit that the Court reviewed. The mass surveillance wasn't but the surveillance is in there. The text messages between Sheila Oliver and Suzanne Morphew are in the PC affidavit, so she's misleading the Court by saying this wasn't provided until recently. It's been provided all along. That's just a misstatement."[37]

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[36] Exhibit 31, August 6, 2021 Transcript, p. 3:14-16 ("I have very little room on my docket due to the back up of COVID trials.").
[37] Exhibit 31, p. 13:14-22.

29. Based upon Mr. Lindsey's assertions that the DAs were in compliance,[38] Mr. Morphew made the decision to go forward with the Hearings/PEPG hearing, which was the only way to gain his release from jail.[39] As a result, the discovery sanctions hearing was delayed. It is our belief based upon their conduct that the prosecution doubled down knowing the defense would not have access to the exculpatory information and no further court orders to produce would occur by the conclusion of the hearings.

30. The Hearings proceeded as scheduled on August 8, 9, 23 and 24. The defense discovered in late September and early November that from the inception of the investigation through the conclusion of the Hearings that prosecutors (Jeff Lindsey, Mark Hurlbert) and law enforcement agents were meeting with each other, meeting with the DNA experts, and investigating the CODIS matches.[40] No discovery regarding these meetings with the DNA experts, their opinions, or the investigation conducted by CBI Agent Joe Cahill (the lead CBI investigator on the case), CBI Agent Derek Graham, DA/CCSO Investigator Alex Walker, or CCSO Detective Burgess, and probably others regarding the Tempe DNA match was provided to the defense. The earliest evidence of any discovery provided was September 27, 2021, long after the Hearings had concluded.[41]

31. By August 23, 2021 (the third day of the PH/PEPG hearing), the prosecution had not called a DNA expert to testify, in fact the defense discovered in November 2021 that the DA's subpoenaed Expert Duge to testify but called her off prior to the day of the hearings. The DA's did not bring out any testimony regarding the DNA in the case, correct any misrepresentations regarding the DNA in the Arrest Affidavit, present information regarding the unknown male DNA identified on critical items in the case (especially where Barry Morphew's DNA was excluded), nor the CODIS matches.

32. And, at the end of the day, on August 23, 2021, DDA Lindsey advised the Court that he would not be calling the lead CBI investigator Cahill to testify and that FBI Agent Grusing (who was on the witness stand) would probably be their last witness.[42] This was strange because Agent Joe Cahill was on their two good faith witness lists for the preliminary hearing (first list of 18 witnesses emailed July 21, 2021, and second list of 8 witnesses filed with the

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[38] *Ibid*. Exhibit 20, p. 45:2-3 ("I have never shirked my obligation for discovery."). That was not true. Nor was it true when Mr. Lindsey testified under oath: "I've never shirked from my discovery obligations, Ms. Eytan." Exhibit 30, Tr. January 24, 2022, p. 203:1-2.

[39] Exhibit 31, August 6, 2021 Hearing Transcript, pgs. 5-7.

[40] Exhibit 30, January 24, 2022 Hearing Transcript, p. 203. Later, Mr. Lindsey testified falsely about the 8/2/2021 CODIS meeting. Under oath, Mr. Lindsey first denied that such hearings were taking place and then simply feigned a loss of memory: "I don't remember the [8/2/2021 CODIS meeting]. … I don't have notes .. [or] anything indicating that a meeting happened." *Id.*, pp. 203-204. When confronted with proof, Mr. Lindsey then said he remembered only Commander Walker being there but not other people. *Id.*, pp. 204-205.

[41] *Id.* at, pgs. 204-208 (testimony of Jeff Lindsey).

[42] Exhibit 32, August 23, 2021 Hearing Transcript, p. 249:10-16. Mr. Lindsey said that he might call FBI Agent Harris after the cross-examination of Walker. *Id.*, p. 267:20-25.

court on August 6, 2021). Agent Cahill was the lead investigator in the Morphew case - and as DA Lindsey testified, Agent Cahill had talked to Mr. Morphew a lot and "did a lot of investigation." Exhibit 30, Tr. 1/24/22, p. 218. He was one of the named "public servants" who Mr. Morphew was accused of "attempting to influence" in Count 5 of the Complaint and Information (filed May 18, 2021).

33. Because CBI Agent Cahill was one of the three recipients of the May 19, 2021 CODIS letter, and his name appeared as one of the two law enforcement contacts on the CODIS match letters the defense believed CBI Agent Cahill to be the most knowledgeable about the CODIS matches. This is why it is believed this is one of the reasons the DA's did not call Agent Cahill to testify, hoping to avoid any testimony about the CODIS matches or the CODIS investigation.

34. As a result of the DA's surprising decision that lead investigator Agent Cahill was not going to be called to testify at the Hearings,[43] on August 23, 2021, the defense scrambled to serve Agent Cahill with a subpoena to testify on August 24, 2021 at his personal residence in Colorado Springs, the next and final day of the Hearings. The defense subpoenaed CBI Agent Cahill based on the limited information that Agent Cahill was the primary agent who could present testimony about the CODIS matches.

35. August 24, 2021, after the prosecution convened an emergency meeting with the defense to be described below, the prosecution concluded Agent Grusing's testimony and then closed their case. At that time, the defense called Agent Cahill to the witness stand.

36. The defense was forced to conduct a direct examination of Agent Cahill even though he was the lead investigator and clearly an adverse witness. The defense asked Agent Cahill open ended questions about his investigation into the CODIS matches. Agent Cahill could provide any answer he wanted, and did, without the defense having a dearth of concealed information. DDA Hurlbert attempted to keep the CODIS/DNA Match information from the Court's, media's, interested family members, and public's consideration. DDA Hurlbert objected, claiming CODIS hits were irrelevant.[44] The Court overruled the objection stating it was critical evidence.

37. Unbeknownst to the defense, the DAs and Agent Cahill had been investigating the CODIS matches the entire month of August. Agent Cahill had actually submitted two lengthy reports about his findings to the DA's and Chaffee County Sheriff's Office prior to his testimony, but the reports were not turned over to the defense. Everyone at the DA's table (Chief DA Lindsey, DA Stanley, DDA Mark Hurlbert, and Mr. Alex Walker the DA's Advisory Witness) knew or should have known about the CODIS investigation.

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[43] Surprised, Judge Murphy asked Mr. Lindsey twice if he was not calling Cahill Exhibit 32, p. 249:10-16
[44] Exhibit 28, p. 66:15-16 (Hurlbert objecting that evidence that one of the CODIS hits was to a sex offender in Tempe, Arizona was irrelevant).

38. Agent Cahill testified he denied knowing much about the DNA, the CODIS matches, or the meaning of the matches.[45]

39. DA Stanley, DDAs Hurlbert and Lindsey, and Mr. Alex Walker all failed to interject when Agent Cahill made statements that were contrary to what they knew or should have known to be the truth about the CODIS match and DNA investigation in the case.

40. DA Stanley, DDAs Hurlbert and Lindsey were in actual possession of discovery and had an obligation to know what was in the discovery which highlighted Agent Cahill's false or misleading testimony on August 24, 2021. As stated, the DAs did not present any evidence about the DNA or CODIS matches in the Hearings, and when the defense called Agent Cahill to testify, he minimized the relevance of investigation regarding the unknown male DNA, as he falsely denied being involved in the DNA investigation, and falsely denied being involved or being aware of the investigation related to the CODIS matches.

41. The most substantial of the false testimony stemmed from Agent Cahill failing to disclose that he was directed by DA Jeff Lindsey to conduct investigation into the CODIS matches and did investigate and wrote two reports with multiple attachments regarding the Tempe and Phoenix CODIS Matches in August 2021. These reports were completed on August 16, 2021 and August 23, 2021, but not turned over to the defense until September 27, 2021. [46]

42. These late produced reports proved that Agent Cahill was heavily involved in the investigation involving the CODIS matches in August 2021, and that he submitted the request to CBI for testing the unknown male DNA found in Mrs. Morphew's car and had a meeting with DDA Lindsey and other law enforcement officers regarding the CODIS matches in August 2021 prior to his testimony.

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[45] E.g., Exhibit 28, August 24, 2021 Hearing Transcript, p. 63 (Cahill says that even though the DNA expert (Duge) sent him a letter on May 19, 2021, he didn't see that letter until the DA gave it to him recently); p. 65 (same, letter of Oct. 22, 2020); pp. 55-57 (he didn't read the final version of the arrest affidavit that was signed); pp.58-60 (relying on the DNA expert's report, saying he didn't have any knowledge about the unknown male DNA on the bike, the car, and other items); p.62 (saying he had only recently been made aware about discussions regarding Phoenix, Tempe, and Chicago CODIS hits); p.76 (he hadn't known about the Phoenix CODIS match when the CODIS letter was written in November 2020); pp.77-78 (he didn't know about the Chicago match in April 2021 even though he was listed as a recipient on the correspondence); p.79 (he only knew about the Chicago match when he got the letter from the DA's office); pp.93-94 (he only had one conversation about DNA with DNA expert Caitlin Rogers, and that was in December 2020)

[46] DA's Hurlbert and Lindsey would not confess that their own Discovery Production receipts indicated that the Cahill Reports regarding the August CODIS investigation were not produced until September 27, 2021. Exhibit 30, DA Lindsey testimony pgs. 205-207. The defense was then forced to have its paralegal, Tonya Holliday, submit an affidavit confirming the date of the production of these exculpatory reports – and DA Hurlbert still objected and would not concede this as the truth. Exhibit 33, February 1, 2021 Tonya Holliday Affidavit, and Exhibit 34, February 1, 2021 Hearing Transcript, pgs. 193 - 198, Mr. Hurlbert's objection to Tonya Holliday's representations regarding discovery production.

43. Not only did DAs Lindsey, Hurlbert or Stanley fail to interject during Agent Cahill's testimony, but DDA Hurlbert's cross-examination of Agent Cahill contained many questions, more in the form of DNA expert opinions asking Agent Cahill to confirm and thus minimize the CODIS match information.[47] Mr. Hurlbert asked Agent Cahill about technical DNA information like alleles, Exhibit 28, August 24, 2021, pgs. 88-89. The judge corrected DDA Hurlbert because he was trying to get into scientific, highly technical DNA testimony from a lay witness. *Id.*, p. 90:1-3.

44. Agent Cahill refused to agree with DDA Hurlbert's opinions and made clear he was not an expert in DNA/CODIS. At one point, Judge Murphy asked DDA Hurlbert where he was getting what sounded like expert information from, and Mr. Hurlbert stated it was "just my knowledge of it."[48] Mr. Hurlbert did not state the personal knowledge came from two substantial meetings he had with the CODIS expert in the month of August 2021 that were not disclosed to the defense; nor did he disclose that in those meetings, it was he – Mr. Hurlbert – who was trying to get the experts to represent that a match was not important and when they did not tow his line exactly, he called them all off for the Hearings.

45. Many of Agent Cahill's false statements, which went unimpeded or corrected by the DAs, were raised on February 1, 2022 when the defense called Agent Cahill to testify about the discovery violations.[49] Exhibit 34, February 1, 2022, Transcript of Agent Cahill's Testimony.

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[47] DA Lindsey testified that he was not paying attention to Agent Cahill's testimony, as it was not his witness, and he was probably just sending emails. Exhibit 30, January 24, 2022, pgs. 223-228

[48] Exhibit 2, p. 95:14-18: Mr. Hurlbert said that item 27.1 (Hearings, Defense Exhibit ZZ) was the result of a "keyboard search," and that it "does not meet the high code of standards," and when the judge asked if he was getting that language from a specific document, Mr. Hurlbert said, "No, Your Honor. It's just my knowledge of it."

[49] Selection of Agent Cahill's false statements: On August 24, 2021 (Exhibit 28 p. 52) Agent Cahill claimed he could not speak to the gender of the sample from the DNA lifted from Suzanne's glove box connected to the CODIS hit. On February 1, 2022 (Exhibit 34, p. 39-40) it was pointed out that he was the author of a report identifying that the gender of the sample was from a male. On August 24, 2021 (Exhibit 28, p. 53) Agent Cahill claimed he had not reviewed the DNA in the case. On February 1, 2022, numerous documents produced later in discovery proved that Mr. Cahill did know about the DNA, importantly the CODIS hits, and the unknown Male DNA identified around the house and on the bike and bike helmet. (Exhibit 28, p. 29-41). On August 24, 2021 (Exhibit 28, p. 54) Agent Cahill claimed there was no unknown DNA found on the bike as that is what he learned in a meeting with other investigators. On February 1, 2022, (Exhibit 34, p. 31-35) after receiving additional discovery, the defense was able to get Agent Cahill to admit that this was false as he was sent an email from the DNA expert which highlighted and identified all the unknown DNA found on the bike and bike helmet. On August 24, 2021 (Exhibit 28, p. 53-57) Agent Cahill testified that although the DA's Affidavit indicated that Agent Cahill reviewed and revised the entire affidavit, virtually giving the judge CBI's blessing, Agent Cahill denied that he reviewed the entire affidavit written by and reviewed by DA Stanley, DDA Lindsey, and DA Investigator Walker. Agent Cahill testified he only reviewed up to page 19 of the 129 page affidavit. DDA Hurlbert supported Agent Cahill's denial of knowing anything about the DNA and objected to defense questioning about the DNA as Agent Cahill testified that he only read up to page 19 (Exhibit 28, p. 54). On February 1, 2022 (Exhibit 34, pgs. 24-27) after months of demanding Agent Cahill's revisions to the Affidavit, an email and the revisions were finally turned over DA Hurlbert's objections. The Draft Affidavit did include the sparse and misleading information about the DNA results that were in the filed Affidavit. And, the May 2, 2021 email from Agent Cahill to DA Chief Investigator Alex Walker to the

46. On August 24, 2021, after the testimony concluded, the Court set the ruling on the Hearings for September 17, 2021. Mr. Morphew who hoped for a positive ruling, and at least a bond, on August 24, 2021 was jailed for another month, suffering from diabetes, and remaining on 100% surveillance by the DA's and involved law enforcement of every word and movement he made.

47. On September 17, 2021, the District Court found probable cause, but not proof evident or presumption great. Barry Morphew was released on September 20, 2021, after posting a $500,000.00 bond with restrictions that required him to remain in Chaffee County, Colorado and wear a GPS monitor.[50]

48. On September 27, 2021, after the Hearings, after the defense submitted a follow up briefing in advance of the Court's September 17, 2021 ruling, the DAs produced another 45 GB of discovery, much of which was exculpatory and available prior to the preliminary hearings, and ruling on the preliminary hearings. This discovery included a DNA report dated August 22, 2021 excluding another law enforcement agent from the unknown male DNA found on the evidence as well as the DNA swabbed from the glovebox.[51] This was highly exculpatory, and similar to the CODIS investigation, this report was not disclosed to the defense prior to the conclusion of the Hearings.

49. Also on September 27, 2021, the prosecution produced two substantial exculpatory reports that had been written by Agent Cahill in mid-August 2021 *prior to the conclusion of the Hearings*. Those reports reflected some of the meetings DDAs Hurlbert and Lindsey, the experts, and law enforcement had been having regarding the CODIS matches. As the District Court later found in its Order of April 8, 2022 (p. 3):

> In the months leading up to and during the Hearings, the prosecution had three meetings with law enforcement and CBI analysts to discuss the meaning of the CODIS match, its significance, and follow up investigation to rule out potential sources of the DNA. Information tending to negate the guilt of [the] accused was discussed, but nothing was reduced to writing and disclosed to the defense in any of the three meetings.[52]

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revisions stated: "I have reviewed the AW in its entirety…The AW lacks detail and specificity regarding collected evidence and the results of the forensic examination."

[50] Mr. Morphew was not permitted to bond out on September 17, 2021 because the GPS monitoring servicer was not available until September 20, 2021.

[51] Exhibit 30, pgs. 229-230, DA Lindsey testifies not knowing about the late disclosure of this exculpatory lab report.

[52] Exhibit 23, Order re: [D-17] Defendant's Renewed Motion for Discovery and Contempt Sanctions and Forthwith Hearing; [D-17a] Supplement; [D-17b] Supplement; [D-17c] Supplement; and [D-17d] Supplement (filed 4/8/2022), p. 3. This Report is referenced frequently in this Complaint and will be referred to as "4/8/2022 Order re: D-17 and Supplements."

50. These late-disclosed CODIS Investigation reports also reflected that the DNA on Suzanne's car's glove box not only matched an unsolved sex offense case in Tempe, but it was linked to another sexual offense and a burglary case in Phoenix, Arizona. Later, the District Court found that Cahill had not discussed the undisclosed CODIS hits in his testimony:

> Although Mr. Cahill was aware of the DNA linked to two other cases, he did not discuss it at the Proof Evident Presumption Great and Hearings and the People did not elicit questions related to Report 595.

