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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 #14

RE: STATISTICAL ANALYSIS

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, 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 Q1.1, the sheath strap and inner snap. The statistic reported by the lab is a likelihood ratio (LR). Miller testified that the LR compares the probability of the evidence, meaning the DNA profile obtained, and comparing two different hypotheses. GJ Transcript at 368. “[W]hen we’re comparing to Bryan Kohberger’s reference sample is the hypothesis that he is the contributor, or the source of the DNA, versus the hypothesis that it came from an unknown, unrelated, randomly selected individual.” *Id.* Miller reported the statistic for this comparison, but the State posed the following question to Miller

So, fair to say, that if there were 1.37 octillion people that it would be that Bryan Kohberger is one out of that many octillion, is that -- is that what your testimony is? GJ Transcript at 369.

Miller responded “Unfortunately, this likelihood ratio isn't really on par with talking about the population. Some other statistics are.” *Id.* From Miller’s answer to this question, it is clear that the comparison to the world population is not an appropriate or scientific way to discuss the LR.

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 identify or probability of identity. It simply asks the question: given the data, which hypotheses tested is more likely.

The Court should exclude questions and testimony such as that described above. Clearly Miller disagreed with the premise of the question. Her answer, that the LR was not that type of statistic indicates that the question itself was based on a misunderstanding of the meaning of the LR. As Miller describes in her testimony, the LR is a comparison of two hypothesis, not a statement of rarity of the profile or probability of finding the same profile in the population. This type of question could potentially confuse and mislead the jury and required an undue consumption of time in cross examination.

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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CERTIFICATE OF SERVICE

I hereby certify that on 3/4/2025, I served a true and correct copy of the
SEALED AND UNREDACTED MOTION IN LIMINE #14 RE: STATISTICAL ANALYSIS

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TRENT TRIPPLE

Clerk of the Court

By: 
Deputy Clerk 3/4/2025 10:52:50 AM