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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 #1

RE: INFLAMMATORY EVIDENCE

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby moves the Court for an Order preventing the prosecution from introducing irrelevant and unfairly prejudicial photographs, testimony, and other exhibits in violation of his right to a fair trial protected through the fifth, sixth and fourteenth amendments of the United States constitution and section 1 article 13 of the Idaho Constitution. Such rights are protected through application of Idaho criminal rules and Idaho rules of evidence.

Mr. Kohberger respectfully requests this court order the state to not try the case through eliciting testimony and other evidence that is exceptionally inflammatory. Presenting the case in an emotional and inflammatory way is unfairly prejudicial. Any probative value is less than the danger. Additionally, the prosecution should not present the same information in a variety of ways which is misleading or cumulative and a waste of time.

I.R.E. 403 states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

The case contains over 68 terabytes of data. This data contains thousands of photographs. Many depict roughly the same content. There are photographs that depict the deceased as well as the same location without the deceased. Multiple officers took photographs of the same areas. Additionally, there are many hours of body worn camera footage. Body worn footage depicts the officers moving throughout the house. There are hundreds of photographs of autopsy proceedings. In addition to this evidence over one hundred officers and investigators have been involved in the case and hundreds of people that have been interviewed. Mr. Kohberger seeks to protect the integrity of his trial and requests an Order preventing inflammatory evidence, including testimonial evidence, be excluded. "[A]ppeals to emotion, passion or prejudice of the jury through use of inflammatory tactics are impermissible." *State v. Phillips*, 144 Idaho 82, 87, 156 P.3d 583, 588 (Ct.App.2007); *see also State v. Babb*, 125 Idaho 934, 942, 877 P.2d 905, 913 (1994) *State v. Ellington*, 151 Idaho 53, 253 P.3d 727 (2011)

Mr. Kohberger acknowledges the Idaho Supreme Court has held that a photograph cannot be excluded merely on the basis of being gruesome. *State v. Winn*, 121 Idaho 850 (1992). However, Mr. Kohberger is not making that motion; rather he is requesting the State be prevented from introducing inflammatory evidence.

Multiple studies have found that mock jurors are more likely to convict when exposed to graphic photos. Kevin S. Douglas, et al., *The Impact of Graphic Photographic Evidence on Mock Juror's Decisions in a Murder Trial: Probative or Prejudicial?* 21 LAW & HUM. BEHAV. 485-501 (1997); David A. Bright & Jane Goodman-Delahunty, *Gruesome Evidence and Emotion: Anger, Blame, and Jury Decision-Making*, 30 LAW & HUM. BEHAV. 183-201 (2006). Other studies have shown that judicial instructions to ignore such evidence are ineffective, while some have actually found such instructions *cause* jurors to place more emphasis on that evidence. Joel Lieberman & Jamie Amdt, *Understanding the Limits of Limiting Instructions: Social Psychological Explanations for the Failures of Instructions to Disregard Pretrial Publicity and Other Inadmissible Evidence*, 6 PSYCHOL. PUB. POL'Y & L. 677 (2000); David A. Sklansky, *Evidentiary Instructions and the Jury as Other*, 65 STAN. L. REV. 407 (2013); Michelle Cox & Sarah Tanford, *Effects of Evidence and Instructions in Civil Trials: An Experimental Investigation of Rules of Admissibility*, 4 SOC. BEHAV. 31-55 (1989); Emily R. Edwards & Karen E Mottarella, *Preserving the Right to a Fair Trial: An Examination of Prejudicial Value of Visual and Auditory Evidence*, 16 N. AM. J. PSYCHOL. 397-414 (2014); Saul M. Kassin & David A. Garfield, *Blood and Guts: General and Trial-Specific Effects of Videotaped Crime Scenes on Mock Juror Verdicts*, 21 APPLIED SOC. PSYCHOL. 1877-1887 (1991).

Mr. Kohberger's right to a fair trial free from irrelevant, cumulative, and unfairly prejudicial evidence as guaranteed by the Constitution of the State of Idaho and the United States of America would be violated to allow exhibits depicting gruesome details or the emotional reactions of the police officers at the scene or during their testimony during the trial.

DATED this 24 day of February, 2025.

BY:



ANNE C. TAYLOR
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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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