

LATAH COUNTY PROSECUTOR'S OFFICE  
WILLIAM W. THOMPSON, JR., ISB No. 2613  
PROSECUTING ATTORNEY  
ASHLEY S. JENNINGS, ISB No. 8491  
SENIOR DEPUTY PROSECUTOR  
Latah County Courthouse  
522 S. Adams Street, Ste. 211  
Moscow, ID 83843  
Phone: (208) 883-2246  
paservice@latahcountyid.gov

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: ALIBI

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully moves the Court in limine for an order prohibiting Defendant from presenting any evidence, whether by direct or cross examination, in support of any claimed alibi other than from the Defendant himself.

By way of background, the State refers the court to the following:

1. The State's May 23, 2023, "Request for Discovery Disclosure; Alibi Demand."
2. The State's July 22, 2023, "Motion to Compel 'Notice of Defense of Alibi' or, Alternatively, to Bar Certain Evidence."
3. The Defendant's August 2, 2023, "Objection to the State's Motion to Compel

‘Motive [sic] of Defense of Alibi’ or, Alternatively, to Bar Certain Evidence.”

4. The attached partial transcript of the August 18, 2023, Court hearing relating to alibi where the then-presiding Judge, John C. Judge, observed that the Defendant’s proffered “so-called alibi – not really an alibi” and that he will address the issue of alibi disclosure in a subsequent scheduling order (Exhibit S-1, p. 7, beginning at line 8).
5. The August 22, 2023 (nunc pro tunc to August 18, 2023) “Scheduling Order” which in paragraph 7 at page 2 addresses the deadline for the defense to comply with its statutory obligations for alibi disclosure. This Scheduling Order was subsequently vacated when the Defendant waived speedy trial on August 23, 2023.
6. The State’s December 21, 2023, “Motion for Scheduling Order” which in the second full paragraph on page 3 refers to the issue of alibi.
7. The February 23, 2024, “Order Setting Deadlines and Hearing” which, in paragraph (1), sets an alibi compliance deadline of April 17, 2024.
8. The Defendant’s April 17, 2024, “Notice of Defendant’s Supplemental Response to State’s Alibi Demand.”
9. The State’s April 26, 2024, “Response to ‘Notice of Defendant’s Supplemental Response to State’s Alibi Demand’.”
10. Former presiding Judge John C. Judge’s June 27, 2024, “Scheduling Order” which is subsequent to the April 17, 2024, alibi disclosure deadline and which makes no further reference to alibi.

It has now been approximately twenty months since the State first made its “Request for Discovery Disclosure; Alibi Demand” on May 23, 2023. As the Court file reflects (highlighted

by the above items) the Defendant has failed to comply with the requirements of Idaho Code §19-519 and I.C.R. 12.1. The Defendant has yet to specify “the specific place or places at which the Defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi” as directed by the February 23, 2024, “Order Setting Deadlines and Hearing” and as discussed in the State’s April 26, 2024, “Response to ‘Notice of Defendant’s Supplemental Response to State’s Alibi Demand’”. The Defendant’s proffered April 17, 2024, “Notice of Defendant’s Supplemental Response to State’s Alibi Demand” does not comply with the requirements of Idaho Code §19-519 and I.C.R. 12.1, or with the specific directive of the Court’s February 23, 2024, “Order Setting Deadlines and Hearing.” Consequently, the Defendant should be prohibited from presenting any evidence, whether by direct or cross-examination, in support of any claimed alibi other than from the Defendant himself.

Even were the Defendant to attempt to comply at this late point in time, the State is irrevocably prejudiced. It has now been over two years since the homicides occurred (and since the Defendant was charged) and it would be unrealistic at this late date to expect the State to effectively investigate and respond to any new or additional alibi-related disclosures. This is precisely the situation that caused concern for the Idaho Court of Appeals in *State v. Juarez*, as well as the concerns of the United States Supreme Court in *Williams v. Florida*, where the Court noted the “ease with which an alibi can be fabricated” and “the State’s interest in protecting itself against an eleventh-hour defense is both obvious and legitimate.” *State v. Juarez*, 169 Idaho 274, 494 P.3d 822 (Ct. App. 2021); *Williams v. Florida*, 399 U.S. 78, 81-82, 90 S.Ct. 1893, 1896 (1970). The Supreme Court held:

The adversary system of trial is hardly an end in itself; it is not yet a poker game in which players enjoy an absolute right always to

conceal their cards until played. We find ample room in that system, at least as far as 'due process' is concerned, ...which is designed to enhance the search for truth in the criminal trial by insuring both the defendant and the State ample opportunity to investigate certain facts crucial to the determination of guilt or innocence.

