

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-047] MOTION TO PRECLUDE SPECTATORS AND WITNESSES ASSOCIATED WITH LAW ENFORCEMENT AGENCIES OR SIMILAR ENTITIES FROM OBSERVING OR PARTICIPATING IN THE TRIAL WHILE WEARING UNIFORMS, CARRYING GUNS, OR DISPLAYING INSIGNIAS	

Barry Morphew, by and through counsel, requests that this Court enter an order precluding spectators and witnesses associated with law enforcement agencies, or similar entities from observing or participating in the trial while wearing uniforms, carrying guns, or displaying insignias. Mr. Morphew relies upon the Colorado Constitution, article II, sections 3, 6, 16, 18, 20, and 25, as well as the United States Constitution, amendments VI, VIII, and XIV.

GROUND**S**

1. It is well established that trial judges have considerable discretion over matters related to the orderly conduct of trial, including evidence, *Thweatt v. Ontko*, 814 F.2d 1466, 1470

(10th Cir. 1987), and the “power...to direct the course of the trial in the interest of the proper administration of justice.” *Chapman v. United States*, 169 F.2d 641, 642-43 (10th Cir. 1948). The decision to issue a protective order rests within the sound discretion of the trial court. *Wang v. Hsu*, 919 F.2d 130, 130 (10th Cir. 1990).

2. Exercise of the Court’s power is often seen in matters such as requiring witnesses to remove hats or sunglasses while testifying, prohibitions on lewd or inflammatory clothing, and other routine restrictions. See e.g. *People v. Aleem*, 149 P.3d 765, 776-77 (Colo. 2007) (the trial court did not violate the First Amendment by requiring that the defendant remove his “Tookie Williams” T-shirt). Similarly, this Court has the power to restrict law enforcement officers, Department of Corrections personnel, and others from carrying their firearms and wearing law enforcement uniforms during testimony. This is because “[c]ourtrooms must be neutral, politically impartial environments dedicated to fairness and equal treatment of the litigants.” *People v. Aleem*, 149 P.3d 765, 776-77 (Colo. 2007), citing *Berner v. Delahanty*, 129 F.3d 20, 27 (1st Cir. 1997); *People v. Pennisi*, 149 Misc.2d 36, 563 N.Y.S.2d 612, 615 (1990). “To this end, the court has an obligation to maintain courtroom decorum.” *Ibid.* In *People v. Aleem*, the Colorado Supreme Court found to be reasonable the trial court’s order prohibiting the defendant from wearing a political T-shirt during trial. The Supreme Court held that, for First Amendment purposes, a courtroom is not a public forum. *Id.*, at 776 (“[A] courtroom is a non-public forum for First Amendment purposes.”) In such a forum, courts have not only the authority but the duty to restrict speech to avoid impermissible influences on the jury that may compromise the defendant’s right to a fair trial. *Id.*, at 777 (“Courts have recognized the need to restrict speech to avoid impermissible influences on the jury that may compromise a defendant’s right to a fair trial.”) In *People v. Aleem*, the trial court’s order that the witness change clothes before testifying was reasonable because the witness’ T-shirt “contained several political messages that had the potential to interfere with the courtroom’s purpose and impact the parties’ rights to a fair trial by affecting the jurors’ ability to be impartial.”)

3. Courts in Colorado and other jurisdictions have issued orders prohibiting law enforcement officers from carrying firearms even when the jury is not present, such as during depositions. See *Graber v. City and County of Denver*, No. 09-cv-01029-JLK-MJW (D. Colo. April 5, 2012) (finding “prohibition on the presence of firearms at these depositions both reasonable and prudent”); *Padilla v. City and County of Denver*, No. 09-cv-02930-CMA-KLM (D. Colo. June 30, 2010) (denying defendant’s motion for protective order to bring service revolver to deposition); *In re Stratosphere Corp. Sec. Litig.*, 182 F.R.D. 614, 622 (D. Nev. 1998) (establishing deposition protocols ordering “[n]o firearms shall be permitted at depositions”); *Katz v. Molic*, 1984 U.S. Dist. LEXIS 22546 (S.D.N.Y. 1984) (“The Court perceives no reason why plaintiff or any other party should need firearms during [depositions].”).

