

Combined Courts, Fremont County 136 Justice Center Road Canon City, CO 81212	DATE FILED: March 25, 2022
<b>THE PEOPLE OF THE STATE OF          COLORADO</b> <b>vs.</b> <b>BARRYLEE MORPHEW,</b> Defendant	<input type="checkbox"/> <b>COURT USE ONLY</b> <input type="checkbox"/>
Linda Stanley Eleventh Judicial District District Attorney, # 45298 District Attorney's Office 136 Justice Center Road Room 203 Canon City, CO 81212 Phone Number: (719)269-0170	Case No: D0222022CR000047  Div: 1                      Courtroom:
<b>NOTICE OF PEOPLE'S INTENT TO INTRODUCE STATEMENTS PURSUANT TO          C.R.E. 807 AND C.R.S. 13-25-139</b>	

LINDA STANLEY, District Attorney for the Eleventh Judicial District, by and through her duly appointed Deputy District Attorney, respectfully files this Notice of People's Intent to Introduce Pursuant to C.R.E. 807 and C.R.S. § 13-25-139.

AS GROUNDS for this Motion, the People inform this Court as follows:

**I. FACTUAL BACKGROUND**

1. On May 10, 2020, Suzanne Morphew was reported missing by her husband, the Defendant in this case, Barry Morphew.
  
2. As investigators worked to establish a timeline for her disappearance, several irregularities and discrepancies were discovered in the Defendant's various statements about what happened leading up to, during, and after his wife's disappearance.
  
3. For the purposes of this motion, several facts are important for the Court to consider:
  - A. Early on in the weeks and months that followed the victim's disappearance, the Defendant categorically denies any relationship or marital issues between himself and his wife.
  - B. The last time anyone hears from Suzanne Morphew is around 2:20PM on May 9, 2020. Importantly, the Defendant claims he and his wife were together that

afternoon and both agreed to turn off their phones and spend a “wonderful” evening together.

- C. The timeline of this evening was repeatedly provided by the Defendant to include eating steaks, having sex, and going to bed early.
- D. As the investigation unfolds, and despite the Defendant’s best efforts to delete cell phone data between himself and his wife, information is discovered that the relationship between the Defendant and his wife was on the rocks.
- E. Specifically, the victim made statements to several close friends and family members that the relationship was deteriorating for several years and had reached a breaking point in the weeks leading up to her disappearance.

## **II. LEGAL AUTHORITY FOR INTROCUPTION OF OUT OF COURT STATEMENTS**

- 4. Colorado Rules of Evidence provide many well-founded exceptions for the introduction of out-of-court statements. *See C.R.E. 803 and 804.*
- 5. Should the Court determine a particular statement is hearsay and being offered for the truth of the matter asserted, the offering party may rely on one of more of these exceptions to admit the evidence in trial.
- 6. For statements deemed testimonial in nature, the Confrontation Clause provides the accused with a right to confront and cross-examine the statements introduced only when they are admitted to establish the truth of the matter asserted. *Crawford v Washington*, 541 U.S. 36 (2004).
- 7. A testimonial statement is a statement that a reasonable person in the position of the declarant would objectively foresee might be used in the investigation or prosecution of a crime. *United States v. Pursley*, 130 S.Ct. 1098 (2010).
- 8. The Confrontation Clause simply does not apply to non-testimonial statements and thus permits their admission even if they lack indicia of reliability. *U.S. v Smalls*, 605 F.3d 765 (10th Cir. 2010). *See also Wharton v. Bockting*, 549 U.S. 406 (2007).
- 9. As such, statements may be admissible under various hearsay exceptions even if the declarant is unavailable and not implicate the Confrontation Clause.
- 10. Here, the statements of the victim, Suzanne Morphew, were made well in advance of any anticipated investigation or prosecution, and there is no legitimate argument that she somehow anticipated her own intentional homicide.
- 11. Thus, none of the statements outlined in this motion are testimonial, and therefore the Court need not delve into any Confrontation Clause concerns and need only determine if the statement is hearsay, and if any exception applies.

