

DISTRICT COURT, FREMONT COUNTY, COLORADO 136 Justice Center Rd Canon City, CO 81212 (719) 269-0100	DATE FILED: March 16, 2022 2:07 PM
<p>Plaintiff: The People of the State of Colorado,</p> <p>v.</p> <p>Defendant: Barry Lee Morphew.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case No.: 2022CR47</p> <p>Div.: 1</p>
<p>ORDER RE: [D-53] MOTION FOR DISCOVERY AND ONGOING FULL DISCLOSURE OF ANY RECORDS, MATERIALS, OR INVESTIGATION OF PROSPECTIVE JURORS</p>	

THIS MATTER comes before the Court on Defendant’s [D-53] Motion for Discovery and Ongoing Full Disclosure of Any Records, Materials, or Investigation of Prospective Jurors (“[D-53]”) filed on December 7, 2021. The People filed their Response to [D-53] (“Response”) on December 23, 2021. On February 9, 2022, Defendant filed his Reply in Support of [D-53] (“Reply”). The Court heard additional argument from the parties at the Jury Procedure Conference on March 10, 2022. The Court has reviewed all of the briefing, argument, and the pertinent law. Being fully advised, the Court finds, concludes, and orders as follows:

I. BACKGROUND

Defendant is charged with First Degree Murder, along with other counts, for the alleged murder of his wife, Suzanne Morphew, on or about May 9-10, 2020. Defendant has pled not guilty. A jury trial is scheduled to commence on April 28, 2022.

II. APPLICABLE LAW

In *Losavio v. Mayber*, the court dealt with the public defenders request for access to certain police records. 496 P.2d 1032, 1032-33 (Colo. 1972). It had been the practice in Pueblo for a number of years for the police department to provide the district attorney with the conviction record in traffic and criminal cases of prospective jurors. *Id.* at 1033. Specifically:

The testimony adduced before the trial court showed that before each term of the district and county courts, a list of prospective jurors for that term is delivered to the Pueblo Police Department. An employee of the police department then checks the police files and records. Beside each name on the list are noted any convictions in traffic and criminal cases. These lists are then returned to the district attorney's office. They are made available to the trial deputies for their use in the jury selection process.

Id. The Supreme Court stated two purported purposes for these lists: (1) a substitute for *voir dire* examination at trial; and (2) as a possible check upon the truthfulness of a juror's answer on *voir dire*. *Id.* The public defenders requested no more than what was provided to the district attorneys in the case. *Id.* at 1034. The court found "the reasons advanced for denying these annotated lists of prospective jurors to the public defender's officer, or for that matter, to any defense attorney, are completely devoid of merit." *Id.*

Once these police-created lists are given to the prosecution, they can no longer be classified as either (1) internal matters, (2) as affecting only the internal operations of the police department, or (3) work product. *Id.* As to the extracted information, "both the district attorney and the public defender are likewise to be treated as equals." *Id.* at 1035. The court held that:

the police department files and records requested herein are not public records within the definition of that term contained in 1969 Perm.Supp. C.R.S.1963, 113-2-2(2). However, defense attorneys are entitled to obtain this type of information from the prosecution in accordance with Crim.P. 16(c) if such information is in the possession of the prosecution. The requirements of fundamental fairness and justice dictate no less.

Id. The regulation of discovery matters lies within the sound discretion of the trial court. *People v. White*, 64 P.3d 864, 874 (Colo. App. 2002).

III. ANALYSIS

Here, the People concede "[t]he Defendant is entitled to any information provided by law enforcement to the prosecution, including any criminal history of potential jurors." *Resp.*, at 1. However, the People argue Defendant is not entitled to "other materials, reports, notebooks, or other information regarding prospective jurors that the prosecution has obtained or will obtain." *Id.* at 1-2. The People assert material developed internally in the District Attorney's Office is protected by work-product privilege pursuant to Rule 16(I)(e)(1). *Resp.*, at 5. Defendant requests a list of materials including but not limited to:

criminal histories, record of service for either voir dire or service on a sitting jury, relationships or acquaintances with members of the prosecutorial team or prosecutorial offices or those of the prosecutor's agents, whether on a social, professional, or other basis, and any other information regarding the prospective jurors that is in the possession or control of the prosecution or its agents, including 'bad juror lists' or the equivalent.

Mot., at 1-2.

The Court finds, based upon a review of the case law and Rule 16, the People must turn over the materials requested unless it falls under the umbrella of work product. Therefore, to the extent the People are generating criminal histories, or compiling data about prospective jurors' prior service, it must be disclosed. Any issues related to whether materials are considered work product pursuant to Rule 16(I)(e)(1) should be resolved between the parties, and if the parties are unable to do so, the parties may utilize Rule 16(III) to involve the Court.

IV. CONCLUSION

WHEREFORE, for the reasons stated above and in the Court's discretion, Defendant's [D-53] is **GRANTED IN PART** and **DENIED IN PART**.

SO ORDERED this March 16, 2022.

BY THE COURT:

/s/Ramsey Lama
Ramsey Lama
District Court Judge