4. The due process clause of the Fourteenth Amendment guarantees the right of state criminal defendants to be tried by an impartial jury. The Fourteenth Amendment essentially incorporates the Sixth Amendment right to be tried by a panel of impartial, ‘indifferent’ jurors. *Irvin v. Dowd*, 366 U.S. 717, 722 (1961). The right to a fair trial is also guaranteed by the Sixth Amendment and includes “the principle that ‘one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial.’” *Holbrook v. Flynn*, 475 U.S. 560, 567 (1986) (quoting *Taylor v. Kentucky*, 436 U.S. 478, 584 (1978)). The failure to ensure a fair trial is a violation of the standards of due process. *Irvin v. Dowd*, *supra*, 366 U.S. at 722.

5. In *Holbrook*, the Supreme Court examined the right to a fair trial in the context of a situation where several uniformed police officers had attended the trial of the defendants. In such situations, the Court concluded that federal courts must “look at the scene presented to jurors and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to defendant's right to a fair trial; if the challenged practice is not found inherently prejudicial and if the defendant fails to show actual prejudice, the inquiry is over.” 475 U.S. at 572. *See also*, *Hill v. Ozmint*, 339 F.3d 187, 199 (4th Cir.2003).

6. A hostile “atmosphere in and around the courtroom” may “interfere with the trial process, even though ... all the forms of trial conformed to the requirements of law,” *Estes v. Texas*, 381 U.S. 532, 560 (1965) (Warren, J. concurring), including pretrial publicity and occurrences that take place during trial. *Woods v. Dugger*, 923 F.2d 1454, 1457 (11th Cir. 1991) (conviction and death sentence vacated because uniformed law enforcement officers were permitted to sit in the courtroom during the trial); *see also Sheppard v. Maxwell*, 384 U.S. 333, 352 (1966) (courts evaluate claims of an unfair trial based on the “totality of the circumstances”).

7. In *Woods v. Dugger*, the defendant was charged with killing a correctional officer. Correctional officers who were not performing courtroom security wore their uniforms into the courtroom in a show of solidarity with the slain officer. The defendant killed a prison correctional officer. The court held that the presence of uniformed prison guards rose to the level of prejudice when approximately half of the spectators were prison guards in uniform and who wore their uniforms “for one reason: they hoped to show solidarity with the killed correctional officer.” *Id.* at 1459-60; *see also Mata v. Johnson*, 99 F.3d 1261, 1271 (5th Cir.1996), *vacated in part and remanded*, 105 F.3d 209 (5th Cir.1997) (holding “totality of circumstances” warranted evidentiary hearing on claim excessive security had been deployed when heavily armed guards were in and around the courtroom and where 30-40 uniformed prison guards were in the

courtroom during trial); *United States v. Ruiz*, 579 F.2d 670, 674-75 (1st Cir. 1978) (upholding removal of three uniformed police officers as their uniforms “smack[ed] a little bit of pressurizing the jury and intimidating the jury” in criminal proceeding); *Moore v. State*, 773 S.W.2d 834, 838 (Ark. 1989) (finding prejudice where the State purposely placed a cadre of uniformed police officers inside the rail during closing arguments).