### III. LEGAL AUTHORITY FOR RESIDUAL HEARSAY STATEMENTS UNDER CRE 807

12. Colorado Rules of Evidence 807 allows for the admission of hearsay pursuant to the residual exception under the following conditions:
  - A. The statement is not specifically covered by C.R.E. 803 or 804 but has equivalent circumstantial guarantees of trustworthiness, which the proponent must prove by a preponderance of the evidence;
  - B. The statement is offered as evidence of a material fact;
  - C. The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and,
  - D. The general purposes of these rules and the interests of justice will be best served by admission of the statement into evidence.
13. In considering the trustworthiness of statements, this Court should examine the nature and character of the statements, the relationship of the parties, the probative motivation of the declarant in making these statements, and the circumstances under which the statements were made. See *People v. Jensen*, 55 P.3d 135, 139 (Colo. App. 2001); *People v. McFee*, 2016 COA 97, 412 P.3d 848, 855.
14. "In a homicide trial, evidence of prior threats, mistreatment, or malice by the defendant toward the victim is admissible to show the defendant's motive and culpable mental state." See *Jensen*, 55 P.3d at 140.
15. "In addition, with regard to nontestimonial statements, the Colorado Confrontation Clause requires that "to admit nontestimonial evidence when the defendant has not had a prior opportunity of cross-examination, the prosecution must show that the declarant is unavailable and the statement bears sufficient indicia of reliability." *Compan v. People*, 121 P.3d 876, 885 (Colo. 2005). Where the testimony does not fall under a firmly rooted hearsay exception, the prosecution must show that the evidence has "particularized guarantees of trustworthiness." *People v. Fry*, 92 P.3d 970, 975 (Colo. 2004). Because 'the residual hearsay exception is not a firmly rooted exception . . . particularized guarantees of trustworthiness are required for statements to satisfy the Confrontation Clause under this exception.' *People v. Garrison*, 109 P.3d 1009, 1012 (Colo.App.2004)." *People v. Brown*, 2014 COA 155M-2, 360 P.3d 167, 170.

### IV. ARGUMENT FOR ADMISSION OF RESIDUAL HEARSAY STATEMENTS UNDER CRE 807

16. **Category I:** Text messages exchanged between Suzanne Morpew and Barry Morpew.
  - A. Special Agent Jonathan Grusing authored a report establishing the timeline around surrounding Ms. Morpew's disappearance using recovered phone data and interviews of witnesses. This report also contains information about the below statements. See *Attached, Exhibit 1 – Grusing Report*.

- i. On April 24, 2020, Suzanne sent a message to the Defendant that was recovered from the deleted images in his phone with the following text:  
**“Oh, I’m sure your mistress has you all happy now so you can say you love me but bully me when you’re with me... yea that’s love.”**
  - ii. On May 6, 2020 at 10:13AM sent a message to the Defendant informing him of the following:  
**“I’m done. I could care less what you’re up to and have been for years. We need to figure this out civilly.”**
  - iii. Later on May 9, 2020 at 8:40AM Suzanne texts Barry the following:  
**“Sorry I forgot about Rob Mezzell last night. But I will continue to do your invoicing when you need to.”**
- B. The Court should find that these statements are not hearsay, rather they are being offered for the effect on the listener, that the Defendant believes his marriage is ending.
  - iv. For context, this April 24<sup>th</sup> text is one of the many between these parties accusing each other of having an affair, and therefore highlights the imperfections in their marriage.
  - v. The Defendant later claims that this is a common thread for them, and explains why he ultimately admits to accusing Ms. Morphew of having an affair as some sort of retaliation for her accusations against him.
- C. Specifically, should the Court determine the **“I’m done... we need to figure this out civilly”** statement is offered for the truth of the matter asserted, the Court should find that the following hearsay exception applies:
  - vi. This statement is a then-existing state of mind and a plan for future action under CRE 803(3). The victim is expressing her current emotional state and her plan to resolve their marriage “civilly.”
- D. Should the Court determine these statements are hearsay without exception, they should be admissible under CRE 807:
  - vii. These statements have equivalent circumstantial guarantees of trustworthiness;
    - a. The Defendant is confronted with these statements and confirms they were sent to him from Suzanne on the purported dates.
  - viii. The statement is offered as evidence of a material fact; namely, it rebuts the Defendant’s early claims that there are no problems in the relationship and goes to his motive to harm the victim.
    - a. Specifically, it also makes the Defendant’s statements about their “perfect” and romantic evening of May 9, 2020 completely unbelievable given the deterioration of civility and the relationship as a whole.

- ix. The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts;
  - a. Given Ms. Morpew obvious unavailability and inability to discuss her marriage with the Defendant, her few statements outlining her thoughts on the relationship are the best evidence of motive in this case.
  - b. By all accounts, the problems in this relationship were not public knowledge, and instead, were shared only with close family and friends.
- x. Introduction of these statements will best serve the interests of justice as it gives context to the tumultuous relationship between the Defendant and his wife. Absent sufficient context, the jury will be left questioning why this happened and what lead up to the events in question.

