

LATAH COUNTY PROSECUTOR'S OFFICE  
WILLIAM W. THOMPSON, JR., ISB No. 2613  
PROSECUTING ATTORNEY  
ASHLEY S. JENNINGS, ISB No. 8491  
SENIOR DEPUTY PROSECUTOR  
Latah County Courthouse  
522 S. Adams Street, Ste. 211  
Moscow, ID 83843  
Phone: (208) 883-2246  
paservice@latahcountyid.gov

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 No. CR01-24-31665

~~(SEALED)~~

STATE'S MOTION IN LIMINE  
RE: IMPROPER DEATH  
PENALTY COMMENTS

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully moves the Court for an order in limine prohibiting the defense from making any reference to the State "attempting to kill" their client, Bryan C. Kohberger.

The State brings this motion based on defense counsels' repeated references to the "State attempting to kill" their client. On October 26, 2023, Defendant in his "Reply to State's Objection to Defendant's Second Motion to Dismiss Indictment", Page 18, he states: "[The State] has decided to attempt to kill Mr. Kohberger." On October 26, 2023, during oral argument on the Defendant's

Motion to Dismiss the Indictment, defense counsel stated, “this does not rise to what we would expect out Government to do in this scenario where they are trying to kill one of us.” (State’s exhibit S-1, audio of October 26, 2023 hearing, 2:13:38 mark). Again, on January 25, 2024, during oral arguments on the Defendant’s Motion to Reconsider, defense counsel stated “particularly in a case where the State’s decided that it wants to try to kill someone.” (State’s Exhibit S-2, audio of January 25, 2024 hearing, 11:48 mark).

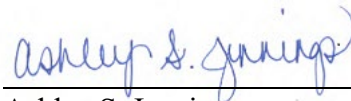
Pursuant to 18-4004A, the State has filed a notice of intent to seek the death penalty. Upon a finding of guilt, the State intends to provide statutory aggravating factors which could enable a jury to impose the death penalty. This is the process laid out by Idaho law. I.C. 19-2515. Any other characterization, such as the statements that the “State is attempting to kill” only serves to inflame the passions of the jury. The statements are irrelevant (i.e. does not make a fact more or less probable; has no consequence in determining the action) to the issues before the jury – the guilt or innocence of the defendant on the charged offenses. I.R.E. 401. In addition, such statements carry the substantial danger of confusing the issues and misleading the jury thus failing the I.R.E. balancing test even if deemed relevant. I.R.E. 403. This is further supported by the Idaho Criminal Jury Instructions which instructs the jury:

At the conclusion of trial, you will decide whether the State has proved the defendant guilty beyond a reasonable doubt. Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict.

I.C.J.I. 700C.

For the above reasons, the State request the Court prohibit defense counsel from making any reference to the State “attempting to kill.”

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of February 2025.



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Ashley S. Jennings  
Senior Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S MOTION IN LIMINE RE:  
IMPROPER DEATH PENALTY COMMENTS were served on the following in the manner  
indicated below:

Anne Taylor  
Attorney at Law  
PO Box 2347  
Coeur D Alene, ID 83816

- Mailed
- E-filed & Served / E-mailed
- Faxed
- Hand Delivered

Dated this 24<sup>th</sup> day of February 2025.

  
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**Exhibit S-1 – Audio File on Thumb Drive Hand-Delivered Separately**

**SEALED**

**State's Motion in Limine RE: Improper Death Penalty Comments**



**Exhibit S-2 – Audio File on Thumb Drive Hand-Delivered Separately**

**SEALED**

**State's Motion in Limine RE: Improper Death Penalty Comments**



**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](mailto:Jeff.Nye@ag.idaho.gov)

**ASHLEY JENNINGS**

DEPUTY PROSECUTING ATTORNEY

VIA EMAIL: [paservice@latahcountyid.gov](mailto:paservice@latahcountyid.gov)

**ANNE TAYLOR LAW, PLLC**

ANNE C. TAYLOR

VIA EMAIL: [info@annetaylorlaw.com](mailto:info@annetaylorlaw.com)

**ELISA G. MASSOTH, PLLC**

ELISA G. MASSOTH

VIA EMAIL: [emassoth@kmrs.net](mailto:emassoth@kmrs.net)

**IDAHO STATE PUBLIC DEFENDER'S OFFICE**

JAY W. LOGSDON

FIRST DISTRICT PUBLIC DEFENDER

VIA EMAIL: [Jay.Logsdon@spd.idaho.gov](mailto:Jay.Logsdon@spd.idaho.gov)

**BICKA BARLOW**

Pro Hac Vice

[bickabarlow@sbcglobal.net](mailto:bickabarlow@sbcglobal.net)

**TRENT TRIPPLE**

Clerk of the Court

By:   
Deputy Clerk

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