*Williams*, 399 U.S. at 82.

For these reasons, the Court should issue an order prohibiting Defendant from presenting any evidence, whether by direct or cross examination, in support of any claimed alibi other than from the Defendant himself.

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

A handwritten signature in black ink, appearing to read 'W. W. Thompson, Jr.', written over a horizontal line.

William W. Thompson, Jr.  
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S MOTION IN LIMINE RE:

ALIBI 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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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 vs. ) NO. CR29-22-2805  
 )  
 BRYAN C. KOHBERGER, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

EXCERPT TRANSCRIPT OF A MOTION HEARING  
HELD ON THE 18TH DAY OF AUGUST, 2023, AT 9:14 AM

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BEFORE: The Honorable John Judge, District Judge

TRANSCRIBED BY: KRISTI LYNN EVANS, RPR, WA & ID CSR NO. 661



APPEARANCES

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For the State:

MR. WILLIAM W. THOMPSON, JR.  
Latah County Prosecuting Attorney  
P.O. Box 8068  
Moscow, ID 83843  
bthompson@latah.id.us

MS. ASHLEY JENNINGS  
Latah County Deputy Prosecuting Attorney  
P.O. Box 8068  
Moscow, ID 83843  
ajennings@latah.id.us

MS. INGRID C. BATEY  
Office of the Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
ingrid.batey@ag.idaho.gov

MR. JEFFREY D. NYE  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
jeff.nye@ag.idaho.gov

1 For Mr. Kohberger:

2

MS. ANNE C. TAYLOR  
Attorney at Law  
P.O. Box 9000  
Coeur d'Alene, ID 83816-9000  
ataylor@kcgov.us

3

4

5

6

MR. JAY W. LOGSDON  
Attorney at Law  
P.O. Box 9000  
Coeur d'Alene, ID 83816-9000  
jlogsdon@kcgov.us

7

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9

10

MS. ELISA G. MASSOTH  
Attorney at Law  
P.O. Box 1003  
Payette, ID 83661  
emassoth@kmrs.net

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1           BE IT REMEMBERED that the above-entitled matter  
2 came on for an EXCERPT of a motion hearing at the hour of  
3 4:34 p.m., August 29, 2024, at the Latah County Courthouse,  
4 City of Moscow, County of Latah, State of Idaho.

5           (Thereupon the following oral proceedings  
6           were had as follows, to-wit:)

7           THE COURT: Okay. So next motion, I believe, is the  
8 State's motion to compel notice of defense of alibi. Mr.  
9 Thompson?

10          MR. THOMPSON: Yes, sir. Thank you. And, Judge,  
11 since the filing of our motion looking at the Defense's  
12 response, it looks like we have made a little bit of  
13 progress. The Defendant has at least -- Mr. Kohberger has  
14 at least now stated that his alibi is he was out driving  
15 around that night. We knew that already, and if that's his  
16 alibi, so be it. What the Defendant has still failed to do  
17 is to comply with Idaho Code 19-519 and Idaho Court Rule  
18 12.1 that specifically requires a Defendant to provide --  
19 identify the names of witnesses who will be called to  
20 support the alibi, along with their addresses. The  
21 Defendant has only said, well, I may do that, or I may call  
22 witnesses, or I'll do it through cross-examination and, of  
23 course, I have the right to testify on my own behalf. We  
24 don't question that. At this late date I do not believe it  
25 is possible, even if the Defense were to provide a list of

1 the names of witnesses and addresses today, that with  
2 everything else that needs to be done leading up to a week  
3 before October 2nd, that there is any way that the State  
4 could reasonably be expected to respond as contemplated by  
5 the rule and the statute. So, the State's position at this  
6 point is we will accept what the Defendant has said; that he  
7 was driving around. Although, he should specify where he  
8 was driving. If he's not going to call anybody else, if  
9 he's not going to offer evidence from anybody other than  
10 himself, and that's none of our business. So, we are  
11 willing to accept that, with an order from this Court  
12 prohibiting the Defense from offering third-party evidence,  
13 whether by direct or cross-examination, in support of  
14 Defendant's claimed alibi. If he wants to testify to that,  
15 that's his prerogative, but at this point it is too late for  
16 the Defense to comply with the statute and identify  
17 specifically people and their addresses who would testify.  
18 So that's where we stand now, Judge. Thank you.

