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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 MOTION IN LIMINE  
RE: ADMISSIBILITY OF  
DEMONSTRATIVE EXHIBITS  
AND MEMORANDUM IN  
SUPPORT

COMES NOW, the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully moves this Court for a pre-trial order regarding the admissibility of demonstrative exhibits. Specifically, the State will seek to introduce a three-dimensional model of the 1122 King Road residence for demonstrative purposes to aid the witnesses in their testimony. The State further submits the following memorandum in support of its request.

## I. STANDARD OF ADMISSIBILITY

Trial courts are endowed with discretion over the use of demonstrative exhibits during trial. *State v. Weigle*, 165 Idaho 482, 487, 447 P.3d 930, 935 (2019) (citing, *State v. Pangborn*, 286 Neb. 363, 373, 836 N.W.2d 790, 799 (2013)). The Idaho Court of Appeals held an exhibit is properly admissible for demonstrative purposes when the exhibit supplements the testimony of witnesses or assists the jury in obtaining a better understanding of the facts in issue. *Masters v. Dewey*, 109 Idaho 576, 709 P.2d 149 (Ct. App. 1985). The Idaho Supreme Court held, “[i]t is established that the use of exhibits by a testifying witness in order to supplement or illustrate events is proper insofar as the differences between the events depicted and the events observed are explained by the witness and the exhibit is not deceptive.” *State v. Hall*, 163 Idaho 744, 780, 419 P.3d 1042, 1078 (2018). The appropriate test is Idaho Rule of Evidence 403 balancing test of probative value against the danger of unfair prejudice, distraction, confusion of the issues, and waste of time. *Id.*

A diagram offered for demonstrative purposes need only be relevant to illustrate a witness’s testimony, it does not need to be precisely accurate (i.e. not to scale). *State v. Raudebaugh*, 124 Idaho 758, 864 P.2d 596 (1993). More recently, the Idaho Supreme Court has agreed in *State v. Roman-Lopez*, finding the use of demonstrative exhibits at trial appropriate to aid the understanding of testimony that may otherwise be difficult to comprehend through words or gestures along. 171 Idaho 585, 524 P.3d 864, 878 (2023)

McCormick explains that demonstrative or illustrative aids may be created outside of court, or by the witness on the stand, and are generally admissible—subject to an unfair prejudice objection—under the theory that they “illustrate and explain live testimony” of what that witness is trying to describe. *See* 2 McCormick on Evid. § 214 (8th ed.). In other words, when the drawing is admitted for

demonstrative or illustrative purposes, “the witness’ *testimony* is the evidence and the map or diagram is merely an aid to its understanding.” 29A Am. Jur. 2d *Evidence* § 981 (emphasis added). Thus, the drawing is not hearsay because it is not an out-of-court statement admitted to establish a particular fact.

*Id.*

## II. ARGUMENT

In this case, the State anticipates introducing a three-dimensional model of the 1122 King Road residence (see Exhibit S-1 attached) at trial. This model will consist of three levels which can be removed by level to show the interior layout of the residence. The interior layout will depict wall and door placements (i.e. no furniture, human depictions, etc.). The model will be placed on a rolling table for portability within the courtroom (i.e. can be placed out of the way when not in use). This model is being constructed by the Federal Bureau of Investigation based on depictions, documentation, and measurements taken at the scene prior to demolition of the 1122 King Road residence.

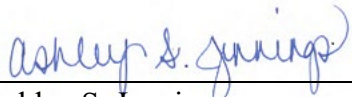
The primary purpose of this model is to aid the jury in having a better understanding of the layout of the residence, which is unconventional, and to illustrate where certain events occurred within the residence. The model will aid certain witnesses (i.e. law enforcement, surviving roommates, individuals responding to the crime scene, and crime scene analysts), in demonstrating the location of victims, location of witnesses, location of items of evidence, items related to their testimony, path of travel, etc. The State anticipates laying the proper foundation to establish the model accurately reflects the layout of the 1122 Kind Road residence. The model passes the IRE 403 balancing test as the value in facilitating the jury in visually understanding where facts in issue occurred at the crime scene far outweighs any danger of unfair prejudice, distraction, confusion of the issues, or waste of time. This model will merely aid witnesses’

testimony and is not being introduced to establish a certain fact in issue therefore is not hearsay under I.R.E. 801 (i.e. not being offered for the truth of the matter asserted).

### III. CONCLUSION

The State requests the Court issue an order allowing the State to use a three-dimensional model of the 1122 King Road residence finding that the model is relevant in order to aid witnesses in their testimony provided that the State lays adequate foundation for the demonstrative exhibit.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of February 2025.

  
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Ashley S. Jennings  
Sr. Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

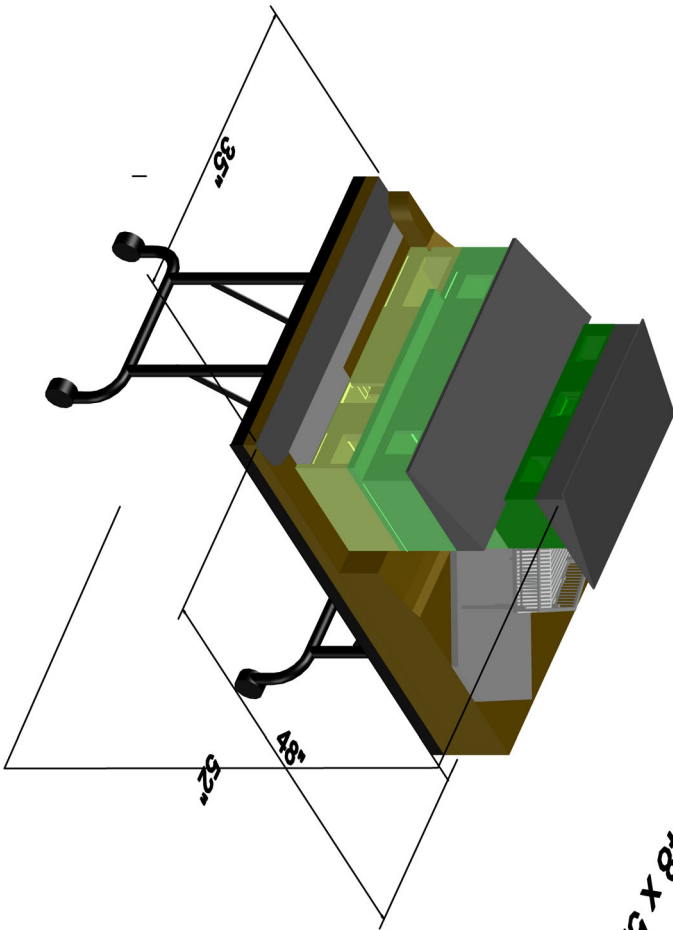
I hereby certify that true and correct copies of the STATE'S MOTION IN LIMINE RE:  
ADMISSIBILITY OF DEMONSTRATIVE EXHIBITS AND MEMORANDUM IN SUPPORT  
were served on the following in the manner indicated below:

Anne Taylor  
Attorney at Law  
PO Box 2347  
Coeur D Alene, ID 83816

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

Dated this 21<sup>st</sup> day of February 2025.

  
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35" X 48 X 52"  
4/3" = 1.0'  
1:16  
.0625  
1122 King Road  
Moscow, Idaho