17. **Category 2:** The statement left behind in the victim's note section of her phone.

A. On May 9, 2020, at 7:02AM Suzanne writes out a list of grievances she has with the Defendant. *See mention of this note in Attached Exhibit 1, Page 34.*

i. This note included the following: **"Accused me of bf and [REDACTED] 5/6."**

B. Should the Court determine these statements are hearsay without exception, they should be admissible under CRE 807:

ii. These statements have equivalent circumstantial guarantees of trustworthiness;

a. The Defendant is questioned about this note and confirms that he confronted her about "bf," which is determined to mean boyfriend.

b. He claims he only did this so she would understand his pain by being confronted by her of his own infidelity. *See Category 1 above.*

iii. The statement is offered as evidence of a material fact; namely, it rebuts the Defendant's early claims that there are no problems in the relationship and goes to his motive to harm the victim.

c. It also makes the Defendant's statements about their "perfect" and romantic evening of May 9, 2020 completely unbelievable given the deterioration of civility and the relationship as a whole.

iv. The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts;

d. Given Ms. Morpew's obvious unavailability and inability to discuss her marriage with the Defendant, her few statements outlining her thoughts on the relationship are the best evidence of motive in this case.

- e. By all accounts, the problems in this relationship were not public knowledge, and instead, were shared only with close family and friends.
  - v. Introduction of this statement will best serve the interests of justice as it gives context to the tumultuous relationship between the Defendant and his wife. Absent sufficient context, the jury will be left questioning why this happened and what led up to the events in question.
18. **Category 3:** Text messages between Suzanne Morphew and Melinda Baumunk.
- A. On May 8, 2020, Suzanne texts back and forth with her older sister Melinda about their relationship issues. *See Attached Exhibit 1, page 5.*
    - i. The text at 9:28AM reads as follows:  
**“I’m sure I struggle with some of the same. It’s been hard dealing with the harsh abrasiveness and having to show respect. He’s also been abusive, emotionally and physically. There’s so much. Hard to share it all and give you a clear picture. Last year during [REDACTED] gave me lots of time to realize and see things for what they are. I went through a period of acceptance and I feel more angry now. Anger at what I’ve allowed.”**
  - B. The Court should find that the following hearsay exception applies:
    - ii. This statement is a then-existing state of mind and emotional state under CRE 803(3). The victim is literally expressing her emotional state, that she is angry at what she has allowed.
  - C. Should the Court determine these statements are hearsay without exception, they should be admissible under CRE 807:
    - iii. This statement has equivalent circumstantial guarantees of trustworthiness;
      - a. These are statements made to the victim’s best friend during a conversation where they are both confiding in one another about their relationship woes.
    - iv. The statement is offered as evidence of a material fact; namely, it rebuts the Defendant’s early claims that there are no problems in the relationship and goes to his motive to harm the victim.
      - b. Specifically, it also makes the Defendant’s statements about their “perfect” and romantic evening of May 9, 2020 completely unbelievable given the deterioration of civility and the relationship as a whole.
    - v. The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts;
      - c. Given Ms. Morphew’s obvious unavailability and inability to discuss her marriage with the Defendant, her few statements

outlining her thoughts on the relationship are the best evidence of motive in this case.

- d. By all accounts, the problems in this relationship were not public knowledge, and instead, were shared only with close family and friends.
- vi. Introduction of these statements will best serve the interests of justice as it gives context to the tumultuous relationship between the Defendant and his wife. Absent sufficient context, the jury will be left questioning why this happened and what lead up to the events in question.

19. **Category 4:** Suzanne's LinkedIn messages with Jeff Libler.

A. Jeff Libler and Suzanne were having a multi-year affair in the years leading up to her disappearance. While they tried to not discuss their marital problems with each other, Suzanne would on occasion discuss her relationship with the Defendant. *See Attached Exhibit 2 – Snippet from LinkedIn Texts.*

