

<p>DISTRICT COURT, FREMONT COUNTY,          COLORADO 136 Justice Center Rd., Rm. 103          Canon City, CO 81212 (719) 269-0100</p>	<p>DATE FILED: May 26, 2022 3:47 PM          FILING ID: C8F2CB787125F          CASE NUMBER: 2022CR47</p>
<p>PEOPLE OF THE STATE OF COLORADO,          Plaintiff,          v.          BARRY LEE MORPHEW, Defendant.</p>	
<p>Iris Eytan, #29505          Eytan Nielsen LLC          3200 Cherry Creek South Drive, Suite 720          Denver, CO 80209          Telephone: (720) 440-8155          Facsimile: (720) 440-8156  <a href="mailto:iris@eytan-nielsen.com">iris@eytan-nielsen.com</a></p> <p>Jane Fisher-Byrialsen, #49133          Fisher &amp; Byrialsen, PLLC          4600 South Syracuse St., 9th Floor,          Denver, Colorado 80237  <a href="mailto:jane@fblaw.org">jane@fblaw.org</a></p> <p>Hollis Whitson, #32911          Samler and Whitson, PC          1600 Stout Street, Suite 1400          Denver, CO 80202 303-670-0575  <a href="mailto:Hollis@SamlerandWhitson.com">Hollis@SamlerandWhitson.com</a></p> <p><i>ATTORNEYS FOR DEFENDANT BARRY LEE          MORPHEW</i></p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 22CR47</p> <p>Division: 1</p>
<p align="center"><b>VERIFIED MOTION FOR RETURN OF PROPERTY AND REQUEST FOR          EVIDENTIARY HEARING          [D-104]</b></p>	

Mr. Barry Morphey, through undersigned counsel, moves this Court for an evidentiary hearing and for an order that the prosecution must return property seized. In support, Mr. Morphey states:

1. The charges against Mr. Morpew were dismissed on April 18, 2022.<sup>1</sup>
2. Prior to the dismissal, defense counsel asked this Court to order the return of the property. This Court directed the parties to confer and let the Court know if there were disagreements. And, upon conferral to follow up with the Court if necessary.
3. Undersigned counsel have attempted that conferral and the prosecution has refused to release any of Mr. Morpew's property.
4. The prosecution has been in possession of the Morpew's property for over two years. The items have been photographed, swabbed, tested, and downloaded. There is no link between the property to the location or circumstances of Mrs. Morpew's disappearance. In fact, there has been a sighting of a woman as recently as May 2022 who has a close resemblance to Mrs. Morpew which the defense notified the prosecution about, but does not appear the prosecution has followed up. The defense is investigating this lead. Additionally, the defense has not seen or heard of any discovery or searching of a body up above Mr. Morpew's old residence - the region which appears to be bone dry at this time. See Footnote 1.
5. The property is not contraband.
6. The Sheriff is in possession of hundreds of items, however the following numbered items 1-97 are the items Mr. Morpew requests be returned:

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<sup>1</sup> The prosecution has indicated it could re-charge Mr. Morpew if they find Ms. Morpew's body which they believe to be near the Morpew's old home buried under five (5) feet of snow. This is unlikely, in consideration of the extent of the search conducted around Mr. Morpew's old home, and the lack of barriers to search in that area in the last two years. Attached are photos of the area above the Morpew's old home, taken on April 24, 2022 and photos of the region taken the week of May 16, 2022. See Exhibit A to this motion. The prosecution said many times throughout the litigation, they do not know what happened to Mrs. Morpew, and only supplied the Court with speculation, hunches, and misrepresentations.

#	Sheriff's Item #	Description
1	1AW	Nexcopy 16GB Thumb Drive
2	2WJP	SVAT Camera Digital Video Recorder SN: 004003500465 With Power Cord
3	4RAB	Mallory Morphew's Cell Phone (iPhone) SN: GONYMGXTKXKP
4	117RAB	Rampage Native Crossbow with Hawke Scope and 2 Bolts (SN: C13184)
5	123RAB	Firearm Paperwork for Firearm with SN: AR-00416
6	136RAB	Browning Game Camera Model Number BTC-6HD-Max
7	137RAB	Browning Game Camera with Black Strap (No Visible Model#)
8	139RAB	Mathews Solo Cam Bow with 6 Arrows and Release
9	149RAB	.17 Savage Model 93R17 SN: 0967838
10	150RAB	Compaq Presario 2100 SN: CNF3280734 Laptop
11	151RAB	Dell Inspiron 1526 CN-0WP019-70166-81G-000A
12	152RAB	White and Pink Apple Watch w/Charger SN: FHLRPC62GR79
13	153RAB	Cudde Back Digital Trail Camera with "N79711" on Back
14	154RAB	Cudde Back Digital Trail Camera with "267" on Back
15	155RAB	Cudde Back Digital "Capture" Trail Camera Model 1125 (Broken Latch)
16	156RAB	Cudde Back Digital "Capture" Trail Camera Model 1132 "Capture IR"
17	157RAB	Cudde Back Digital "Capture" Trail Camera Model 1125
18	158RAB	Camo Ammo Bag with Misc Ammo
19	161RAB	Lexar 1GB Compact Flash Platinum II 80x
20	163RAB	Financial Documents from Truck
21	166RAB	WGI Innovations Trail Camera SN: 418402582015
22	167RAB	Toguard H2O Trail Camera with Strap
23	168RAB	Toguard H2O Trail Camera with Mount

