DISTRICT COURT ALAMOSA COUNTY, COLOARDO 8955 Independence Way; Alamosa, CO 81101 _____ THE PEOPLE OF THE STATE OF COLORADO v. Defendant: BARRY MORPHEW	DATE FILED November 3, 2026 2:10 PM Δ COURT USE ONLY Δ
	Case Number: 2025CR128 Division: C

ORDER GRANTING DEFENDANT'S MOTION D-44 AND TAKING NO ACTION ON DEFENDANT'S MOTIONS D-39 AND D-45

THIS MATTER came before me on July 6, 2026 for a hearing on numerous motions filed by the Defendant among them motions *[D-39] Motion to Exclude Any Witness's Comments or Beliefs That Mr. Morphew Looked or Looks Guilty*; Motion *[D-44] Motion to Prohibit Any Reference to Mr. Morphew's Post-Arrest Silence and Invocation of His Constitutional Rights;* and *[D-45] Motion to Exclude from Trial Any Image of Barry Morphew That Reflects Him in Custody or Commenting or Asking Witnesses About His Incarceration*. Motion D-39 was filed on April 13, 2026. The prosecution filed a response on May 27, 2026 and the Defendant filed a reply on June 22, 2026. Motions D-44 and D-45 were filed on May 29, 2026 and the prosecution filed a response on June 18, 2026. Due to the request to file these motions after the original deadline, no replies were permitted.

Several of the Defendant's motions ask the Court to order the prosecution to avoid eliciting evidence and/or arguments that would be contrary to the law and the

prosecution's ethical obligations. For the foregoing reasons, such orders are unnecessary at this time.

I. MOTION D-39

Motion D-39 concerns a witness giving an opinion while testifying that a particular version of events is more correct, commenting on the credibility or lack thereof of another witness, or opining that the Defendant was not truthful or forthcoming when interviewed. Motion D-39 is also concerned with commentary from witnesses that the Defendant "looked guilty" or "looked like he [was] hiding something." The specific example given during the hearing was when an expert investigator, testifying while watching a video of the Defendant's movements, tells the jury that the Defendant's actions were consistent with something a guilty person would do or looked like he was hiding something, like evidence of the crime.

While there are some limited circumstances under which the prosecution can elicit versions of the testimony about which the Defendant is concerned, that ability should be employed with extreme caution lest the prosecution cross a constitutional boundary from which it cannot return. Therefore, there is NO ACTION TAKEN on the Defendant's Motion D-39 unless and until a specific issue arises wherein I must determine if that boundary has or is about to be crossed.

Assessing the credibility of witnesses and determining the facts that are relevant to a charged crime are solely within the province of the jury*. Colo. Jury Instrs., Criminal E:05 Credibility of Witnesses* and *E:01 Duties of Judge and Jury*, respectively. But a lay witness can, sometimes, provide testimony regarding an ultimate issue to be decided by the jury because nothing requires the jury to accept the witnesses opinion on the issue over its own

considered judgment. *People v. Acosta*, 338 P.3d 472, 479 (Colo. App. 2014). A witness may not, however, testify regarding whether a particular legal standard has or has not been met. *Id*.

A lay witness can testify that, in their opinion, a defendant "acted guilty" if that is not offered merely as a blanket statement but instead includes the observations of the defendant's behavior that brought the witness to that opinion. *Acosta*, *supra*. Similarly, a witness may testify about her or his opinion of observations from evidence such as a video if there is some basis to conclude that the witness is more likely to correctly assess the behavior than is the jury so long as that testimony is helpful to the jury. *People v. Grant*, 492 P.3d 345 (Colo. App. 2021).

A witness cannot be asked to opine on the veracity of another witness and counsel is generally prohibited from asking a witness to comment on the credibility of another. *People v. Murphy*, 484 P.3d 678, 685 (Colo. 2021); CRE 608. "However, if the purpose of the testimony [is] not to comment on another witness's credibility, but rather for the narrow purpose of explaining an officer's interviewing tactics, the testimony [should be allowed]." *Id*. (An investigator testified that he did not believe a witness' statement that he did not know who gave him methamphetamines so he switched his style of questioning from open-ended questions to a direct question regarding the Defendant's involvement.).

II. MOTION D-44

Motion D-44 asks me to preclude the prosecution from commenting on the Defendant's multiple invocations of his constitutional rights.

There is not a scenario that has been raised nor that I can think of independently in which the Defendant's exercise of his constitutional rights might be relevant; therefore, to the extent it is necessary for me to do so, the Defendant's Motion D-44 is GRANTED.

III. MOTION D-45

Motion D-45 asks me to preclude images of the Defendant in custody, in handcuffs, or in jail attire from being shown to the jury.

While the gratuitous display of images of the Defendant while incarcerated in the hopes of eliciting in the jury commonly held beliefs about people who are in jail is not probative of any material fact, there may be circumstances in which such an image of the Defendant in jail clothing or other indicators of his custodial status might be inadvertent, contextually relevant, or a situation for which the danger of unfair prejudice may not be substantially outweighed by the probative value. *See People v. Anders*, 559 P.2d 239, 241 (Colo. App. 1976); CRE 403; *see also, e.g., People v. Dunlap*, 975 P.2d 723 (Colo. 1999); *People v. Ray*, 575 P.3d 400 (Colo. 2025); and *People v. Erickson*, 2021 WL 12343204 (Colo. App. 2021)(not reported). Therefore, while the prosecution should use caution to avoid the use of any such image or testimony, there is NO ACTION TAKEN on the Defendant's Motion D-45 at this time and the issue will be addressed contemporaneously if it arises during trial.

IV. MOTIONS IN LIMINE CONCERNING ALREADY PROHIBITED CONDUCT

Finally, I want to address the filing of motions in limine asking me to prevent actions by the prosecution that are already precluded by constitution, statute, or rule or by other ethical considerations.

The Court is fortunate that I have before me two sets of exceptionally well-qualified, skilled attorneys to try this matter. I understand, given the behavior of the prosecutors in what the defense has deemed "Morphew I", why the defense might raise some of these concerns that would ordinarily be a given amongst professional litigators of this caliber. *See Matter of Stanley*, 576 P.3d 171 (Colo. 2025). But to my knowledge, other than sharing a similar advocation and job title, members of the present team of prosecutors share nothing in common with the Morphew I team and will not be treated as if they have or will commit the same professional sins as their predecessors did. My opinion would be the same if the roles were reversed and the prosecution were to ask me to moderate the arguments of the defense based on the conduct of the Defendant's past counsel in Morphew I or the conduct of other defense attorneys in different cases.

I trust that everyone knows the rules and will abide by them entirely unless I receive evidence to the contrary.

DONE AND SIGNED THIS 3rd DAY OF NOVEMBER, 2026.

By the Court:



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Amanda C. Hopkins, District Court Judge