

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-046 MOTION IN LIMINE REGARDING NARRATION OF VIDEOS	

Mr. Morphey requests an order barring the People, their witnesses and counsel from offering any narration of video recordings that the People may play for the jury and in support states as follows:

1. Mr. Morphey anticipates that the People will offer video recordings into evidence and will seek to play them for the jury. Mr. Morphey may or may not object to the recordings being admitted into evidence, but, to the extent that the Court does admit the videos (whether over Mr. Morphey's objection or not), he objects to any of the People's witnesses offering any narration of any videos.

2. Under CRE 701, a lay witness may testify to opinions or inferences so long as they are (a) rationally based on the perception of the witness; (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of CRE 702.

3. Lay opinion testimony is permitted because “it has the effect of describing something that the jurors could not otherwise experience for themselves by drawing upon the witness's sensory and experiential observations that were made as a firsthand witness to a particular event.” *People v. McFee*, 2016 COA 97, ¶ 76 (quoting *United States v. Freeman*, 730 F.3d 590, 595 (6th Cir. 2013)). A lay witness's opinion is not helpful to the jury, and therefore improper, if it's based on the same information that the jury has. *See id.*

4. Case law supports Mr. Morphew's position. In *People v. Vergari*, 2022 COA 95, 521 P.3d 391, a video forensics technician (Janson) had cropped and enlarged a section of a surveillance video to create two videos focusing on the altercation between the defendant and the victim. The videos were admitted, and, “[a]s they played, the prosecutor asked Janson - who was not present during the altercation - to describe what was occurring in the videos. Defense counsel objected, arguing that the jurors could determine for themselves what the videos depicted. The trial court found that Janson could describe what the videos showed as ‘it's often necessary that the witness make a record as to what the exhibit is showing.’” *Id.* at ¶15.

5. The Court of Appeals found two problems with the trial court's approach. First, the Court held that the trial court's ruling that the “narration was necessary to ‘make a record’ about what the videos showed” was “misplaced [because] the videos were admitted and thus they - and what they showed - became part of the record. A narration simply for the sake of making a record was unnecessary.” *Id.* at ¶19 n. 3.

6. A video thus speaks for itself. It is not like a sporting event that requires ongoing commentary. The People should not be permitted to provide any play-by-play analysis of any video. There should be no questions to any officers or investigators along the lines of “What is happening now?”

7. The *Vergari* Court held that “it was improper for Janson to opine on the events shown in the recordings [because he] did not witness what occurred in the videos firsthand, have any personal knowledge about the video recordings or what they depicted, or provide a unique or more informed perspective or understanding because of his expertise in forensic imaging.” *Id.* at ¶19. Given that he “was simply asked to narrate what the jurors

themselves were contemporaneously viewing, ... he was in the same position as the jurors when it came to discerning what these videos depicted.” The Court then reemphasized, “He therefore should not have been permitted to provide any opinion about what the videos showed. Instead, it was for the jurors to watch the videos and reach their own conclusion about what the videos depicted.” *Id.* at ¶19. This is because a “witness, lay or expert, may not form conclusions for jurors that they are competent to reach on their own.” *Id.* at ¶18 (citations omitted). *See also People v. Christian*, No. 23CA0339, 2025 WL 3485723, at *7 (Colo. App. Dec. 4, 2025) (not selected for publication) (finding the trial abused its discretion by admitting a detective’s statements that based on what he saw in the video, Mr. Christian flicked open a knife and acted aggressively);¹ *People v. Delgado-Cruz*, No. 22CA0977, 2025 WL 1088211, at *3 (Colo. App. Feb. 20, 2025), *cert. denied*, No. 25SC181 (“Ordinarily, then, if a witness is in precisely the same position as the jury to interpret a video recording, his opinion as to what is shown on the recording is inadmissible under Rule 701.”).

8. Thus, the People should not be permitted to provide any “color commentary” on any video. There should be no questions to officers or investigators along the lines of “In your opinion, what was XXX doing here?” or “what was XXX trying to do here?” It would be error to allow the People to narrate a video when the jury is fully capable—and fully tasked with—interpreting it for themselves.

9. Mr. Morphey 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. Morphey 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. Morphey respectfully requests that the People, their witnesses and counsel be barred from calling any witness to narrate or opine in any way on any video that the People may play for the jury.

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

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