51. This was only the beginning of a stream of discovery that was created prior to Mr. Morphew's arrest and prior to the Hearings which in various discovery dumps over the next several months, until more of the truth emerged.

52. It's important to note, as evidence of the prosecution's deliberate, willful, and knowing misconduct, an incident that occurred on August 24, 2022. On August 24, 2021, before the testimony commenced on the last day of the Hearings, and with the courtroom filled with media and family members DA Stanley and DDAs Hurlbert and Lindsey ominously announced in open court that they urgently needed to disclose something to the defense. Given that the court was concerned about running out of time to conclude the Hearings, the court gave the prosecution leave to meet with the defense. The defense attorneys and prosecuting attorneys, and the CBI and FBI investigative agents all filed past the media and family members and convened together in a nearby conference room.[53] The DAs believed it was imperative to advise the defense at that very moment they were contacted by a woman who claimed she had an affair with someone 20 years prior who looked like Barry Morphew. When asked, the DAs refused to provide the name of this woman, and stated they would provide her name "through discovery." Of course, this information had no relevance to the case or the hearing, but the prosecutors believed *this was some sort of information* that was pertinent to share in person, and not via email, before concluding the Hearings.

53. The method in which the prosecutors made an announcement needing to meet with the defense with urgency caused curiosity and speculation in the "crowd". But, shockingly the prosecutors did not take this opportunity to inform the defense about the lab report produced to them the day prior that excluded another law enforcement officer from the unknown male DNA found on the evidence collected, the CODIS match, to disclose the highly exculpatory DNA CODIS information, Agent Cahill's investigation, or their ongoing meetings with the DNA CODIS experts.

54. Seven months later, after multiple days of discovery sanctions hearings, the District Court determined that Agent Cahill's testimony at the Hearings was contradicted in

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[53] The small courtroom was filled with members of the media, families and the public. The members of the public waited in line hours before the Hearings commenced with pillows and blankets to try to obtain a seat to watch the Hearings. Because there was so much hype created about the case, the Judge also live streamed the Hearings to play at the County Fairgrounds.

numerous particulars to the discovery later obtained by the defense. Exhibit 23, April 8, 2022 Order re: D-17 and Supplements, e.g., pp. 8-11.

55. On October 4, 2021, resisting a defense request for the DAs to inventory the mass of disorganized discovery,[54] the DAs once again claimed that they had provided the defense all discovery, and all evidence tending to be favorable to the defense:

> 3. Crim.P. Rule 16 requires the prosecution to "make available" or "disclose" certain enumerated materials. Rule 16(I)(a)(1). Rule 16(I) concerning the People's responsibilities require the disclosure of substantive material. The People have complied with the requirement that discovery has been "made available" or "disclosed" to the defense. The Rule does not address providing an "inventory" of such materials.

D-20, D-20 People's Response to Defendant's Motion for Prosecution to Inventory Discovery (filed 10/4/2021), p. 2.

56. On October 5, 2021, DDA Edwards filed a motion demanding the Court set deadlines on the defense Rule 16 obligations to promote accuracy and efficiency for the truth, and minimize gamesmanship:

> COME NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District, hereby submits this motion to set a deadline for defense disclosures and for a pretrial readiness conference. To promote accuracy and efficiency in the search for the truth, to prevent trial by ambush, and to minimize gamesmanship, Crim.P. 16 requires not only discovery from the People to the defense, but discovery from the defense to the People as well. To further justice, the People move

P-25, People's Motion to Set a Deadline for Defense Disclosures and for a Pretrial Readiness Conference, p. 1 (filed 10/5/2021).

57. On October 11, 2021, after reviewing the additional thousands of GBs of discovery produced, the defense filed another Motion for Discovery Sanctions regarding the CODIS match investigation, and other outstanding, favorable and items of evidence not produced. The Court set a hearing on the discovery sanctions motion to commence on November 9, 2021.

58. On October 13, 2021, the court heard arguments from the parties regarding all the pre-trial and disclosure deadlines. On October 27, 2021, the Court issued a Case Management Order. The Court also ruled that the DAs would need to file a Certificate of Compliance that it had provided all mandated discovery pursuant to Rule 16 by November 1, 2021. Later, Judge Lama would observe that the prosecution was adamant about wanting the Case Management Order that they violated: Judge Lama wrote that, at the time, DDA Dan Edwards "agreed with

[54] Motion D-20, Motion for Prosecution to Inventory Discovery Produced after June 2, 2021 (filed 8/7/2021).

the Court and even said, you know, Judge, it's so important that you issue the CMO with expert disclosures because in my years of experience the defense is going to not abide by that and then they're going to come in and ask for a last minute continuance. The People were on notice, agreed to it, even asked for it, and in an underhanded way disparaged the defense alluding to it would be them that violated it."[55]

59. On November 1, the DAs filed a Certificate of Compliance, signed by DDA Jeff Lindsey, identifying all the discovery they had produced, but it was disorganized, unidentifiable, and unhelpful.

60. It was learned through the ensuing months of litigation, that much of the exculpatory and favorable discovery had still not been produced. Still not a single email or text between the prosecution witnesses had been provided as ordered by the Court on June 3, 2021. Many of those suppressed emails debunked the primary theories alleged in the Affidavit to Arrest Barry Morphew without a bond, and testimony the DA's presented at the Hearings.

61. In early November 2021, in preparation for the November 9, 2021 discovery sanctions hearing, the defense served CBI agent Caitlin Rogers (DA's expert in DNA) and CBI Agent Megan Duge (DA's expert in CODIS), and CBI Agent Joe Cahill with subpoenas to testify. All of these witnesses requested witness prep meetings with Defense Attorney Eytan in advance of the hearing.

62. During the witness prep meetings Agents Rogers and Duge both indicated that they used a communication log to refer to which identified all the different occasions they spoke with the DAs and law enforcement about the DNA and CODIS evidence. These scientists were surprised that the defense had not received this log and stated there must have been a glitch in their system. Attorney Eytan requested the communications log as part of the defense investigation, or alternatively to produce it to the DAs and to the defense simultaneously to avoid the DAs from withholding it.

63. Ms. Duge and Ms. Rogers administrative assistant emailed the communications log to the DAs and to Ms. Eytan at the same time.

64. The communications log reflected numerous communications Agent Duge and Agent Rogers had with both law enforcement and the DAs since the inception of the investigation, prior to the Hearings, during the month of August 2021, and in September 2021. The log reflected a meeting on August 20, 2021, wherein DAs Hurlbert and Lindsey amongst numerous law enforcement officers met with CBI Lab Agent Duge and discussed the meaning of the CODIS matches, the CODIS letter (including the language "limited genetic data"), the unknown male DNA, the investigation that needed to be performed, and what exclusions could

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[55] Exhibit 21, Tr. March 10, 2022, pp. 161-162. The hearing to which Judge Lama referred was held on Oct. 13, 2021, see p. 47:3-12 (argument of DDA Edwards).

be made on various pieces of evidence collected. Incidentally, when DA Lindsey was called to testify by the defense on January 24, 2021, he claimed this August 20, 2021 meeting was a "witness prep" session with Agent Duge in preparation for the defense calling Agent Cahill to testify about CODIS. Exhibit 30, Tr. January 24, 2022, pgs. 212-215. However, as confirmed by Agent Cahill, the defense had not spoken to Agent Cahill or served Agent Cahill with a subpoena to testify until August 23, 2021 after the DAs made clear they would not be calling Agent Cahill.

65. After speaking with Agents Duge and Rogers it became evident to Defense Attorney Eytan that DDA Hurlbert's cross-examination of Agent Cahill three months prior was created from bits and pieces of the opinions provided by Agents Duge and Rogers in these expert meetings.

66. None of the law enforcement agents or DAs reduced to writing a summary of these opinions and communications. Exhibit 30, Tr. January 24, 2021, pgs. 215-216. If it wasn't for the defense subpoenaing these witnesses in October 2021 to a hearing regarding discovery asking the right questions in the witness prep sessions prior to the discovery sanctions hearing, the CBI labs policy of reducing communications with prosecutors and law enforcement agents to writing, the defense would never have known the DAs were in possession of this favorable and exculpatory information. Importantly, there was DNA evidence that was not resolved or followed up on which pointed to a valid theory for Suzanne Morphew's disappearance.

67. In advance of the November 9, 2021 hearing, Agent Cahill reached out to Attorney Eytan to learn why he was subpoenaed and how he could prepare for his testimony. In emails disclosed to the defense in February 2022, it was revealed that Agent Cahill and DDA Hurlbert communicated about the defense subpoena. Agent Cahill advised DDA Hurlbert that the defense was not responding to his request to confer about the subpoena. DDA Hurlbert advised Agent Cahill that the defense probably wouldn't talk to him and if not, it would come out at the hearing and that it would "make her [Iris Eytan] look bad". Exhibit 36, Mr. Hurlbert also emailed Agent Cahill that he would prep him in advance of the interview if it did occur.

68. Without knowing about this working relationship between Agent Cahill and DDA Hurlbert, Ms. Eytan set up a Zoom meeting with Agent Cahill. Prior to the meeting, Agent Cahill emailed Ms. Eytan asking how he could prepare, and Ms. Eytan responded that it would be good for him to pull all his emails and texts that were responsive to the Court's June 3, 2021 order.

69. Agent Cahill responded that he was never advised of such an order. Ms. Eytan emailed him a copy of the order.

70. Attorney Eytan then interviewed Agent Cahill via Zoom. Agent Cahill shared new information with the defense including that: CBI emails were deleted automatically 90 days after their creation, that he did preserve hundreds of emails after reviewing the court order and

would send them to DDA Hurlbert to review, law enforcement used a database called Smartforce where they shared notes, reports, and tasks, law enforcement all had regular "Sync" meetings, he had made multiple revisions to the Draft Arrest Affidavit and emailed them to the prosecution team, and were still preserved on his computer. The DAs had not produced any of this information in discovery.

71. In this prep Zoom meeting, Attorney Eytan asked Agent Cahill about his testimony at the Hearings. Agent Cahill stated that before he testified DDA Mark Hurlbert wanted him to talk about DNA. Agent Cahill told Mr. Hurlbert he was not qualified to talk about DNA. Agent Cahill did not reveal what else was in DA Hurlbert's script.

72. Finally, Agent Cahill revealed that even though he was the lead Morphew investigator, soon after the Hearings the DA removed him from investigating the Morphew case. Agent Cahill claimed he did not know why this occurred but to ask the DA's office.

73. In the late produced discovery in February 2022, (predominantly emails written between the DA's office and witnesses between 2020 and 2021), the DA's also produced a transcript of the Zoom meeting conducted between Agent Cahill and Ms. Eytan. This was a huge surprise as Attorney Eytan was not asked and did not consent to the recording of the interview. It is unknown to this day who secretly recorded the interview as both CBI Agents Martinez and Cahill independently claim to have recorded it. There is no identifying chain of custody between the recording and the transcript, nor was the recording produced. In a later hearing, after an argument up at the bench between DDA Hurlbert and Ms. Eytan about whether DA Hurlbert advised Agent Cahill to secretly record the interview, and while Agent Cahill was sitting on the witness bench and within earshot, Agent Cahill testified that Mr. Hurlbert did not ask him to record the interview. It makes no sense that Agent Cahill would have just, on his own, secretly recorded our interview even though he had discussed the interview with Mr. Hurlbert before it happened.

74. After the defense interviews with Agents Cahill, Duge and Rogers in November 2021, DDA Hurlbert filed a motion for sanctions *against the defense* for conducting not only permissive, but mandatory investigation by attempting to get the communications log and court ordered emails.[56] This was ironic, as the DAs were hiding favorable evidence from the defense. Yet, DDA Hurlbert accused the defense of "trying to get discovery behind the People's back" and "trying to short circuit the discovery process," the DA violated its duty of candor to the tribunal (violating RPC 3.3(a)(1), asserted a claim when there was no basis in fact or law for it (violating RPC 3.1),[57] and failed "to avoid conduct that undermines the integrity of the adjudicative process" (violating RPC 3.1, Cmnt. [2], [4], [10]). The DAs accused defense counsel of "misrepresenting the Court's order" when in fact, defense counsel sent the order itself to the CBI Agents. The prosecution knew the defense had provided CBI the Court's order and

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[56] Exhibit 37, People's Motion for Sanctions (filed 11/5/2021).
[57] See e.g., People v. Efe, 475 P.3d 620, 633–34 (Colo. O.P.D.J. 2020)(RPC 3.1 is violated by "lodging frivolous and groundless motions").

knew that they (the prosecutors), in violation of RPC 3.4(d), had failed to do so notwithstanding the fact that the Court had entered the order some five months before.[58] This followed with the DA's office telling CBI lab and investigative personnel (witnesses) to refrain from sharing information with the defense and to only go through the DA's office; this was a violation of RPC 3.4, especially subsections (a), (d), and (f). The DA's motion was not only frivolous, but was a clear means of bullying, a method to convince the DA's witnesses that the defense should not be trusted, and a means to deflect their willful concealment of discovery prior to the November 9, 2021 hearing.

75. The DA's motion for sanctions did not include the complete email string between Ms. Eytan and Agent Cahill where Ms. Eytan was completely transparent in a request for court ordered emails and texts and emailed him the Court's June 3, 2021 order. The DA's motion also misrepresented Ms. Eytan's communications with the CBI lab wherein Ms. Eytan asked for the log and requested it be sent to both the DA and myself at the same time. These assertions by the DA were indicative of the DA's continued efforts to conceal favorable evidence and information they were in possession of and did not disclose to the defense. As stated in the Defense Response:

[58] Exhibit 38, Tr. 11/9/2021, p. 9, 15-19.

9. The DAs intentionally omitted factual information by attaching only a misleading snippet of the email chain as an exhibit and only citing to a portion of the factual conversation. *See* Exhibit 3, October 20 to November 2, 2021 the entire email chain including Ms. Eytan's response email to CBI Agent Cahill sending the June 2, 2021 Court Order.

10. There is absolutely no prohibition in the rules of discovery or anywhere else that would prevent a defense attorney from requesting information directly from witnesses, whether or not the district court had ordered the prosecution to provide the information. The district court never ruled that information sought by defense counsel was privileged or protected from disclosure; this Court merely ruled that, for some of the items requested, the prosecution was under no obligation to provide it. Such an order in no way, shape, or form constitutes a protection order restraining defense investigation of the case. Defense counsel may make requests of witnesses to provide information above and beyond what the prosecution is compelled to affirmatively obtain and provide. See Crim. P. Rule 16(III)(a). "As a general rule of criminal law, witnesses belong neither to the government nor the defense, and both sides have a right to interview witnesses before trial." *United States v. Carrigan*, 804 F.2d 599, 603 (10th Cir.1986)(internal quotations and alterations omitted).

11. The prosecution makes an unexplained allegation that defense counsel is somehow impeding the prosecution's investigation of its own case and/or that defense counsel should have told these government agents to not speak to defense counsel.

Comm. Walker was represented by the County Attorney during pertinent parts of the process with him.

12. The DA intentionally misquotes Crim. P. Rule 16(III)(a), thereby implying the Rule means the opposite of what it actually states. The DA's statement from paragraph 9 of its motion is set forth below, with the **omitted parts** inserted and ***highlighted***:

> Crim. P. Rule 16(III)(a) says that ***Subject to the provisions of Parts I (d) and III (d), neither the prosecuting attorney, the*** "…defense counsel ***… the defendant nor other prosecution or defense personnel*** shall advise persons having relevant material or information (except the defendant) to refrain from discussing the case or with showing any relevant material to any party, counsel or their agent, nor shall they otherwise impede counsel's investigation of the case. ***The court shall determine that the parties are aware of the provision***."

The DA's sanctions motion has it exactly backwards: The portion the prosecution relies upon states that no one shall tell persons to refrain from discussing the case, not (as the prosecution appears to suggest) that a defense attorney is supposed to tell prosecution witnesses they *shouldn't* speak to defense counsel. The prosecution provides no legal support for its bizarre claim.

13. The prosecution's intentional omission and misquotation of Crim. P. Rule 16(III)(a) is a violation of the Rules of Professional Conduct, which prohibit "knowingly mak[ing] a false statement of material fact or law to a tribunal," Colo. RPC 3.3(a)(1). Under this rule, a lawyer "must not allow the tribunal to be misled by false statements of law or fact." Colo. RPC 3.3 cmt. 2.

Exhibit 39, December 7, 2021 Defense Response to Motion for Sanctions.