8. Permitting law enforcement officers to appear in uniforms, badges, and guns sends a message from this Court to the jury, conveying the idea that these witnesses are worthy of special trust and special treatment. See *State v. Page*, 16 P.3d 890, 896 (Idaho 2000) (“[A]llowing the officers to appear with firearms is a form of vouching for their credibility. One could conclude that they alone are trustworthy enough to have weapons in the courtroom . . . Some may see the permission to wear a firearm on the witness stand as the court itself recognizing the officers as being more worthy of trust than other witnesses.”). “Badges, signs, and other forms of visual information or signals that trigger anger, revenge or excessive emotions for or against a party violate a defendant's right to a fair trial guaranteed by the 6th amendment to the United States Constitution and Art. I § 13 of the Louisiana Constitution.” *State v. Allen*, 800 So. 2d 378, 390 (La. App. 4 Cir. 2001). Correctional officers have no legitimate reason to don police dress for court. The officers will be identified as law enforcement personnel during their testimony. Detectives who typically testify in suit coats and ties seem to have little if any problem establishing their identity and credibility without wearing a uniform. The only reason off-duty officers are told to wear uniforms to Court is to encourage the very idea that *voir dire* seeks to dispel, that the uniform makes these men and women more credible, believable, and honest than the population generally and other non-uniformed witnesses in particular. Justice should not encourage such a falsehood. Even in civil cases, when one of the parties is not on trial for his life, the show of uniforms, badges, and guns in the courtroom can rise to the level of unfair prejudice. See e.g., *Davidson v. Riley*, 44 F.3d 1118, 1127 (2nd Cir. 1995) (remanding case for trial court to hold evidentiary hearing to determine if extra security guards were needed in §1983 action).

9. The Colorado Jury Instruction on DETERMINING CREDIBILITY OF WITNESSES, COLJI, E:05 states:

INSTRUCTION NO.

You are the sole judges of the credibility of each witness and the weight to be given to the witness's testimony. You should carefully consider all of the testimony given and the circumstances under which each witness has testified.

For each witness, consider that person's knowledge, motive, state of mind, *demeanor*, and *manner while testifying*...

See also id., E:06 (expert witness) ("the credibility of an expert's testimony is to be considered as that of any other witness"). Thus, jurors are explicitly urged to take into account witness "demeanor." The definition of "demeanor" includes "behavior; conduct; bearing; appearance."¹ Demeanor reflects on a person's character and is a fundamental aspect of evaluation of that person's credibility.

10. A reasonable person could infer that a witness's appearance, including his or her clothes or attire, is part of the demeanor that the jury is instructed to consider. The definition of a person's demeanor includes a determination of a person's character as well. There is merit in the statement that "the clothes make the man." That is why a defendant often chooses to not appear in prison garb in front of a jury. The uniform of a police or correctional officer, including the act of carrying a gun while testifying or observing in the courtroom, provides an overt statement just as much as if he or she states "I am a police officer and a person to be trusted." The uniform itself creates an evidentiary statement that lends to the credibility or character of the person wearing it without first providing the Court or Mr. Morpew the right to object to that statement.

11. Rule 608(a)(2) of the Colorado Rules of Evidence in relevant part states: "evidence of truthful character is admissible only after the character of witness for truthfulness has been attacked by opinion or reputation evidence or otherwise." When an officer testifies while wearing a gun, badge, and/or uniform, it is equivalent to admitting evidence to the trier-of-fact prior to any attack on the officer's credibility. This is impermissible under Rule 608.

12. It is also impermissible under CRE 403, which states: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Wearing of official uniforms when not required is not probative of any fact relevant to this case, and can only unfairly prejudice Mr. Morpew.

¹ <http://www.english-test.net/toeic/words/333/toeic-definitions.php>

13. While there is at least one specific example of a law enforcement officer using his loaded, deadly weapon to shoot a fire chief in a courtroom,² that is not the source of Mr. Morphew's concerns. Mr. Morphew is concerned about his right to a fair trial and an impartial jury.

