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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 IN LIMINE #5** **RE: INCONCLUSIVE DATA**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of records, and hereby moves the Court for an Order limiting testimony about the statistical analysis of Item Q13.1, fingernail scrapings.

Allowing such testimony would violate Mr. Kohberger's Federal and State Constitutional rights to due process, a fair trial, effective assistance of counsel, and confrontation of witnesses. This motion is based on the 5th, 6th and 14th Amendments to the United States Constitution, Idaho

Constitution Article. I Section 13, and Idaho Criminal Rule 16 and Idaho Rules of Evidence 102, 104, 701, 702, and 703. The requested limits are made to "secure fairness in administration…to the end the truth may be ascertained and proceedings justly determined. See *I.R.E. 102*. Further, the above-requested matters are ripe for consideration by the Court pursuant to I.R.E. 104 based on the existence of issues that involve preliminary questions of admissibility.

STATEMENT OF FACTS

In grand jury testimony, Jade Miller testified as to the results of testing done on Item Q13.1, a swab of the left fingernail clippings from Madison Mogen (M.M.). The data consisted of three person mixture. The statistic, the likelihood ratio (LR), was calculated assuming that M.M. was a contributor to her own fingernails. Miller testified that M.M. as followed:

> This DNA profile is at least 77,900,000 times more likely to be seen if it resulted from a mixture of DNA from Madison Mogen, Kaylee Goncalves, and an unrelated randomly selected individual, than if it resulted from DNA from Madison Mogen and two unrelated randomly selected individuals. Grand Jury Transcript at 366.

The data from that sample was "inconclusive" as to Mr. Kohberger. GJ Transcript at 365, 366. Miller testified that inconclusive means that an analyst is "unable to say one way or another whether or not Bryan Kohberger is included in the mixture." GJ Transcript at 366. Miller went on to explain that the likelihood ratio for Mr. Kohberger was 0.0469 and that any number less than 0.01 supported exclusion. GJ Transcript at 367.

ARGUMENT

The use of misleading language confuses and misleads the finder of fact and is barred by the Rules 402, 403, as well as due process in that the evidence is overly prejudicial. The erroneous admission of irrelevant and prejudicial evidence will offend due process when it renders a trial fundamentally unfair (*Estelle v. McGuire* (1991) 502 U.S. 62, 70).

Here, expanding beyond the language of the report would prejudice Mr. Kohberger in that it might allow the jury to infer that the inconclusive data would mean that he might be included. LR's are different from traditional statistics that courts and juries are used to seeing and hearing.

The LR is a comparison of hypotheses, it is not a statement of identity or probability of identity. It simply asks the question: given the data, which hypotheses tested is more likely. For Item Q13.1, both hypotheses tested for each individual assumed that M.M.'s DNA was present. So when the lab generated an LR, laid out above, the hypotheses tested were:

M.M., K.G., and one unknown unrelated person

Versus

M.M. and two unrelated persons

This comparison was done for all of the individuals listed in report #7 and for Mr. Kohberger in Report #26.[1] At the ISP lab, any number greater than 100, is considered a conclusive result indicating inclusion. Any number less than 0.01 is considered a conclusive result indicating exclusion. Thus if an LR falls within the range of 0.01 to 100, the lab cannot draw any conclusions and the data is reported as inconclusive.

In her testimony Miller did not provide a full context to the analysis. The lab reported a series of LR's for Item 13.1 including an LR of 0.399 for Jack Ducouer, 0.485 for Cole Barenberg, 0.20, for Xana Kernodle, 0.0233 for Bethany Funke. Lab Report #7, at 3. All of these individuals sit in the same shoes as Mr. Kohberger, namely that the LR is exclusionary but falls in the range of inconclusive.

Of interest is that when an LR was calculated for Ethan Chapin, the lab reported 3.33. Thus, Mr. Kohberger's inconclusive LR is similar to almost every other person for whom an LR was generated and focusing on his "inconclusive" LR would mislead the jury. In that in implies that the LR means that Mr. Kohberger's DNA might be present in the sample.

The Court should exclude testimony such as

> That's a range that we determine that there's not enough information to say or conclude one way or another about someone to be a contributor GJ Transcript at 367.

[1] Motion in Limine #5 Exhibit 1 ISP Lab Reports 7 and 26

More importantly, Mr. Kohberger has disclosed that through further independent laboratory testing, he is eliminated as a contributor to Item 13.1. When Mr. Kohberger sought to overturn the grand jury indictment, he argued that Miller's testimony was inadmissible and misleading. The state argued that the testimony was presented to the grand jury as exculpatory, and an effort to elicit favorable evidence for Mr. Kohberger. The independent lab testing conducted by the defense related to Item 13.1 is in deed exculpatory. Mr. Kohberger is excluded, and the state should be precluded from misleading the jury in any way.

