DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101	DATE FILED June 30, 2025 9:44 PM
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. BARRY LEE MORPHEW, Defendant.	
JANE FISHER-BYRIALSEN, #49133 FISHER & BYRIALSEN, PLLC 4600 S. Syracuse Street, 9th Floor Denver, CO 80237 (202)256-5664 Jane@fblaw.org DAVID BELLER, #35767 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 (303)573-1900 Fax: (303) 446-9400 david@rklawpc.com	Case Number: 25CR128 Division C

OBJECTION TO ORDER PREEMPTIVELY GRANTING REQUESTS FOR EXPANDED MEDIA COVERAGE AND REQUEST FOR MODIFICATION (D-002)

COMES NOW Barry Morphew, by and through counsel, and hereby OBJECTS to this Court's Order of June 20, 2025 and REQUESTS modifications as outlined below, and states:

1. On June 20, 2025, this Court entered an Order Preemptively Granting Requests for Expanded Media Coverage.

2. The exercise of sound discretion of the Court commands the denial of expanded media coverage in all proceedings in this matter.

EXPANDED MEDIA COVERAGE:

3. Pursuant to Colo. P.A.I.R.R. 3 ("Rule 3" expanded media coverage,) and CJD 23-02 (streaming), in determining whether expanded media coverage should be permitted, a judge shall consider factors including the following:

a. (2)(A). Whether there is a reasonable likelihood that expanded media coverage (streaming) would interfere with the rights of the parties to a fair trial;

b. (2)(B). Whether there is a reasonable likelihood that live streaming/streaming would create any adverse consequence to a party, attorney, victim, or witness;

c. 2(C). Whether there is a reasonable likelihood that expanded media coverage/streaming would unduly detract from the solemnity, decorum and dignity of the court; and

4. In this matter, expanded media coverage would interfere with the rights of the parties, detract from the dignity of the court, and create adverse effects greater than those by traditional media coverage.

5. While the public and the press have a general right to access criminal trials, there is no recognized right to televise or record the proceedings. *See Estes v. State of Tex*., 381 U.S. 532, 549 (1965) ("A defendant on trial for a specific crime is entitled to his day in court, not in a stadium, or a city or nationwide arena. The heightened public clamor resulting from radio and television coverage will inevitably result in prejudice. Trial by television is, therefore, foreign to our system"); *Wood v. Georgia,* 370 U.S. 375, 383, (1962) (T]he purpose of this trial is not… to educate the world about the American legal system. Instead, the purpose is to determine the innocence or guilt of this defendant for the specific crimes charged in the Indictment. It remains a bedrock principle of our legal system that the courts have the right "to conduct their business in an untrammeled way"); *see also Courtroom Television Network LLC v. State of New York*, 5 N.Y.3d 222, 231, 833 N.E.2d 1197 (2005)("The Federal Constitution does not require courtrooms to be open to televise court proceedings"). Thus, the court retains discretion to deny requests for expanded media coverage.

6. For a defendant to have a fair trial, the jury should decide the case solely on the basis of evidence admitted at the trial and not by considering information or opinions appearing in the media, or on preconceptions about the case founded on media reports. *Irvin v. Dowd,* 366 U.S. 717 (1961); *Patterson v. People of State of Colorado, ex rel. Attorney General,* 205 U.S. 454, 462, (1907) ("The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print").

7. There is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties, Mr. Morphew's right to a fair trial and his right to

confidential communications with counsel and confidential communications among his counsel and professional defense team.

8. Pervasive and prejudicial coverage erodes Mr. Morphew's right to the presumption of innocence, to due process, and to a fair trial. *Walker v. People,* 458 P.2d 238 (Colo. 1969). It subjects the victims and other witnesses to potential abuse and attention and threatens to alienate them such that they may no longer wish to attend or participate in court proceedings. "Certain individuals participating in a criminal prosecution, such as victims and witnesses, would prefer not to have their involvement publicized. Indeed, many newspapers refrain from publishing the names of crime victims." Scott M. Matheson, Jr., *The Prosecutor, the Press, and Free Speech*, 58 Fordham L. Rev. 865, 884 (1990). It also has a detrimental effect on potential jurors' willingness to participate in the judicial process and to do so in a fair and impartial manner. *See* Christine L. Ruva & Cathy McEvoy, *Negative and Positive Pretrial Publicity Affect Juror Memory And Decision Making,* JOURNAL OF EXPERIMENTAL PSYCHOLOGY: APPLIED 14, 226–235 (2008) (finding that pretrial publicity significantly affected jurors' perceptions of defendant credibility and culpability, witness credibility, ratings of the prosecuting and defense attorneys, misattributions of publicity as having been presented as trial evidence, and ultimately their verdicts); *See also* Lorraine Hope, Amina Memon, & Peter McGeorge, *Understanding Pretrial Publicity: Predecisional Distortion Of Evidence By Mock Jurors,* JOURNAL OF EXPERIMENTAL PSYCHOLOGY: APPLIED 10, 111-119(2004)*(*elevated rates of guilty verdicts observed in jurors exposed to negative pretrial publicity).

9. The presence of cameras within the courtroom and the media's participation in web-viewing, addressed below, will provide unnecessary distraction to the parties and witnesses and detract from the dignity of the court.

10. Further, the presence of cameras within the courtrooms will certainly bring forth more media attention. Such attention will no doubt hinder Mr. Morphew's right to a fair trial.

11. Counsel hereby objects to the request for expanded media coverage, including any audio/video recordings or still photography, for the reasons stated above.