76. The November 9, 2021 discovery sanctions hearing was very disjointed because the DAs were furiously trying to mislead the Court that the defense had all discovery and that they were in the dark as to what the discovery violations the defense was alleging. The DAs claimed both that the defense had "everything," and that the reason they didn't have everything was because of a "computer glitch."[59]

[59] E.g., Exhibit 38, Tr. of November 9, 2021, p.93:4-14, where Mr. Hurlbert states: "Judge, ultimately what it came down to was if there hadn't been this computer glitch they would have had this as well. So that's kind of the problem. There has been no hiding from the People. The People have provided everything that we have gotten from CBI. And in fact, actually requested the lit pack from CBI long before we normally would which got us the CODIS. So Judge, this is just going down a road that is just not even remotely relevant to anything. I don't know, Judge, maybe they haven't. There's so much discovery here that maybe they haven't – " This statement was patently untrue. As but one example, the DAs later produced – after, not before, the critical discovery sanctions hearings – some 22,000 pages of emails that had been ordered turned over almost six months before, most of which included DA personnel as recipients and/or senders of the emails.

77. The defense called both CBI Agents Duge and Rogers to testify at the November 9, 2021 sanctions hearing. Because the DA did not produce all of their emails until after the second court order in late January 2022, the examinations were stunted and incomplete. However, due to defense investigation, the defense was in possession of the aforementioned CBI Lab comm log, and the defense was able to bring out the substance of the multiple and secret DNA meetings these experts had with the DAs and law enforcement during the pendency of the investigation and importantly in August 2021.

78. Expert and CBI Agent Duge testified that in one of the meetings in August and September 2021 with the DAs present (DDA Hurlbert, DDA Lindsey, and possibly DA Stanley and DDA Pembleton), the DAs were trying to get Expert Duge to refrain from using the word "match" in describing the CODIS matches, thereby minimizing the exculpatory nature of the evidence. Expert Duge testified that the language came from the FBI definitions and was immutable. This stinging testimony is more evidence of a Lack of Candor to the Court; at the Preliminary hearing during his cross-examination of CBI agent Cahill, DA Hurlbert (a self-proclaimed DNA expert) attempted to push Agent Cahill to reject the use of the word "match" to minimize this favorable and exculpatory evidence.[60]

79. The November 9, 2021 hearing did not conclude, and the hearing was continued to December 14, 2021. And, due to the prosecution's continued assertions that they produced all discovery, and the defense contradiction of those assertions, the Court ordered the parties to confer about the complaints regarding the outstanding discovery. As a result, the defense set out to confer regularly with the prosecution. However, after the defense compiled and sent to the DA a chart of discovery items to confer about, the DAs claimed they had not reviewed it. When the defense pushed the DAs to review it, they then stated they could not stipulate to the itemized list of discovery items and dates in which discovery was or was not produced or what was outstanding. The defense documented all conversations regarding the discovery disputes in a conferral chart and it was attached to D-57.[61]

80. The conferral chart reduces to writing the DA's positions on providing discovery in the case, and importantly what information they considered to be, exculpatory or tending to be favorable to the defense. In short, nothing. Importantly, the conferral chart broke down the DA's Certificate of Compliance for the prosecution to stipulate to when this discovery was obtained by the prosecution and when the discovery was produced - DDAs Hurlbert and Weiner refused - as they did not know because the Certificate of Compliance was a sloppy, unresponsive, unprofessional "Certificate". Exhibit 40, D-57 (it's below).

81. The DAs were committed to staking out the position that none of the endorsed witnesses made any oral statements that were exculpatory and worthy of reducing to writing,

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[60] See e.g. Exhibit 28, Tr. August 24, 2021, pp. 90-92.
[61] "Exhibit 40, Status Report re: Ongoing Hearing on Prosecutorial Discovery Violations [D-57] and separately filed 36-page attachment of charts and documentation of the discovery violations (filed Jan. 7, 2022).

including the experts and that, if the defense did not have a written statement from a witness or expert, it was because the witnesses or experts did not write anything or tended to be favorable to the defense. DAs Hurlbert and Weiner claimed that if an oral statement (regardless of whether it was exculpatory or not) was made by an expert or lay person and it was not recorded or summarized in a log or report, it just goes “poof” and would not be produced. Of course, this was absurd, as Experts Duge’s and Rogers’ opinions and verbal statements about DNA Matches and what could be an alternate suspect were surely exculpatory, favorable and their statements were never reduced to writing or produced by the prosecution.

82. The DAs withheld all court ordered expert and law enforcement emails and texts because they maintained there were none that tended to be favorable in any way to the defense or in the prosecution.

83. Additionally, the DAs maintained that they only needed to disclose the exculpatory statements from expert witnesses they intended to call to trial. Because the DAs maintained that information related to CODIS and unknown male DNA was not exculpatory or favorable to the defense, none was produced. This was in direct violation of Rule 16, the Court’s orders, and the Rules of Professional Conduct. Throughout the hearings, and in the April 10, 2022 order, Judge Lama commented on many of their unsupported positions that belied their statements throughout the hearings that they had complied with Rule 16. Exhibit 23, April 8, 2022 Order re: [D-17].

84. In December 2021, during the conferrals, the DAs maintained their position that they had turned over all the discovery, and if we didn’t have it, it either did not exist or was not discoverable.

85. The defense continued to demand what was believed to be essential and favorable discovery, including the FARO scan of the Morphew house before items were moved due to the extensive search, the forensic image of Suzanne’s HP Laptop, and the forensic image of Suzanne’s iCloud account. Information/images obtained from these items were referred to in the Arrest Affidavit and in the Hearings, but the defense could not challenge the DA’s claims without the actual forensic images (copies of the items). When the defense again asked for production of these items on November 9, 2021, DDA Hurlbert advised the judge the defense was not being truthful, and that we did have the data/evidence. Specifically, DDA Hurlbert stated the following with regard to Suzanne’s HP Laptop:

> MR. HURLBERT: *They talked about the HP laptop they said they don't have, they do have it. So they got it back in June, Your Honor. We have the evidence of that. So maybe they just don't have it, Judge. They don't have this report from Agent Cahill. Maybe it's just not there. That's part of the problem.*

Exhibit 38, Hearing Transcript of November 9, 2021, p. 93:16-21.

86. In December, after talking to the DA's experts, and hiring defense experts, it was confirmed that the defense did not have this electronic and digital data and evidence. DDA Hurlbert finally admitted that the prosecution had not yet produced this evidence. The prosecution finally produced the forensic image of Suzanne's HP laptop, the FARO Scan, and Suzanne's iCloud on December 30, 2021, early January 2022, and February 25, 2022, respectively.

87. After defense experts were able to examine these items it was discovered that many assertions proposed by the DAs in pleadings and Hearings were contradicted by this withheld evidence:

- There were 60% more files located on the iCloud data than originally produced.
- The creation dates of many of Suzanne's notes were unknown (including the note that was embedded in the Arrest Affidavit and introduced at the Hearings).
- Suzanne's HP laptop was logged in and conducting searches on her private accounts on May 9, 2020 late in the evening when the DAs claimed she was deceased and while they claimed Barry was allegedly disposing of her body.

88. In November-December 2021, while having these discovery conferrals/disputes, the DAs were sitting on thousands and thousands of emails that existed as far back as May 2020 and which, on June 3, 2021, the Court had ordered to be produced.

89. The DAs continued to stonewall the defense and would not produce a single email or text between the law enforcement witnesses and DA's office. Additionally, in mid-December 2021, the DAs produced a *Brady* letter indicating that Agent Joe Cahill resigned after an internal investigation which "may impact the credibility of" Agent Cahill.

90. On December 14, 2021, the original judge, District Court Judge Patrick Murphy, recused himself. On January 5, 2022 District Court Judge Lama Ramsey was appointed by the Supreme Court to preside over the case.

91. On January 24, 2022, after months of the prosecution denying the defense claims that not all the discovery was produced, was impossible to identify, refer to, or organize, DDA Hurlbert confessed that the discovery was disorganized and that even the DAs were unable to ascertain what had been provided to the defense. Referring to "unfortunately the tortured process that discovery has happened in this case," DDA Hurlbert said they were going to reorganize the discovery AGAIN, and would be re-producing all the discovery with new bates numbers:

> Originally because the D.A.'s office, the lawyers
> at that time were just looking to get anything out to the

> defense. So a lot of things were not Bates stamped. A lot of things were not logged. We didn't know what the defense had really or what the defense didn't have. I think that just invites discovery violations.

Exhibit 30, Tr. of January 24, 2022, p. 93:3-10. The mass of discovery was reproduced for a third time. Some of the pages had new Bates numbers, and some had no Bates numbers. By January 2022, the discovery was produced numerous times, with many different Bates numbers attached to the same page. This process made citation to the nonuniform and haphazard. Finding buried in the many pages the relevant, , and/or exculpatory discovery was just as likely as finding a needle in a haystack.

92. On January 24, 2022, Judge Lama asked specifically about the emails that the DA had been ordered to produce on June 3, 2021. *Id*., pp. 37-38, 67:14-18. DDA Hurlbert said they were "voluminous and some are not organized," but he thought they could be produced before the upcoming February 4, 2022 hearing on the defense discovery sanctions motions. *Id*., p. 67:23-24. The judge ordered they be produced within seven days. *Id.*, pp. 67-68.

93. DDA Hurlbert did not display candor to the Court. During the course of litigation, when the DA wanted to use an email, DDA Hurlbert had been able to pull up the single email from June 2021 he wanted to use to refute defense claims of discovery violations and emailed the single email to defense counsel without any bates number, foundation for identification. *Id.*, p. 41:21. Yet, the other thousands of emails remained undisclosed for many months notwithstanding the Court's order to produce them.

94. The prosecutors did not exhibit candor in its communications to the Court about the undisclosed emails. As an example, Agent Derek Graham had told the defense that he had produced his emails and notes to the DA's office on November 29, 2021. *Id*., pp. 14-15, 40. DDA Hurlbert made an untrue statement to the Court: "The emails we got from [Chaffee County Sheriff's Office] were a couple of weeks ago. I know from *Agent Graham, his was January 15th, it was a Saturday, along with his notes. His notes were also at that time*." *Id*., p. 31:21-24 (emphasis added).

95. Mr. Hurlbert also claimed that he had received the CCSO and CBI emails "only about three weeks ago." *Id.*, p. 61:18-20. These statements completely ignored the fact that DA personnel were included on hundreds if not thousands of the emails; in other words, for thousands of the emails, the DAs office should not have had to "wait" to get them from anyone – they had them.

96. Although on May 27, 2021, the DAs were specifically ordered to produce all impeachment evidence, and Mr. Lindsey in court stated they would produce all impeachment evidence, they did not do so. For example, the prosecution provided a "*Brady* letter" disclosing that CBI former-lead investigator Agent Cahill had been subject to an internal affairs

investigation following the accidental discharge of his service weapon at his home; however, the prosecution refused to produce Agent Cahill's Internal Affairs investigation file or take any steps to obtain it.

97. As a last resort, after seven (7) months of attempting to obtain the email and text communications, conferring with the DA, and filing motions, the defense issued *Subpoenas Duces Tecum* (SDT) on CBI and Chaffee County Sheriff's Office for the emails and texts and on CBI for Agent Cahill's Internal Affairs file. This caused the CBI agents and Chaffee County Sheriff's investigators, in conjunction with the DAs, to start gathering the emails and texts for production for the first time since the June 3, 2021 Court order.

98. On January 24, 2022, the Court held a hearing on the SDTs. The Court ordered the IA file be produced in camera. The DAs objected to the SDT for emails and texts, saying that they were court-ordered in June 2021, and contending that the DA's duty was only to send the Court Order to the relevant agencies to produce discovery, nothing more:

> 16 Your Honor. I don't think it's appropriate for the subpoena
> 17 duces tecum. It's a Rule 16 issue certainly and we are in
> 18 the process of complying with the judge's original court
> 19 order from June.
> 20 Which Your Honor -- just so we are clear, the
> 21 judge had his court order -- the order was sent out to law
> 22 enforcement, to CBI, to FBI, and to CCSO. I don't -- I
> 23 think that is enough. Again, these are law enforcement.
> 24 They should know that this is something that is going to be
> 25 coming. They are going to know that they are going to have
> 1 to hold on to their emails.
> 2 I don't know that we could be subscribed to
> 3 destroying this if CBI did not widely distribute it. I know
> 4 that FBI and CCSO both widely distributed it. It was enough
> 5 that they had the email that said here's the order and the
> 6 order is this from the court regarding the emails. That was
> 7 sent just a couple of days after the order, Judge.
> 8 We can't go into CBI and say -- we don't run CBI.
> 9 We're not in charge of them. The best we can do is inform
> 10 them of it, tell them what they need to do, and either they
> 11 do it or they don't.

Exhibit 30, pgs. 33-34.

99. The Court quashed the defense subpoena for emails and texts on the basis that the defense could and should be getting them pursuant to the June 3, 2021 Order of the Court. The Court found that they were relevant and that the Court's June 3, 2021 order was consistent with

Rule 16. *Id.*, p. 45:3-22. *See also id.,* p. 46:17-19 ("This information falls squarely under Rule 16 and the Court's order and the People have an obligation to turn it over."). Because the DA's were required to be disclosed by Rule 16 and they had been ordered to be disclosed, the Court ruled that they were otherwise procurable prior to trial and that, therefore, a SDT was not in order; rather, the proper avenue was through the discovery process notwithstanding the fact that they had not been turned over as required. Judge Lama stated that "[he] would expect the defense to file a motion seeking sanctions were these emails and texts not procured in the near future." *Id.*, p. 46:22-24. He added, "here we are in January, these s should have been turned over in the summer." *Id.*, p. 65:23-24. As noted above, the Court ordered for a second time (first time was on June 3, 2021) that they be produced within a week. *Id.*, pp. 67-68.

100. On January 24, 25, and February 1, 2022 the Court convened multiple motions hearings about the alleged discovery violations, pre-trial motions, and the pre-trial publicity motion.

101. Pursuant to the Court's January 24, 2022 order, the DA produced more than 24,000 pages of emails that were created and dated May 2020 to November 2021, however they were not produced until January 27, 2022. The emails were not merely correspondence between law enforcement officers who DDA Hurlbert said he "is not in charge of", but between DDA Lindsey, DDA Hurlbert and experts and law enforcement witnesses in the case.

102. As a result of receiving this Rule 16 and court-ordered discovery so late, the defense did not have the benefit of the exculpatory emails until the February 1, 2022 hearing, and long after the Hearings, CBI Agent Duge, CBI Agent Rogers testified on November 9, 2021, and after DA Jeff Lindsey, Commander Walker, and Detective Burgess testified on January 24 and 25, 2022. The emails were so voluminous it was difficult to read, absorb and use them succinctly at the February 1, 2022 hearing in order to cross-examine Former CBI Agent Cahill.

103. There were two revelations from the discovery sanctions hearings. First, the defense proved that the DAs were not in compliance with the Court Order and Rule 16, withheld and favorable evidence from Mr. Morphew in the Arrest Affidavit and the Hearings, and did nothing to preserve and produce their own discovery or ensure the flow of information from law enforcement agencies working on the investigation. Exhibits 30 and 16, January 24-25, 2022 Transcripts of Former DDA Jeff Lindsey, Commander Alex Walker, and CCSO Detective Burgess.

- Numerous CBI and law enforcement officers denied ever seeing the Court order mandating the production of emails and texts, and even then, not understanding the order in so far as they needed to produce statements of experts working on the case. Specifically, CBI Agents Cahill, Duge, Graham and Rogers testified they did not know about the Court orders regarding discovery and specifically the orders regarding emails and texts.

- Contrary to DDA Hurlbert's argument regarding the Court Order being sent out to all agencies in June 2021, the law enforcement agents that testified were not aware there was an order to preserve and produce emails that would in any way tend to be favorable to the defense.
- Commander Walker who not only knew about the order, but emailed it out, did not understand the order. Walker was a prior employee of the DA's office and signed the Affidavit to Arrest Mr. Morphew. Walker believed emails regarding the DNA were not exculpatory and testified that he self-selected the emails he eventually produced to the DAs, holding back 30% of his emails.
- Commander Walker testified that he never reviewed his emails while he was at the DA's office for the year he investigated the case and did not know if they still existed.
- Detective Robin Burgess cautiously admitted he knew of the order, but claimed none of his emails (including about the unknown male DNA and CODIS matches) were exculpatory so he did not turn any of them over.
- Law enforcement officers did not corroborate that they had meetings DDA Lindsey referred to "ensure the flow of information". The DAs did not believe that any information related to unknown male DNA or the CODIS matches was favorable or exculpatory so took the position it did not need to be disclosed to the defense.
- The DAs and law enforcement officers who testified at the hearings knew a lot about the unknown male DNA and CODIS matches and this information was not disclosed to the defense prior to or during the hearings.
- The DAs did not inform law enforcement to take notes related to the DNA and CODIS (and any other exculpatory or favorable information) and preserve them, nor did law enforcement take notes during the meetings with the experts, so the information is now lost.

