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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

V.

BRYAN C. KOHBERGER
Defendant.

Case No. CR01-24-31665

STATE'S AMENDED OBJECTION TO
EXPERT TESTIMONY FROM ALIZA P.
COVER

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and hereby objects to the proposed testimony of Aliza P. Cover in support of Defendant's Motion to Strike State's Notice Pursuant to Idaho Code § 18-4004A on Grounds of Arbitrariness ("Motion"). Based on the law review article submitted by Defendant to support Professor Cover's testimony, her testimony would have two parts: a legal opinion that Idaho's capital sentencing scheme violates the Eighth Amendment and a review she conducted of all first-degree murders in Idaho for a set period of time. Both parts are precluded by the Idaho Rules of Evidence.

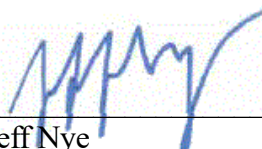
Professor Cover’s testimony would not be helpful to this Court. *See* I.R.E. 702. It is now well-established in Idaho that “testimony containing conclusions of law by an expert witness is generally inadmissible.” *Ybarra v. Bedke*, 166 Idaho 902, 908, 466 P.3d 421, 427 (2020). As the Idaho Supreme Court has explained, “when an expert witness offers a legal conclusion it invades the province of the court to determine the applicable law.” *Id.* Defendant submitted as Professor Cover’s expert report a law review article titled *Narrowing Death Eligibility in Idaho: An Empirical and Constitutional Analysis*. (*See* Mot., Ex. A.) As the title suggests, Professor Cover’s article is a legal analysis of Idaho’s capital sentencing scheme. The article sets out her view of Idaho and U.S. Supreme Court precedent on capital punishment and ultimately concludes that Idaho’s “high rate of death eligibility shows that the capital scheme is failing to ‘genuinely narrow the class of persons eligible for the death penalty,’ and therefore violates the Eighth Amendment.” (Mot., Ex. A, p.605.) Such legal analysis and argument is adequately performed by Defendant’s counsel, and admitting it through Professor Cover’s testimony would “invade[] the province of the court to determine the applicable law.” *Ybarra*, 166 Idaho at 908, 466 P.3d at 427.

Moreover, the Idaho Supreme Court has expressly rejected the idea that a case-by-case review of murders in Idaho has any legal relevance in a challenge to Idaho’s capital sentencing scheme. *See State v. Hairston*, 133 Idaho 496, 508, 988 P.2d 1170, 1182 (1999). In *Hairston*, the court faced a claim indistinguishable from Defendant’s and refused to engage in the exact type of review contained in Professor Cover’s law review article because there is “no legal basis for the review of all Idaho first degree murder cases.” *Id.* The Court explained that such a review would have no legal significance in this context because the proper legal question is whether “[e]ach aggravating circumstance . . . provide[s] a principled basis for distinguishing between those who deserve the death penalty and those who do not.” *Id.* Given *Hairston*, Professor Cover’s review of

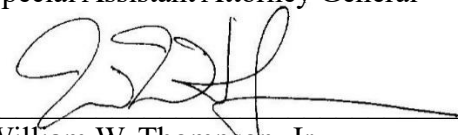
all Idaho first degree murder cases cannot “help the trier of fact to understand the evidence or to determine a fact in issue.” I.R.E. 702.

Even if there were a legal basis for Professor Cover’s review of murder cases in Idaho, she does not have sufficient foundation to testify in a court of law as to the results of her review. *See* I.R.E. 702. “The proponent of expert testimony must lay foundation for it.” *Rich v. Hepworth Holzer, LLP*, 172 Idaho 696, ___, 535 P.3d 1069, 1080 (2023). “This means that courts must review both the expert’s qualifications and the records relied upon by the expert to determine whether the expert can establish the necessary foundation.” *Id.* (internal quotations omitted). As the State explained in its response to Defendant’s motion, Professor Cover did not have access to sufficient information to determine whether each of the defendants mentioned in her article were legally eligible for the death penalty. (*See* Objection to Defendant’s Motion to Strike State’s Notice Pursuant to Idaho Code §18-4004A on Grounds of Arbitrariness, pp.6-8.) And neither Professor Cover nor Defendant provided this Court with sufficient information such that it could fulfill its obligation to review “the records relied upon by the expert to determine whether the expert can establish the necessary foundation.” *Id.* Defendant has thus failed to lay a proper foundation for Professor Cover, and this Court should preclude her testimony.

RESPECTFULLY SUBMITTED this 10th day of October 2024.



Jeff Nye
Special Assistant Attorney General



William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE’S AMENDED OBJECTION TO EXPERT TESTIMONY FROM ALIZA P. COVER was served on the following in the manner indicated below:

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- Mailed
- E-filed & Served / E-mailed
- Faxed
- Hand Delivered

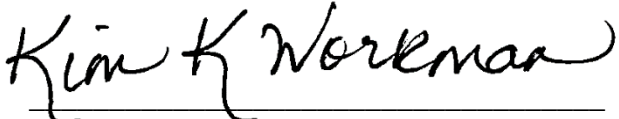
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Dated this 10th day of October 2024.



Kim K. Workman