District Court, Fremont County, Colorado 136 Justice Center Road Canon City, CO 81212	DATE FILED: June 17, 2022 4:53 PM FILING ID: 62D5FFB2C8283 CASE NUMBER: 2022CR47
THE PEOPLE OF THE STATE OF COLORADO **vs.** **BARRY MORPHEW,** Defendant	☐ **COURT USE ONLY** ☐
Linda Stanley Eleventh Judicial District District Attorney, # 45298 District Attorney's Office 104 E. Crestone Ave Salida, CO 81201 Phone Number: (719)539-3563	Case No: D0082022CR000047 Div: 1 Courtroom:

PEOPLE'S RESPONSE TO DEFENSE MOTION FOR RETURN OF PROPERTY AND REQUEST FOR EVIDENTIARY HEARING [D-104]

COMES NOW, the People of the State of Colorado, by and through Linda Stanley, District Attorney for the Eleventh Judicial District, by and through her duly appointed Deputy District Attorney and respectfully asks this Court to deny the defense Motion for Return of Property and Request for Evidentiary Hearing without a hearing and as grounds therefore states:

1. On May 6, 2021 the Defendant was brought before the Court on charges including the First Degree Murder of his wife, Suzanne Morphew. To date Ms. Morphew's remains have not been found. On September 17, 2021, after the Honorable Chief Judge Murphy found probable cause for the charges listed in the indictment, but declined to find proof evident presumption great, the Defendant was granted a bond that was quickly posted.

2. On April 19, 2022, the People filed a written motion asking the Court to dismiss the murder charges against the defendant without prejudice or *nolle prosequi* . The defense objected to the People dismissing without prejudice. The People indicated in their Motion and in oral argument that we wished to dismiss the case because we felt that we were close to finding Suzanne's body, but that weather and snow prevent any further searching. The Court found that the People were not dismissing the case to circumvent speedy trial and dismissed without prejudice.

3. "A *nolle prosequi* order is not the final disposition of a criminal case but leaves the matter in the same condition as before the charges were filed." *People v. Small*, 631 P.2d 148, 154 (Colo. 1981). citing *Lawson v. People*, 165 P.771 (Colo. 1917). *See also People v. Lopez*, 946 P.2d 478 (Colo. 1997). "Thus … the original indictment against the defendant became a nullity upon its dismissal without prejudice." *Id.* at 155. Legally, this case is in the same posture as it was before the defendant was arrested.

4. The cases cited by the defense do not apply to this case. In every case cited, the case could not be further prosecuted, either because of an acquittal or dismissal with prejudice, which is not the case here. Further in many of the cases, the People did not object to return of the property.

5. In *People v. White*, 701 P.2d 870 (Colo. App. 1985), a Denver Police Officer, whose gun was allegedly used to commit second degree murder by the defendant motioned the trial court to get it back after White was acquitted at trial. *Id.* Both the People and the defense agreed the Denver Police Officer should get his gun back, yet the trial court ordered the firearm be destroyed. *Id.* The Court of Appeals held that the officer should get his gun back and found, "it is fundamental to the integrity of the criminal justice process that property involved in the proceeding, *against which no government claim lies*, be returned promptly to its rightful owner." citing *People v. Buggs*, 631 P.2d 1200 (Colo.App.1981). *Emphasis Added.* In this case, since the case is "in the condition as before the charges were filed" it is in a different position than after an acquittal and therefore, the People have a claim to all property seized.

6. In *People v. Rautenkranz*, 641 P.2d 317 (Colo. App. 1982), in execution of a search warrant, law enforcement seized several items from Rautenkranz, including a jeep and a windmill. The defendant pled guilty to theft by receiving, not involving the jeep or windmill. *Id*. The defendant filed a motion asking for return of the jeep and windmill, the People objected saying the jeep was contraband and the windmill was not the defendant's and the trial court denied the defendant's motion. *Id.* The Court of Appeals reversed the trial court's ruling and citing *United States v. Wilson*, 540 F.2d 1100 (D.C. Cir 1976) found:

> We hold that the district court, once its need for the property has terminated, has both the jurisdiction and the duty to return the contested property here regardless and independently of the validity or invalidity of the underlying search and seizure .... It goes without saying, that if the Government seeks to forfeit the property a proper proceeding should be instigated to accomplish that purpose.

Id at 318. The defense cites this case for requiring a hearing to "recover property seized." *Defense Motion Paragraph 12.* But that is not what *Rautenkranz* held. First, as in *White*, the People should have no government interest in the property, essentially that it would not used in a further prosecution. Second, that a hearing should be held if the People are going to forfeit the property. Neither are applicable in this case. As mentioned above, the People have a claim to all property seized for use in a future prosecution. Further, no hearing need be held as the People are not looking to forfeit the property. To the contrary, we wish to hold it safe for a potential future prosecution.