CONCLUSION

A fair trial is mandated by Mr. Kohberger's Federal and State Constitutional rights to due process, a fair trial, effective assistance of counsel, and confrontation of witnesses. U.S. Const. amends. V, VI, and XIV; Idaho Const. art. I Sections 8 and 13. Expert testimony, improperly elicited must be excluded.

DATED this ___24____ day of February, 2025.

BY: _____
BICKA BARLOW
ATTORNEY AT LAW

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 February, 2025 addressed to:

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_____

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FORENSIC DNA REPORT

Case Agency(s) : **MOSCOW POLICE DEPARTMENT**	Agency Case No(s).: **22-M09903**	Laboratory Case No.: **M2022-4843** **XREF: M2022-4870**
Date(s) of Offense: **11/13/2022**	Investigating Officer(s): **Dustin Blaker**	Report No.: **7**
Date Evidence Accepted: **11/18/2022**	Analyst: **Jade Miller**	
Case Name(s): **Suspect - JACK S DUCOEUR** **Subject - BETHANY G FUNKE** **Subject - DYLAN M MORTENSEN** **Subject - JOSE A CRUZ** **Victim - MADISON M MOGEN** **Victim - XANA A KERNODLE** **Victim - ETHAN J CHAPIN** **Victim - KAYLEE J GONCALVES**		

EVIDENCE DESCRIPTION:

Item 3: Submitted swab from F2 bedroom floor
Item 4: Submitted swab and debris from F3 bedroom floor
Item 6.1: Swab of right fingernail clippings from Ethan Chapin
Item 7.1: Swab of left fingernail clippings from Ethan Chapin
Item 9.1: Swab of right fingernail clippings from Xana Kernodle
Item 10.1: Swab of left fingernail clippings from Xana Kernodle
Item 12.1: Swab of right fingernail clippings from Madison Mogen
Item 13.1: Swab of left fingernail clippings from Madison Mogen
Item 15.1: Swab of right fingernail clippings from Kaylee Goncalves
Item 16.1: Swab of left fingernail clippings from Kaylee Goncalves
Item 20: DNA extracts from Items 3, 4, 5, 6.1, 7.1, 8, 9.1, 10.1, 11, 12.1, 13.1, 14, 15.1, 16.1, 17, 18, and 19

CONCLUSIONS AND INTERPRETATIONS:

Deoxyribonucleic Acid (DNA) Analysis, employing the Polymerase Chain Reaction (PCR), was used to generate a Short Tandem Repeat (STR) profile from Items 6.1, 7.1, 13.1, 15.1, 16.1, and a portion of Items 3, 9.1, 10.1, and 12.1.[1]

FOOTNOTES
[1] Loci Examined: Amelogenin, D3S1358, D1S1656, D2S441, D10S1248, D13S317, Penta E, D16S539, D18S51, D2S1338, CSF1PO, Penta D, TH01, D7S820, D5S818, TPOX, DYS391, D8S1179, D12S391, D19S433, FGA, and D22S1045.

DEFENDANT'S
MOTION IN LIMINE #5
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
CASE NO. CR01-24-31665

The DNA profile obtained from Item 3 matches that obtained from the known reference sample of Xana Kernodle (See Item 8, Report No. 4 issued 11/20/2022). This DNA profile is at least 12.5 septillion (1.25×10^{25}) times more likely to be seen if Xana Kernodle is the source than if an unrelated individual randomly selected from the general population is the source.

The DNA profile obtained from Item 6.1 indicates a mixture of DNA. Xana Kernodle is a potential contributor to this DNA mixture. Assuming a two person mixture and that Ethan Chapin (See Item 5, Report No. 4 issued 11/20/2022) is a contributor, this DNA profile is at least 19.4 septillion (1.94×10^{25}) times more likely to be seen if it were the result of a mixture of DNA from Ethan Chapin and Xana Kernodle than if it resulted from Ethan Chapin and an unrelated individual randomly selected from the general population.

Madison Mogen (Item 11), Kaylee Goncalves (Item 14), Jack Ducoeur (Item 17), Bethany Funke (Item 18), Dylan Mortensen (Item 19) (See Items 11, 14, 17, 18, and 19, Report No. 4 issued 11/20/2022), John Showalter (Item 1), Cole Barenberg (Item 2) (See Items 1 and 2, M2022-4870, Report No. 1 issued 11/20/2022), and Jose Cruz (See Item 33, Report No. 6 issued 11/23/2022) are excluded as being contributors to this DNA mixture.

