

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-045] MOTION TO EXCLUDE FROM TRIAL ANY IMAGE OF BARRY MORPHEW THAT REFLECTS HIM IN CUSTODY OR COMMENTING OR ASKING WITNESSES ABOUT HIS INCARCERATION	

Mr. Morphey requests an order barring the People from displaying, admitting, discussing or mentioning or utilizing for any purpose at trial any image that shows Barry Morphey in custody, including images that are mug shots or that show him in jail clothing, handcuffs, or any other indicia of incarceration, including discussing the fact he was incarcerated or making comments about it. In support, Mr. Morphey states:

1. It is black-letter law that the Due Process Clause prohibits the routine use of physical restraints or jail clothing visible to the jury during criminal trials, *Deck v. Missouri*, 544 U.S. 622 (2005) (restraints); *Estelle v. Williams*, 425 U.S. 501 (1976) (jail clothes). A

defendant's presumption of innocence is “directly undermined when the defendant is required to appear before the jury in visible restraints or prison clothes.” *People v. Knight*, 167 P.3d 147, 153 (Colo. App. 2006).

2. For similar reasons, booking photos, “mug shots” and the like are inadmissible and can be reversible error. See *People v. Anders*, 38 Colo. App. 185, 187, 559 P.2d 239, 241 (1976) (reversing conviction); *People v. Bugarin*, 181 Colo. 62, 507 P.2d 875 (1973) (reversing conviction). This same logic extends to testimony about his incarceration or prosecutorial questions, remarks or comments about it.
3. Use or admission at trial would violate CRE 403 because here, there is no probative value but overwhelming and inherent prejudice. Use or admission at trial would also violate CRE 404(b) by suggesting prior criminality. Admission of a defendant's mug shot carries with it a particularly acute danger of unfair prejudice. *United States v. Hines*, 955 F.2d 1449 (11th Cir. 1992) (reversing conviction). See e.g., *People v. Nunez*, No. 15CA1262, 2018 WL 11714006, at *8 (Colo. App. Mar. 22, 2018) (not selected for publication) (concluding “ the court erred when it concluded that the prejudicial effect of the photo did not substantially outweigh the probative factors”).
4. Admission of any mug shot or similar image in this case or discussions, testimony or remarks about it would violate Mr. Morphew’s federal constitutional right to due process. It is “constitutional error” to admit evidence that is “totally without relevance” to a criminal proceeding. *Dawson v. Delaware*, 503 U.S. 159, 165, (1992). Moreover, if “evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief.” *Payne v. Tennessee*, 501 U.S. 808, 825 (1991); see also *Snowden v. Singletary*, 135 F.3d 732, 739 (11th Cir.1998) (introduction of expert opinion that 99.5% of children tell the truth about sexual abuse was “federal constitutional error,” because it invaded the jury's role in assessing witness credibility). Similarly, admission of any in-custody image would violate the due process clause of the Colorado state constitution.
5. This motion in *limine* is required to prevent use or mention of Mr. Morphew’s incarceration, including any such image, in remarks or questions to prospective jurors or in the prosecution’s Opening Statement. The damage will be done if the image is shown to jurors or comments made about it, even though the objection would be sustained.
6. This motion in *limine* is also required to prevent the prejudice that would ensue from the prosecution starting to present an image or discussing Mr. Morphew’s incarceration and thus 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 such an image, the prosecution should not be allowed to try to do it at trial. call a witness to the stand who relied upon such information. The prosecution should be required to approach the bench beforehand so that any dispute is resolved outside the presence of the jury.

7. 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 the topic of Mr. Morphew's incarceration or including it in any questions to any witness. Mr. Morphew makes a continuing objection.
8. Mr. Morphew 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. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and case law cited therein and at oral argument.

WHEREFORE, Mr. Morphew requests an order barring the People from displaying, admitting, discussing or mentioning or utilizing for any purpose at trial any image that shows Barry Morphew in custody, including images that are mug shots or that show him in jail clothing, handcuffs, or any other indicia of incarceration, including discussing the fact he was incarcerated or making comments about it.

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