19 THE COURT: All right. Thank you. Who do I -- Ms.  
20 Taylor?

21 MS. TAYLOR: It's me, Judge.

22 THE COURT: All right.

23 MS. TAYLOR: Your Honor, we have provided to the  
24 Prosecutor what we can provide to the Prosecutor and more.  
25 We -- I think that Mr. Thompson is right, we don't have to

1 tell the Prosecutor if Bryan is going to testify, or what  
2 Bryan might say. We have indicated that we would -- that  
3 it's possible that we would have additional things that  
4 might come out through expert testimony on cross-examining  
5 the State's expert. I don't have documentation to give to  
6 the State today. I am not going to go into anymore about it  
7 this moment. I understand when October 2nd is. I  
8 definitely understand that, and I have heard everybody's  
9 thoughts and concerns. I get that but, I mean, this is what  
10 we have and when there is more, I will provide it.

11 THE COURT: Okay. Thank you. Any response?

12 MR. THOMPSON: Your Honor, with all due respect, that  
13 is exactly what the rule and the statute are designed to  
14 prohibit. As the U.S. Supreme Court observed in Taylor vs.  
15 Williams, the ease with which an alibi can be fabricated.  
16 The Defense is waiting to gather up evidence, seeing what  
17 they can fabricate to match that evidence. Say, oh, by the  
18 way, here is our alibi now. That is specifically what is  
19 prohibited by the statute, by the rule, by the comments of  
20 the U.S. Supreme Court --

21 (End of recording.)

22 (Resuming of excerpt of the recording as follows:)

23 MR. THOMPSON: -- and Williams vs. Florida. Trials  
24 are not yet a poker game where players enjoy an absolute  
25 right to always conceal their cards until played, and that's

1 what is going on here. That's why the rule exists. Just  
2 need to cut it off, and we will move forward. The Defendant  
3 can testify to his own alibi, if that's what he wants to do,  
4 but it violates the rule, the statute, and the rights of the  
5 State to a fair trial to allow third-party evidence, whether  
6 by direct or cross.

7 THE COURT: Okay. Thank you. Well, the way I  
8 understand this is -- and this is in the so-called alibi,  
9 not really an alibi, but, quote, he was out driving during  
10 the late night and early morning hours of November 12 to 13,  
11 2022. So what I'm going to -- what I'm going to do, because  
12 next -- the next motion is for a scheduling order, I'm going  
13 to address this in terms of a deadline, and we'll see how  
14 that goes. Right now that is as far as Mr. Kohberger wants  
15 to go with regard to alibi, and that's fine. But if there  
16 is going to be -- and, Ms. Taylor, you suggested that there  
17 might be some witnesses, then you need to cough them up by a  
18 certain date, certainly, before the trial. I have read the  
19 Albert case, which was interesting because there were late  
20 witnesses. The Judge refused to allow them to testify, and  
21 that case was overturned by the Supreme Court -- or not  
22 the -- the Idaho Supreme Court. Maybe it was the Court of  
23 Appeals. I don't know. I'm not looking at it, but then  
24 Perez, that was 2021, that was a Court of Appeals. And they  
25 said, out of luck if you were too late. And so I think, Ms.

1 Taylor, you acknowledge that potential risk to your client  
2 in your latest response to the request, so there is -- you  
3 know, there's some potential balancing there. And certainly  
4 Mr. Kohberger doesn't have to say a word, and that is  
5 protected by the Constitution of the United States and  
6 Idaho. All right. So, I think that takes care of that for  
7 now until I am going to give you the deadlines. So, I think  
8 the last motion, then -- and, again, this motion to  
9 dismiss --

10 (End of recording.)

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CERTIFICATE OF TRANSCRIPTION

I certify under penalty of perjury under the laws of the State of Idaho that the following is true and correct:

- 1) That I am a certified court reporter;
- 2) I received the electronic recording directly from the trial court conducting the hearing, if a transcript was made only from a recording;
- 3) This transcript is a true and correct record of the proceedings to the best of my ability;
- 4) I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and
- 5) I have no financial interest in the outcome or end result of the litigation.

Dated this 28th day of January, 2025, Lewiston, Idaho 83501.

*Kristi Lynn Evans*

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s/ Kristi Lynn Evans, RPR, CSR NO. 661  
P.O. Box 574  
Lewiston, Idaho 83501  
Email: kevans@latahcountyid.gov