The DNA profile obtained from Item 7.1 is consistent with that obtained from the known reference sample of Ethan Chapin.

The DNA profile obtained from Item 9.1 indicates a mixture of DNA with a major profile, which is consistent with having come from Xana Kernodle. Ethan Chapin is a potential contributor to the minor component of this mixture. Assuming a two person mixture and that Xana Kernodle is a contributor, this DNA profile is at least 6,150 times more likely to be seen if it were the result of a mixture of DNA from Xana Kernodle and Ethan Chapin than if it resulted from Xana Kernodle and an unrelated individual randomly selected from the general population.

Jack Ducoeur, John Showalter, Cole Barenberg, and Jose Cruz are excluded as being contributors to this DNA mixture.

The DNA profile obtained from Item 10.1 indicates a mixture of DNA with a major profile, which is consistent with having come from Xana Kernodle. Ethan Chapin is a potential contributor to the minor component of this mixture. Assuming a two person mixture and that Xana Kernodle is a contributor, this DNA profile is at least 8,340,000 times more likely to be seen if it were the result of a mixture of DNA from Xana Kernodle and Ethan Chapin than if it resulted from Xana Kernodle and an unrelated individual randomly selected from the general population.

Jack Ducoeur, John Showalter, Cole Barenberg, and Jose Cruz are excluded as being contributors to this DNA mixture.

The DNA profile obtained from Item 12.1 is consistent with that obtained from the known reference sample of Madison Mogen.

The DNA profile obtained from Item 13.1 indicates a mixture of DNA with a major profile, which is consistent with having come from Madison Mogen. Kaylee Goncalves is a potential contributor to this mixture. Assuming a three person mixture and that Madison Mogen is a contributor, this DNA profile is at least 77,900,000 times more likely to be seen if it were the result of a mixture of DNA from Madison Mogen, Kaylee Goncalves, and an unrelated, randomly selected individual than if it resulted from Madison Mogen and two unrelated individuals randomly selected from the general population.

Based on the likelihood ratio result 0.399, it is inconclusive whether Jack Ducoeur is a potential contributor to this DNA profile.

Based on the likelihood ratio result 0.485, it is inconclusive whether Cole Barenberg is a potential contributor to this DNA profile.

Based on the likelihood ratio result 3.33, it is inconclusive whether Ethan Chapin is a potential contributor to this DNA profile.

Based on the likelihood ratio result 0.201, it is inconclusive whether Xana Kernodle is a potential contributor to this DNA profile.

Based on the likelihood ratio result 0.0233, it is inconclusive whether Bethany Funke is a potential contributor to this DNA profile.

John Showalter, Jose Cruz, and Dylan Mortensen are excluded as being contributors to this DNA mixture.

The DNA profiles obtained from Items 15.1 and 16.1 are consistent with that obtained from the known reference sample of Kaylee Goncalves.

Deoxyribonucleic Acid (DNA) extraction and quantification, employing real-time Polymerase Chain Reaction (PCR), were performed on the swab from Item 4.

No DNA was detected on Item 4. No further testing was conducted on this item.

DISPOSITION OF EVIDENCE:

Items 6.1, 7.1, 13.1, 15.1, 16.1, and the swab from Item 4 were consumed during testing; however, DNA extract remains for these items. All other items and the empty packaging for Items 4, 6.1, 7.1, 13.1, 15.1, and 16.1 have been returned to the main laboratory evidence vault for return to the submitting agency.

REMARKS:

The descriptions, conclusions and interpretations stated above apply to the sample(s) as received.
I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Jade Miller

Jade Miller / Forensic Scientist
Issue Date: **11/23/2022**

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FORENSIC DNA REPORT

Case Agency(s):	Agency Case No(s).:	Laboratory Case No.:
MOSCOW POLICE DEPARTMENT	**22-M09903**	**M2022-4843** **XREF: M2022-4870**
Date(s) of Offense:	Investigating Officer(s):	Report No.:
11/13/2022	**Dustin Blaker**	**26**
Date Evidence Accepted:	Analyst:	
12/27/2022, 01/06/2023	**Jade Miller**	
Case Name(s): **Suspect - BRYAN KOHBERGER** **Victim - MADISON M MOGEN** **Victim - XANA A KERNODLE** **Victim - ETHAN J CHAPIN** **Victim - KAYLEE J GONCALVES**		

