

Anne Taylor Law, PLLC
Anne C. Taylor, Attorney at Law
PO Box 2347
Coeur d'Alene, Idaho 83816
Phone: (208) 512-9611
iCourt Email: info@annetaylorlaw.com

Elisa G. Massoth, PLLC
Attorney at Law
P.O. Box 1003
Payette, Idaho 83661
Phone: (208) 642-3797; Fax: (208)642-3799

Bicka Barlow
Pro Hac Vice
2358 Market Street
San Francisco, CA 94114
Phone: (415) 553-4110

Assigned Attorney:

Anne C. Taylor, Attorney at Law, Bar Number: 5836
Elisa G. Massoth, Attorney at Law, Bar Number: 5647
Bicka Barlow, Attorney at Law, CA Bar Number: 178723
Jay W. Logsdon, First District Public Defender, Bar Number: 8759

**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:

[REDACTED]

The data from that sample was [REDACTED] as to Mr. Kohberger. GJ Transcript at 365, 366. Miller testified that inconclusive means that an analyst is [REDACTED] [REDACTED] GJ Transcript at 366. Miller went on to explain that the likelihood ratio for Mr. Kohberger [REDACTED] [REDACTED]. 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 [REDACTED], 0.485 for [REDACTED], 0.20, for [REDACTED], 0.0233 for [REDACTED]. 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 [REDACTED], [REDACTED]. 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

[REDACTED]

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:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov

Elisa Massoth – via Email: legalassistant@kmrs.net

Jay Logsdon – via Email: Jay.Logsdon@spd.idaho.gov

Bicka Barlow, Attorney at Law – via Email: bickabarlow@sbcglobal.net

Jeffery Nye, Deputy Attorney General – via Email: Jeff.nye@ag.idaho.gov



CERTIFICATE OF SERVICE

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

LATAH COUNTY PROSECUTING ATTORNEY'S OFFICE

WILLIAM W. THOMPSON, JR.

PROSECUTING ATTORNEY

JEFFERY D. NYE

SPECIAL ASSISTANT ATTORNEY GENERAL

VIA EMAIL: Jeff.Nye@ag.idaho.gov

ASHLEY JENNINGS

DEPUTY PROSECUTING ATTORNEY

VIA EMAIL: paservice@latahcountyid.gov

ANNE TAYLOR LAW, PLLC

ANNE C. TAYLOR

VIA EMAIL: info@annetaylorlaw.com

ELISA G. MASSOTH, PLLC

ELISA G. MASSOTH

VIA EMAIL: emassoth@kmrs.net

IDAHO STATE PUBLIC DEFENDER'S OFFICE

JAY W. LOGSDON

FIRST DISTRICT PUBLIC DEFENDER

VIA EMAIL: Jay.Logsdon@spd.idaho.gov

BICKA BARLOW

Pro Hac Vice

bickabarlow@sbcglobal.net

TRENT TRIPPLE

Clerk of the Court

By: 

Deputy Clerk 3/4/2025 11:42:21 AM