104. The second revelation from the discovery litigation as described above was that the sanctions hearings illuminated that DDA Hurlbert, DDA Lindsey, and DA Stanley must have known that CBI Agent Cahill provided false testimony at the Hearings regarding what Agent Cahill and law enforcement knew regarding DNA and CODIS matches and when they knew it. It is believed that DAs Hurlbert and Lindsey concealed the status of the CODIS investigation, the Tempe match investigation which started in December 2020 and continued into August 2021 and withheld information gleaned from interviews with CBI experts Duge and Rogers, and concealed their ongoing investigation into the unknown male DNA found on critical pieces of evidence.

105. And, ultimately, perhaps to create distance from Agent Cahill's false testimony, DA Stanley turned on Agent Cahill after DA Stanley effectively fired Agent Cahill from the Morphew investigation. As background, Agent Cahill advised the defense in the November 2021 Zoom interview that after he testified at the Hearings he was abruptly terminated from the Morphew case. The defense followed up on Agent Cahill's claims. It was discovered that DA Linda Stanley called CBI management and demanded that Agent Cahill be terminated from the Morphew investigation because she was not happy with Agent Cahill's testimony about the CODIS matches. Although when DA Lindsey testified at the discovery sanctions hearings, he

was not forthcoming about the reasons for Agent Cahill's termination from the case (Exhibit 30, pgs. 230-233). DA Stanley testified on March 4, 2022 that Agent Cahill was taken off the Morphew investigation because he didn't follow the script she and DDA Hurlbert gave him in preparation for his 8/24/21 testimony[62]:

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14        Q.   He had been prepped by your office of what the
15   questions were going to be?
16        A.   Correct.
17        Q.   And then he didn't answer them in the same way he
18   had done at the prep.
19        A.   Correct.
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Exhibit 41, March 4, 2022 Hearing Transcript, p. 255.

106. After the defense found out the DAs terminated Agent Cahill from the case resulting in his transfer to the CBI marijuana interdiction unit, and after it was disclosed to the defense that Agent Cahill did not support Mr. Morphew's arrest (see Claim Group Three), the DA's represented that THE lead Morphew Investigator was "thoroughly discredited," i.e., untrustworthy. In a pleading filed by the DA Linda Stanley, DDA Mark Hurlbert, and DDA Bob Weiner on February 23, 2022 they stated:

> 3. In the defense's latest motion, they are asking the Court to dismiss a First Degree Murder case because a former CBI Agent, who has been thoroughly discredited, has opined on the timing of arresting the defendant in this case. The defense contends that if they had known

Exhibit 42, Response to Defense Supplement to Motion for Sanctions [D-17(c)] (filed Feb. 23, 2022), p. 3.

107. On January 25, 2022, the third day of discovery sanctions hearings, the defense called Chaffee County Sheriff's Office Detective Burgess to testify. Detective Burgess testified that two weeks prior to his testimony he had reviewed his emails and turned them over to the DAs. The DAs had not yet produced the emails to the defense. Therefore, Detective Burgess and the DAs continued to be at a distinct advantage at the discovery sanctions hearing. [63]

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[62] There was much more testimony at the March 4, 2022 hearings on the subject of how Mr. Cahill got terminated from the case. It was truly remarkable, with witnesses giving a wide range of testimony and few admitting what had actually happened – that Linda Stanley called Agent Cahill's boss and it was her displeasure that got him terminated from the case. Also remarkable – and a significant violation of the RPC – is the fact that the prosecution did not disclose to the defense what had happened.

[63] Exhibit 16, pgs. 16, 21. Burgess testified that, in June of 2021, Jeff Lindsey told him to produce emails but if "the content" of the email had already been disclosed, he should not produce the email. *Id.*, pp. 16-17.

108. Based on the discovery produced by the DAs up to January 25, 2022, Detective Burgess did not write any substantial reports and did not appear involved in the Morphew investigation. But, because his name was identified on the May 19, 2021 CODIS match letter and on the CODIS match paperwork sent by CBI to notify the other State's agencies of the matches, the defense called Detective Burgess to testify about the DA's and law enforcements knowledge of the CODIS matches and investigation. Exhibit 16, pgs. 24-25.

109. Detective Burgess testified that in December 2020, he received a phone call from a Tempe, Arizona detective about a DNA match of DNA between a swab collected from Suzanne's glovebox to an unsolved sex offense that occurred in Tempe, Arizona (CODIS match). Detective Burgess testified he asked the Tempe detective to forward him an email with the details about the match and the linked case; Burgess then forwarded that email to his team. Burgess testified that numerous lead investigators at the DA's office, CBI and CCSO knew about the Tempe CODIS match in December 2020, five months before Mr. Morphew was arrested. *Id.*, pp. 37-38, see also p. 59.

110. That defense was shocked by this obviously favorable and exculpatory email Detective Burgess was referring to that was written on ***December 2, 2020*** regarding the Tempe CODIS match. This December 2, 2020 email was not produced t**o the defense until January 27, 2022, two days after Detective Burgess testified.** Exhibit 43, December 2, 2020 CODIS Hit email. Therefore, once again, as with Agent Cahill at the Preliminary Hearing, the prosecutors withheld exculpatory evidence and evidence of innocence at a discovery sanctions hearing, and sat in silence during the defense' blind questioning of Detective Burgess.

111. When Detective Burgess testified, although he had just reviewed this CODIS match email prior to his testimony which the DA's were in possession of, he testified he could not remember who he sent the email to notifying the lead investigators of this CODIS match.

112. Detective Burgess' vague testimony, and the prosecution's withholding of this December 2, 2020 email, caused the defense to blindly ask Detective Burgess questions about what the DAs office knew about the CODIS match prior to Mr. Morphew's arrest and/or Preliminary Hearing. Detective Burgess indicated that DA Investigator Alex Walker, the signator of the Arrest Affidavit and DA Linda Stanley's advisory witness at the Hearings, knew about the CODIS match in December 2020. Detective Burgess testified that in December 2020 Agent Cahill told DA Investigator Alex Walker and Detective Burgess and others that "it was nothing", (Exhibit 16, p. 61:18-19), Agent Cahill had connections in Tempe, AZ and he would take care of it. (*Id.*, p. 40:5-17). Two days later, when the email was produced, the defense learned the DA's and multiple law enforcement agents were included on this email string, including *Chief DA Investigator Alex Walker*, CBI Agent Graham, Chaffee County Undersheriff Andy Rohrich, and Chaffee County Detective Claudette Hysjulien. Exhibit 43.

113. Additionally, Detective Burgess testified that the May 19, 2021 CODIS match letter was discussed at the time he received it in May 2021 with "[DA Investigator] Alex Walker,

and **the District Attorneys at the time**, and CBI." Exhibit 16„ p. 25. He could not remember all the District Attorneys that discussed the CODIS matches but believed "**it would have been Jeff Lindsey.**" *Id.*, p. 25:5.[64] Detective Burgess testified that Agent Cahill's investigation was not thorough; there was no follow up on the Phoenix match and it just "fell through the cracks." *Id.*, pgs. 24-25.

114. Detective Burgess was the only law enforcement officer that testified was not a DA advisory witness in any prior hearing, nor did he watch any of the court proceedings. In other words, he was not able to conform his testimony based on what the DA's and his colleagues had presented to the Court. Detective Burgess's testimony contradicted all prior law enforcement witness testimony and the DA's representations about both the timing of their knowledge about the CODIS matches and representations to the Court that all favorable discovery had been produced to the defense. All other witnesses (including Commander Walker who testified the day before) and the DA's office denied knowing about the CODIS matches until August 3, 2021 when the defense attached the May 19, 2021 CODIS match letter to its motion for sanctions. See *Id.*, p. 39:19-25

115. The thousands of withheld emails revealed that DA Investigator Alex Walker, (who was supposed to have been supervised by DA Linda Stanley) misrepresented other information in the Arrest Affidavit and that DA Linda Stanley, and DDAs Jeff Lindsey, Mark Hurlbert and Aaron Pembleton misrepresented facts and withheld exculpatory information in the Arrest Affidavit and during the hearings. This resulted in Mr. Morphew being wrongly jailed for five months, and then required to post a $500,000 cash bond in order to be released from jail pending trial, being placed on a GPS and ordered to stay in Chaffee County, Colorado for another seven (7) months (where he was villainized and being harassed because of widespread community animosity). DA Linda Stanley and DDA's Lindsey, Pembleton, and Hurlbert continued the murder prosecution without disclosing the following favorable information contained in emails produced in late January 2022:

- As far back as December 2020, the DA's office [DA Chief Investigator Alex Walker] and law enforcement knew about at least one CODIS match;
- The DDA Lindsey and likely DA Stanley knew about the CODIS Matches in May 2021.
- The DAs [Stanley, Lindsey, Hurlbert, Pembleton] and law enforcement were concerned about the CODIS evidence during the PH/PEPG hearings, Exhibit 44, 15A-21479-82;
- The DAs [Stanley, Hurlbert and Lindsey] and law enforcement knew that key elements of their "technical evidence" was presented at the Hearings in a misleading or false manner, including but not limited to:
    - The DAs [Stanley, Hurlbert and Lindsey] argued that, on the afternoon that they believed Suzanne was killed, data from Mr. Morphew's cell phone showed that he

[64] Burgess also testified that he met with Jeff Lindsey in August 2021 about the CODIS match. Exhibit 16, p. 45:14-17. See also id., p. 49 (he met on a phone conference on August 20, 2021 with CBI agent Duge, DA investigator Walker, DDA's Lindsey and Hurlbert, and CBI Agent Graham).

was running all around his house; they argued that the inference was that Barry was chasing Suzanne around. However, the DAs and law enforcement were in possession of a 2020 expert opinion that Barry Morphew's GPS phone data in the vicinity of the Morphew home is not reliable because of poor reception and a phenomenon known as "static drift." Because of "static drift," it was probable that the phone was sitting stationary in the home, not moving around the outside of the home at top rate speeds [which would have had to be approximately 35 miles per hour]; and

- The DAs [Stanley, Hurlbert and Lindsey] argued that, on that same afternoon, Barry's phone was placed in "airplane mode," for hours with the inference that he was somehow attempting to mask his activities. However, the DAs and law enforcement were in possession of a 2020 expert opinion and accompanied records that showed that the phone was not being manually placed in airplane mode, was not in airplane mode for more than a minute, and that the suggestion to the contrary was unreliable and without support.

116. The late produced emails also revealed that contrary to DDA Hurlbert's representations, the CODIS matches were good matches, and that Agent Duge's May 19, 2021 letter stating the matches were based on "partial" and "limited genetic data " was not based on any scientific and technical language - but her own made up "Duge" language. This was confirmed in the late produced emails written on August 11, 2021 by Agent Duge, from the CBI communications log indicating meetings with DAs Hurlbert and Lindsey, and then in an interview the defense conducted with Agent Duge. Exhibit 45, Discovery Page 15A-21537-38. In our opinion, DDA Hurlbert, a self-described expert in DNA, knew that the terms "partial" and "limited genetic data" were not scientifically validated but pressed Agent Cahill, a self-described non-expert in DNA to adopt the made up language to minimize the exculpatory nature of the evidence with hopes of continuing to jail Mr. Morphew until trial and a wrongful conviction. Exhibit 28, pgs. 95:5-18, 96:8-12, 99-101.

117. The defense discovered that even when the prosecution produced emails, exculpatory information was redacted from them. DDAs Hurlbert and Weiner were responsible for the production of the emails. The following is a shocking example: There was a May 26, 2021 email string that was produced in 2021 on a CBI disc that included many lab reports. The email was between CBI lab agents, Agent Cahill and Detective Burgess regarding the unknown male DNA found on different pieces of evidence, and the need to identify the unknown male DNA - and a request to obtain a DNA sample from Deputy Tucker to eliminate any unknown male DNA. The original, unredacted email string was produced by the agents.

118. Together with thousands of other emails produced in Late January and early February 2022, DDAs Hurlbert and Weiner and DA Linda Stanley disclosed this exact email but from Detective Burgess' email address. Perhaps not realizing CBI lab agents had already

produced the original unredacted email months before, *the DAs removed or permitted the removal of the exculpatory portion about the need to identify the unknown male DNA in the case.*

UNREDACTED:

7/1/2021 State.co.us Executive Branch Mail - 20000911/2020-109 Case Question

STATE OF COLORADO

Rogers - CDPS, Caitlin <caitlin.rogers@state.co.us>

20000911/2020-109 Case Question
3 messages

Rogers - CDPS, Caitlin <caitlin.rogers@state.co.us> Wed, May 26, 2021 at 4:42 PM
To: Robin Burgess <rburgess@chaffeesheriff.org>, "Cahill - CDPS, Joseph" <joseph.cahill@state.co.us>, Derek Graham - CDPS <derek.graham@state.co.us>

Hello,

Buccal swabs from Deputy Zach Tucker were submitted alongside the blue t-shirt for elimination purposes. Does Deputy Tucker's profile need to be compared against all evidence previously tested in the case or just the blue t-shirt?

Thanks!

Caitlin Rogers, M.S., ABC-MB
Forensic Scientist - Biological Sciences
Pueblo Forensic Science Laboratory

COLORADO
Bureau of Investigation
Department of Public Safety

P 719.647.5974 I F 719.547.9200
79 N. Silicon Drive, Pueblo West, CO 81007
caitlin.rogers@state.co.us I www.colorado.gov/cbi

Robin Burgess <rburgess@chaffeesheriff.org> Wed, May 26, 2021 at 8:08 PM
To: "Rogers - CDPS, Caitlin" <caitlin.rogers@state.co.us>

Actually, if we could test it against everything that would be great. I feel like we still had a few unknowns, and he did work here the entire time.

Thanks!
Detective Burgess

Sent from my iPhone

Cahill - CDPS, Joseph <joseph.cahill@state.co.us> Fri, May 28, 2021 at 6:40 AM
To: "Rogers - CDPS, Caitlin" <caitlin.rogers@state.co.us>
Cc: Robin Burgess <rburgess@chaffeesheriff.org>, Derek Graham - CDPS <derek.graham@state.co.us>

Caitlin,

Good morning. I am not aware of any other physical evidence which TUCKER may have been associated with the collection.

Regards,

Joe

https://mail.google.com/mail/u/0?ik=422a876db2&view=pt&search=all&permthid=thread-a%3Ar-2914722359189499160&simpl=msg-a%3Ar33636181… 1/2

7/1/2021 State.co.us Executive Branch Mail - 20000911/2020-109 Case Question

[Quoted text hidden]
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Joseph Cahill, CBI Agent

Major Crimes Unit

COLORADO
Bureau of Investigation
Department of Public Safety

P 303-239-4201 I C 719-225-0268

690 Kipling Street, Lakewood, Colorado 80215

joseph.cahill@state.co.us I www.colorado.gov/cbi

REDACTED:

15A-11318

Robin Burgess <rburgess@chaffeesheriff.org>

20000911/2020-109 Case Question
1 message

Rogers - CDPS, Caitlin <caitlin.rogers@state.co.us> Wed, May 26, 2021 at 4:42 PM
To: Robin Burgess <rburgess@chaffeesheriff.org>, "Cahill - CDPS, Joseph" <joseph.cahill@state.co.us>, Derek Graham - CDPS <derek.graham@state.co.us>

Hello,

Buccal swabs from Deputy Zach Tucker were submitted alongside the blue t-shirt for elimination purposes. Does Deputy Tucker's profile need to be compared against all evidence previously tested in the case or just the blue t-shirt?

Thanks!

Caitlin Rogers, M.S., ABC-MB
Forensic Scientist - Biological Sciences
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Exhibits 46 and 47, Redacted 15A-11318/Discovery Page 71943 and unredacted, non-bates'd May 26, 2021 email from Rogers.[65] This was not a "black-mark" redaction. Someone had simply deleted the exculpatory sentence and then produced the altered email to the defense. Apparently by accident, a copy of the un-altered email was produced with approximately 22,000 pages of and the defense had found the un-altered email to compare with the altered one received earlier. This is an astonishing example of the pattern of intentional and knowing discovery violations that DA Stanley, DDAs Lindsey, Hurlbert and Weiner were perpetrating. And, as argued by the defense on February 1, 2022 it was/is still unknown how much more exculpatory evidence was being withheld.

119. As previously outlined in the opening paragraphs of Claim 2 above, the discovery sanctions timeline commenced with the Motion for Sanctions [D-16] that was filed on June 24, 2021. This motion set off the discovery sanctions hearings that commenced on November 9, 2021, and continued on January 24 and 25, February 1, and March 4, 2022. The parties engaged in lengthy arguments regarding the discovery sanctions on February 1 and March 4, 2022.