EVIDENCE DESCRIPTION:

Item 72: Submitted swab from north wall of stairwell
Item 73: Submitted swab from half wall
Item 74: Submitted swab from 2nd floor table
Item 75: Submitted swab from 2nd floor outside of bedroom
Item 76: Submitted swab from living room table
Item 77: Submitted swab from 3rd floor door
Item 78: Submitted swab of stain on floor near west bedroom
Item 101.1: Stain on cutting from uncased pillow from 1630 NE Valley Rd.
Item 103.1: Stain A on bottom portion of mattress protector from 1630 NE Valley Rd.
Item 103.2: Stain B on bottom portion of mattress protector from 1630 NE Valley Rd.
Item 103.3: Stain C on bottom portion of mattress protector from 1630 NE Valley Rd.
Item 108: Reference oral swabs from Bryan Kohberger
Item 110: DNA extracts from Items 72 through 78, 101.1, 103.1, 103.2, 103.3, and 108

CONCLUSIONS AND INTERPRETATIONS:

Deoxyribonucleic Acid (DNA) Analysis, employing the Polymerase Chain Reaction (PCR), was used to generate a Short Tandem Repeat (STR) profile from a portion of Items 72 through 78, 101.1, 103.1, 103.2, 103.3, and 108.[1]

The DNA profile previously obtained from Item 1.1 (See Report No. 4, issued 11/20/2022) matches that obtained from the known reference sample of Bryan Kohberger. This DNA profile is at least 5.37 octillion (5.37×10^{27}) times more likely to be seen if Bryan Kohberger is the source than if an unrelated individual randomly selected from the general population is the source.

FOOTNOTES

[1] Loci Examined: Amelogenin, D3S1358, D1S1656, D2S441, D10S1248, D13S317, Penta E, D16S539, D18S51, D2S1338, CSF1PO, Penta D, TH01, vWA, D21S11, D7S820, D5S818, TPOX, DYS391, D8S1179, D12S391, D19S433, FGA, and D22S1045.

The DNA profile previously obtained from Item 1.4 (See Report No. 4, issued 11/20/2022) indicates a mixture of DNA with a major profile. Assuming a two person mixture, Bryan Kohberger is excluded as being a contributor to this DNA mixture.

The DNA profile previously obtained from Item 6.1 (See Report No. 7, issued 11/23/2022) indicates a mixture of DNA. Assuming a two person mixture, Bryan Kohberger is excluded as being a contributor to this DNA mixture.

The DNA profile previously obtained from Item 9.1 (See Report No. 7, issued 11/23/2022) indicates a mixture of DNA with a major profile. Assuming a two person mixture, Bryan Kohberger is excluded as being a contributor to this DNA mixture.

The DNA profile previously obtained from Item 10.1 (See Report No. 7, issued 11/23/2022) indicates a mixture of DNA with a major profile. Assuming a two person mixture, Bryan Kohberger is excluded as being a contributor to this DNA mixture.

The DNA profile previously obtained from Item 13.1 (See Report No. 7, issued 11/23/2022) indicates a mixture of DNA, assumed to be from three individuals, with a major profile. Based on the likelihood ratio result 0.0469, it is inconclusive whether Bryan Kohberger is a potential contributor to this DNA mixture.

The DNA profile previously obtained from Item 23 (See Report No. 13, issued 12/17/2022) indicates a mixture of DNA with a major profile. Assuming a two person mixture, Bryan Kogberger is excluded as being a contributor to this DNA mixture.

The DNA profile previously obtained from Item 30 (See Report No. 13, issued 12/17/2022) indicates a mixture of DNA, assumed to be from three individuals, with a major profile. Bryan Kohberger is not the source of the major male DNA profile from this item. Due to the low level results and limited data, no conclusions can be made regarding the minor contributors.

The DNA profiles previously obtained from Items 37.1 and 37.2 (See Report No. 13, issued 12/17/2022) were determined to be from the same unknown male. Bryan Kohberger is not the source of the DNA profiles from these items.

The partial DNA profile previously obtained from Item 40.1 (See Report No. 13, issued 12/17/2022) was determined to be from an unknown male. Bryan Kohberger is not the source of the DNA profile from this item.

The partial DNA profile previously obtained from Item 40.4 (See Report No. 13, issued 12/17/2022) indicates a mixture of DNA with a major profile. Assuming a two person mixture, Bryan Kohberger is not the source of the major male DNA profile from this item. Due to the low level results and limited data, no conclusions can be made regarding the minor contributor.

