GALLATIN COUNTY CLERK
OF DISTRICT COURT
SANDY ERHARDT
2026 NOV -5 PM 1:36
FILED
BY GS DEPUTY

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
GALLATIN COUNTY

STATE OF MONTANA, Plaintiff, v. AUSTIN JOHN CLOWES, Defendant.	Cause No.: DC-25-438C Hon. John C. Brown **ORDER ON DNA RELATED MOTIONS**

On September 17 and 23, 2026, the Defendant, Austin John Clowes, appeared before the Court with his counsel, Herman A. Watson, IV, and Herman A. Watson, III, Attorneys at Law. The State of Montana was represented by Eric N. Kitzmiller and Meghann F. Paddock, Assistant Attorneys General for the State of Montana and Special Deputy Gallatin County Attorneys. All parties were present to address motions related to DNA evidence and probable cause for the filing the Information in the above.

Given the Final Pretrial Conference scheduled for 9 a.m. on November 6, 2026, the Court's expedited specific Orders on the subject DNA related Motions are set forth below. The Court's full detailed Findings of Fact and Conclusions of Law supporting these Orders will be issued on or before November 16, 2026.

IT IS HEREBY ORDERED:

1. **State's Motion in Limine (Ct. Doc. 65).** The motion is GRANTED IN PART, in that the Court finds STR DNA typing to be a reliable field and Ms. Ryan and Ms. Fallang to be qualified DNA analysts, and DENIED IN PART, in that the Court declines to enter a pretrial order admitting the STRmix likelihood ratios and associated inclusionary opinions reported

against the Defendant for PGF Item 2.1, PGF Item 3.2, PGF Item 6 / MSCL Item 4.1.1 (and 4.1.1.1), and PGF Item 7 / MSCL Item 4.2.1 (and 4.2.1.1).

2. **Defendant's Motion in Limine (Ct. Doc. 69).** The motion is GRANTED. The State shall not offer, through any witness, exhibit, or argument, the likelihood ratios, verbal-scale characterizations, or opinions of inclusion reported against the Defendant on the items listed in paragraph 1, or any characterization of those results as a "match," an "identification," or a finding that the Defendant's DNA "was found on" those items, nor shall the State, through any witness, exhibit, recording, or argument, state or suggest that the Defendant 'could not be excluded' from, or that his DNA is 'consistent with,' any item, including MSCL Item 32.01.01; that any DNA result, comparison, or laboratory report led to his identification, arrest, or charge; or that any DNA test connected him to Mr. Kilwein. The State shall instruct its witnesses accordingly and shall redact any recording or document offered at trial that refers to such results.

3. **Presentation of DNA evidence (Ct. Doc. 73), and alternatively as to paragraphs 1 and 2.** The motion is GRANTED. As to any DNA comparison result the State offers at trial:

    1. Any likelihood ratio shall be presented together with the two propositions compared, the assumed (conditioned) contributors, and the number of contributors assigned by the analyst;
    2. Any likelihood ratio shall be presented as the reported number (with its lower bound where one was computed) together with the laboratory's verbal category and the numeric range that category denotes; witnesses and counsel shall not use the terms "match," "identified," or "his DNA was found on";
    3. No witness shall testify that the presence of DNA establishes that it was deposited during the offense, or that the Defendant touched, handled, or had contact with Mr. Kilwein;

4. No witness shall testify that the M-Vac collection localizes DNA to any portion of the garment;
5. No witness shall testify that STRmix has "no lower limit" or can "reliably" interpret contributors at any given proportion except by reference to the specific validation data on which the statement rests;
6. Where both laboratories reported a comparison on the same item, the State shall not present one laboratory's result without the other's; and
7. Any result reported with an LR below one shall be described in the laboratory's own reported terms and not as an "exclusion" unless the laboratory so reported it.

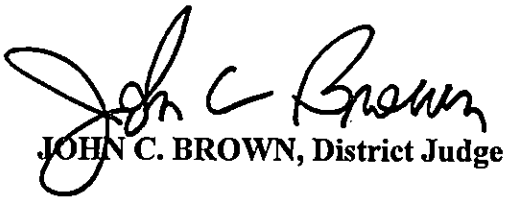
4. **Production of testing analysts (Ct. Doc. 70).** The motion is GRANTED consistent with the State's representation. The State shall present at trial each analyst who personally performed the collection, extraction, quantitation, amplification, analysis, interpretation, or technical review of any result it offers — including Ms. Bardole, Ms. Ryan, PGF's technical reviewers (Theron Vines III as to the January 27, 2022, September 2022, and February 23, 2023 reports and Cailin M. Drugan as to the November 21, 2025 report), Mr. Zeigler, and Ms. Fallang — and shall not offer the reports, notes, or conclusions of any such person through a substitute witness. Within 14 days the State shall identify by name and role every person who performed any of those functions on each item it intends to offer.

5. **Production and independent testing (Ct. Docs. 72 and 74).** The motions are GRANTED as follows. Within 21 days the State shall produce, or shall cause PGF and MSCL to produce, in native electronic format, to the extent not already produced: (a) each laboratory's records of contamination, unintended transfer, and nonconformance events bearing on the items; (b) all communications between or among PGF, MSCL, CCSR, and law enforcement concerning the items; and (c) the complete chain-of-custody and administrative files for each item. Independent testing and re-analysis by the defense expert of the retained extracts and swab

halves is AUTHORIZED under a written protocol to be submitted by the parties within 14 days; the State may impose reasonable conditions to protect the physical evidence while in defense custody but shall not condition access on any waiver of the Defendant's objections to chain of custody.

6. The Court's ruling on the Defendant's motion to dismiss for lack of probable cause (Ct. Doc. 110), taken under advisement on September 17, 2026, is addressed by separate order.

DATED this 5th day of November, 2026.



JOHN C. BROWN, District Judge

cc: Herman A. Watson, IV
Erick Kitzmiller & Meghann Paddock