24	169RAB	Toguard H2O Trail Camera with Mount
25	170RAB	Toguard H2O Trail Camera with Mount
26	173RAB	White Air Pods w/ Charger
27	176RAB	Crossbow Bolt with Multiple Broadheads
28	178RAB	.22 Hornet Rifle Model CZ527 SN: D326408 w/ Vortex Scope
29	183RAB	Black Moultrie Game Camera
30	189RAB	5 Arrows
31	191RAB	iFly Black Suitcase
32	3RJC	HP Laptop
33	4RJC	Mac/Apple Laptop
34	6RJC	Tablet-White Apple iPad
35	12RJC	Kindle
36	14RJC	Letter Addressed to Barry from Suzanne
37	24RJC	Moultrie Trail Camera #1, Model MCG12693 with 32GB SD Card
38	25RJC	Moultrie Trail Camera #2, Model MCG12963 with 16GB SD Card
39	26RJC	Moultrie Trail Camera #3, Model MCG12591 with 8GB SD Card
40	60RJC	Green/Tan Holy Bible, Main Floor Sitting Room
41	63RJC	Letters/Journals/Notebooks
42	64RJC	Black Notebook
43	65RJC	Tax Documents in Black Folder
44	69RJC	iPod
45	72RJC	Documents
46	73RJC	Documents
47	74RJC	Clothing
48	75RJC	Documents
49	76RJC	Container with Documents

50	78RJC	Notebook
51	81RJC	Camera
52	83RJC	Documents
53	128RJC	Misc. Receipts from Master Bathroom Drawers
54	129RJC	Misc. Thank You Cards
55	134RJC	Green Journal
56	135RJC	Journal w/ Butterflies
57	137RJC	Gratitude Journal
58	143RJC	Family Portrait
59	148RJC	Graphite Arrow about 18" Long w/ Broadhead
60	164RJC	Black DVR-DVS, SN: 613979335, Model WL-T8HITB w/ Power Cord
61	1SEH	S&W M&P Shield 9mm Pistol, SN: HUZ8404
62	2SEH	Ruger Police Service Six Rev. 357, SN: 15687077
63	3SEH	Browning Buck Mark.22 Cal, SN: 515N07412
64	5SEH	Harrington & Richardson Bolt Action .22, SN: 6721
65	6SEH	Browning A-Bolt Cal. 222 REM, SN: D7172MR351
66	7SEH	Browning BL-22 Cal. 22, SN: 01362MT242
67	8SEH	Camo Bolt Action 17 Cal., SN: 0214002
68	9SEH	Savage Model 16 243 Winchester, SN: K556878
69	10SEH	Browning Model 53 32-20 Winchester, SN: 10566NM3F7
70	11SEH	Browning A-Bolt 3006 30-06, SN 93874NT8S7
71	12SEH	CF Gonvorks Forest Indiana 300 Blackout, SN: 0001, with Suppressor K7AK24
72	13SEH	Remington Model 700 300 Blackout, SN: RR84905E
73	14SEH	Browning A-Bolt 270 WSM, SN: 34028MV351
74	15SEH	Browning Model 65 Cal. 218BEE, SN: 01679PN167

75	16SEH	Remington Model 700 7mm, SN: 301990
76	17SEH	Weatherby Mark V 240WM, SN: H202807
77	18SEH	Browning A-Bolt 270 Win, SN: Unknown
78	19SEH	Benelli Super Black Eagle II, SN: U269249
79	20SEH	Weatherby Mark V 270 Win Mag, SN: H199228
80	21SEH	Camo 12 Gauge Browning, SN: Unknown
81	22SEH	Misc. Paperwork from Gun Safe
82	23SEH	Bank Rept. from Gun Safe
83	24SEH	Tapes from Gun Safe, VHS
84	25SEH	GPS 5 Total (25-1 through 25-5)
85	26SEH	Game Cameras (2), 2 Ant. (26-1 through 26-2)
86	27SEH	Game Cameras (2), 1 Ant. (27-1 through 27-2)
87	40SEH	270 WSM (14SEH)
88	43SEH	240 Weatherby (17SEH)
89	44SEH	270 Win (18SEH)
90	10CMH	Apple Macbook Pro, SN: FVFCRF2ZP3Y0, Model A2289
91	14CMH	New Life Study Testament Book
92	29CMH	White Books with Writings
93	30CMH	White/Green Cross Symbol/Bookmark
94	32CMH	Tax Documents (1) Unopened Mail Doc
95	35CMH	Misc. Documents (Greeting Cards, VS Gift Card, Envelopes)
96	36CMH	Misc. Documents in Box (Financial Docs, Mail, Business Cards)
97	187RAB	Broadhead

7. The prosecution has copied and preserved the paper documents. The electronic items including the SD cards have been removed and copied, or downloaded by the prosecution's purported experts.