120. It is important that DA Linda Stanley not be the fall woman for the DA's misconduct, especially those concerning the discovery violations. All the DDA's had

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[65] See also, Exhibit 24, pgs. 193-194 (discussing the comparison between the full email and the one that had been altered.

tremendous prosecutorial experience, and all named were involved in the concealment. Further, DDA Hurlbert made it clear in an email on March 31, 2022 that he was handling all discovery conferrals and requests, and DA Stanley should be excluded from all discovery conferrals and requests. Exhibit 48.

121. The DA's continued to conceal favorable evidence, and the defense was forced to continually file additional motions for discovery sanctions. Most of these are identified in the Court record as supplements to D-17 filed on August 3, 2021. Ultimately, on March 28, 2022, the Court indicated it would rule on most of the discovery sanctions motions, but not the outstanding motions for sanctions wherein the DAs had not yet fully briefed or the parties had not argued the motions. The Court issued the Discovery Sanctions Order on April 8, 2022.

CLAIM GROUP THREE: FAILURES TO DISCLOSE AND MISLEADING TESTIMONY RELATED TO EFFORTS BY LAW ENFORCEMENT TO PREVENT LINDA STANLEY AND CHAFFEE COUNTY SHERIFF SPEZZE FROM MAKING A "HASTY" ARREST OF BARRY MORPHEW

(AGENT CAHILL/ "WORST DECISION [TO ARREST BARRY MORPHEW] EVER")

1. After months of defense requests, Agent Cahill's Internal Affairs (IA) file was released by the Court to the parties on February 8, 2022. After reviewing the materials, on February 9, 2022, the defense filed D-17(c), alleging the prosecutor's withheld exculpatory information contained in the IA file. Exhibit 49. The circumstances of Agent Cahill's IA investigation were that Agent Cahill shot himself in the hand with his personally owned revolver on November 19, 2021. Agent Cahill lied to his supervisors about the circumstances of the incident which resulted in his termination from CBI. In Agent Cahill's recorded interview with CBI supervisors, Agent Cahill discussed the stress the Morphew investigation had put upon him, and stated that arresting Mr. Morphew was the "worst decision that could be made" and the "arrest was premature".

2. Agent Cahill also stated that CBI's top brass including CBI Director John Camper, CBI Deputy Director Craig Shaeffer, and CBI Head of Major Crimes, Kirby Lewis all contacted Chaffee County Sheriff John Spezze recommending the Sheriff's office "stand down" and not arrest Barry Morphew at the time.

3. Agent Cahill also stated that after the Preliminary Hearing, the DA's office complained to the Bureau (CBI) about his testimony and asked that he no longer work on the case. Agent Cahill believed his transfer to the marijuana unit was retaliatory. As stated above, while DA Linda Stanley confirmed Agent Cahill's statements in the IA investigation about his termination from the Morphew case resulting from his preliminary hearing testimony, DDA Jeff Lindsey concealed this fact — denying the DA's office had anything to do with his termination. Exhibit 30, pgs. 230-233.

4. The Court set a testimonial hearing on this Motion for Discovery Sanctions D-17(c) for March 4, 2022. The defense called CBI Director John Camper, CBI Deputy Director Craig Shaeffer, CBI Head of Major Crimes Kirby Lewis, Chaffee County Sheriff's Office Investigator Alex Walker, Sheriff Spezze, CBI Agent Derek Graham, Mr. Cahill and DA Linda Stanley to testify.

5. All the individuals held the party line that there was probable cause to arrest Mr. Morphew, however it was not clear who (if any) had reviewed any of the investigation, draft affidavit, or final affidavit to arrest prior to Mr. Morphew's arrest. However, the CBI officials verified under oath that they called Sheriff Spezze concerned that the investigation was not complete, not reviewed, not organized and that waiting months or even a year would be necessary before charging Mr. Morphew with Murder in the First Degree.

6. DAs Linda Stanley, Jeff Lindsey and DA investigator Alex Walker represented in the Arrest Affidavit for Judge Murphy's eventual signature that CBI supported the affidavit and supported the immediate arrest of Barry Morphew. These representations were wholly contradicted by the testimony elicited by CBI officials on March 4, 2022.

7. DA Linda Stanley testified that she was completely unaware that CBI did not support Barry Morphew's arrest at that time, or that the top brass at CBI contacted Sheriff Spezze to "stand down" on arresting Barry Morphew at that time. And, because witness Sheriff Spezze's, witness DA investigator Alex Walker, DA Linda Stanley and DDA Jeff Lindsey's emails were never produced to the defense, there is no evidence to show that DA Linda Stanley testified truthfully.

8. It is hard to believe that DA Linda Stanley, DDA Jeff Lindsey, and DA Investigator Alex Walker were unaware of CBI's concerns that the arrest was premature and that there was probable cause to arrest Mr. Morphew at that time:

a. First, a week before Mr. Morphew's arrest, CBI Agents Graham and Cahill sent DA Investigator Alex Walker emails with many edits to the draft Affidavit to Arrest along with substantive comments citing overall lack of confidence in the Affidavit. These emails were sent around the same time Agent Cahill and Graham's supervisors and CBI Officials stated they contacted Sheriff Spezze to "stand down."

b. Second, it is hard to believe that not only DA Investigator Walker kept CBI's concerns to himself, but that Sheriff Spezze kept the conversations he had with CBI Director and Deputy Director's about the status of the investigation of the largest case in Chaffee County from DA Linda Stanley and DDA Jeff Lindsey.

c. Third, in our collective decades of experience, we have never seen a DA's office that has drafted and signed the Affidavit for Arrest in a First Degree Murder case. Ordinarily the

law enforcement agency investigating the case would draft and send it to the DA's office for review and then would be forwarded to a judge. In his case there were three major law enforcement agencies, FBI, CBI and Chaffee County Sheriff's Office investigated the case. This is a sign that the DA's knew of the lack of confidence from the investigative team, but chose to make a media splash by boldly and unilaterally trump their opinions and arrest Mr. Morphew on the 1st Anniversary of Suzanne Morphew's disappearance.

d. Last, it is also rare that when Mr. Morphew was arrested the DA's office had zero discovery to provide to the defense upon his arrest. The DA only started to collect the investigative reports/discovery from the various law enforcement agencies only after the defense demanded and the Court ordered it be produced.

9. These factors, along with DA Stanley's appearance on the Podcast "Profiling Evil" on April 30, 2021 when she spoke about resolving cold cases and Suzanne Morphew's disappearance, that is evidence that the DA's office did know of CBI's concerns, ignored them, and instead chose to arrest Mr. Morphew with multiple misrepresentations and falsities in order to obtain publicity and attention on the anniversary of Suzanne Morphew's disappearance.

10. Had it not been for Agent Cahill shooting himself in the hand in November 2021, and lying about the circumstances about how and why that occurred, the defense would never have known (the little we know) about this exculpatory and favorable information.

CLAIM GROUP FOUR:
PLACEMENT OF FALSE AND MISLEADING ALLEGATIONS REGARDING DISCOVERY OBLIGATIONS IN DOCUMENTS FILED IN COURT

1. From the inception of the case, the defense was in constant communication and dispute with the DAs regarding the production of discovery, including asking for the court-ordered emails and texts. On August 3, 2021, DA Lindsey filed a Response to Defense Motion for Contempt claiming "he met with all law enforcement agencies involved in this case" and "ordered all agencies to conduct an audit of their files and evidence being held… In response to the audit, all agencies undertook a submission that brought forth the discovery. In order to ensure all discovery has been provided, the discovery was provided to the Defense.." Exhibit 50, DA Response to Defense Motion for Contempt (filed 8/3/2021), para. 1.

2. DA Lindsey's claims that he was ensuring the flow of discovery was produced was false, as after the preliminary hearing, it was discovered that massive amounts of discovery was being withheld, including all the emails and texts, and not a single law enforcement officer admitted to having this "meeting" with DA Lindsey or being asked to audit their files..

3. During the January 24, 2022 Hearing (Exhibit 30, p. 108), Alex Walker testified he denied meeting with DA Lindsey:

13 Q. I asked you two questions. You're right. So
14 let's do this first. Did you speak with any Prosecutors
15 before the Hearings at any time about what to do
16 with your investigation? Your emails, your reports, things
17 like that? How to make sure you preserved and produced
18 them?
19 A. I don't recall having a specific conversation with
20 the D.A. on that. No.
21 Q. And did the D.A. set up any type of procedure for
22 producing your emails up to that point, before the
23 Hearings started?
24 A. I don't believe there was a procedure.

CLAIM GROUP FIVE:
CONTINUED PATTERN OF DISCOVERY VIOLATIONS – FAILURE TO FOLLOW COURT RULES AND ORDERS REGARDING EXPERT DISCLOSURES AND MISREPRESENTATIONS TO THE COURT REGARDING EXPERT TESTIMONY

1. On March 10, 2022, the court struck numerous of the DA's experts finding that the DAs had committed pattern discovery violations, as well as a failure to abide by the Court's Trial Management Order and Rule 16 regarding the disclosure of experts. Exhibit 21.

2. This order was issued after substantial argument in which Mr. Hurlbert thumbed his nose at the Court alleging he did not need to follow the Court's Trial Management Order, as he argued that Rule 16 allowed him more time to disclose its experts;

3. On April 1, 2022, three weeks later and after the defense disclosure deadline, the DAs filed a motion for partial reconsideration of the Court's order, arguing that their expert disclosures were merely a day late, thus undeserving of such a sanction. Exhibit 51, People's Motion to Partially Reconsider March 10, 2022 Order Striking Expert Witness. The content of this motion contains additional proof of the DAs methods to twist facts and deny responsibility in order to create a fictional story of victimization by Judge Lama. While lengthy, we recommend reading the responses which properly and factually document the DA's misconduct. Exhibit 52, D-62 Defense Responses to Motion to Reconsider.[66]

[66] Exhibit 51.a. Statement of Intent to File a Response to Prosecution's Unnumbered Motion to Partially Reconsider March 10, 2022 Order Striking Expert Witnesses [D-62, D-62b, D-62c], filed 4/3/2022; Exhibit 52, Response to Prosecution Motion to Reconsider and Defense Motion to Dismiss Case [D-62, D-62b, D-62c](filed 4/5/2022)(with 4 exhibits)

A. Candor To The Tribunal - Misrepresentations About Potential Expert Testimony

4. DDAs Hurlbert, Grosgebauer, Weiner and DA Stanley misrepresented what its experts would testify to and submitted expert disclosures, some of which they later admitted were false, without conferring with their experts.

5. As stated above, on March 10, 2022, due to both violation of court orders and Rule 16 violations, the Court struck numerous prosecution experts. The Court allowed four remaining prosecution offered experts to be subjected to a *Shreck* Hearing[67] for the defense to challenge on March 30, 2022. The four remaining experts were Dr. Lucero (Nurse), Dr. Wolfe (Veterinarian), Mr. Doug Spence (Canine/Scent Detection Expert) and CBI Agent Rogers (DNA). It was the prosecution's burden to bring the offered experts to the Shreck hearing for the defense challenge. DDA Hurlbert and DDA Grosgebauer were on notice and accepted the hearing date. Exhibit 53, March 30, 2022 Hearing Transcript, pgs. 5-8, recounting the scheduling of the March 10, 2022 hearing.

6. On March 28, 2022, the prosecution filed an objection to a *Shreck* Hearing on all the experts, and dropped a line in their objection that Dr. Lucero would not be available on March 30, 2022 if the Court permitted her testimony.

7. On March 29, 2022, the Court issued a written ruling that the DNA expert, CBI Agent Caitlin Rogers, was the only remaining DA Expert that would be permitted to testify at trial without being challenged at the *Shreck* Hearing.

8. On March 30, 2022, after hours of preparation, the defense came to court prepared to challenge the three remaining experts. However, upon arrival at court in Canon City, the DAs notified the defense that Dr. Wolfe was unavailable. The DAs further notified the defense to read their response they filed the day prior that indicated that Dr. Lucero was also unavailable. The defense moved to strike both experts (Dr. Wolfe and Nurse Lucero) because of the prejudice. The Court reset Dr. Lucero's testimony to April 29, 2022. The Court ruled that it would hear arguments on relevance grounds as to Dr. Wolfe prior to ruling on the motion to strike.

B. DDA Hurlbert Presenting False Evidence Regarding Expert Dr. Lisa Wolfe

9. The DAs represented in the Affidavit for Arrest and the Preliminary Hearing that Mr. Morphew murdered Suzanne Morphew at their home on May 9, 2020 by injecting her with animal tranquilizer serum. There was no physical evidence supporting this theory.

10. The DAs endorsed Dr. Lisa Wolfe, a veterinarian. It was their intent that she would discuss the effects of an injection of animal tranquilizer serum on a human. At the March

[67] *People v. Shreck*, 22 P.3d 68, 70, 77-78 (Colo. 2001).

30, 2022 *Shreck* Hearing, DDA Hurlbert argued Dr. Wolfe's testimony was relevant because no blood was found at the Morphew home after Suzanne Morphew disappeared, and Suzanne Morphew's murder must have been caused by an injection of tranquilizer serum. DDA Hurlbert stated Suzanne Morphew was not murdered by a gun or knife "certainly otherwise there'd be blood everywhere, and there was no blood found at the scene." *Id.* at pg. 24. The DDA further clarified "We did not find blood anywhere in the house. A knife wound —done many knife murders, done many gun murders. There's always blood in the house. There was nothing found in the house. There's no blood in the house" *Id.* at pg. 41.

11. DDA Hurlbert further advised Judge Lama the DAs theory was supported as there was a sheath of a syringe located in the Morphew's dryer "with the shorts Mr. Morphew was wearing the day" his wife disappeared, and Mr. Morphew was captured on a surveillance camera wearing the very same shorts that were found in the dryer. *Id*. at pg. 24. And, then when Judge Lama inquired what beyond the sheath was evidence that tranquilizer serum was used in the case, Mr. Hurlbert advised the judge that Mr. Morphew "had these tranquilizers in the garage." *Id*. at page 25.

12. The defense responded by providing the court with a similar needle sheath, and law enforcement photographs of the dryer before and after the search of the dryer.

a. The photographs contradicted DDA Hurlbert's representations. The sheath was not found with the shorts that DDA Hurlbert claimed were Mr. Morphew's shorts he wore the day Mrs. Morphew disappeared. The needle sheath was found on its own in the dryer bin after the household laundry (including a pair of Mr. Morphew's shorts, Morphew family clothing, and sheets) had already been removed from the dryer bin more than a week prior.

b. There was no evidence when Mr. Morphew last wore the shorts that were collected from the dryer.

c. And, most importantly, there was no tranquilizers, tranquilizer serum, or evidence of tranquilizer serum, found in the garage or anywhere in the house.

13. The arguments by DDA Hurlbert were false, exaggerated, and intended to convince the court to allow this speculative theory and testimony to be wrongly admitted at trial.

14. The Court struck Dr. Wolfe from being called as a prosecution expert. Among other rulings, the Court found the testimony was "too speculative," "too tenuous," and that its admission "would be error." *Id.* at pgs. 46-48.

15. Further, DDA Hurlbert's statements later contradicted the statements made to the Court in the Defense Motion to Return Property hearing seven months later – on October 25, 2022. In defending the DA's position that Mr. Morphew's firearms should not be returned to Mr. Morphew after the dismissal, DDA Hurlbert retracted his prior statements that were used to

try to convince the Court to permit Dr. Wolfe's testimony admitted at trial, DDA Hurlbert argued about firearms possibly being used to murder Mrs. Morphew "we could be wrong about that, been wrong before." Exhibit 54, October 25, 2022 Recording of Court Hearing.

16. The DAs as officers of the court made arguments without facts, and that served their immediate purpose to harass, wrongly prosecute, and further their unsupported theories.

C. DDA Grosegebauer Presented False Evidence Regarding Expert Doug Spence

15. Soon after the search for Suzanne Morphew commenced in the early evening hours on May 10, 2020, her mountain bike was found off the road and in a ravine near the Morphew home. This piece of evidence left many questions that still remain unanswered: was Mrs. Morphew riding her bike and had an accident, or was she abducted at the location where her bike was found, or was Mrs. Morphew never on her bike in that location and did someone toss her bike into the ravine.

16. That evening, law enforcement and DA investigator Alex Walker determined that it would be important to bring a dog (K9) into the area where the bike was discovered to determine if Suzanne Morphew's scent could be detected. If Mrs. Morphew's scent was in the area; it would possibly reveal if Suzanne Morphew was on her bike or in the area prior to her disappearance, and if she could be tracked. Or in the alternative, if there was no scent of Mrs. Morphew, the bike was possibly tossed into the ravine. Doug Spence, a dog handler, was brought into conduct this K9 investigation.

