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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 #10

**RE: IMPROPER EXPERT OPINION
TESTIMONY - MITTELMAN**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of records, and hereby moves the Court for an Order excluding improperly expert testimony, David Mittelman.

Allowing improper expert testimony violates 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. Article I Section 13 of the Idaho Constitution, Idaho Criminal Rule 16 and Idaho Rules of Evidence 102, 104, 701, 702, and 703. The requested exclusions 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.

On February 17, 2025, the prosecution submitted the disclosure for rebuttal witness David Mittelman of Othram labs. In the disclosure, Mittelman offers multiple opinions as to the quality of the work done by Othram labs in generating a SNP profile and for starting the IGG search for relatives of the SNP profile. In addition to these opinions, Mittelman offers multiple objectionable opinions that fall outside of the proper role of an expert and are highly speculative.

A. Mittelman should be excluded as a witness based on failure to disclose in a timely fashion and due process

As set forth in *In Limine Motion to Exclude IGG* (Motion in Limine #11) Mr. Mittelman and his proposed testimony were disclosed for the first time on February 17, 2025. Mr. Kohberger incorporates by reference the facts and arguments presented in that motion. Due to the later discovery and the motion to exclude IGG altogether, Mittelman is no longer a rebuttal witness and his untimely disclosure puts Mr. Kohberger at a significant evidentiary disadvantage and his testimony along with the rest of the IGG evidence, must be excluded.

B. Mittelman offers opinions that must be excluded because they are highly speculative

The State offers the following opinions:

Mittelman will testify that the collection of DNA evidence from the crime scene, the development of an STR profile, and its entry into CODIS all took place before Othram’s involvement in the case. With an STR profile already in CODIS, identifying the suspect was ultimately a matter of time.

Othram was engaged to build a SNP profile and perform forensic genetic genealogy to accelerate the investigative process. While this approach expedited the

identification, it did not change the inevitable outcome—the suspect would have been identified regardless.

The FBI's role may have further accelerated the work Othram had already begun, but Othram was on track to reach the same conclusion. This is evident from the preliminary, incomplete report Othram provided after being asked to stop its efforts.

In this case, additional reference testing was always going to lead to the identification of Mr. Kohberger, regardless of which agency completed the process or when it occurred.

All of the above opinions are improper because they are highly speculative. “An expert opinion that merely suggests possibilities, not probabilities, would only invite conjecture and may be properly excluded.” *Nield v. Pocatello Health Servs., Inc.*, 156 Idaho 802, 815 (2014)[quoting *Slack v. Kelleher* 140 Idaho 916, 923 (2004)]. Mittelman's disclosure states no facts to support this opinion. These opinions appear to be Mittelman's belief in DNA testing rather than a reasoned expert opinion based on facts. Admission of these opinions would invite conjecture and should be excluded.

The first opinion seems to assume that at some point in time, Mr. Kohberger's DNA would be entered into CODIS. The only way into CODIS is via the commission or conviction for a felony. This assumption is improper and would mislead the jury and would create cross examination on this issue that would take an undue consumption of time.

Not only are the opinions above highly speculative as to what would have occurred rather than what did occur, they are irrelevant. The opinions do nothing to prove guilt or innocence and seemed geared to simply promote the technology of DNA testing. While this goal is not improper, the means is. As the disclosure sets forth, Mittelman will testify about his lab, their processes and their quality systems. The speculative opinions add nothing other than confusion and will result in an undue consumption of time.

This testimony must be prohibited pursuant to Idaho Rules of Evidence, and Mr. Kohberger's Federal and State Constitutional Rights of a fair trial, confrontation, and due process.

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. Improper speculative expert testimony 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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