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FILED IN THE DISTRICT AND

DISTRICT COURT EL PASO COUNTY, COLORADO Court Address: 270 S. Tejon Colorado Springs, CO 80903	COUNTY COURTS OF EL PASO COUNTY, COLORADO DEC 08 2015 DR. LYNETTE CORNELIUS CLERK OF COURT
<hr/> <b>People of the State of Colorado</b> vs. <b>Defendant: ROBERT LEWIS DEAR, JR.</b>	<hr/> <b>▲ COURT USE ONLY ▲</b>
<hr/> <u>Chief Deputy District Attorney:</u> Jeffrey D. Lindsey Address: 105 E. Vermijo Colorado Springs, CO. 80903 Phone Number: 520-6000 Attorney Registration #: 24664 District Attorney: Daniel H. May #11379	<hr/> Case #: 15CR5795  Division #: 10  Courtroom #: W570
<p style="text-align: center;"><b>D-006</b></p> <p style="text-align: center;"><b>PEOPLE’S RESPONSE TO DEFENDANT’S MOTION TO ALLOW          CONFIDENTIAL DEFENSE EXPERTS TO BE PRESENT FOR SCIENTIFIC          TESTING OF EVIDENCE</b></p>	

The People of the State of Colorado, through Chief Deputy District Attorney Jeffrey D. Lindsey, hereby respond to Defendant’s Motion to Allow Confidential Defense Experts to be Present for Scientific Testing of Evidence [D-006]. The People respectfully request Defendant’s motion be denied, based on the following.

1. Defendant’s motion requests that this Court issue an order that “confidential defense experts” be present for “any” scientific testing of evidence in this case.
2. Though paragraph six of defendant’s motion cites two cases for the general proposition that effective assistance of counsel may entail consultation with defense experts, he provides no authority for the proposition that the presence of defense experts during non-destructive testing is required by law.
3. To the contrary, the legislature has provided for the presence of defense representatives only where there will destructive testing of evidence. See § 16-3-309(2)(f)-(g), C.R.S. 2015; People v. Wartena, 156 P.3d 469, 471-472 (Colo. 2007)(if the People have “reason to suspect that the sample will be destroyed during testing, [they] must contact the defendant so that his expert may be present during testing”).
4. The trial court’s role before testing is to oversee the preservation of evidence. Wartena, 156 P.3d at 472 (so stating). However, except in unusual circumstances, a trial court does not have the authority to dictate testing procedures to any testing facility or laboratory, including ordering the People to allow defendant a confidential expert to be present during scientific testing.