16. In late February 2022, the DAs filed an expert disclosure for Doug Spence, to testify about the K9 sniff search on May 10, 2020. The DAs represented that Doug Spence did not write his own report, that the only report on the subject was written by Chaffee County Sheriff's Office Sergeant Plackner. The DAs put the defense on notice that Doug Spence would testify consistent with Sergeant Plackner's report that contained the results of the K9 search, which were that the K9 caught a scent of Suzanne Morphew from where the bike was found to the river bank. Further, the K9 kept going in the direction of the Morphew residence but had to stop because he could not cross the creek. Exhibit 55, DAs Disclosure Statement of Spence Testimony.[68]

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[68] In D-62c, the defense set forth the DA's disclosure about Spence in its entirety: "**Statement of Lieutenant Doug Spence.** It is anticipated that Lt. Spence will testify as to the methodology and procedures as it relates to canine sniff searches as it is used for tracking. He will testify that he was asked to provide a dog to aid in tracking in this case. He will say that he and his canine were tasked to try to pick up the victim's scent from where the bike had been deposited using a known scent article from her. He will testify that the dog kept trying to go in the direction of the Morphew residence but had to stop because he couldn't cross a creek." Supplement to Motion to Strike Proposed Expert Witnesses [D-62c], filed March 2, 2022, pg. 4.

17. Then on March 28, 2022, the DA filed a Response to D-67 Defense Motion to Exclude Mr. Spence's Testimony. Exhibit 56. In that response, the DAs once again put the defense on notice as to Doug Spence' testimony as summarized in their expert disclosure and added that "Rosco (K9) did not follow a trail leading up to the road where the bike presumably came from, nor did he follow a trail leading in the direction where Mrs. Morphew would have left the area on foot or in a vehicle." *Id.*

18. While the defense did not have a report, nor any notes from the DA's witness preparation with the DAs, including any exculpatory (impeachment) statements, the defense was led to believe that Doug Spence provided the DA's with the information contained in the disclosure and the additional information provided in their March 28, 2022 response.

18. On March 30, 2022, DDA Grosgebauer (with DDA Hurlbert sitting next to him) notified the Court and the defense that the prior expert disclosure written and filed by the DA's office was not accurate.

19. DDA Grosgebauer advised the Court that "Mr. Spence did not author his own report." Exhibit 53, p. 51, lines 2-3. DDA Grosgebauer stated that "his findings were put inside another person's report" and when preparing him "last night for this potential hearing" that in the past "when they gave Mr. Spence his summary opinion, "he agreed but he had some additional information that he did not tell the initial reporting officer." *Id.*, pg. 51, lines 9-13.

20. And, then in complete contradiction to one of the only timely filed expert disclosures, and the DA's Response, which indicated that Mr. Spence's K9, Rosco, DID pick up a scent of Suzanne Morphew where her abandoned bike was located, DDA Grosgebauer stated that after speaking to Mr. Spence the night prior, he was told that Rosco "DID NOT pick up a strong scent anywhere." *Id.* at p. 52, 2-6.

21. DDA Grosgebauer reasoned that the People's analysis of how this is useful to a jury did not change. *Id.* DDA Grosgebauer inferred that this was not a case of withholding exculpatory evidence - instead is inculpatory, because the lack of a scent means that Mrs. Morphew was not likely on the abandoned bike and abducted, rather Mr. Morphew planted the bike in that location. *Id.* at p. 52. After dropping this bomb of this change in expert opinion, DDA Grosegebauer then quickly requested to call Mr. Spence to testify, without addressing the fact that the previously filed expert disclosure and response were false.

22. The defense requested the opportunity to inquire of Mr. Spence in the hallway about this changed testimony, and the whereabouts of a written report. After speaking with Mr. Spence and DDA Grosgebauer participating in the hallway, the parties returned to the courtroom. DDA Grosegebauer advised the Court that he discovered that Mr. Spence did actually write a report, and they would voluntarily strike Mr. Spence as an expert witness at trial, nor would they call him as a rebuttal witness. *Id.* at pgs. 49-70.

23. While DDA Grosegebauer voluntarily struck their expert, he denied any responsibility pursuant to Rule 16 to obtain and turn over Mr. Spence's report. DDA Grosgebauer advised the court since Mr. Spence was an employee of the Department of Corrections, the DA's office was not required to acquire his written report and produce it to the defense. *Id.* at pg. 58. The Defense referenced *People v. Bueno*, 409 P.3d 320, 328 (2018), a murder conviction reversal because a DOC document was withheld from the defense. DDA Grosgebauer had never heard of the case, and although the most recent seminal discovery sanction case cited to by the defense in multiple pleadings, the defense provided him with a case citation.

24. And, then to avoid having to turn over Mr. Spence's report, and avoid a Rule 16 discovery sanction, while admitting the evidence is "material" DDA Grosegebauer stated:

> 16 But because we are striking that witness it is not
> 17 something under Rule 16 that we have to turn over. We do
> 18 not have to turn over expert reports for people we are not
> 19 calling as experts at trial.

Id. at page 58.

25. It is difficult to grapple with the DA's repeated misinterpretation of Rule 16. The same misinterpretation of Rule 16 that was utilized in concealing the DNA evidence. That if the DAs did not want to use evidence, or think it is important to prove their theories, they did not have to produce it, and therefore, not a Rule 16 violation. This is a carve out of Rule 16 that the Framers of the Constitution and the Colorado Supreme Court never intended and illustrates the disregard of prosecutorial duties and obligations as a whole.

26. The Court ruled that the prosecution violated Rule 16 — again. *Id.* at pgs. 66-69, 163. The Court did not agree with the DA's interpretation of Rule 16 or of the court orders. *Id.* And, the Court permitted Mr. Spence to be subject to questioning resulting from the violation.

27. Mr. Spence testified that he was *never* contacted by any DA prior to the night before his testimony. Mr. Spence testified no DA or other DA investigator ever asked him for his report, nor asked what his expert opinions were. *Id.* at 80-82.

28. Contrary to DDA Grosgebauer's earlier representations made to the Court, Mr. Spence testified that he never told DDA Grosgebauer that his K9 "Rosco" did not pick up a scent. *Id*. at 123-125. Mr. Spence also testified that he never reviewed the DA's summary of Mr. Spence's testimony until it was read to him the night. Mr. Spence testified that he told DDA Grant Grosgebauer that the sentence of the DA's expert disclosure stating the K9 kept going in the direction of the Morphew house but stopped because he couldn't cross a creek was false. *Id.* at 125:11-16. Mr. Spence also testified that he did not know where the Morphew home was so that statement in the DAs disclosure was inaccurate. *Id.* at 160:7-20.

29. Further, Mr. Spence testified contrary to the DA's written response, that he did not take his K9 on any possible trail up to a road to check for Mrs. Morphew's scent, he only took the K9 in a field across from the river. *Id*. at 199:2-8.

30. In order to prove the DA was making bold misrepresentations and attempting to manufacture expert opinion, when Mr. Spence testified the defense played one of the deputies' body worn camera recordings (produced by the prosecution) from the evening of the initial search. The recordings showed Mr. Spence advised the deputies and DA Investigator Alex Walker on scene that his K9 did in fact detect Suzanne Morphew's scent from the abandoned bike to the river - an approximate distance of 50-70 yards. *Id.* at 95:24, 105-106. This was extremely exculpatory information and without the body worn camera video, the DA's office intended to present false testimony at trial and conceal favorable evidence from the defense.

31. This was another case of the DA's misrepresentations and manufacturing information and expert opinions. The DA's pleadings and arguments intended to lead the Court to prevent Mr. Spence's testimony from being required at the Shreck Hearing. And, unlike with Agent Cahill's testimony, this would give them time to assuage Mr. Spence to testify (untested by the defense) consistent with their unsupported theories at trial.

32. On March 9, 2022, the defense filed a Motion to Dismiss Based on the Presentation of False Testimony at Pretrial Hearings. Exhibit 25, Motion to Dismiss Based on Presentation of False Testimony at Pretrial Hearings [D-64].[69] The prosecution had not responded, nor had the Court ruled on this motion at the time the case was dismissed. The undersigned requests that the OARC review D-64, as it provides the legal authority supporting the defense claims that the prosecution should be disciplined for attempting to admit untruthful and misleading information.

CLAIM GROUP SIX: "PUBLICATION" TO THE COURT AND PUBLIC THROUGH PLEADINGS CONTAINING FALSE AND MISLEADING INFORMATION AND EVIDENCE NOT RULED ADMISSIBLE

1. The DAs collectively filed motions with misleading information attempting to bring in prejudicial, inflammatory irrelevant evidence into the trial.

A. Illegal Weapon Count

2. The DA's theory of murder initially was that Mr. Morphew injected Mrs. Morphew with tranquilizer serum by a dart rifle. However, at the preliminary hearing, the

[69] See also Exhibit 52, Response to Prosecution Motion to Reconsider and Defense Motion to Dismiss Case [D-62, D-62b, D-62c] (filed 4/5/2022), footnote 3 (summarizing the Spence violations).

defense disclosed that they discovered that the prosecution witnesses knew the dart rifle was not functional. Then, the DA's changed the theory to Mr. Morphew injected Mrs. Morphew with tranquilizer serum manually with a syringe.

3. In addition to Murder in the 1st Degree, Mr. Morphew was charged with illegal possession of a dangerous weapon – a short rifle that Mr. Morphew handed to law enforcement on one of their visits to Mr. Morphew in 2021.[70] The defense moved to sever the trial of this count from the trial of the Murder and related counts. Exhibit 57, Motion to Sever Counts for Trial [D-58], filed 1/11/2022.

4. DDA Edwards and DA Linda Stanley filed a Response to the Motion to Sever Counts that contained false and misleading statements.[71] They represented that the gun was "found" by law enforcement, inferring Barry Morphew concealed it. However, the truth is that Barry Morphew volunteered he had this firearm in prior conversations with law enforcement. And, ten (10) months after Suzanne Morphew disappeared, and in what may have been the 30th voluntary meeting Barry Morphew had with law enforcement, he brought it with and handed the firearm to them from the driver's seat of his truck.

5. More significantly, in order to defeat the defense motion, the DAs were back to the theory that a weapon fired a dart that murdered Mrs. Morphew. And, in doing so, the DAs then falsely represented that the alleged illegal firearm could have been used to murder Suzanne Morphew.

- "In addition, found in the search of the property are (1) a plastic hypodermic cover from the dryer; (2) a dart needle from a box in the garage; and (3) a dart body from a box in the garage. Affidavit, page 45. **These darts can be shot from the dangerous weapon.** See Affidavit." Response to D-58, p. 3, para. 6 emphasis added)

- "It is the People's position that one method the defendant may have used was **the dangerous weapon to shoot the victim with a dart to tranquilizer her before he murdered her and/or with the dart to murder her**. Because the evidence of the dangerous weapon and the other charges are based on two or more acts connected together or that constitute parts of a common scheme or plan the count should not be severed." Exhibit 58, Response to D-58, p. 3-4, para. 6 (emphasis added)

- "Here, the dangerous weapon and the other charges relate to the homicide – **the actual instrumentality of the murder**. They are also intrinsic to the Defendant's consciousness of guilt in hiding/destroying the evidence of the crime." Id., p. 4, para. 7 (emphasis added).

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[70] See Amended Complaint and Information (filed 5/18/2021), Count 4, alleging that "[b]etween and including May 9, 2020 and March 4, 2021, Barry Lee Morphew unlawfully, feloniously, and knowingly possessed a dangerous weapon, namely: short rifle; in violation of section 18-12-102(3), C.R.S."
[71] Exhibit 58, People's Response, Motion to Sever Counts for Trial [D-58] (filed 1/18/2022).

- "Here, the possession of the dangerous weapon is **circumstantial evidence of both identity, that the Defendant committed the murder,** and his culpable mental state. It does not matter that the short rifle was found some time later than the murder itself. **If a murder uses a weapon to commit the crime and hides it – but is later found by law enforcement** – does not mean that the weapon when found should be severed from the charge of murder. **The Defendant hid the short rifle from law enforcement – as he cleaned up the murder scene** to make the scene look innocent." *Id.* at p. 4, paras. 8-9 (emphasis added).

6. A month after the DA filed their response, after the defense took the time to file a reply, and at the hearing on February 24, 2022 when the defense prepared for and even argued the motion for the Court, DDA Weiner then interjected representing he could shortcut the whole argument on the defense motion. DDA Weiner stated he wanted to "correct a factual statement in their response. I believe our response indicates something to the effect of this particular gun could shoot a dart. That's not accurate and I just wanted to clarify that to the court." Exhibit 59, February 24, 2022 hearing transcript, p. 109: 5-10. Then this exchange ensued:

11 THE COURT: That's not accurate?
12 MR. WEINER: That is correct. **This gun does not**
13 **shoot the darts. It's not the dart gun.** We're talking
14 about a separate weapon, okay? I just want to clarify that
15 for Your Honor.
16 THE COURT: Okay, because **a big point of your**
17 **argument** why that charge is properly included -- the
18 dangerous weapon charge -- with these charges **was because it**
19 **was used in the same transaction and then Mr. Edwards argued**
20 **it was capable of shooting the dart**, so it's one method that
21 this may have occurred. That was written in the motion.
22 MR. WEINER: **Yes, and that is not accurate** and
23 that's why I wanted to clarify that for the Court. That
24 last clause of that sentence that it was capable of shooting
25 the darts **is not accurate**. This was a separate gun. It is
1 part of the transaction, it is part and parcel to the
2 evidence, but not --
3 THE COURT: But there's no way this gun -- this
4 alleged dangerous firearm could have shot the tranquilizer
5 at issue.
6 MR. WEINER: Judge, I don't know -- I am not a
7 firearm's expert. I can't say that definitively, but I can
8 tell you at this point **that is not what we believe happened.**
9 So to make -- however, to clarify for the Court,
10 this was the gun that the defendant indicated that he was
11 shooting chipmunks with. And this was basically part of his

12 alibi. He was talking about how he was shooting chipmunks
13 and he described the gun and then he produced the gun.
14 **I agree with counsel that referencing that this**
15 **gun was a short gun, was illegal, is not appropriate in this**
16 **case**. So I think just to be clear on that that is something
17 that we can agree on.

Id. at pgs. 109-110.

7. The prosecutors had made no earlier attempt to alert defense counsel to their agreement to the motion or to the false statements contained within their Response. As with many of the other issues described above, they sat back, let Mr. Morphew expend substantial resources litigating this issue, preparing for the court hearing, and taking precious time away from other matters. This misconduct violated, at a minimum, RPC 3.2, RPC 3.3, RPC 3.4, RPC 3.8, RPC 4.1(a), RPC 5.1, RPC 5.2, and RPC 8.4.

B. CRE 807 "Notice" containing dozens of pages of inadmissible evidentiary

8. On March 25, 2022, the DAs publicly filed a "Notice of People's Intent to Introduce Statements Pursuant to CRE 807 and Section 13-25-139, C.R.S."

9. The DA attached 98 pages of intricately detailed information the prosecution sought to introduce at trial, much of which would have been hotly contested. This Notice contained inflammatory and inadmissible information that should not have been made accessible to the public, especially when 1,000 juror summons had already been sent out. Exhibits 60 and 61, Motion to Limit Public Access [D-71] and Motion to Strike the Prosecution's CRE 807 Notice and its Exhibits [D-72] (both filed 3/27/2022).

10. The Court had already excluded much of the information from being introduced at trial, yet the DAs included it in their publicly filed pleading anyway. For example, on December 7, 2021, the DAs had filed a Motion to Admit Evidence as Res Gestae or CRE 404(b) Evidence [P-34]. The DA supplemented that motion on January 3, 2022, asking for permission to admit more evidence. [P-34a] The bulk of the requested evidence included very remote-in-time, unsubstantiated and untrue domestic violence allegations.

11. The Court denied the People's motions in an oral ruling on February 10, 2022.[72]

12. When the DAs filed [P-34] on December 7, 2021 and [P-34a] on January 3, 2022, they had taken steps to protect them from public view.[73] However, when they filed their CRE

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[72] Exhibit 62, pgs. 70-86.

