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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 NUMBER CR01-24-31665

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

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and submits the following Reply to the State's Objection to testimony from Professor Cover.

The State's objection to Professor Cover's testimony is that it provides legal analysis and that it relies on what it believes is unreliable empirical evidence. As to the latter- generally the


court is capable of deciding what weight to give evidence and determine what the foundation is – not the State. *State v. Barber*, 157 Idaho 822, 824 (Ct.App.2014) (citing 31 WRIGHT & GOLD, FEDERAL PRACTICE & PROCEDURE 153 (2000)).

The State's other objection is puzzling. The State cites to decision relating to providing legal opinions from non-lawyers to judges, and quotes the part of it relating to providing legal opinions to juries. This is what the opinion actually says:

We have previously held that testimony containing conclusions of law by an expert witness is generally inadmissible. For example, in *Ballard v. Kerr*, we concluded that when an expert witness offers a legal conclusion it "invade[s] the province of the court to determine the applicable law." 160 Idaho 674, 694, 378 P.3d 464, 484 (2016) (quoting *Torres v. Cnty. of Oakland*, 758 F.2d 147, 150 (6th Cir. 1985)) (alteration in original). Additionally, Idaho Rule of Evidence 702 only permits expert testimony "if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." We respectfully conclude that while the factual materials stated in the report are helpful, the legal analysis of a non-lawyer, expert witness is not.

Ybarra v. Bedke, 166 Idaho 902, 908, 466 P.3d 421, 427 (2020). Assuming the prosecutor read this, it is hard to understand how they believed it supports their argument. Prof. Cover is a law professor. If this Court can rely on her legal writing, it ought to be capable of considering her testimony.

DATED this 24 day of October, 2024

BY: 

JAY W. LOGSDON
FIRST DISTRICT PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 24 day of October, 2024 addressed to:

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