

<p>DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101</p> <hr/> <p>THE PEOPLE OF THE STATE OF COLORADO Plaintiff,</p> <p>v.</p> <p>BARRY LEE MORPHEW, Defendant.</p>	<p>DATE FILED April 13, 2026 9:19 PM</p> <p>▲ COURT USE ONLY ▲</p>
<p>JANE FISHER-BYRIALSEN, #49133 FISHER &amp; BYRIALSEN, PLLC 4600 S. Syracuse Street, 9<sup>th</sup> Floor Denver, CO 80237 (202)256-5664 <a href="mailto:Jane@fblaw.org">Jane@fblaw.org</a></p> <p>DAVID BELLER, #35767 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 (303)573-1900 Fax: (303) 446-9400 <a href="mailto:david@rklawpc.com">david@rklawpc.com</a></p>	<p>Case Number: 25 CR 128</p>
<p align="center"><b>[D-021] MOTION TO EXCLUDE FROM PRETRIAL COURT PROCEEDINGS PERSONS WHO MAY BE WITNESSES AT TRIAL OR AT ANY MOTION HEARING</b></p>	

Mr. Barry Morphew, by and through his attorneys, and pursuant to CRE. 615, C.R.S. §24-4.1-303(6)(a), and the Colorado Constitution, hereby request this Court sequester and exclude the presence of witnesses during trial testimony and during pre-trial hearings. In support, Mr. Morphew states:

**BACKGROUND**

1. The prosecution has endorsed well over 240 witnesses for trial.
2. Attendance of witnesses at pretrial hearings, particularly evidentiary hearings, will inevitably deprive Mr. Morphew of his constitutional right to have a fair trial.

3. Given the nature of this case and the overwhelming amount of media attention, witnesses may be tainted by their ability to observe hearings, listen in and hear the testimony of other witnesses and to observe the pretrial hearings where substantive legal issues will be addressed. Through their observation there is a risk that their testimony will be influenced or improperly adapted.

4. Given the number of prosecution witnesses endorsed so far, it will be impossible for defense counsel to be aware of who is in attendance at each court hearing and request specific remedies as to that person. Similarly, people may be “admitted” into the court’s webex during or at the outset of hearings. Mr. Morphew’s counsel cannot possibly monitor, track, and make individual motions at each court hearing every time a prosecution-designated witness attends either in person or virtually at hearings.

5. This motion is not meant to apply to witnesses who are “victims” as defined by statute. In those situations, counsel requests the court handle those witnesses on a case-by-case basis depending on the subject matter of the hearing.

6. As for prosecution-endorsed witnesses not covered by the VRA, counsel requests an exclusion order. Any legitimate concern by the prosecution for any particular designated witness can be addressed by the prosecution making a request at or before the hearing for an exception, with notice to the defense and an opportunity for Mr. Morphew’s counsel to be heard.

7. It will be imperative for this Court to exclude all witnesses allowable under the law, and not subject to the requirements of the Victim Rights Act (“VRA”), from observing or being present either virtually or in person during any trial testimony and at any pretrial hearing in this case.

#### **APPLICABLE AUTHORITY**

8. CRE 615, Exclusion of Witnesses, is part of the Colorado Rules of Evidence, states: “[a]t the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion.”

9. “[T]he trial court may, in its discretion, exclude a victim from a hearing if necessary to protect the defendant's constitutional right to a fair trial[.]” *People v. Albo*, No. 18CA0087, 2020 WL 14044675, at \*9 (Colo. App. Oct. 1, 2020) (not published).

10. CRE 615 provides for three exceptions. None of these exceptions are relevant here. The purpose of CRE 615 “is to prevent the testimony of one witness from being influenced by that of another. . . .” *People v. Brinson*, 739 P.2d 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.”).

11. Mr. Morpew’s request is for the exclusion of all prosecution witnesses not covered under the VRA.

## ARGUMENT

12. Mr. Morpew’s request that the prosecution witnesses in this matter be excluded is rooted firmly in his constitutional right to have a fair trial. Colo. Const. art. II § 16. Mr. Morpew, in order to avoid witnesses fabricating, colluding, or otherwise conforming their testimony with what they hear, requests that the Court take the appropriate measures to exclude the prosecution’s witnesses from pre-trial hearings as well as from the testimony phase of the trial. *See Martin v. Porak*, 638 P.2d 853 (Colo. App. 1981).

13. The Court should be looking to avoid prejudice to Mr. Morpew due to fabrication or collusion of witnesses, witnesses conforming their testimony to other witnesses, and the overall tainting of witness testimony. *See, e.g., People v. Gomez*, 632 P.3d 586 (Colo. 1981); *People v. Wright*, 678 P.2d 1072 (Colo. App. 1984) (courts discussing the factors on appeal relevant to trial court decisions permitting testimony of non-sequestered witnesses).

14. Due to the sheer number of witnesses that have been endorsed by the prosecution, there is a risk that there are witnesses who provided no written statements or mechanisms which would be required for their impeachment should their testimony adapt to their observations of court proceedings. This severely hinders Mr. Morpew’s ability to confront witnesses against him in a meaningful way. An issue like this will be avoided if witnesses are excluded from the pretrial hearings and from observing any testimony during trial.

15. Mr. Morpew makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, Crim. P. 16, and RPC 3.8. Mr. Morpew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and caselaw cited therein and at oral argument.

WHEREFORE, Mr. Morpew respectfully requests this Court exclude the prosecution’s witnesses from pretrial hearings as well as trial.

Respectfully submitted this 13th day of April, 2026.

**FISHER & BYRIALSEN, LLC**

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

**RECHT KORNFELD PC**

s/ David Beller  
David Beller, #35767

**Certificate of Service**

I hereby certify that on April 13th, 2026, 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/ Jane Fisher-Byrialsen