[73] P-34a Motion To Limit Public Access To Exhibit 1 People's Motion to Admit Evidence as Res Gestae or C.R.E. 404(B) Evidence (filed 12/7/2021); P-34a Motion to Limit Public Access to Exhibit 1 People's Motion to Admit Evidence as Res Gestae or C.R.E. 404(B) Evidence (filed 1/3/2022 regarding supplement to P-34),

807 “notice” just before trial, they took no such steps. Mr. Morphew’s attorneys had to scramble when the misconduct was discovered and prepare and file motions to seal and strike prior to the court’s acceptance of the document. This document history shows that DDA Grosgebauer filed this document with no security:

Document History

Case Number: 2022CR000047
Case Caption: The People of the State of Colorado v. Morphew, Barry Lee
Court Location: Fremont County

Document ID: 36DB6CDFC8A8C
Submitted By: Grant William Grosgebauer

Date Filed ↓	Document Filing Fee	Status	Review Clerk	Clerk Phone Number	Document	Document Title	Document Security	Court Comments
03/28/2022	$0.00	Accepted	Mandy A	N/A	Motion	NOTICE OF PEOPLE'S INTENT TO INTRODUCE STATEMENTS PURSUANT TO C.R.E. 807 AND C.R.S. 13-25-139	Suppressed	N/A
03/25/2022	$0.00	Submitted	N/A	N/A	Motion	NOTICE OF PEOPLE'S INTENT TO INTRODUCE STATEMENTS PURSUANT TO C.R.E. 807 AND C.R.S. 13-25-139	Public	N/A

13. The egregiousness of the DAs conduct is exacerbated by the fact that the DAs were not required to file the disclosure with the Court at all. CRE 807 and the district court’s orders required only that the prosecution make disclosures *to the defense* of its proposed CRE 807 evidence.[74]

14. The public filing was irresponsible and reprehensible. It shows that the judge’s prior finding of misconduct related to publicity had no deterrent effect whatsoever on Linda Stanley or her deputies. Either the prosecution acted intentionally, or it acted with gross recklessness and utter disregard for Mr. Morphew’s rights, the District Court’s prior rulings, the integrity of the judicial process, and the prosecutor’s special responsibilities in a criminal case.

C. Airplane Mode - Exculpatory Discovery Concealed

15. The DAs case against Mr. Morphew appeared to have substance based on their allegation that there was reliable cell phone data that supposedly proved that on May 9, 2020, he intentionally put his phone in airplane mode for hours to avoid being tracked in the future. The

[74] CRE 807 does not provide for filing in the court file 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 the District Court set the deadline, it required “disclosure” – not filing in a public court file. See Exhibit 16, p. 219 (“I'm going to make the deadline for disclosure under 807 March 21, 2022”). See id., pp. 225-226 (referring to “disclosures” and making the deadline March 29, 2022).

DAs theory was that Mr. Morphew put his phone in airplane mode immediately after he injected Mrs. Morphew with tranquilizer serum. Then while the phone was in airplane mode he was alleged to have disposed of the body without being tracked. This theory was presented in the Affidavit, used for the Court to issue a no bond hold on Mr. Morphew, to make a finding of probable cause, and incite a presumption of guilt in the public eye.

16. However, on January 27, 2022, when the DAs were forced to produce emails pursuant to the June 2021 court order, they produced a June 24, 2020 email from their cell phone data expert, FBI Agent Kevin Hoyland. This email had been sent to the DA investigator Alex Walker (who penned the Affidavit which was authorized by DA Linda Stanley and DDA Jeff Lindsey), and all the primary investigating law enforcement officials. The FBI expert's email advises them that their theory about "airplane mode" was not reliable. In fact, according to the data produced in January 2021, the phone was only in airplane mode for one minute. Exhibit 63, Offer of Proof and Exhibits - Airplane Mode.

D. Chipmunk Map - Exculpatory Discovery Concealed

17. The DAs also pursued a theory that on May 9, 2020 after Mr. Morphew came home in the afternoon, and just prior to allegedly placing his phone in airplane mode, his phone appeared to be moving all over the interior and exterior of the Morphew residence between 2:44 p.m. and 2:47 p.m. Their theory was the phone's movement all around the house was proof that Mr. Morphew was frantically chasing Mrs. Morphew around the residence trying to inject her with tranquilizer serum; or that Mr. Morphew injected her and the running around was Ms. Morphew spasm'ing causing her to run around and for Mr. Morphew to chase her. This theory was included in the Affidavit.

18. Mr. Morphew volunteered to speak with law enforcement and did so over fifty times, some of which included inviting them over to have steak dinner with his daughters, and passing out Find Suzanne leaflets with law enforcement on a regular basis. On one of these occasions, Mr. Morphew was asked why his phone was moving rapidly around and through the house. Mr. Morphew said he didn't know why but that, if that was true, he might have been shooting chipmunks with his chipmunk gun as he often did.

19. Representing to the Court Mr. Morphew's phone was moving erratically and to convince the Court of their murder theory, the DAs prepared a "chipmunk/pinpoint map" on which they placed lines purporting to show the phone's movements and attached it to the Affidavit. And the DA's presented this map in the preliminary hearing and argued that Mr. Morphew's phone moving was proof that he was chasing Mrs. Morphew around the residence not because he was chasing chipmunks: presumably he was chasing Mrs. Morphew (at approximately 40 miles per hour) after she had been injected with the tranquilizer serum.

20. As it turns out, they had known since at least June 2020 that this was not fact. On January 27, 2022, in the 24,000 pages of late produced emails, was a June 2, 2020 email from the

DA's expert, FBI Agent Kevin Hoyland to numerous investigators in the case, including FBI Agent Grusing who reviewed the Affidavit, and testified at the preliminary hearing about the chipmunk map. This June 2, 2020 email was shared with Alex Walker and Jeff Lindsey.[75] This June 2, 2020 email from the DA's expert indicates a low confidence in this theory that Mr. Morphew was running around, and instead the phone very well could have been stationary in the home. Exhibit 64, Offer of Proof and Exhibits - Chipmunk Map.

E. Return Of Property/DDA Hurlbert Presenting False Information

21. After the case was dismissed, Mr. Morphew filed a motion for the return of some of his property seized from his home in 2020 and 2021. Exhibit 65, Motion for Return of Property [D-104](filed 5/26/2022).

22. In the DA's response filed on June 17, 2022, they claimed the defense did not provide a compelling reason for the items, but if they would do so, they would oblige the defense requests **as they had in the past**. Exhibit 66, People's Response to Defense Motion for Return of Property [D-104]. The DAs made it appear that they have accommodated the defense, acting in good faith and with professionalism.

23. The motion was heard on October 25, 2022. Exhibit 67, a copy of the Court authorized recording of the hearing via Webex. In that hearing, as can be viewed, the defense pointed out that this "good faith" representation was fiction. In fact, the DDA had been obstructionist and had not acted in good faith. *Id.*

24. For context, there was only one prior occasion when the defense requested Mr. Morphew's property be returned. On September 17, 2021 after the Court set a $500,000 cash bond permitting Mr. Morphew to be released from jail, the defense asked the DAs in the courtroom (DA Stanley, DDA Lindsey and DDA Hurlbert) to return Mr. Morphew's driver's license and truck to him (the truck which was not alleged to have been involved in the offense and in fact, had been purchased after Suzanne Morphew's disappearance). The DAs said "no" and literally ran out of the courtroom before the Court could resolve the request, causing delay and forcing the defense to file a motion requesting return of the truck and driver's license. The defense filed a motion and a supplement explaining the above unprofessional conduct. Exhibit 68, D-23, Motion for the Return of Mr. Morphew's truck and driver's license.

25. Three weeks later, at a hearing on October 13, 2021, after the Court inquired the status of the defense motion, DDA Lindsey agreed to return both items back to Mr. Morphew. Exhibit 69, Tr. Oct. 13, 2021, pgs. 29-30. The DAs recalcitrance, delay, game playing, and

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[75] The date of the email between Alex Walker and Jeff Lindsey is redacted from discovery. It should be noted that Jeff Lindsey's last day at the DA's office was sometime between mid-October to November 1, 2021.

failure to alert the Court or counsel that they would confess the motion, cost Mr. Morphew more in attorneys' fees and delayed the return of the items for almost a month.

26. Fast forward to when DDA Hurbert was confronted with a motion to return Mr. Morphew's property after the case was dismissed, DDA Hurlbert omitted and misrepresented all the facts to the Court by claiming the DA's have always been so accommodating when asked for the return of Mr. Morphew's property.

CLAIM GROUP SEVEN: FAILURE TO RESPOND TO SECURITY CONCERNS RELATED TO COURT PERSONNEL, INCLUDING JUDGE LAMA AND MEMBERS OF THE DEFENSE TEAM.

1. On March 28, 2022, Judge Lama's home address was posted on the internet. The redacted post is embedded in this Request for Investigation at the end of Claim Group 1.

2. Importantly, the post was made by a witness on the DA's witness list for trial.

3. On March 28, 2022, Ms. Eytan emailed DDA Hurlbert to bring this to his attention. DDA Hurlbert challenged Ms. Eytan to identify any law that it violated. Subsequently, Ms. Eytan – not the district attorney – brought this to the attention of Judge Lama at a bench conference on March 30, 2022, and the following ensued:

> MS. EYTAN: Your Honor, I emailed the Prosecution yesterday. We became aware that some individual that is -- this is kind of a concern in this case -- that he posted your home address and some land that you own on a YouTube Channel.
>
> THE COURT:· When did it happen?
>
> MS. EYTAN: I'm going to print out the posts. I made the Prosecution aware. I just let them know that it was concerning. They asked if I thought that he committed a crime and I said no, but I think it's concerning that this is happening, that his personal life is now -- I mean it's happening to all of us but this is worse than ever. And we'll print that post out for you. I did send it to the Prosecution and I asked that they would look into it. They're peace officers. I can't do anything about it but I needed you to know.
>
> THE COURT: I appreciate you bringing it to my attention. I was made aware of some other posts that raised some alarms with law enforcement, so they're aware and they –
>
> MS. EYTAN: This one I wanted you to be aware of.

THE COURT: Was this recent?

MS. EYTAN: Yesterday. And it's not like --
it's not super threatening like -- but it's -- it provides
impetus to this like crime show talking community that's
very vigorous about -- and that –

MR. GROSGEBAUER: (inaudible).

MS. EYTAN: You guys know. He's a witness in your case.

MR. GROSGEBAUER: Yeah, but I know (inaudible).

THE COURT: Yeah, I presume Grand Junction.

MS. EYTAN: (inaudible) criminal history.

MR. GROSGEBAUER: There's a misdemeanor and
something about (inaudible).

MS. EYTAN: It's getting a little close.

THE COURT: I just know (inaudible).

MR. GROSGEBAUER: Hopefully he has the wrong information.

MS. EYTAN: I don't think it is. It looks pretty official.

THE COURT: I'm going to let my security know just
so they're aware. I'll say that. Okay, I'm really glad you
brought this to my attention. Security is obviously paramount.
Everybody needs to be safe to do their job. So
I can have this copy?

MS. EYTAN:· Yeah, it's yours.

THE COURT: They might be aware of it already. Anything else?

MS. EYTAN: No, that was all.

Exhibit 53, pgs. 206-208.

4. Posting the private home address of judicial personnel is and was a violation of Colorado law:

> It is unlawful for a person to knowingly make available on the internet personal information about a protected person or the protected person's immediate family if the dissemination of personal information poses an imminent and serious threat to

> the protected person's safety or the safety of the protected person's immediate family and the person making the information available on the internet knows or reasonably should know of the imminent and serious threat.

§ 18-9-313 (2.7), C.R.S. 2021. A violation of Subsection (2.7) is a class one misdemeanor. §18-9-313 (3). This law was amended in 2021 to explicitly add judges to the list of protected persons covered by the statute. Laws 2021, Ch. 311, Section 1. 2021 Colo. Legis. Serv. Ch. 311 (H.B. 21-1015)("An Act Concerning Security Protections For Certain Criminal Justice System Personnel."). This statutory change was deemed so important that it went into effect immediately upon signing.[76] The new law went into effect June 24, 2021.

5. The cavalier attitude of DDAs Hurlbert and Grosgebauer to the very real threat posed by this type of vigilantism is shocking. While it is possible that the post alone did not establish all of the elements of the offense, the post certainly warranted investigation and immediate notification to Judge Lama. Instead, DDA Hurlbert and DDA Grosgebauer did not notify Judge Lama, shrugged their shoulders, essentially stating that if Ms. Eytan didn't know of a statutory violation, that was the end of the matter.

CLAIM GROUP EIGHT: FAILURE TO TREAT SERIOUSLY A CONSPIRACY TO TAMPER WITH PROSPECTIVE JURORS.

1. After the jurors were summoned for the scheduled May 2022 trial, individuals on various social media accounts began engaging in conduct that appears to be an attempt/conspiracy to tamper with the jury. Exhibits 70 and 71.[77] Among other plans, the individuals intended to arrive at the courthouse on the days that prospective jurors were lining up to fill out questionnaires; the individuals had ordered and were planning to wear T-shirts emblazoned with a snippet from a text message allegedly involved in the case – a text message that the defense would be objecting to and thus might be inadmissible testimony that should not reach the jurors. The idea was to wear the T-shirts and walk around while the jurors were lined up.

2. On its face, the internet activity appeared to constitute a conspiracy to tamper with the jury in violation of §§18-8-609, 18-2-201(1), 18-2-206(1), 18-2-101(1), 18-2-101(4), C.R.S.

3. The defense alerted DDA Hurlbert and DA Stanley of the activity.

4. DDA Hurlbert explicitly refused to investigate and prosecute the crimes of jury tampering, attempted jury tampering, and conspiracy that were occurring.

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[76] *Id*. ("SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.").

[77] D-96 Motion to Compel Prosecution of Jury Tampering and Affidavits of TH and IE (redacted), D-97 Motion for Orders to Prevent Jury Tampering.

5. The refusal by DA Stanley and DDA Hurlbert to do anything about the jury tampering posed an obvious, undeniable risk that the crimes that were being committed might result in substantial prejudice to Barry Morphew in his scheduled trial.

6. The only reason offered by the prosecution was that it would be improper for the prosecution to investigate a juror. It is true that one of the internet posters had received a jury summons. But the DDA's excuse assumed that all of the persons committing these offenses were prospective jurors and further, falsely assumed that these persons should remain in the prospective juror pool.

CLAIM GROUP NINE: DAs FAILURE TO SUPERVISE - RULE 5.1

1. Mr. Walker was the Chief DA Investigator for the 11th Judicial District Attorney's Office from the time Mrs. Morphew went missing until June 2021 when he departed to work at the Chaffee County Sheriff's Office. Mr. Walker was integral in the Morphew investigation: he was present at the scene when Mrs. Morphew was pronounced missing, he was at the Morphew residence assisting in the search, he was involved in many meetings with law enforcement and experts, meetings with the DAs Stanley, Lindsey, and Hurlbert and he drafted and signed the Affidavit to Arrest Barry Morphew. And, when Mr. Walker left the DA's office to work at the Sheriff's Office; the DAs identified him as their primary advisory witness for most of the court hearings in the case.

2. The DAs were responsible to supervise Mr. Walker, and ensure that their prior employee, advisory witness and witness was following the rules, and not making misrepresentations, or perpetrating a fraud on the court. But, Mr. Walker testified that he was not advised of the discovery rules and court orders, nor was he supervised to do so in accordance with the Rules.

Alex Walker Testimony Regarding Meeting with the DAs and DNA Experts About Exculpatory Information; Alex Walker is Not Instructed To Turn over Exculpatory Emails about the DNA or to Take Notes in the Meeting, Exhibit 30, pgs. 103-106:

18 Q. And you recall her testifying and/or Agent Duge
19 testifying that there was a meeting that was convened that
20 you were present for on August 20, 2021.
21 A. I believe that's correct, yes.
22 Q. And that meeting was to discuss the CODIS matches
23 and to discuss what CODIS means, right?
24 A. Correct.
25 Q. And specifically in this case, as you know, there
1 were three CODIS matches that were made, correct?

