

DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101	DATE FILED October 21, 2026 1:00 PM
THE PEOPLE OF THE STATE OF COLORADO Plaintiff, v. BARRY LEE MORPHEW, Defendant.	▲ 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-061] MOTION FOR AUTHORIZATION TO WEAR CIVILIAN CLOTHING AND FOR MODIFICATION OF IN-COURTROOM RESTRAINTS	

COMES NOW Barry Morphew, by and through counsel, and moves for authorization to dress in civilian clothing for all upcoming status conference hearings, other pretrial hearings, and trial in this case and requests modification of restraints during the proceeding sufficient to permit Mr. Morphew to take notes and effectively assist counsel. As grounds in support of this motion, Mr. Morphew states:

1. On August 28, 2025, this Court granted a previous request (Motion and Order D-006) for Mr. Morphew to wear civilian clothing to an upcoming court hearing and provided for modification of restraints. This court set conditions in that order that Mr. Morphew does not oppose.

2. It is possible that the order remains in force. In an abundance of caution, however, Mr. Morpew requests that this Court enter a standing order permitting Mr. Morpew to wear civilian clothes and have modified restraints at all court appearances, including trial.
3. All the justifications for this court's prior order remain in place. Mr. Morpew incorporates the allegations in D-006 by reference.
4. There has been a significant amount of publicity, in both print and electronic Media. Every case event – even the most mundane – garners an overwhelming amount of attention and republication.
5. This local, national, and international attention means that Barry Morpew's image can be expected to be blasted out to thousands of viewers. There is no doubt the jury pool in this case will be heavily saturated with these images.
6. Barry Morpew is presumed to be innocent.
7. If Barry Morpew is not allowed to dress in civilian clothing for court appearances, his state and federal constitutional rights to be presumed innocent will be undermined. He will be repeatedly portrayed as a guilty criminal by virtue of being viewed in jail garb and visible restraints.
8. The same is true if he is handcuffed at counsel table, unable to take notes or assist counsel effectively.
9. When potential jurors observe a defendant in restraints and prison clothes, they receive a subconscious instruction that the defendant is a bad person and a criminal who is not to be trusted. Such treatment also sends a message as to how the police believe the accuse should be treated and that he should be jailed. See *Eaddy v. People*, 174 P.2d 717, 718-719 (Colo. 1946) ("the presumption of innocence requires the garb of innocence"), See also *Illinois v. Allen*, 397 U.S. 337, 344 (1970) ("[T]he sight of shackles and gags might have a significant effect on the jury's feelings about the defendant. .."). Simply put, shackles and jail uniforms "suggest to the jury that the justice system itself sees a 'need to separate a defendant from the community at large.'" *Deck v. Missouri*, 644 U.S. 622, 630 (2005) (quoting *Holbrook v. Flynn*, 475 U.S. 560, 569 (1986)).

10. Justice Brennan eloquently summarized the constitutional infirmity of requiring jail clothing during trial in his dissent in *Estelle v. Williams*, 425 U.S. 501, 518 (1976). His concerns apply equally to pretrial hearings in a case with this extraordinary level of exposure:

Identifiable prison garb robs an accused of the respect and dignity accorded other participants in a trial and constitutionally due the accused as an element of the presumption of innocence, and surely tends to brand him in the eyes of the jurors with an unmistakable mark of guilt. Jurors may speculate that the accused's pretrial incarceration, although often the result of his inability to raise bail, is explained by the fact he poses a danger to the community or has a prior criminal record; a significant danger is thus created of corruption of the fact finding process through mere suspicion. The prejudice may only be subtle and jurors may not even be conscious of its deadly impact, but in a system in which every person is presumed innocent until proven guilty beyond a reasonable doubt, the Due Process Clause forbids toleration of the risk.

Justice Brennan's insights were later borne out by the rulings in *Deck v. Missouri*, *supra*, *Illinois v. Allen*, *supra*; *Holbrook v. Flynn*, *supra*, and the other cases cited herein.

11. When Barry Morphew has been present in court, including numerous court appearances in the prior prosecution when he was out of custody on bond, he has always been quiet and respectful. *People v. Knight*, 167 P.3d 147, 153 (Colo. App. 2006) (court may deny defendant's request to appear unrestrained and in street clothes only when necessary for physical security, prevention of escape, or courtroom decorum) (citing *Deck v. Missouri*, 544 U.S. at 628-29); *People v. Dillon*, 655 P.2d 841, 846 (Colo. 1982); *Hamrick v. People*, 624 P.2d 1320 (Colo. 1981) (reasonable efforts should be used to prevent juror views of defendants under restraint; reversal required when such views occurred and were found to be unnecessary and prejudicial). *See also Estelle v. Williams*, 425 U.S. 501, 504-505 (1976). There was never any incident and never any reason to apply shackles.
12. Consistent with the presumption of innocence, Mr. Morphew moves for authorization to wear civilian clothing. Arrangements can be made to drop off clothing for at the Detention Center the night before the hearing, or in the morning, or under whatever arrangements are convenient for the Alamosa County Sheriff's Department.

13. This Court should ensure that unnecessary restraints are not imposed during appearances before this Court. Counsel acknowledges that the court may properly impose restraints upon a defendant which are necessary to maintain security of the courtroom. *Lucero v. Lundquist*, 580 P.2d 1245 (Colo. 1978). However, only that security is permitted which is necessary to ensure that the defendant remains in custody and will not endanger court personnel or others in the courtroom and will not disrupt the trial. *People v. Rogers*, 528 P.2d 1309 (Colo. 1974). The *Rogers* decision is in reference to restraints used at trial however, the court chose to apply to the same standards to the *Lucero* decision, which was not in reference to a jury trial. Here, no evidence is before the court that any type of heightened security is necessary.
14. During court proceedings, Mr. Morphew needs to be able to write and handle papers. Such restraints hamper the ability for counsel to effectively receive assistance from Mr. Morphew during hearings. The Sixth Amendment guarantees that a court may not prevent a defendant from consulting with his attorney during trial or otherwise impose restrictions which hinder or prevent counsel from being effective in representing and advocating the client's cause. *Herring v. New York*, 422 U.S. 853 (1975); *Geders v. U.S.*, 425 U.S. 80 (1976); *People v. Meyers*, 617 P.2d 808 (Colo.1980). Mr. Morphew indisputably has the right to effective assistance of counsel at pretrial hearings. See *Glasser v. United States*, 315 U.S. 60 (1942), *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

WHEREFORE, Mr. Morphew moves for authorization to dress in civilian clothing for all pretrial hearings and trial and requests modification of restraints so that his hands are free to take notes and assist counsel.

Respectfully submitted this 21st day of October, 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 October 21, 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