- i. April 14, 2014, in response to Jeff's question about how she was doing, Suzanne said the following:  
**"I'm okay. Been a little tough around here with expectations and confrontation. Same stuff. Just this force of will to make things happen. When I don't play along it gets heated. Some harsh words exchanged last night. But on a lighter note, had a dream thst you and I were able to be open with our love. No more hiding!! It was great!"**
- ii. Later in the LinkedIn chain, Suzanne says:  
**"I have to admit...I'm a little off without you babe. It makes me a little sad too...But it changes nothing in my heart. Just makes me see how much I truly love you."**
- iii. Again, in the same conversation, Suzanne says:  
**"Sometimes when I see his reactions I realize how long it's been this one way exchange. Kind of like your project stuff...like if we quit doing what they want then it just turns ugly and manipulation sets in, anger, silence, etc. it's sick."**
- iv. On May 7, 2020, Suzanne and Jeff chatted again on LinkedIn:  
**"I reloaded wa...He's gone for a bit"**  
**"Will you stay with me a little longer??"**  
**"If you can't it's fine babe..just know these next few days will be rough"**  
**"Nobody loves you...like the way I do. I crave time with you. I crave the feeling I get when we connect. Physically or emotionally. You're my guy. Always."**
- v. On May 8, 2020, when Suzanne was out with the Defendant having a "great" night, she was messaging Jeff:  
**"You're the only real love I've known...the only love I want."**

- vi. May 8, 2020 at 8:40PM, Suzanne sent Jeff the following:  
**“Goodnight. I’m thinking August and being wrapped up with each other... where we both belong.”**
  - vii. May 9, 2020, around 2PM Suzanne sent the last ever messages to Jeff, along with a selfie of her laying out in the backyard:  
**“He’s headed home. I’ll be spotty. I love you deeply babe...”**  
**“Guess who is alone again”**  
**“I am on wa”**
  - viii. November 4, 2020, Jeff Libler is interviewed and states that the victim told him **“when the girls were out, she would think about going out on her own.”**
  - ix. On November 13, 2020, Jeff Libler is interviewed and says the victim told him she **“wanted out of her marriage.”**
- B. The Court should find that the following hearsay exception applies:
- x. These statements are then-existing state of mind and emotional state under CRE 803(3). The victim is expressing her emotional state, her then feelings towards the Defendant, what she was doing at the time, and future plans to go out on her own and initiate a divorce..
- C. Should the Court determine these statements are hearsay without exception, they should be admissible under CRE 807:
- xi. This statement has equivalent circumstantial guarantees of trustworthiness;
    - a. These are statements made to the victim’s lover of several years. The content of the conversations makes it clear that she is incredibly open and trustworthy of this person and the connection they have, lending credence to the veracity of the statements.
  - xii. The statement is offered as evidence of a material fact; namely, it rebuts the Defendant’s early claims that there are no problems in the relationship and goes to his motive to harm the victim.
    - b. These statements show that the victim had withdrawn from the Defendant for many months. That she was in love with another person, and therefore was not in love with her husband.
    - c. Taken together, these statements show that the marriage was effectively over as far as the victim was concerned, the Defendant’s general malice towards the victim, and they refute any claim that these parties would have a “phone free” night together on May 9, 2020, as the only person she seemingly wanted to communicate with was Jeff Libler.
    - d. Additionally, her statements about her future plans show make it less likely that she would have ran away on her own, or dropped



off such that she no longer communicated with Jeff, a person she clearly cared deeply for.

- e. Finally, these statements show the final words spoken by the victim, and make it clear that she was alive prior to her husband returning for the afternoon on May 10, 2020. They also make it unreasonable to assume that the victim would go from texting her lover several times a day, to never following up with him after this date again.
- xiii. The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts;
  - f. Given Ms. Morphew's obvious unavailability and inability to discuss her marriage with the Defendant, her few statements outlining her thoughts on the relationship are the best evidence of motive in this case.
  - g. By all accounts, the problems in this relationship were not public knowledge, and instead, were shared only with close family and friends.

D. Introduction of these statements will best serve the interests of justice as it gives context to the tumultuous relationship between the Defendant and his wife.

Absent sufficient context, the jury will be left questioning why this happened and what lead up to the events in question.

20. *Category 5*: Suzanne's conversations with Sheila Oliver.

A. Sheila Oliver and Suzanne were best friends since college. They communicated frequently and Suzanne confided in Sheila things that she did not tell anyone else about her marriage with the Defendant.