8. Some of the items identified in the above property chart are of sentimental value. This includes some of the hunting gear which is exceptionally costly and cannot easily be replaced.

9. The only theory ever put forward by the prosecution regarding any weapon being utilized in the alleged murder was that perhaps a Dart Marlin Rifle was involved; as it turns out, that rifle was tested by the prosecution's firearm expert in 2022, and as it was seized, it was inoperable. Mr. Morpew does not request return of that item.

10. Mr. Morpew has a right to return of his property once all evidentiary uses have been completed. *People v. White*, 701 P.2d 870 (Colo. App. 1985).

11. In *White*, a police officer's service revolver, which was allegedly used by the defendant to commit second degree murder, was seized from the defendant at the time of his arrest. *Id.* at 870. The defendant was acquitted at trial, and, six days later, the police officer filed a motion for the return of the revolver. *Id.* The trial court denied the motion, and, on appeal, the court of appeals reversed and remanded for the trial court to order the return of the revolver, finding it was not contraband nor the fruit of illegal activity by the police officer. *Id.* at 871.

12. To recover property seized as part of a criminal proceeding, a defendant may file a verified motion seeking the return of that property with the same court in which the charges were brought. *People v. Rautenkranz*, 641 P.2d 317, 318 (Colo. App. 1982). Mr. Morpew has verified this petition.

13. Upon Mr. Morphew's request, as is made herein, this Court must hold an evidentiary hearing. *City & Cty. of Denver v. Desert Truck Sales, Inc.*, 837 P.2d 759, 768 (Colo. 1992); *Rautenkranz*, 641 P.3d at 318.

14. Mr. Morphew need establish only a prima facie case of ownership. A prima facie case requires only that Mr. Morphew show that the items were seized from him in connection with the investigation and the items are being held by law enforcement authorities. *Ibid.* "Evidence of seizure from the defendant is prima facie evidence of his or her ownership of the property." *People v. Hargrave*, 179 P.3d 226, 228 (Colo. App. 2007), citing *People v. Buggs*, 631 P.2d 1200, 1201 (Colo.App.1981).

15. Upon establishment of the prima facie case, the burden then shifts to the prosecution to prove by a preponderance of the evidence that the items are the fruit of (or are connected to) an illegal activity. *People v. Ward*, 685 P.2d 238, 239-40 (Colo. App. 1984) ("Once a defendant has made a prima facie showing of ownership of the seized property . . . the burden shifts to the prosecution to show that the property was the fruit of an illegal activity . . . or to show a connection between the seized property and criminal activity.") (citing *People v. Bustam*, 641 P.2d 968 (Colo. 1982)).

16. It would violate due process if law enforcement could simply seize property and retain it indefinitely after the charges have been dismissed. By keeping Mr. Morphew's property, the prosecution is essentially keeping the false charges alive, a cloud of suspicion over his head and his life, and is akin to keeping Mr. Morphew on an unlawful personal recognizance bond. Mr. Morphew is presumed innocent and shall be treated as so. Both the U.S. Constitution and the Colorado Constitution prohibit government takings of property without due process of law. U.S. Const., amend. XIV; Colo. Const., art. II, § 25. Barry, Mallory, and Macy Morphew also have the



“natural, essential and inalienable” right to acquire, possess and protect their property. Colo. Const., art. II, § 3. They have the right to “keep and bear arms” in defense of their homes, persons, and property. Colo. Const. art. II, § 13. See also U.S. Const., amend. II (the Government may not infringe the right of the people to keep and bear arms). All of these constitutional rights are presently being violated by the deprivation of their property, including their firearms.

WHEREFORE, Mr. Morphew requests that this Court enter an order that law enforcement and/or the District Attorney shall return his property forthwith. Alternatively, to preserve costs Mr. Morphew requests a hearing on this Motion via Webex.

Respectfully submitted this 26th day of May 2022.

**EYTAN NIELSEN LLC**

*s/ Iris Eytan*  
Iris Eytan, #29505

**FISHER & BYRIALSEN, PLLC**

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

**SAMPLER AND WHITSON**

*s/ Hollis Whitson*  
Hollis Whitson, #32911


**VERIFICATION**

I, Barry Morphew, state upon my oath that I have reviewed the foregoing motion and its attachments, including the property chart, and attest that the contents are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Barry Morphew

COUNTY OF DENVER     )  
                                  )  
STATE OF COLORADO    )     ss.

The above and foregoing was subscribed and sworn before me using audio-video technology this 26<sup>th</sup> day of May, 2022, by Barry Morphew.

  
\_\_\_\_\_  
TONYA L. HOLLIDAY  
Notary Public  
State of Colorado

My Commission Expires: 05-16-2024

TONYA L. HOLLIDAY  
Notary Public  
State of Colorado  
Notary ID # 20074036735  
My Commission Expires 05-16-2024

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of May 2022, a true and correct copy of the foregoing **VERIFIED MOTION [D-104]** was served via CCE as follows: 11<sup>th</sup> Judicial District Attorney's Office, 101 Crestone Ave., Salida, CO 81201

*s/Tonya Holliday*

Tonya Holliday