The DNA profile obtained from Item 72 indicates a mixture of DNA with a major profile, which matches that previously obtained from the known reference sample of Kaylee Goncalves (See Item 14, Report No. 4, issued 11/20/2022). Assuming a two person mixture, this DNA profile is at least 779 septillion (7.79×10^{26}) times more likely to be seen if it were the result of a mixture of DNA from Kaylee Goncalves and an unrelated, randomly selected individual than if it resulted from two unrelated individuals randomly selected from the general population.

Madison Mogen (See Item 11, Report No. 4, issued 11/20/2022) is a potential contributor to the minor component of this mixture. Assuming a two person mixture, this DNA profile is at least 6.83 septillion (6.83×10^{24}) times more likely to be seen if it were the result of a mixture of DNA from Madison Mogen and an unrelated, randomly selected individual than if it resulted from two unrelated individuals randomly selected from the general population.

Ethan Chapin (Item 5), Xana Kernodle (Item 8), Jack Ducoeur (Item 17), Bethany Funke (Item 18), Dylan Mortensen (Item 19) (See Report No. 4, issued 11/20/2022), John Showalter (Item 1), Cole Barenberg (Item 2) (See M2022-4870, Report No. 1, issued 11/20/2022), Jose Cruz (See Item 33, Report No. 6, issued 11/23/2022), Henry Clark (Item 41), Kenneth Anderson (Item 42), Donald McDonald (Item 43), Mason Barstow (Item 44), Jeremy Reagan (Item 45), Khoi Nguyen (Item 46), Derrick Agbenya (Item 47), Patrick Buettner (Item 48), Courage Alorbu (Item 49), James Deskins (Item 50) (See Report No. 13, issued 12/17/2022), Connor Chesnut (See Item 6, M2022-4870, Report No. 3, issued 12/14/2022), and Bryan Kohberger are excluded as contributors to this DNA mixture.

The DNA profile obtained from Item 73 indicates a mixture of DNA with a major profile, which matches that previously obtained from the known reference sample of Kaylee Goncalves. Assuming a two person mixture, this DNA profile is at least 525 septillion (5.25×10^{26}) times more likely to be seen if it were the result of a mixture of DNA from Kaylee Goncalves and an unrelated, randomly selected individual than if it resulted from two unrelated individuals randomly selected from the general population.

Madison Mogen is a potential contributor to the minor component of this mixture. Assuming a two person mixture, this DNA profile is at least 44.6 quadrillion (4.46×10^{16}) times more likely to be seen if it were the result of a mixture of DNA from Madison Mogen and an unrelated, randomly selected individual than if it resulted from two unrelated individuals randomly selected from the general population.

Ethan Chapin, Xana Kernodle, Jack Ducoeur, Bethany Funke, Dylan Mortensen, John Showalter, Cole Barenberg, Jose Cruz, Henry Clark, Kenneth Anderson, Donald McDonald, Mason Barstow, Jeremy Reagan, Khoi Nguyen, Derrick Agbenya, Patrick Buettner, Courage Alorbu, James Deskins, Connor Chesnut, and Bryan Kohberger are excluded as contributors to this DNA mixture.

The DNA profiles obtained from Items 74, 75, and 78 match that previously obtained from the known reference sample of Xana Kernodle. This DNA profile is at least 9.25 septillion (9.25×10^{24}) times more likely to be seen if Xana Kernodle is the source than if an unrelated individual randomly selected from the general population is the source.

The DNA profiles obtained from Items 76 and 77 match that previously obtained from the known reference sample of Kaylee Goncalves. This DNA profile is at least 1.01 octillion (1.01×10^{27}) times more likely to be seen if Kaylee Goncalves is the source than if an unrelated individual randomly selected from the general population is the source.

The DNA profiles obtained from Items 101.1, 103.1, 103.2, and 103.3 are consistent with that obtained from the known reference sample of Bryan Kohberger.

Laboratory Case Number: **M2022-4843**	Report No.: **26**

DISPOSITION OF EVIDENCE:

Item 108 was previously returned to the submitting agency. All remaining items have been returned to the main laboratory evidence vault for return to the submitting agency.

REMARKS:

The descriptions, conclusions and interpretations stated above apply to the sample(s) as received.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Jade Miller

Jade Miller / Forensic Scientist

Issue Date: **02/06/2023**

CERTIFICATE OF SERVICE

I hereby certify that on 3/4/2025, I served a true and correct copy of the

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TRENT TRIPPLE
Clerk of the Court

By: _____
Deputy Clerk 3/4/2025 11:15:14 AM