

DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101	DATE FILED August 21, 2025 4:06 PM
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. BARRY LEE MORPHEW, Defendant.	
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 JANE FISHER-BYRIALSEN, #49133 FISHER & BYRIALSEN, PLLC 4600 S. Syracuse Street, 9th Floor Denver, CO 80237 (202)256-5664 Jane@fblaw.org	<hr/> Case Number: 25CR128 Division C
MOTION FOR AUTHORIZATION TO WEAR CIVILIAN CLOTHING AND FOR MODIFICATION OF IN-COURTROOM RESTRAINTS (D-006)	

COMES NOW Barry Morphew, by and through counsel, and moves for authorization to dress in civilian clothing for the upcoming status conference hearing in this case and requests modification of restraints during the proceeding sufficient to permit Mr. Morphew to take notes and effectively assist counsel. As grounds in support of this motion, Mr. Morphew states:

1. Mr. Morphew is currently set to appear before this Court on September 2, 2025.
2. There has been a significant amount of publicity, in both print and electronic media, over this case. Every case event – even the most mundane – is expected to garner an overwhelming amount of attention. A simple google search on this case yields in excess of hundreds of thousands of “hits.”

3. This local, national, and international attention means that Barry Morphew's image can be expected to be blasted out to thousands of viewers. There is no doubt the jury pool in this case will be heavily saturated with these images.
4. Barry Morphew is presumed to be innocent.
5. If Barry Morphew is not allowed to dress in civilian clothing for court appearances, his state and federal constitutional rights to be presumed innocent will be undermined. He will be repeatedly portrayed as a guilty criminal by virtue of being viewed in jail garb.
6. The same is true if he is visibly handcuffed at counsel table, unable to take notes or assist counsel effectively.
7. When potential jurors observe a defendant in restraints and prison clothes, they receive a subconscious instruction that the defendant is a bad person and a criminal who is not to be trusted. Such treatment also sends a message as to how the police believe the accuse should be treated and that he should be jailed. See *Eaddy v. People*, 174 P.2d 717, 718-719 (Colo. 1946) ("the presumption of innocence requires the garb of innocence"), See also *Illinois v. Allen*, 397 U.S. 337, 344 (1970) ("[T]he sight of shackles and gags might have a significant effect on the jury's feelings about the defendant. .."). Simply put, shackles and jail uniforms "suggest to the jury that the justice system itself sees a 'need to separate a defendant from the community at large.'" *Deck v. Missouri*, 644 U.S. 622, 630 (2005) (quoting *Holbrook v. Flynn*, 475 U.S. 560, 569 (1986)).
8. When Barry Morphew has been present in court, including numerous court appearances in the prior prosecution when he was out of custody on bond, he has always been quiet and respectful. *People v. Knight*, 167 P.3d 147, 153 (Colo. App. 2006) (court may deny defendant's request to appear unrestrained and in street clothes only when necessary for physical security, prevention of escape, or courtroom decorum) (citing *Deck v. Missouri*, 544 U.S. at 628-29); *People v. Dillon*, 655 P.2d 841,846 (Colo. 1982); *Hamrick People*, 624 P.2d 1320 (Colo. 1981) (reasonable efforts should be used to prevent juror views of defendants under restraint; reversal required when such views occurred and were found to be unnecessary and prejudicial). See also *Estelle v. Williams*, 425 U.S. 501, 504-505 (1976). He was not under handcuff or other restraints and there was never any incident or reason to apply such restraints.
9. Consistent with the presumption of innocence, Mr. Morphew moves for authorization to wear civilian clothing. Arrangements can be made to drop off clothing for at the Detention Center the night before the hearing, or in the morning, or under whatever arrangements are convenience for the Alamosa County Sheriff's Department.

10. This Court should ensure that unnecessary restraints are not imposed during appearances before this Court. Counsel acknowledges that the Court may properly impose restraints upon a defendant which are necessary to maintain security of the courtroom. *Lucero v. Lundquist*, 580 P.2d 1245 (Colo. 1978). However, only that security is permitted which is necessary to ensure that the defendant remains in custody and will not endanger court personnel or others in the courtroom, and will not disrupt the trial. *People v. Rogers*, 528 P.2d 1309 (Colo. 1974). The *Rogers* decision is in reference to restraints used at trial however, the court chose to apply to the same standards to the *Lucero* decision, which was not in reference to a jury trial. Here, no evidence is before the Court that any type of heightened security is necessary. There is no indication from the deputies or others that handcuffs alone, or handcuffs coupled with shackles and the like would not suffice for the protection of the proceedings.
11. The Sixth Amendment guarantees that a court may not prevent a defendant from consulting with his attorney during trial, or otherwise impose restrictions which hinder or prevent counsel from being effective in representing and advocating the client's cause. *Herring v. NY*, 422 U.S. 853 (1975), *Geders v. U.S.*, 425 U.S. 80 (1976), *People v. Meyers*, 617 P.2d 808 (Colo.1980). The right to effective assistance of counsel encompasses any stage of the proceedings at which there is a constitutional right to counsel. *Glasser v. U.S.*, 315 U.S. 60 (1942), *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

WHEREFORE, Mr. Morpew moves for authorization to dress in civilian clothing for the upcoming status conference hearing in this case and requests modification of restraints so that his hands are free to take notes and assist counsel.

Respectfully submitted this 21st day of August, 2025.

RECHT KORNFELD, P.C.

/s/ David Beller
David Beller, #35767

FISHER & BYRIALSEN, LLC

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

Certificate of Service

I hereby certify that on August 21, 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/ Caren Garcia