2 A. Yes.
3 Q. These are meetings with experts, right? A call
4 that you had with an expert.
5 A. Correct.
6 Q. Did you produce your notes from that meeting?
7 A. I don't believe I have notes from that meeting.
8 No, ma'am.
9 Q. You didn't take notes from your meeting with the
10 experts regarding talking about CODIS matches in this case?
11 A. Did not.
12 Q. Now it has been represented by the Prosecutors
13 that you as an experienced investigator, you know what
14 exculpatory means. Right?
15 A. Yes, ma'am.
16 Q. And you know also what something that might tend
17 to be favorable to the defense would mean, right?
18 A. Yes.
19 Q. And that you would know that if you were in
20 possession of that information that you would turn that over
21 to be produced, right?
22 A. Yes.
23 Q. Now information about an unknown male DNA profile
24 found in Suzanne Morphew's car that links to -- has
25 potential leads to other sex offenders in the country, would
1 you agree with me that that would tend to be favorable to
2 the defense?
3 A. Yes.
4 Q. And so when an expert is having a communication
5 with you about something that tends to be favorable to the
6 defense did you understand from that order that you needed
7 to produce information the expert gave to you to the
8 Prosecutors to provide to the defense? Did you understand
9 that from that order?
10 A. I did not.
11 Q. On the phone call was Jeff Lindsey, Agent Harris,
12 yourself, Agent Graham, D.A. Hurlbert, and Undersheriff
13 Rohrich. Do you recall that?
14 A. Sounds about right.
15 Q. And were you present by phone or Zoom, or with
16 somebody during that call?
17 A. I was actually at my home on phone.
18 Q. This phone call that took place with expert Duge
19 about this unknown male profile that meeting was convened as

20 a result of email exchanges that went on between all six,
21 seven of you? Is that how it was coordinated?
22 A. To set up the meeting?
23 Q. Yes.
24 A. Yes. It's right there. Well, are we talking
25 about the September one?
1 Q. No, we're talking about August 20, 2021.
2 A. I would assume so but I don't have it in front of
3 me, no.
4 Q. Let's talk about you don't have it in front of
5 you. So you sent out the order on June 4, 2021. In that
6 order that you're looking at no only does it talk about this
7 paragraph about experts that we just kind of went through,
8 but doesn't it also order all investigators on the case to
9 turn over emails that are favorable -- tend to be favorable
10 to the defense or to the Prosecution? Isn't that
11 part of that order?
12 A. It is, yes.

3. DDA Hurlbert and DDA Lindsey were present at the August and September 2021 secret meetings with Mr. Walker and the DNA/CODIS experts. DDA Hurlbert did not advise Mr. Walker (or any other law enforcement officer to the expert meetings) to provide the defense with notes from the meetings in which exculpatory information was being discussed.

4. DDA Hurlbert cross examined Mr. Walker at the January 24, 2022 discovery sanctions hearing. And, during this hearing or any other time did DDA Hurlbert confess that the expert statements regarding the DNA/CODIS matches were favorable and should have been produced. This stands to reason why DDA Hurlbert or any other DA did not provide their notes, or instruct law enforcement officers to take and/or produce their notes from meetings with experts. Instead, as continues to the current day, if DDA Hulbert believes he can debunk the forensic evidence it must not be favorable. This indicates that DDA Hurlbert does not know “favorable” evidence when he comes across it, or does and conceals it. Exhibit 23, pgs. 12-14, Judge Lama’s overview of the DA’s Pattern of Discovery Violations related to the CODIS matches.

CLAIM GROUP TEN: CANDOR TO THE TRIBUNAL - MOTION TO DISMISS - RULE 3.3

1. On numerous occasions, in the Affidavit, and in the improper and extrajudicial statements made to the press, DA Stanley and her deputies continuously claimed they did not need a body to prosecute Mr. Morphew. They all used the term “no-body homicide” as often as they could.

2. In the August 24, 2021 Fox 21 News Conference after the Preliminary Hearings, DA Stanley would not back down:

Reporter	Q:	People want to know, can you really, uh, bring this case to a trial with no body?
DA Linda Stanley:	A:	Yes.
Reporter	Q:	You're confident?
DA Linda Stanley:	A:	Yes.

See Exhibit 3, 4.

3. However, in the DA's Motion to Dismiss filed on April 19, 2022, nine minutes before the pre-trial conference and nine days prior to 1,000 summoned jurors appearing for trial, after nearly a year of litigation, and after the Court had struck numerous experts due to their continued pattern of violating the discovery rules and court orders, the prosecution (DA Stanley and DDAs Hurlbert, Weiner and Grosegebauer) moved to dismiss the case without prejudice. As was their pattern of misconduct, they let the Court, Mr. Morphew, and Mr. Morphew's attorneys spend many days preparing for the motions to be resolved at the pretrial conference.

4. The prosecutors claimed their Motion to Dismiss was made in good faith because (suddenly, and contrary to their widely-publicized prior position), they needed Mrs. Morphew's body in order to move forward with the case.

5. These DAs claimed if it was not for five feet of snow, they could get to Mrs. Morphew's body. Exhibit 72, Motion to Dismiss with Prejudice, Section IV ("we are close to discovering the victim's body" and "the weather complicated the efforts" "To date, the area has 5 feet of snow concealing the location where the People believe Ms. Morphew is located."). The DAs needed to have a good faith reason to dismiss the case without prejudice, permitting them to re-prosecute Mr. Morphew in the future.

6. The defense claimed the DA's motion to dismiss without prejudice was made in bad faith, based on false evidence, and lacked candor to the court. The areas the DA described where Mrs. Morphew's body ostensibly was buried and had already been searched, scoured, and investigated for the two years prior. But, the DAs convinced the court that their claims were genuine that Mrs. Morphew was buried under a snow were true and her body was necessary for prosecution. As a result, the court granted the DA's motion to dismiss without prejudice.

7. It has been three years since Mrs. Morphew disappeared. A third long hot summer has passed since the DA's April 19, 2022 false claim that they were close to finding

Mrs. Morphew's body but needed the snow to melt. It does not appear there has been a search effort, and certainly no body recovered.

8. On October 25, 2022, at Mr. Morphew's Return of Property Hearing, DDA Hurlbert responded to the defense claim that the DA's need for Mr. Morphew's property was made in bad faith, similar to their motion to dismiss that was made in bad faith and stated:

> "back in May we thought it was going to be soon that we were going to find Suzanne Morphew, *obviously we were wrong.*" See Exhibit 54, Time 33:14.

9. The DAs claim they are wrong about "how" "what" and "where" Mr. Morphew killed Mrs. Morphew, but not that they could be wrong that he killed Mrs. Morphew. This continued narrative is unprofessional and unethical. There are no pending charges against Mr. Morphew, and the DAs narrative acts as a continued accusation that Mr. Morphew is guilty - demolishing Mr. Morphew's constitutional and fundamental right to the presumption of innocence.

10. The DA's statements to the court of these material facts appear to be false in violation of CRPC 3.3. OARC should investigate what information the DAs had in April 2022 that constituted their (sudden) and good faith belief that Mrs. Morphew's body was buried under the snow and was soon to be discovered. And, what information they had supporting their "good faith" belief that her body was in that location, a location that was not previously searched or was inaccessible prior to that date. Additionally, OARC should investigate what efforts the prosecution has made, constituting their claims they are continuing to search for Mrs. Morphew's body.

CLAIM GROUP 11: VIOLATION OF VICTIM RIGHTS ACT/PREJUDICING THE ADMINISTRATION OF JUSTICE - RULE 8.4

1. Mr. and Mrs. Morphew have two children, Macy and Mallory Morphew, now aged 18 and 22 respectively. Other than Barry Morphew, they are the people most directly affected by the disappearance of their mother and their father's charges. Macy and Mallory have stood by their father, Barry Morphew, since Suzanne Morphew disappeared.

2. Suzanne Morphew has two brothers and a sister who live in Indiana and have been estranged from Suzanne Morphew and the Morphew family on and off (mostly off) throughout the years. But, importantly, they pressured the DA's office to prosecute Barry Morphew. It was well known that the Indiana family members did not speak with Macy and Mallory Morphew due to their estrangement and opposing beliefs about their father's innocence.

3. The charges against Barry Morphew took a great toll on Macy and Mallory Morphew. Barry was arrested around the first anniversary of Suzanne Morphew's

disappearance, when Macy was a minor, and the day before Mallory Morphew's college graduation. So, without a mother present, their father was also taken from them. The DAs have treated Macy and Mallory Morphew like traitors because they believe in their dad's innocence. The DAs picked their "chosen victims": Suzanne Morphew's estranged family in Indiana.

4. On April 19, 2022, when the defense team, Barry Morphew, and his daughters appeared in court they were not aware the DA had filed a motion to dismiss without prejudice in the court's electronic filing system. The DAs motion to dismiss is ten pages long. The decision must have been considered and made well before April 19, 2022. Yet, the DAs motion was filed only 9 minutes before the pretrial hearing was scheduled to begin and with no advance notice to Suzanne Morphew's daughters. The DA's present at the hearing included DA Stanley, DDA's Hurlbert and Weiner.

5. The Court had previously disallowed anyone to appear via Webex.[78] However, well before the hearing, the DA arranged and obtained special permission to have Mrs. Morphew's Indiana family listen and participate in the pre-trial conference via Webex. It was also strange, because while the case had significant media attention, there was an extraordinary number of local and national press at the pre-trial conference, and the defense received a cryptic message from a member of the press while driving to court about how we were "feeling" about the hearing. It seemed the media knew about the impending dismissal.

6. While waiting for Judge Lama to take the bench to commence the pre-trial conference proceedings, with the media in the courtroom, the DAs sitting at their table, the defense team, Mr. Morphew and Mr. Morphew's daughters sitting in the courtroom, the defense looked at their emails. A member of the defense team noticed an email notification that a Motion to Dismiss had been filed in the electronic filing system a few minutes prior. The defense was not given a courtesy hard copy of the motion prior to accidentally seeing it served electronically or even a heads up when we entered the courtroom.

7. It was evident the DAs wanted to surprise the court and the defense as a media splash in court, preventing the defense time to absorb and evaluate the DA's motion and claims. The motion indicated that the DAs were compliant with the Victim Rights Act, because they notified Suzanne Morphew's Family re: "Victims", but did not advise Mallory or Macy Morphew about the dismissal "for obvious reasons". Exhibit 72, pg. 10.

7. Upon opening the Motion to Dismiss served on the electronic filing system, the defense team immediately showed Mr. Morphew and Macy and Mallory Morphew the Motion from their computer screen. This was performed in Court in the view of the media and the DAs, seconds before the Court took the bench. The Morphew family were extremely emotional and confused. When the Judge took the bench and because he also did not know of the filing, he

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[78] Previously, it had become apparent to the Court that someone had hacked into the Judicial Webex system. Pretrial hearings were being recording and live streaming court proceedings and posting photographs of defense counsel's table from a vantage point behind the judge.

started the proceedings by itemizing the pre-trial motions to be heard and in what order. Defense counsel interrupted the Judge and let him know about the Motion to Dismiss. Judge Lama indicated he had not seen the filing.

8. The DA's represented that the they were in compliance with the Victim Rights Act, as they previously notified Mrs. Morphew's siblings. And, the DA's represented that Suzanne Morphew's siblings in Indiana were prepared to speak via Webex. They obviously had prior notice and time to prepare their statements. They were permitted to make a record via Webex telephone about the dismissal. Macy and Mallory Morphew are not close in any way to their mother's sibling, but the DA's office did not advise Mrs. Morphew's siblings to address only the Court. Instead the siblings addressed Mallory and Macy directly implying their dad was a murderer.

9. Macy and Mallory, unprepared, and wanting to believe their mother was soon to be found, did not believe the DA's motives. Macy and Mallory Morphew were in shock and made a spontaneous record to the Court stating that the DAs made this case extremely hard on them and the DAs should not have pursued the case. The DAs have never talked to or attempted to talk to Macy or Mallory Morphew about the status of their "investigation" or their decision to dismiss the case without prejudice.

9. Attorney General Weiser has recently had to speak out about the 12th Judicial District DA's Office failure to communicate with victims and consult with them about dismissals - or treat them with respect and dignity - in violation of the Victim Rights Act in Colorado. Exhibit 73. The 11th Judicial DA's Office is just as culpable.

10. The DAs here violated Macy and Mallory Morphew's Constitutional Rights and the Victim Rights Act. This case was one of the most high profile cases in Colorado, and certainly the most in the 11th Judicial District. Regardless, and with a massive spotlight on their actions they snubbed their nose at their ethics, at the Court, the Rules, the Laws, the Constitution, and to the accused.

CLAIM GROUP TWELVE: FAILURE TO REPORT MISCONDUCT AND FAILURE TO SUPERVISE - RULE 8.3(a)

1. "A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority." C.R.P.C. 8.3 (a).

2. While the undersigned are not in a position to know whether or not the named prosecutors have reported the misconduct, they should have done so. "An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover." C.R.P.C. 8.3, Comment [1].

3. DA Linda Stanley (Bar No. 45298) was involved in the investigation of this case prior to Mr. Morphew's arrest and still represents her office is involved in the continuing investigation. DDA Jeffrey Lindsey (Bar No. 24664) was on the case from the outset and left the case sometime during October 2021. DDA Mark Hurlbert (Bar No. 24606) was on this case from July/August 2021 and represents he is still involved in the investigation. DDA Daniel Edwards (Bar No. 7938) was on the case from September 2021, but left before its conclusion. DDA Aaron Pembleton (Bar No. 53924) was on the case from the outset and left at some point. DDA Robert Weiner (Bar No. 21572) was on the case by at least November 9, 2021 and remained until it was dismissed. DDA Grant Grosgebauer (Bar No.50229) was on the case at least by March 10, 2022 and remained until it was dismissed.

4. Every single one of these attorneys had an obligation to report the rampant pattern of misconduct. There is no safe harbor just because a person jumps ship and leaves a case or DAs office.

5. For example, it was DDA Robert Weiner who, on February 24, 2022, told the Judge that DA Linda Stanley and DDA Daniel Edwards had included statements that were "not accurate" in the Prosecution's Response (in opposition) to Defense Motion D-58 (the motion to sever counts). See Claim Group Six above. Exhibit 59, Tr. February 24, 2022, pgs. 109-110 (repeating that the statements were "not accurate" and saying "that is not what we believe happened."). (These again, were highly material statements about the alleged murder weapon that turned out to not be capable of being a murder weapon under their theory.) Did Robert Weiner report the misconduct of DA Linda Stanley and DDA Daniel Edwards?

6. Another example are the rampant violations of the Colorado Rules of Professional Conduct related to pretrial publicity and violation of court orders regarding publicity. DDA Daniel Edwards, rather than reporting DA Stanley's misconduct in making her numerous statements to various media sources, stood up in court and *defended* her statements. See Claim Group One above. DDA Edwards, with DDA Hurlbert sitting alongside him, justified Ms. Stanley's statements quoted in the October 15, 2021 Denver Gazette article by stating that the role of a prosecutor was to "put people in jail," that's "what prosecutors do." Exhibit 16, Tr. January 25, 2022, pg. 136. Did Daniel Edwards and Mark Hurlbert report the misconduct of DA Linda Stanley, DDA Jeff Lindsey, DDA Aaron Pembleton, and others who violated the RPC?

7. Acting as a supervisor but failing to ensure fulfillment of professional obligations with regard to that supervision violates the C.R.P.C. 5.1. While much of the misconduct pointed out in this Complaint was directly engaged in by each of the attorneys, to the extent any of them was a "supervisor" over another, the supervisor here utterly failed to ensure compliance with the RPC.

8. As elected DA, Linda Stanley was the supervisor over all of these attorneys. Her name appears as the attorney representing the People in the pleadings. She appeared in Court.

The allegations in this Complaint, then, even if they do not mention her specifically, all contribute at the very least to a gross failure to supervise.

CONCLUSION

DAs have incredible power and as such have higher ethical duties --- and they should be held to those higher standards. DAs expect the accused to know the difference between right and wrong, to take responsibility for their misconduct, and to learn from their mistakes or wrongs. And, when the accused cannot follow this trajectory, DAs punish the accused.

In this case, the DAs never abandoned their continued pattern of violating the Rules of Professional Conduct. The DAs concealed favorable evidence and provided false information to the Court to avoid sanctions even after being exposed on numerous occasions. The DAs did not show deference to the Rules and Laws, instead made empty excuses, justified their misconduct with their misunderstanding and distortion of the Rules. To attempt to deflect their misconduct, the DAs used old school inflammatory language about the defense, threw lay witnesses and experts under the bus, and claimed the judge had it all wrong. Facts prove these experienced prosecutors made a mockery of the Rules of Professional Conduct. Their defensive indignations are just empty words. Even after being sanctioned in the Morphew case, DA Linda Stanley leading the charge is under fire for her office's alleged pattern of failing to comply with the Rules.[79] If these named attorneys are not disciplined, what is to deter these attorneys from understanding and complying with the Rules of Professional Conduct in the future?

Any one of the facts recited in this Complaint warrants severe sanctions imposed on Colorado Attorneys and prosecutors Linda Stanley, Jeff Lindsey, Aaron Pembleton, Mark Hurlbert, Robert Weiner, Grant Grosgebauer, and Daniel Edwards. This Office of Attorney Regulation Counsel should investigate these claims fully and impose the severest sanction possible.

Signed by:

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[79] Exhibit 76, March 6, 2023 *People of the State of Colorado v. Joseph Tippet*, 23CR5000, Request to Dismiss Murder in the First Degree as a Sanction for Violating This Court's Order, Which is Part of the 11th Judicial District Attorney's Office Pattern and Practice.

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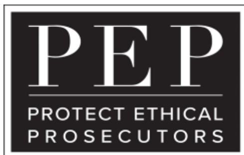

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