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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  
DEFENDANT'S 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 replies to the State's Objection to Defendant's Motion to Compel I.C.R. 16(b)(7) Material and Sanctions.

Mr. Kohberger is protected under the Constitutions of the United States and the State of Idaho to a right to a fair trial, to confront his accusers, the presumption of innocence and effective

assistance of counsel. In effort to protect his rights, the Idaho Supreme Court has pronounced rules governing criminal discovery through Idaho Criminal Rules. Mr. Kohberger asserts the State's failure to disclose expert opinions and supporting data violates his rights under both Constitutions. Mr. Kohberger cannot fairly confront the evidence the State intends to bring against him when he does not know what it is. His counsel cannot be adequately prepared to represent him at trial given the State's lack of adequate expert disclosures. Failure to properly disclose expert opinions by merely disclosing a list or topics an expert may testify about or leaving open ended opinions in essence shifts the burden to Mr. Kohberger. He is forced to respond to unknown expert opinions, with unspecified scientific, technical or specialized knowledge while giving the State the ability to disclose its further or actual expert opinions in rebuttal filing on February 13, 2025. This failure to disclose expert opinions not only prevents Mr. Kohberger from confronting evidence against him, but also prevents him from assessing his need to file motions in *limine* and motions to exclude expert witness who do not meet Idaho's evidentiary standard (Idaho Rules of Evidence 702, 703, 704 and 705), otherwise known as a "Daubert/Frye" hearing. Deadlines are looming. This motion cannot be heard until January 23, 2025, the actual defense deadline. Motions in *limine* are due February 10, 2025. A motion to extend time to file some is filed simultaneously.

### **ARGUMENT**

The Court has the State's sealed exhibits S1-S25. The State's filing consists of over 400 pages, mostly curriculum vitae of the named witnesses, and very few details of expert opinions with a few exceptions. Approximately two thousand pages of discovery are referenced in the DNA disclosures. The Court does not have the discovery pages in the expert disclosures but for one example attached to the State's Objection as S-1. Most of the disclosures have catch all phrases that the expert will rely on the work of unnamed others, that the disclosure is meant to be an aid, but "does not encompass all finding, impression, conclusions, or materials related to this expert's involvement in this case" or that the disclosure "does not in any [] limit the scope of the expert's

testimony.” This language essentially places no limits on the testimony of the expert and places Mr. Kohberger at a disadvantage because he cannot prepare for the unknown opinion of an expert that would be proffered for the first time on the witness stand in front of a jury. The State disclosures violate his constitutional rights under the Sixth Amendment and Fourteenth Amendments to confront and cross-examine the witnesses, confront the evidence that the State intends to present, and his counsel’s ability to effectively prepare. Some of the expert disclosures are extremely broad and encompass topics that are not touched upon in any reports or discovery provided. These disclosures do not allow Mr. Kohberger to evaluate the scope of the opinion, assess how his own expert witness will need to respond with countering opinions, prepare to confront the evidence the State intends to elicit, allow counsel to competently prepare for trial and determine if a motion in *limine* or motion to exclude will be needed. Other disclosures contain lists of areas of testimony without more. Mr. Kohberger is provided no clues about the expert opinions on discovery disclosures that are vast – hundreds of thousands of pages. Attached as exhibit B, under seal, is a more detailed argument related to the lack of disclosure for specific experts.

The State’s “Objection To Defendant’s Motion to Compel I.C.R. 16(b)(7)” acknowledges its duty under the rules, the quantity of 68 terabytes<sup>1</sup> of discovery, and the disarray to which the State has both received and produced the discovery. The State interprets the motion to compel as one of “complaint” that “adequate” information has not been provided. *See* Foot Note 1 page 2. Mr. Kohberger’s argument is that, given the overwhelming amount of discovery in this capital murder case, compliance with discovery rules related to expert opinions is vital to be informed of expert opinions being offered against him. Mr. Kohberger’s experts need to know exactly what opinions and supporting materials each of them is confronting in this case as well as allowing

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<sup>1</sup> As a point of reference, a single terabyte is the equivalent of 75 million pages of text. *See:* <https://cloudnine.com/ediscoverydaily/electronic-discovery/ediscovery-best-practices-perspective-on-the-amount-of-data-contained-in-1-gigabyte/>

competent representation by counsel. He needs to know what scientific, technical, or specialized knowledge the witness holds to qualify him or her as an expert. “The discovery rules are designed to safeguard the truth-seeking functions of trials, promote fairness and/or, to facilitate fair and expedited pretrial fact gathering and to prevent surprise at trial.” *State v. Morin*, 158, Idaho 622,626 (Ct. App. 2015). The expert witnesses the State discloses are all relying on underlying data and technical or specialized knowledge, but what they intend to testify about using such knowledge is unknown.<sup>2</sup>

### 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 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   7   day of January, 2025.

BY:



ELISA G. MASSOTH, ATTORNEY

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<sup>2</sup> The State submitted exhibit S-1 to its objection as an example of discovery that qualifies as an expert report. This exhibit is a list of items collected. If the witness associated with this list is simply a chain of custody witness, an opinion is not necessary. If the witness will testify that evidence was collected in accordance with her training, proper procedure, and lab protocols, that calls for and qualifies as her opinion. If this witness testifies that others gathered evidence in accordance with proper procedure and protocols, that also qualifies as an opinion. The lab protocols and evidence collection procedures have not been disclosed. If the State wishes to elicit her opinion regarding whether or not evidence was collected in accordance with her training and lab protocols, that is an opinion. If the State wishes to elicit any results of the tests and what they mean, that is an opinion. This is a good example of how the State’s disclosures related to DNA are lacking in this case.

## CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 7 day of January, 2025, addressed to:

Latah County Prosecuting Attorney –via Email: [paservice@latahcountyid.gov](mailto:paservice@latahcountyid.gov)

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