

DISTRICT COURT, FREMONT COUNTY, COLORADO, 136 Justice Center Rd., Rm. 103 Canon City, CO 81212 (719) 269-0100	DATE FILED: April 13, 2022
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. BARRY LEE MORPHEW, Defendant.	
Iris Eytan, #29505 Dru Nielsen, #28775 Eytan Nielsen LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (720) 440-8155 Facsimile: (720) 440-8156 iris@eytan-nielsen.com dru@eytan-nielsen.com Jane Fisher-Byrialsen, #49133 Fisher & Byrialsen, PLLC 4600 South Syracuse St., 9th Floor, Denver, Colorado 80237 jane@fblaw.org Hollis Whitson, #32911 Samler and Whitson, PC 1600 Stout Street, Suite 1400 Denver, CO 80202 303-670-0575 Hollis@SamlerandWhitson.com <i>ATTORNEYS FOR BARRY LEE MORPHEW</i>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 22CR47 Division: 1
MOTION FOR ORDERS TO PREVENT JURY TAMPERING AND PROTECT MR. MORPHEW'S RIGHT TO A FAIR TRIAL [D-97]	

Mr. Morphey asks this Court to enter orders to prevent jury tampering with jurors and prospective jurors in this case. Such orders are necessary to protect Mr. Morphey's right to a fair trial and an impartial jury. Such measures include controlling access to the court parking lot,

prohibiting communication with jurors and potential jurors and/or protests about this case in the view or earshot of jurors and potential jurors. As grounds, Mr. Morphew states:

1. Exhibit A to this motion demonstrates that individuals have committed and are continuing to commit jury tampering.

2. A person commits jury tampering in violation of §18-8-609 (1), C.R.S. when that person “attempt[s] to communicate with a juror, directly or indirectly, with the intent to influence that juror's vote, opinion, decision, or other action in a specifically identifiable case.” *People v. Iannicelli*, 2019 CO 80, ¶ 53, 449 P.3d 387, 397. Jury tampering is a class 4 felony. *Ibid*. Attempting and conspiring to commit jury tampering are both class 5 felonies. *See* §§ 18-2-101(1), 18-2-101(4), C.R.S. §§ 18-2-201(1), -206(1), C.R.S.,¹ 18-2-101(1) and (4), C.R.S.²

3. Speech concerning judicial proceedings is not without limits. *People v. Iannicelli*, 2019 CO 80, ¶ 29, 449 P.3d 387, 392. Like free speech, a fair trial is one “of the most cherished policies of our civilization” and must also be protected. *Ibid*, citing *Bridges v. California*, 314 U.S. 252, 260 (1941).

4. The First Amendment protects speech concerning judicial proceedings only “so long as that speech does not interfere with the fair and impartial administration of justice.” *United States v. Heicklen*, 858 F. Supp. 2d 256, 274 (S.D.N.Y. 2012). Accordingly, the Supreme Court

¹ A person commits conspiracy to commit a crime “if, with the intent to promote or facilitate its commission, he [or she] agrees with another person or persons that they, or one or more of them, will engage in conduct which constitutes a crime or an attempt to commit a crime, or he [or she] agrees to aid the other person or persons in the planning or commission of a crime or of an attempt to commit such crime.” § 18-2-201(1), C.R.S.

² A person commits criminal attempt “if, with the intent to promote or facilitate its commission, he [or she] agrees with another person or persons that they, or one or more of them, will engage in conduct which constitutes a crime or an attempt to commit a crime, or he [or she] agrees to aid the other person or persons in the planning or commission of a crime or of an attempt to commit such crime.” § 18-2-101(1), C.R.S.

has long recognized that states “may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence.” *Iannicelli*, ¶ 29, 449 P.3d at 393, quoting *Cox v. Louisiana*, 379 U.S. 559, 562 (1965).

5. This Court clearly has authority to regulate and control access to judicial property and influence over it. “Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities.’ ” *Iannicelli*, ¶ 49, 449 P.3d at 396, citing *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799–800 (1985); *see also Curious Theatre Co. v. Colo. Dep't of Pub. Health & Env't*, 220 P.3d 544, 546 (Colo. 2009)

6. There is no alternative to this Court’s immediate and forceful action. Jury tampering is already occurring, and the prosecution has shown no interest in doing anything to prevent it or to protect Mr. Morphew’s right to a fair trial. *See* Exhibit B. One can only assume that the prosecution prefers the tactical advantage that such tampering may produce.

WHEREFORE, Mr. Morphew requests that this Court control access to the court parking lot, prohibit communication with jurors and potential jurors and prevent protests about this case in the view or earshot of jurors and potential jurors.

Respectfully submitted this 13th day of April 2022.

EYTAN NIELSEN LLC

s/ Iris Eytan
Iris Eytan, #29505

FISHER & BYRIALSEN, PLLC

s/ Jane Fisher-Byrialsen
Jane Fisher-Byrialsen, #49133

SAMPLER AND WHITSON

s/ Hollis Whitson

Hollis Whitson, #32911

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April 2022, a true and correct copy of the foregoing **MOTION [D-97]** was served via CCE as follows: 11th Judicial District Attorney's Office, 101 Crestone Ave., Salida, CO 81201

s/ Tonya Holliday

Tonya Holliday