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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

**MOTION TO COMPEL I.C.R. 16(b)(7)
MATERIAL AND FOR SANCTIONS**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby moves this honorable Court for an Order to compel complete expert disclosures from the State in this matter, and requests sanctions pursuant to I.C.R. 16(k). The bulk of the State's expert disclosures fail to include opinions and reports. These inadequate disclosures greatly prejudice Mr. Kohberger who is obligated to submit defense guilt phase expert disclosures by January 23, 2025. The sanctions considered must be the exclusion of the experts or at a bare minimum, an order

MOTION TO COMPEL I.C.R. 16(b)(7) MATERIAL AND FOR SANCTIONS

compelling proper disclosure and an extension of Mr. Kohberger's January 23, 2025 deadline¹. Mr. Kohberger is prejudiced because he does not know what expert evidence the State intends to elicit. He does not know what expert evidence he must confront.

RELEVANT FACTS

In this case there are over sixty-eight (68) terabytes of discovery produced in a method that the defense has repeatedly referenced in pleadings and at various motion hearings as extremely disorganized. There have been twenty (20) specific requests for discovery and six (6) motions to compel filed by the defense. The Court entered a "Redacted Order Governing Further Criminal Proceedings and Notice of Trial Setting" on October 9, 2024 and has notified the parties that strict compliance with the Court's order is expected. On December 18, 2024 the State disclosed twenty-five (25) experts. Of those, only five (5) include actual expert reports. Notably, not a single DNA expert opinion or report was produced. Instead, the State's disclosures refer to bates numbered pages and say:

"This disclosure is provided as an aid; it does not encompass all findings, impressions, conclusion, or materials related to this expert's involvement in this case. It further does not in any way limit the scope of the expert's testimony. Further, this expert may testify about findings, impressions, and/or conclusions that he/she drew from the work of other experts who previously examined or handled the evidence in question."

At least three digital forensic experts are disclosed with lists of sixty-seven (67) electronic devices or third-party data bases examined. Not a single report of what the three experts will opine related to any specific device or data is disclosed.

ARGUMENT

This is a capital murder case and nothing about it is clear cut. The expert issues are complex, involving many different facets of DNA, cellular data, cell tower coverage and drive testing, car identification, crime scene and blood spatter analysis, fingerprint analysis, forensic

¹ Mr. Kohberger does not include here a motion to strike the death penalty for failure to properly disclose experts; without proper disclosure that motion is forthcoming.

pathology, and electronic device analysis of the suspect, victims, and alternative suspects, and social media accounts. At issue is the State's Supplemental Response to Request for Discovery Regarding Expert Testimony and its Exhibits, filed December 18, 2024. The disclosure lists twenty-five (25) experts² and provides curricula vitae, five (5) with expert opinion reports, and others with reference to bates numbered pages or items, but no opinion, data, or methodology.

What the State's Disclosure does not do is follow the rule, which states:

(7) *Expert Witnesses*. On written request of the defendant, the prosecutor must provide a written summary or report of any testimony that the state intends to introduce at trial or at a hearing pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence. The summary provided must describe the witness's opinions, the facts and data for those opinions, and the witness's qualifications. Disclosure of expert opinions regarding mental health must also comply with the requirements of Idaho Code § 18-207. The prosecution is not required to produce any materials not subject to disclosure under subsection (g) of this Rule. This subsection does not require disclosure of expert witnesses, their opinions, the facts and data for those opinions, or the witness's qualifications, intended only to rebut evidence or theories that have not been disclosed under this Rule prior to trial.

As the Court of Appeals has held:

The plain text of Rule 16(b)(7) requires the disclosure of expert witness "opinions," the "facts and data for those opinions," and also "any testimony that the State intends to introduce pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence." That encompasses not only an expert's opinion but also "scientific, technical, or other specialized knowledge" to which a qualified witness may testify in a form other than an opinion. *See I.R.E. 702*.

State v. Morin, 158 Idaho 622, 625 (Ct.App.2015). As the Court explained in *Morin*, when an expert relies on some form of scientific or technical information, that must be disclosed, as opposed to other witnesses whose opinions may be of the less scientific variety "The discovery rules are designed to safeguard the truth-seeking functions of trials, promote fairness and candor, to facilitate fair and expedited pretrial fact gathering and to prevent surprise at trial". *Id* at 626. If the

² Mr. Kohberger is filing Exhibit A under seal containing the specific issues with the disclosures. Courtesy copies will be provided via email to opposing counsel and court staff on the date of this motion and hand delivered to the court on 1/2/25.

State violates a disclosure requirement under I.C.R. 16(b)(6), the trial court has “considerable discretion” to fashion an appropriate 16(k) remedy. *State v. Montgomery*, 163 Idaho 40 (2017).³

Mr. Kohberger continues wading through a sea of discovery. The need for rule compliant expert disclosures is critical to his ability to prepare for his defense at trial. The State’s failure to comply is not harmless.

CONCLUSION

Mr. Kohberger must be able to confront the evidence against him and to do that, it must be disclosed in accordance with Idaho Rule 16 and this Court’s Trial Setting Order. The expert evidence disclosed by the State is woefully inadequate. This is a capital murder case and compliance with the rules of discovery are not optional. Mr. Kohberger is prejudiced by the State’s failure. It is impossible for him to confront unknown expert opinions, with his own expert disclosures by January 23, 2025.

DATED this 27 day of December, 2024.



ANNE C. TAYLOR
ATTORNEY



JAY WESTON LOGSDON
FIRST DISTRICT PUBLIC DEFENDER

/S/

ELISA G. MASSOTH
ATTORNEY

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 27 day of December, 2024, addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov

Elisa Massoth – via Email: emassotht@kmrs.net

Jay Logsdon – via Email: Jay.Logsdon@spd.idaho.gov

Jeffery Nye, Deputy Attorney General – via Email: Jeff.nye@ag.idaho.gov



³ Recently, in *State v. Lori Vallow Daybell*, an Idaho court struck the death penalty when the state produced recorded jail calls after the Court’s imposed deadline. See CR22-21-1624. Failure to properly disclose experts is arguably more prejudicial than late disclosed jail calls.