RECORDING LIVE STREAMING:

12. Pursuant to C.R.S. §13-1-132(3.5), a request for public viewing and listening in reason time may be denied (in part):

a. (III) Technology, staffing, or internet issues limit or prevent remote observation;

b. (IV)(A) there is a reasonable likelihood remote observation of live proceedings risks compromising the safety of any person; the defendant's right to a fair trial, including violations of sequestration orders; or the victim's rights pursuant to §24-4.1-302.5(1)(a); and

c. (IV)(B) There is no less restrictive alternative that preserves the public interest in remote observation while mitigating the identified risk.

13. In this matter, counsel anticipates asking for an Order of Sequestration throughout this matter pursuant to C.R.E. 615. The purpose of Rule 615 "is to prevent the testimony of one witness from being influenced by that of another…" *People v. Brinson,* 739 P.3d 897, 899 (Colo. App. 1987); *see also People v. Melendez,* 102 P.3d 315, 319 (Colo. 2004) ("Sequestration orders are meant to prevent witnesses from tailoring their testimony to that of other witnesses and to aid the court in the detection of false testimony"); *People v. Villalobos,* 159 P.3d 624, 629 (Colo. App. 2006) ("The purpose of sequestration order is to prevent a witness from confirming his…testimony to that of other witnesses and to discourage fabrication and collusion"). This purpose "is accomplished under the rule's term by ordering witnesses to withdraw from the courtroom until called." *Brinson,* 739 P.2d at 899. However, a trial court "may also direct witnesses not to discuss the case with each other." *Id.; see also Melendez,* 102 P.3d at 319; *Villalobos,* 159 P.3d at 629. Courts have discretion to sequester witnesses at all phases of the trial, as well as during pretrial hearings, upon a showing that a sequestration order is appropriate under the circumstances. *See generally 3 Weinstein's Evidence,* 615-19 (1987).

14. There is no way for the Court or parties to know who is participating and recording the hearing from afar. Technology of the streaming service does not permit the court's busy staff from monitoring participation, and it is impossible for the parties to monitor or know who has participated in viewing livestreaming and whether that impacts their knowledge of the case.

15. In addition, the due process clauses of the Colorado and United States Constitutions guarantee every criminal defendant the right to a fair trial. *Dunlap v. People,* 173 P.3d 1054 (Colo. 2007).

16. The inclusion of audio recordings and close ups of Mr. Morphew conferring with counsel, and counsel speaking to each other and members of the defense team, is a clear violation of Rule 3 and Mr. Morphew's constitutional rights to due process and

to a fair trial. U.S. CONST. AMENDS. V, VI, VIII, XIV; COLO. CONST. ART. II, §§ 16, 20, 23, 25.

17. The denial of a fair trial may be presumed when pretrial publicity is massive, pervasive, and inherently prejudicial. *Sheppard v. Maxwell,* 384 U.S. 333 (1966); *People v. Loscutoff,* 661 P.2d 274 (Colo. 1983); *Walker v. People,* 458 P.2d 238 (Colo. 1969); *Estes, supra*.

18. In Mr. Morphew's case, the media coverage has been massive, pervasive, and prejudicial. The story has been published locally, nationally, and internationally. There are already hundreds, if not thousands, internet and media "hits" with coverage about this case within the past few days.

19. It is in the court's discretion to order the closure of criminal proceedings, limited to those situations in which closure is deemed necessary to further the administration of justice and the truth-finding process. To overcome this presumption of openness, there must be an "overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise Co. v. Superior Court,* 464 U.S. 501, 509 (1984). As such, the court must consider reasonable alternatives to closing the proceeding, and any order fashioned by the court must be no broader than is necessary under the circumstances. *Id., see also*: *Star Journal Publishing Corp. v. County Court,* 197 Colo. 234, 591 P.2d 1029 (1979). The closure issue may include exclusion of the press to prevent publicity that might prejudice the fairness of a trial.

20. Denying the expanded media request will not significantly impede the media's right to access or report the case. Media will undoubtedly be outside the courthouse at the July 1, 2025 hearing and all subsequent hearings. The "presumption of openness" remains intact with traditional media coverage.

21. If the Court grants the request for expanded media over Mr. Morphew's objection, Mr. Morphew specifically requests that the Court adopt the following limitations in addition to those already stated in the Court' July 20, 2025 Order:

    a. Members of the public should be advised orally prior to recording that video or audio recording on any device not specifically approved by the Court is forbidden, to include that no still photos are to be taken;

        i. Further advise the public of the prohibition of camera footage, video or still, of any victim or witness, including members of the public

attending court, and specifically naming Mr. Morphew's daughters. (noting July 20, 2025 Order at par. 6, 7, 8);

ii. Advise the livestreaming public that "screen" or "audio" captures of the proceedings are strictly forbidden;

b. Members of the public should be specifically advised that they cannot use cell phone cameras inside the Courtroom;

c. Prohibit any zooming features on Mr. Morphew, his daughters, any attorneys, and any members of the defense team. (noting July 20, 2025 Order at par. 12);

d. Prohibit any video and audio recording of any private discussions occurring between only defense counsel and Mr. Morphew;

Respectfully submitted this 30th day of June, 2025.

FISHER & BYRIALSEN, LLC

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

RECHT KORNFELD, P.C.

/s/ David Beller
David Beller, #35767

Certificate of Service

I hereby certify that on June 30, 2025 I caused the foregoing to be filed with the Alamosa County District Court and a copy of the same to be served on the Alamosa County District Attorney's office via CCE-File Service.

/s/ David Beller