

DISTRICT COURT, FREMONT COUNTY, COLORADO, 136 Justice Center Rd., Rm. 103 Canon City, CO 81212 (719) 269-0100	DATE FILED: April 13, 2022
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. BARRY LEE MORPHEW, Defendant.	
Iris Eytan, #29505 Dru Nielsen, #28775 Eytan Nielsen LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (720) 440-8155 Facsimile: (720) 440-8156 iris@eytan-nielsen.com dru@eytan-nielsen.com Jane Fisher-Byrialsen, #49133 Fisher & Byrialsen, PLLC 4600 South Syracuse St., 9th Floor, Denver, Colorado 80237 jane@fblaw.org Hollis Whitson, #32911 Samler and Whitson, PC 1600 Stout Street, Suite 1400 Denver, CO 80202 303-670-0575 Hollis@SamlerandWhitson.com <i>ATTORNEYS FOR BARRY LEE MORPHEW</i>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 22CR47 Division: 1
MOTION TO COMPEL PROSECUTION FOR JURY TAMPERING [D-96]	

Pursuant to § 16-5-209, C.R.S., Mr. Morphey requests that this Court order the prosecuting attorney to come before the Court and explain the refusal to investigate and prosecute crimes of jury tampering, attempted jury tampering, and conspiracy that are occurring 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.

Section 16-5-209, C.R.S., states:

The judge of a court having jurisdiction of the alleged offense, upon affidavit filed with the judge alleging the commission of a crime and the unjustified refusal of the prosecuting attorney to prosecute any person for the crime, may require the prosecuting attorney to appear before the judge and explain the refusal.

If after that proceeding, based on the competent evidence in the affidavit, the explanation of the prosecuting attorney, and any argument of the parties, the judge finds that the refusal of the prosecuting attorney to prosecute was arbitrary or capricious and without reasonable excuse, the judge may order the prosecuting attorney to file an information and prosecute the case or may appoint a special prosecutor to do so.

The judge shall appoint the special prosecutor from among the full-time district attorneys, assistant district attorneys, or deputy district attorneys who serve in judicial districts other than where the appointment is made; except that, upon the written approval of the chief justice of the supreme court, the judge may appoint any disinterested private attorney who is licensed to practice law in the state of Colorado to serve as the special prosecutor. Any special prosecutor appointed pursuant to this section shall be compensated as provided in section 20-1-308, C.R.S.

As stated in the attached Affidavits, the prosecuting attorney has unjustifiably refused to prosecute or even investigate the crimes of jury tampering, attempted jury tampering, and conspiracy to commit jury tampering. These crimes, which are described in the attached affidavit, are being committed within the jurisdiction of this Court.

Jury tampering is committed when a person, “with intent to influence a juror's vote, opinion, decision, or other action in a case, he attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.” §18-8-609 (1), C.R.S.,

See People v. Iannicelli, 2019 CO 80, 449 P.3d 387. Jury tampering in a class 1 felony trial is a class 4 felony. §18-8-609 (2). Conspiracy and attempt to commit this offense are both class 5 felonies. §§ 18-2-206(1), C.R.S.,¹ 18-2-101(4), C.R.S.²

The refusal of the prosecuting attorney to investigate and prosecute these crimes is arbitrary and capricious and without reasonable excuse. There is an obvious, undeniable risk that the crimes being committed may result in substantial prejudice to the defendant in this case, Barry Morphew. The prosecution's refusal to investigate this matter and prosecute these offenses appears to be based on the prosecution's desire to gain a tactical advantage in Mr. Morphew's case by permitting the prospective jury pool and eventually, the sitting jurors to be tampered with.

The only reason offered by the prosecution is that it would be improper for the prosecution to investigate a juror(s). That excuse falsely assumes that all of the persons committing these offenses are prospective jurors and further, false assumes that these persons should remain in the prospective juror pool.

Absent an investigation, it is not possible to identify which of the persons committing these crimes are or are not on the existing prospective juror list. That is a reason to pursue a prosecution, not a reason to refrain from it.

WHEREFORE, Mr. Morphew requests that this Court (1) require the prosecuting attorney to appear before this Court and explain its refusal, (2) find that the refusal of the prosecuting

¹ A person commits conspiracy to commit a crime "if, with the intent to promote or facilitate its commission, he [or she] agrees with another person or persons that they, or one or more of them, will engage in conduct which constitutes a crime or an attempt to commit a crime, or he [or she] agrees to aid the other person or persons in the planning or commission of a crime or of an attempt to commit such crime." § 18-2-201(1), C.R.S.

² A person commits criminal attempt "if, with the intent to promote or facilitate its commission, he [or she] agrees with another person or persons that they, or one or more of them, will engage in conduct which constitutes a crime or an attempt to commit a crime, or he [or she] agrees to aid the other person or persons in the planning or commission of a crime or of an attempt to commit such crime." § 18-2-101(1), C.R.S.

attorney to prosecute is arbitrary or capricious and without reasonable excuse, and (3) either order the prosecuting attorney to file an information and prosecute the case or appoint a special prosecutor to do so.

Respectfully submitted this 13th day of April 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

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April 2022, a true and correct copy of the foregoing **MOTION [D-96]** was served via CCE as follows: 11th Judicial District Attorney's Office, 101 Crestone Ave., Salida, CO 81201

s/ Tonya Holliday _____
Tonya Holliday