14. During jury selection, the court and parties will be making important attempts to weed out from jury service, in this case any individuals who would give more credibility to a police or correctional officer than a "civilian" witness because of the position the officer holds. See e.g. *People v. Roldan*, 353 P.3d 387 (Colo. App. 2011) (trial court erred in failing to excuse for cause a prospective juror whose husband, brother, and cousin were police officers and who said she would "most likely" accept a police officer's statements as more truthful than another person's), *reversed on other grounds related to remedy*, 322 P.3d 922 (Colo. 2014); *People v. Reddick*, 44 Colo. App. 278, 280, 610 P.2d 1359, 1361 (1980) (trial court erred in not removing for cause a juror whose respect for the prosecutor and her relationship with police officers may have caused a "possible unconscious influence" on her). See also e.g. *Butler v. City of Camden, City Hall*, 352 F.3d 811 (3d Cir. 2003) (in a civil case, the trial court's failure to question prospective jurors on potential law enforcement bias denied the arrestee-plaintiff the right to a fair and impartial jury, warranting a new trial). The cases holding challenges based on such juror perceptions to be legitimate and justified are legion.

15. The issue of officers wearing uniforms, badges, and guns while testifying and/or observing the trial is just as prejudicial as when a defendant appears in jail garb and shackles in front of a jury. See *Estelle v. Williams*, 425 U.S. 501, 512 (1976) (violation of due process rights of a criminal defendant to require him to testify while wearing the outfit of a prisoner); *Montoya v. People*, 345 P.2d 1062, 1063-64 (Colo. 1959) (presenting defendants to jury in manacles was unnecessary and prejudicial); *Eaddy v. People*, 174 P.2d 717, 718 (Colo. 1946) (wearing clothes with the words "County Jail" prejudicial noting "[t]he presumption of innocence requires the garb of innocence"). An accused's prisoner's uniform is likely to have a continuing influence on the jury. *People v. Romero*, 694 P.2d 1256, 1266 (Colo. 1985). See also *People v. James*, 40 P.3d 36, 42 (Colo. App. 2001) ("a defendant's wearing of prison garb or visible restraints is a constant reminder that he or she is a prisoner").

16. If there are specific issues that make enforcement of this Court's order a hardship on a particular witness, of course that specific example could be brought to this Court's attention

² This occurred in the small town of Jericho, Arkansas on September 2, 2009.

<http://www.freerepublic.com/focus/news/2349272/posts>;

<http://www.alien-earth.com/keywords/articles.php?article=2461&keyword=261&letter=xx#>; see e.g., John Campbell, *Don Payne, Jericho Fire Chief, Shot By Cop In Arkansas Court Over Tickets*, The Huffington Post (Nov. 19, 2012).

in advance of the witness testifying. Such issues can generally be accommodated by permitting the officer to bring a change of clothes, as the Court did in one civil case:

In his final motion in limine, the plaintiff asks the court to direct the defendant officers not to wear their uniforms in court. The defendants do not object with the qualification that if the defendants must be in uniform at time of trial due to the upcoming NATO summit, then the uniform issue be permitted to be revisited. In response, the plaintiff suggests that, if necessary, the officers bring a change of civilian clothes to change into while they are in court. *This is a reasonable suggestion.* Accordingly, the plaintiff's motion to have the officers not wear their uniforms in court is granted but the defendants may raise the issue again before trial should circumstances change.

Ford v. Bell, 09 C 6851, 2012 WL 1416456, at *3 (N.D. Ill. Apr. 24, 2012) (not reported in F.Supp.) (emphasis added). Indeed, a trial court can err by not requiring witnesses to change clothes before testifying when the witness' attire would prejudice the jury. *See e.g. State v. Allen, supra*, at 390 (when the witness showed up wearing clothes that might prejudice the jury, the trial judge should have required the witness to change his clothes before testifying).

17. This restriction should also apply to the prosecutors in the case.

CONCLUSION

The possibilities for a witness's attire at trial range from full nudity to the wearing of an official uniform that represents trustworthiness. Both attires would make a preemptive statement to the trier-of-fact regarding the character or demeanor of the witness. Both types of attire would lend weight to the credibility of each witness. This Court should allow neither.

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