

DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101 THE PEOPLE OF THE STATE OF COLORADO Plaintiff, v. BARRY MORPHEW, Defendant	DATE FILED May 29, 2026 2:49 PM ▲ COURT USE ONLY ▲
JANE FISHER-BYRIALSEN, #49133 FISHER & BYRIALSEN, PLLC 4600 S. Syracuse Street, 9 th 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: 25 CR 128
[D-043] MOTION IN LIMINE TO EXCLUDE SCREENING TESTIMONY	

Mr. Barry Morpew, by and through undersigned counsel, requests an order excluding for any purpose at trial “screening” testimony that suggests law enforcement, or the District Attorney, or the Grand Jury has screened the case and approved of the prosecution.

1. It is generally improper to present evidence to a jury about the existence of probable cause or the process for obtaining a search or arrest warrant. *People v. Mullins*, 104 P.3d 299, 301 (Colo. App. 2004). Such evidence tends to run afoul of CRE 401, which requires evidence to be relevant, and CRE 403, which provides for the exclusion of evidence if its probative value is substantially outweighed by the danger of unfair prejudice. *See Mullins*, 104 P.3d at 301; *see also Howard-Walker v. People*, 2019 CO 69, ¶ 33 (“[W]hether a judge or a police officer believed there was probable cause to arrest the defendant was irrelevant to whether the prosecutor established the defendant's guilt at trial.”).

2. References to a “screening process” are improper because they hint that additional evidence supporting guilt exists that is unknown to the jury, and also reveal the personal opinion of the witness as to the guilt of the defendant. *See Domingo–Gomez v. People*, 125 P.3d 1043, 1052 (Colo. 2005). It also implies indictment or the charges themselves are evidence of the defendant's guilt. *See Ibid; People v. Mendenhall*, 2015 COA 107M, ¶ 62, 363 P.3d 758; *People v. Jones*, 832 P.2d 1036, 1040 (Colo. App. 1991).

3. The fact that the People believed that there was reason to bring charges against a person is irrelevant because that belief has no rational tendency, using permissible inferences, to make it more probable that the defendant committed the charged offense. *See Mullins*, 104 P.3d at 301.

4. “Screening” testimony includes any testimony designed to bolster the decision-making process or judgment of law enforcement or other actors, as explained by the Court of Appeals in a case concluding that inadmissible evidence had reached the jury:

We thus conclude that the investigator's statements regarding how many potential cases he received each year and in how many of those cases charges were brought constituted inadmissible evidence. We see no purpose for the testimony other than to imply that the defendant was guilty because the prosecution believed it was ‘appropriate’ to bring charges in this case whereas multiple other cases did not result in criminal charges. Consequently, the only inference that the jury could draw from the testimony—that the prosecution believed the defendant was guilty—was improper. The testimony was therefore irrelevant and inadmissible.

People v. Mendenhall, 2015 COA 107M, ¶ 63, 363 P.3d 758, 772.

5. In addition to the above cases, numerous other criminal convictions have been reversed in unpublished opinions based on erroneous admission of such testimony or prosecutorial comments.¹ *See e.g. People v. Salazar*, 21CA0949, ¶¶ 37-39, 2024 WL 6046531 (not published) (the prosecutor engaged in misconduct by eliciting responses from the detective regarding the existence of probable cause for his arrest because “[t]he detective's testimony that even though the victim lied, ‘[t]here were other reasons to believe probable cause existed’ told the jury that the detective — and by extension the prosecutor — had additional evidence of

¹ Unpublished cases may be cited in this court. *See Patterson v. James*, 2018 COA 173, 454 P.3d 345.

Salazar's guilt.”), *cert. denied*, 24SC737; *People v. Garcia-Chevez*, 21CA0333, 2023 WL 12057077 (not published) (finding the trial court reversibly erred by allowing the investigator to testify about her determination that there was probable cause to arrest the defendant); *People v. Hawkins*, 17CA0371, 2020 WL 14043943 (not published) (reversing conviction because the district court erred by permitting a police detective to testify about a screening process for filing charges); *People v. Adams*, 17CA2049, 2020 WL 14044612 (not published) (reversing conviction because of inadmissible evidence about how the prosecution determined that the evidence was sufficient to charge the defendant).

6. Testimony of this nature diminishes the constitutional protection that no conviction shall enter absent the prosecution satisfying their burden to prove the elements of the offense beyond a reasonable doubt. *See In re Winship*, 397 U.S. 358, 363 (1970). The U.S. Supreme Court has called the presumption of innocence “that bedrock ‘axiomatic and elementary’ principle whose ‘enforcement lies at the foundation of the administration of our criminal law.’ ” *Ibid.* *See also Tibbels v. People*, 2022 CO 1, ¶ 23, 501 P.3d 792, 797 (remarks that diminished the “proof beyond a reasonable doubt” standard warranted reversal).

7. Such improper testimony is also precluded by C.R.E. 403 because it carries substantial risk of unfair prejudice that would overwhelm any marginal probative value and lead to an unfair trial in violation of the due process clauses of the constitutions of the state of Colorado and the United States.

8. This motion in *limine* must be decided pretrial to prevent mention of the information (and information derived from it) in remarks or questions to prospective jurors or in the prosecution’s Opening Statement. The damage will be done long before the prosecution even calls the witness to the stand.

9. This motion in *limine* must be decided pretrial to prevent the prejudice that would ensue from the prosecution presenting a witness, starting to question that witness about this material, and then forcing the defense to object in front of the jury. The jury would certainly view this as if the defense were trying to hide something. Because the prosecution may not introduce this material, the prosecution should not be allowed to call to the stand a witness who relied upon such information. The prosecution should have to approach the bench beforehand so that any dispute is resolved outside the presence of the jury.

10. Whenever Mr. Morphew objects to evidence, testimony, and information, regardless of whether the objection is made in a pretrial motion or at trial, he is also objecting to arguments, remarks, prosecutor’s questions, and all other comments on that topic. He requests this Court prohibit the prosecution from making any statements, arguments, remarks, or any

other comment on that topic or including it in any questions to any witness. Mr. Morphew makes a continuing objection.

11. Mr. Morphew makes this motion and all other motions and objections during all proceedings in this case whether or not explicitly stated at the time of the making of the motion or objection, under the Due Process, Right to Counsel, Confrontation, Right to Remain Silent, Privilege Against Self-Incrimination, Compulsory Process, Ex Post Facto, Trial by Jury, Equal Protection, Right to Appeal and Cruel and Unusual Punishment Clauses of the federal and Colorado Constitutions, and Article II, Sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, and Article I, Section 9, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the U.S. Constitution, as well as the Rules of Evidence, including but not limited to CRE 401, 402, 403, 404, 608, 701, 702, 801, 802, 803, and 901. Mr. Morphew 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. Morphew respectfully requests that the People, their witnesses and counsel be barred from providing “screening” testimony that suggests law enforcement, or the District Attorney, or the Grand Jury has screened the case and approved of the prosecution.

Respectfully submitted this 29th day of May, 2026.

FISHER & BYRIALSEN, PLLC

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 May 29, 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/ Abby Clement

Paralegal at Fisher & Byrialsen PLLC