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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/> People of the State of Colorado vs. Defendant: ROBERT LEWIS DEAR, JR.	<hr/> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<hr/> Chief Deputy District Attorney: 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
D-006 PEOPLE’S RESPONSE TO DEFENDANT’S MOTION TO ALLOW CONFIDENTIAL DEFENSE EXPERTS TO BE PRESENT FOR SCIENTIFIC TESTING OF EVIDENCE	

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.

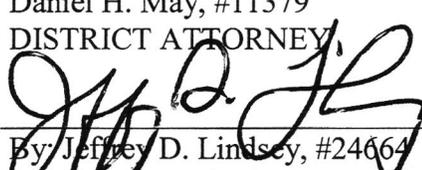
1. Defendant’s motion requests that this Court issue an order that “confidential defense experts” be present for “any” scientific testing of evidence in this case.
2. Though paragraph six of defendant’s motion cites two cases for the general proposition that effective assistance of counsel may entail 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.

5. Defendant's argument in paragraph 7.c. of his motion that testing performed outside the presence of defense experts will deprive him of "a realistic ability to confront and rebut testimony concerning such testing" is without merit. Defendant offers no legal authority to support this argument. Defendant is entitled to a fair trial, which includes the right under the United States and Colorado Constitutions to confront the witnesses against him. See U.S. Const. amend. VI; Colo. Const. art. II, § 16. But it does not follow from this that he is entitled to have a confidential expert present during scientific testing of evidence.
6. The primary purpose of the right to confront adverse witnesses is to provide the accused with the opportunity for cross-examination. See, e.g., Hinojos-Mendoza v. People, 169 P.3d 662, 668 (Colo. 2007). See also Strickland v. Washington, 466 U.S. 668, 684 (1984) ("a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding"). While a defendant's Sixth Amendment rights apply to pretrial stages of criminal proceedings, "the right to confrontation is a trial right — not a constitutionally compelled rule of pre-trial discovery." People v. Baltazar, 241 P.3d 941, 944 (Colo. 2010).
7. The Colorado Rules and Statutes afford defendant specified pre-trial discovery rights and also specified rights regarding the confrontation of those who perform scientific tests on evidence. Under Crim. P. 16, defendant has the right to inspect any reports or statements of the experts who perform scientific tests on evidence, and (if he follows the protocols of § 16-3-309) he may request that any employee or technician who performs scientific testing of evidence testify in person at trial. Defendant also has the right to independently test any scientific evidence, and he may call witnesses at trial to testify as to the results of those tests. See generally Crim. P. 16, CRE 702, and § 16-3-309, C.R.S. 2015. These authorities provide defendant with ample opportunity to subject any scientific testing of evidence to adversarial scrutiny, and such opportunity is sufficient to fulfill the requirements of the Confrontation Clause and guarantee a fair trial.

WHEREFORE, for the reasons stated above, the People request this Court deny Defendant's Motion to Allow Confidential Defense Experts to be Present for Scientific Testing of Evidence.

Respectfully submitted:

Daniel H. May, #11379
DISTRICT ATTORNEY


By: Jeffrey D. Lindsey, #24664
Chief Deputy District Attorney

12/8/2015
Date

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO ALLOW CONFIDENTIAL DEFENSE EXPERTS TO BE PRESENT FOR SCIENTIFIC TESTING OF EVIDENCE (D-006)** has been forwarded to the Public Defender's Office by placing it into the Public Defender's box for pickup:

12/8/15

Lina Jacques