- i. On November 27, 2018 at 9:58 PM, Suzanne texts with Sheila:  
**“Had kind of a rough “talk” with B. Not exactly how I wanted it to go  
but made some progress I guess  
At least he wanted to talk  
That’s a step  
Just that need to always be right and everything about him is so  
tough.  
Hard to really move forward with that way of thinking  
And hard not to put up walls  
He defenses me being stronger  
Sort of uncomfortable for him  
Just not need his approval all the time is so freeing really  
I’ve really had to do my own soul searching  
Many things Ive [sic] done wrong overt [sic] the years and allowed to  
creep in**

**Breaking the codependency for me is big**

**I told him I give him total freedom to go and do without any question  
Not checking where his phone is etc.”**

- ii. On January 12, 2019, Suzanne texts with Sheila in response to Sheila asking if things have been better with Barry:

**“Somewhat. Still have work to do but my [REDACTED] has really helped me let go...it’s been so freeing. Also just have a more realistic idea of us...like how diff we are and not to expect what may never be there. Ya know?**

**He’s opened up more since he’s been home...by text.**

**He feels the changes in me and I think it’s very uncomfortable**

**He’s used to me checking in and asking questions...no more of that.**

**He says I’ve been so diff the last year or so and he can’t love me like I need unless my old sweet self is back....? I told him I think he feels the change in me and is used to me always checking up and being too much in his every move and that makes him feel more distance. I am learning the detach with love thing and it is a hard balance...to detach and still seem loving.**

**My question of him was to think about what makes you feel most connected to me... He of course sad when you’re the sweet person I married I feel close.... Not really what I was aiming for. Just thinking of what we can do to have more connection since were [sic] so different and girls will be gone in 3 yrs.**

**No def date of return as usual wants to hung until he achieves. I still think there’s someone there.**

**I told him I need to be an individual not a perfect wife to make him happy.**

**At least he’s expressing himself.**

**Think he’s scared of my pull away.”**

- iii. Later on January 12, 2019 at 12:14PM, Suzanne texts Sheila:

**“Thanks for your encouragement this morning with Barry. I texted him a response this morning to his yesterday that I would love prayer about. Praying he will truly take it in and respect and love me for me. Letting go of expectations.”**

- iv. On July 27, 2019 at 7:21PM, Suzanne texts to Sheila:

**“Does it surprise you that B took a wildfire deployment to Durango?? He texted me “I got deployed” “I’m sorry”**

**Voluntary.**

**He could have turned it down**

**Oh well...**

**The girls will be there with me for [REDACTED]  
Sorry. Had to vent a little.”**

- v. On July 31, 2019, Suzanne texts to Sheila:

**“Need prayers. Barry came home unannounced in a very defensive mood.**

**I would leave tonight if I could. He’s so emotionally abusive and defensive...manipulative with the girls too.**

**He’s probably brainwashing them.**

**He’s got them feeling sorry for him**

**Always playing martyr**

**And telling Mal to [sic] much..I can tell by what she says they [sic] he’s talking to her**

**About me not being as loving...**

**I went two yrs when he emotionally left me and they knew nothing**

**He’s out of control”**

- vi. In the same chain of texts to Sheila, Suzanne responds to Sheila’s question about if she feels safe at home:

**“With the girls here I think it is.**

**I don’t want to upset you.**

**You’re just the only one who knows what’s really gone on**

**I think he’s still got a secret life which brings the defensiveness and manipulative ways....”**

- vii. In the same chain of texts to Sheila, Suzanne explains the demeanor of the girls that day:

**“They were upset cause they heard him arguing with me....”**

- viii. On August 25, 2019, Suzanne texts with Sheila about her upcoming

**[REDACTED]**

**“He will be with me and neighbor will take me Tuesday”**

- ix. On September 1, 2019, at 3:03PM, Suzanne texts Sheila in response to Sheila asking if Suzanne is asking for prayers regarding her [REDACTED] or relationships:

**“Relationships. He pulled Macy in again and left. My heart hurts for her**

**He’s not stable. It’s guilt and desperate measures he’s taking**

**He looks for any reason to run. It can be small and he blows up and takes off...I believe there’s still another**

**I can’t win with him. He’s too good at the manipulation.**

**I feel stuck. I can’t let my [REDACTED] again**

**I can’t handle the unsteadiness. The day he cut his leg he accused me of wanting to go back to town to get his [REDACTED] and talk to someone....I**

came back with can't question you about another but you can me?  
He literally opened his door while I was drivin [sic] up the mountain  
like he was gonna jump. His usual tactic when I bring up another.  
Then he pulled girls in and told them everything that day. I lost all  
respect for him that day.

Macy mentioned us separating today or divorcing...She wants us  
happy. She's tired of the tention [sic].

