DATE FILED
October 29, 2026

DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101 --- 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, 9th 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-064] MOTION FOR COURT TO IMPOSE MEANINGFUL DEADLINES ON THE PROSECUTION TO COMPLETE FORENSIC TESTING

Mr. Morphew, by and through counsel, moves this Court to set a meaningful deadline for the prosecution to complete forensic testing. In support, Mr. Morphew states:

1. The trial in this case was continued because the defense required additional time to organize and review discovery, determine what experts need to be retained, obtain necessary funding for the defense, determine what motions need to be filed, and to conduct trial preparation. A key component was to review the forensic evidence and consult relevant experts.

2. Upon information and belief, the prosecution continues to conduct forensic testing. Thus, as it turns out, the forensic evidence, state's experts, and defense experts are a moving target, thwarting a meaningful attempt to complete the required tasks to prepare this case for trial.

3. The prosecution appears to have expanded its forensic investigation to pursue additional testing as recently as September 4, 2026.

4. Because the prosecution appears to continue testing and analysis of the physical evidence, and retention of experts, defense work in many areas critical to the trial may be slowed or even stalled. See Crim.P. 16 (I)(b)(3) (disclosures must be made "as soon as practicable").

5. Mr. Morphew's right to conduct independent testing is undisputed. The defense has the right to conduct independent analysis of physical evidence within certain parameters. *Brady v. Maryland*, 373 U.S. 83 (1963); *People ex rel. Gallagher v. District Court*, 656 P.2d 1287 (Colo. 1983). The right to independent forensic testing derives from due process principles and is protected by court rules and statutes. See Crim.P. 16 (I)(a)(1)(III), and Crim.P. 16 (I)(a)(3). Rule 16(I)(a)(1) requires the prosecution make evidence available to the defense. Rule 16 (I)(a)(1)(IV) requires the People make all physical evidence available to the defense. Section 16-3-309, C.R.S., discusses procedures for testing when the quantity or condition of the evidence will not leave a sufficient sample for independent defense testing. *See also People v. Greathouse*, 742 P.2d 334 (Colo. 1987) (describing standards for finding a state constitutional due process violation when the prosecution does not preserve sufficient material for independent testing of "constitutionally material" evidence).

6. The prosecution continued forensic testing transgresses the intention of this Court in granting the continuance that the defense would be provided adequate time to render effective assistance of counsel.

7. The Defense is concerned that there may be insufficient time to get the evidence to defense experts for examination and analysis if this continues.

8. This Court's First Amended Omnibus Order, pp. 3-4, requires the defense to provide expert disclosures simultaneously with the prosecution.[1] That will be impossible if the prosecution does not have a deadline to complete forensic testing and if the prosecution waits until the final day to provide disclosures to the defense instead (as Rule 16 requires) "as soon as practicable." Crim.P. 16 (I)(b)(3). Obviously, the defense cannot provide notice of responsive experts until the defense receives the prosecution's expert disclosures.

[1] In a separate motion the defense has contemporaneously filed a Motion seeking clarification of the Amended Omnibus Order as there is currently only a deadline for objections to the opposing party's experts, not a deadline for rebuttal expert disclosures.

9. Unless this Court sets definite deadlines for the prosecution to complete all forensic testing in this case, the defense will be unable to adequately prepare for trial and the defense may be forced to request another continuance of trial because equal access and equal time to examine and evaluate the physical evidence has not been provided.

10. Mr. Morphew makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, Crim. P. 16, RPC 3.8, and the Colorado Rules of Evidence (including CREs 401, 402, 403, 404, 608, 801, 802, 803, 804, and 901). Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case (including but not limited to D-048) and case law cited therein and at oral argument.

WHEREFORE, Mr. Morphew requests that this Court set a meaningful deadline for the prosecution to complete forensic testing.

Respectfully submitted this 29th 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 29, 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