7. In *People v. Hargrave*, 179 P.3d 226 (Colo. App. 2007), pursuant to a search warrant, law enforcement seized several items from Hargrave's home. The defendant pled guilty to two felonies and was sentenced to ten years in the Department of Corrections. *Id.* After several unsuccessful attempts by the defendant's parents to get his property, he filed a motion to get his property back. *Id*. A hearing was held where the People, although contending that they thought all the remaining property was stolen, nonetheless agreed that they could not prove anyone else owned the property and agreed to release it pursuant to law enforcement policy. *Id.* The trial court ordered the property returned after the defendant showed ownership but refused to rule on impound fees and whether they should be waived. *Id.* The main holding from the Court of Appeals was whether the trial court had jurisdiction to decide whether the fees should be waived or not. *Id.* The defense cites *Hargrave* for the proposition that evidence seized from the defendant is prima facie evidence of ownership. Although, *Hargrave* does find this, that finding is far down analysis the Court of Appeals undertook. In citing *Rautenkranz*, the Court of Appeals found, "*when the need for property seized in a case has ended*, the trial court has the jurisdiction and the obligation to order its return and, if necessary, to conduct a hearing to determine its appropriate disposition and any ancillary issues." *Id* at 228. *Emphasis Added* And as above, the need for the property seized in this case has not ended.

8. Finally, in *People v. Ward*, 685 P.2d 238 (Colo. App. 1984), after a sale of cocaine to law enforcement, the defendant was arrested and money was seized. The defendant pled guilty to conspiracy and filed a motion asking for return of some of the money saying it came from loans from others. *Id.* After a hearing, the trial court found there was sufficient nexus between the money seized and drug dealing and denied the return of the property. *Id.* The Court of Appeals affirmed the trail court's ruling. *Id.* Although, the Court of Appeals found that, as the defense states, after a prima facie showing of ownership, the burden shifts to the People, it is clear that *Ward* is in a different position than this case and we don't even get to the People's burden. As in

all the cases cited above, *Ward* takes place after the defendant had already pled guilty and after the People no longer had an interest in the property seized. In this case, as mentioned above, the People still have an interest in using the seized property in a future prosecution.

9. It is clear from the caselaw analysis above that the defendant does not have the right to a return of property nor a hearing on the matter. This case is where it was before the defendant was arrested, not after plea or trial, and the People have an interest in potentially using the seized evidence in a future prosecution. It is helpful to look at this as if the People had never charged the defendant, since, legally, that is where the case is at. If we had never charged the defendant, he never would have been able to get this property back.

10. In their motion, the defense has enumerated 97 items they want returned. Other than saying the that the guns and hunting gear seized are "of sentimental value" the defense has given no compelling reason why they want those items back. Further in an email to the undersigned, the defense demanded six general items returned (including the preposterous claim that there was $70,000 in a gun safe) but gave no evidence numbers or reasons why these items were needed. *See Exhibit 1* In the past, when the defense has asked the People for specific items (defendant's truck and driver's license) and given a compelling reason (to be able to work and to drive, respectfully), the People have agreed to release the items. The lack of specificity in the initial email and lack of compelling reason in the email and motion indicates that there is no need to get these items back, but rather the defense wants this evidence so it is difficult if not impossible for the People to prosecute the case in the future. In the motions hearing on the People's Motion to Dismiss, the defense argued that it should be dismissed with prejudice so the People could not prosecute the defendant in the future. The judge denied that argument, but it appears the defense is trying an end around the judge's order by trying to deprive the People of evidence they may need in the future.

11. The defense on the one hand contends that the People provided no theory as to what happened to Suzanne Morphew (*See Defense Motion, Footnote 1)* and on the other state that the People stated that our theory as to Ms. Morphew's murder was that she was drugged using a dart gun (*See Defense Motion, Paragraph 9).* The People need not identify to the defense our theory of how the crime was committed and did not throughout the proceedings. The People also do not need to tell the defense what our need for specific evidence would be used for should be commence prosecution again. And frankly, any theories we had before we find Suzanne's body may be proven wrong when we find her. Therefore, evidence that may not seem to be relevant today

may become relevant tomorrow and we may have no inkling of what that may be, which is why we need to keep the evidence seized.

12. Finally, the defense mentions in their motion the search for Suzanne and an unidentified homeless woman the defense believes is Suzanne seen in Colorado Springs as proof that the People and law enforcement are not really looking for Suzanne and therefore are keeping the defendant's property for some unknown nefarious reason. The People do not need to keep the defense abreast of our current investigation. The People and law enforcement want to find Suzanne more than anyone other than her family and continue to follow leads and tips. As mentioned in our Motion to Dismiss weather has stymied our search for Suzanne's body until recently. Although the defense has characterized the area as "bone dry", anyone who has hiked in the mountains knows that may be true for the valleys and open spaces, but that altitude, aspect and cover can cause other areas to be very different. The defense provided the People with a grainy photo of a blonde woman seen in Colorado Springs that does not show her face. Despite the low likelihood of a stable Suzanne Morphew suddenly becoming mentally ill and homeless in Colorado Springs, the People have been working with Colorado Springs Police Officers assigned to work with the homeless to locate this person. The People have and will continue to gather evidence, track down leads and search for Suzanne in this case and that is why we need to keep all the evidence seized.

WHEREFORE the People respectfully ask this Court to DENY the defense Verified Motion for Return of Property and Request for an Evidentiary Hearing.

Respectfully submitted this 17th day of June, 2022.

Respectfully submitted,
LINDA STANLEY
11th Judicial District Attorney
/s/ Mark Hurlbert
Mark Hurlbert, #24606
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on June 17, 2022 a true and correct copy of the foregoing Motion was served via Colorado Courts E-Filing on all parties who appear of record and have entered their appearance herein according to Colorado Courts E-Filing.

By: /s/ Mark Hurlbert