He plays the hurt one"

- x. In the same text chain, in response to Sheila asking what Barry tells the  
girls in front of her, she responds:  
"Says he loves me and can't handle the pain from me not giving him  
love he needs  
Doesn't mention all the damage he's done to me  
Physically mentally  
I told them I was hurting for 2 years and they never knew because  
that's what parents do  
I feel no peace when he's here. I don't know what to do. I don't feel  
safe around him. He's lost my trust. He will do anything to come out  
looking good.  
It makes me someone I dont [sic] like  
I'm sorry. I just feel lost today  
This is the lowest I've felt.  
I hate burdening you  
I think he wants me to be his puppet while he does what he wants in  
his "secret life"...I think he wants both but if he can't have me he will  
want to make sure he looks right. I believe he would be fine without  
me. He more or less just needs his physical needs met and to make  
"good appearances" with no thought for what I'm not getting. It's  
funny he's bought me flowers, gifts and planned s [sic] trip...more  
than he's done in the last 5 yrs  
It's all about his expectations for me  
I know I'm not giving him what he needs. The feelings behind the  
acts are not there...I'm bad at faking. He can easily put on just to  
look good  
I feel it's what looks good for the girls to see. That's just my feeling.  
He wants to appear the hurt one doing all he can  
May sound bad but I've seen his motives  
I think when I press about there being "another" he's resorted to his  
extreme behavior to scare me so that I won't bring it up again.  
I wanted to try to make it work until Macy was on her own.

**I wouldn't feel safe alone with him  
I don't see how I can get over the damage done  
I feel numb  
I've told him they [sic] and he's said okay well let's just tell the girls  
I'm leaving you and how you feel and you don't want me.  
I sound so terrible. I'm sorry.  
I know I've done things to hurt us too.  
Many things.**

**Like I said it's made me someone I don't like...don't wanna be"**

- x. In the same text string, Suzanne discusses with Sheila the possibility of them getting along if they divorce:

**"Not sure B could take that high road tho  
I know I sound so one sided...I've done my share of damage  
I just want peace"**

- xii. On September 2, 2019, Suzanne texts with Sheila:

**"I was thinking this morning how long I have out [sic] up with  
disappointments and just feel I'm to the end  
Kinda like my mom...she had s [sic] long fuse but once she made her  
decision it was firm**

**Once Macy's gone I won't be able to do it.**

**I won't feel safe**

**I've tried to hold on for her but even she's weary of it and asking why  
we don't separate**

**I sort of wish he would just get fed up with me and leave**

**Does that sound bad?**

**He wants me to be the bad guy**

**I'd live in a shack right now**

**I'm sure he won't make it easy. He has always wanted control**

**I can't do anything until we get our full payment for the house**

**Maybe January"**

- xiii. In the same text string, she discusses possibly living off of her inheritance money like her sister did if she gets divorced:

**"B said he would pay all that back to me.**

**Thank you for listening. I've never told anyone this stuff.**

**I won't have true peace until it's all over but I do feel more resolve to  
press forward with letting go"**

- xiv. On September 3, 2019 at 10:18 AM, Suzanne texts with Sheila:

**"Would appreciate your prayers...he returned last night acting like  
all should be fine. Wants to talk today to try to convince me that we  
need to work on stuff. I'm confused and was quite resolved to letting**

**go. It's just hard with the girls as he's still talking to them as support.  
Saw a text on his phone from Mal this morning encouraging him.  
Breaks my heart he's involving them still"**

xv. In the same text string at 11:49 AM, Suzanne texts Sheila:

**"I stood my ground**

**He left again**

**Told him I'm done. That I need peace. Not sure what's next**

**He said if that's how you feel I'm leaving**

**He tries to portray something he's not and hopes he will pull me back  
in**

**Told him when he involved girls I was done with respecting him.**

**He tried to use money as a tool and the girls...didn't take the bare**

**Bait**

**He said so you want to be in [sic] your own? Want me to stop paying  
all your [REDACTED] bills??**

**I told him if he got angry at all I was filing a restraining order on him**

**That shocked him a bit**

**Kept him together tho**

**He no longer sleeps with me unless I "put out". If he knows I'm going  
to sleep he sleeps out here in the bonus room**

**I just want out. Free of this nightmare.**

**He's back. Gtg"**

xvi. In the same text string at 2:10PM, Suzanne responds to a text from Sheila asking if she's ok:

**"Yes**

**Just feel like I've been in battle"**

xvii. In the same text string at 11:09PM, Suzanne responds to a text from Sheila asking how she's doing:

**"Doing pretty good. Things calmed down. Lines were drawn and I  
stood my ground"**

xviii. On September 4, 2019 at 3:25PM, Suzanne texts with Sheila:

**"Barry's been here. Been on best behavior I've ever seen.**

**He's in denial about my true heart about things. Have a good  
agreement to keep it amicable and peaceful tho for health and Macy."**

xix. On March 25, 2020 at 11:03PM, Suzanne texts Sheila:

**"Could use some extra prayer today. It's been rough here.**

**Just strength going forward. Tsking [sic] care of myself physically in  
a stressful marriage. Macy and I had a very tough talk yesterday.**

**She sees and is so perceptive. She's weary of the tension here. She  
knows how he is toward me and almost begged me to divorce him."**

- xx. In the same text string, in answer to Sheila's question if she has taken any more steps towards leaving Barry, Suzanne texts:  
**"Not really. I feel unequipped  
Wish I could just have an amicable talk...  
But dealing with a narcissist  
Macy said mom we could move to Salida and both get jobs this summer 🤔"**
- xxi. In the same text string, in answer to Sheila's question if they have talked anymore about splitting, Suzanne texts:  
**"He threatens. but I've never come out and said I wanted it today. He thinks I'm holding on til after Mace graduates at lesst [sic]  
He prob thinks I'm not strong enough to do it  
Given finances  
Lmk if you have any advice. Macy assures me she would be fine with it yesterday  
She said mom why don't you just do it without telling him?  
She even mentioned a restraining order 🤔  
I'm sick I had a conversation like that with my 16 yr old"**
- xxii. In that same text string at 4:20PM, Suzanne texts Sheila:  
**"It's Jekyl and Hyde again. He and Mal we're [sic] together last night. Prob switching it on when he talks with her. Ugh.  
I feel like I'm crazy.  
I just had a conversation with him. Pretty much told him I can't be healthy and stay in this.  
He threatens to come home and pack.  
He also asked me if I'm Talking to anyone about our marriage...like friends"**
- xxiii. On that same date at 7:54PM, Suzanne texts Sheila:  
**"Ugh. He came home when girls are gone. He won't speak of divorce. Begging for another chance. I'm so torn. But I'm [sic] my heart I know who he is."**
- xxiv. On March 26, 2020 at 2:37PM, Suzanne texts Sheila:  
**"Yesterday was interesting. To say the least. He has flipped a switch. Promising to be nice and to give him a chance."**
- xxv. On April 2, 2020 at 1:14PM, in response to Sheila's question about how the home front was, Suzanne texts:  
**"It changes like the wind. As usual  
Long text this morning of apology and declaration. It's sad. I feel bad. I don't want to cause him to have to do this. There's just**

**become a point that the reality of what's never been there is sobering...**

**And I've accepted what is...he can't change the core person you know? Makes me wonder what the young me was thinking**

**I was a broken girl just looking for stability and no confidence in who I was**

**He thinks we are great as long as he's getting what he wants"**

- xxvi. On May 9, 2020, Suzanne and Sheila text in the morning about Hannah's upcoming wedding the next day and Sheila's mother's health. There are no text messages after that morning between the two women.
- B. Most of these statements can be categorized as then existing state of mind and a plan for future action under C.R.E. 803(3). The victim is expressing her current emotional state, her feelings about what her daughters have been told and how they are feeling, her plan to eventually leave the marriage, and her doubts about that plan at times.
- i. In order to be admissible under C.R.E. 803(3), the availability of the declarant is immaterial. Additionally, the rule requires that the statements must have been made under circumstances indicating sincerity. *Morrison v. Bradley*, 655 P.2d 385 (Colo. 1982).
  - ii. In this case, these statements are all made to her best friend who is the only one she truly confides in. Included in these statements are statements that also admit that she has also behaved in ways that have damaged their marriage and are not merely self-serving statements to make her look good to her friend. There are also statements included that show that the Defendant is trying to be a better husband, giving her hope, which she would not have made if her statements were not sincere.
- C. Many of these statements, specifically the statements in which Ms. Morpew expresses not feeling safe when she is alone with the Defendant, are not hearsay and are admissible to show her state of mind. *People v. Cardenas* 25 P.3d 1258 (Colo. App. 2000). Additionally, Ms. Morpew's statements about her intent to leave the marriage are included under the state of mind exception. See *People v. Madson*, 638 P.2d 18 (Colo. 1981), which stands for the proposition that statements of present intent of future conduct are included in the state of mind exception.
- D. Should the Court determine these statements are hearsay without exception, they are admissible under C.R.E. 807:
- vi. These statements have equivalent circumstantial guarantees of trustworthiness;
    - a. As stated in ¶ III.20.B above, these statements are all made to her best friend who is the only one she truly confides in. Included in these statements are statements that also admit that she has also



behaved in ways that have damaged their marriage and are not merely self-serving statements to make her look good to her friend. There are also statements included that show that the Defendant is trying to be a better husband, giving her hope, which she would not have made if her statements were not sincere. She had no motive to lie to her best friend of over thirty years. She was not trying to impress her friend or convince her friend that she should be perceived as a perfect wife. This was a woman talking to her best friend as women do, about her inner most thoughts and feelings about her struggles with her marriage and her husband.

- b. These statements meet the requirement of trustworthiness.
- vii. These statements are offered as evidence of a material facts:
- c. The statements rebut the Defendant's early claims that there are no problems in the relationship.
  - d. These statements give context to the nature of the marriage, to which only Ms. Morphew and the Defendant are privy. The statements show the ups and downs that occur from mid-2018 until her death in May of 2020 and explain to the jury how the marriage reached its tipping point by May of 2020.
  - e. These statements are evidence of his motive to harm the victim to preserve his reputation with his daughters and the community as a family man and good husband without risking Ms. Morphew's side of the story coming out through a divorce with the victim.
  - f. Lastly, the statements make the Defendant's claims about their "perfect" and romantic evening of May 9, 2020 completely unbelievable given the deterioration of civility and the relationship as a whole.
- viii. These statements are more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts;
- g. Given Ms. Morphew obvious unavailability and inability to discuss her marriage with the Defendant, her statements to her best friend outlining her thoughts on the relationship as they occur are the best evidence of motive in this case.
  - h. By all accounts, the problems in this relationship were not public knowledge, and instead, were shared only with close family and friends.
- ix. Introduction of these statements will best serve the interests of justice as it gives context to the tumultuous relationship between the Defendant and his wife. Absent sufficient context, the jury will be left questioning why this happened and what lead up to the events in question.

## V. LEGAL AUTHORITY AND ARGUMENT FOR FOREITURE BY WRONGDOING

21. Forfeiture by wrongdoing was recently codified in C.R.S. § 13-25-139. In pertinent part, this statute states:

A. When a party to a criminal case wrongfully procures the unavailability of a witness, a statement otherwise not admissible pursuant to the Colorado rules of evidence that is offered against the party that was involved in or responsible for the wrongdoing that was intended to, and did, deprive the criminal justice system of evidence is admissible as an exception to the hearsay rule. In determining the admissibility of the evidence, the court shall determine, prior to the trial, whether the forfeiture by wrongdoing occurred by a preponderance of the evidence.

- i. In this case, the Defendant killed the victim, depriving the criminal justice system of evidence from the victim as follows:
  - a. Rebuttal of the Defendant's early claims that there are no problems in the relationship.
  - b. The context to the nature of the marriage, to which only Ms. Morphew and the Defendant are privy. The statements show the ups and downs that occur from mid-2018 until her death in May of 2020 and explain to the jury how the marriage reached its tipping point by May of 2020.
  - c. The Defendant's motive to harm the victim to preserve his reputation with his daughters and the community as a family man and good husband without risking Mr. Morphew's side of the story coming out through a divorce with the victim.
  - d. Rebuttal of the Defendant's claims about their "perfect" and romantic evening of May 9, 2020, which is completely unbelievable given the deterioration of civility and the relationship as a whole.
- ii. This Court held a Preliminary Hearing and Proof Evident or Presumption Great Hearing in this case pursuant to C.R.S. § 16-4-101. This Court did find probable cause as to the charges but did not find that the evidence rose to the proof evident or presumption great standard. However, in considering if evidence is admissible pursuant to the forfeiture by wrongdoing statute, the standard is preponderance of the evidence, which is arguably less than the standard for holding a person without bond.

22. If this Court finds that any of the statements made by Ms. Morphew prior to her death and included above under Section IV are not admissible pursuant to C.R.E. 803, 804, or 807, this Court should find that those statements are admissible pursuant to C.R.S. §13-25-139.

- A. The People have shown this Court at the Preliminary Hearing that it is more probable than not that the Defendant was involved in or responsible for the wrongdoing, i.e. the murder of the victim, and
- B. The Defendant intended to and did deprive the criminal justice system of the statements of the victim, making such statements exceptions to the hearsay rule due to forfeiture by wrongdoing.

WHEREFORE, the People request that this Court continue this matter and reset the hearing for a date and time convenient to all parties.

Dated: March 25, 2022

Respectfully submitted,  
LINDA STANLEY  
/s/ Grant Grosgebauer  
Grant Grosgebauer, #50229  
Deputy District Attorney

## **CERTIFICATE OF SERVICE**

I certify that on March 25, 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/ Grant Grosgebauer