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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

**DEFENDANT'S MOTION FOR LEAVE
TO ALLOW WITNESS TESTIMONY AT
APRIL 9, 2025 HEARING**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby moves the Court for leave to allow the defense to call the following witnesses to testify at the Motions in Limine hearing scheduled for April 9-10, 2025. This request is based in the United States Constitution through the Sixth and Fourteenth Amendments and the Idaho Constitution

Article I Section 13. Mr. Kohberger faces the Death Penalty and must raise every possible issue and have a full record of such.

Attorneys representing a person facing capital punishment have a heightened responsibility because of the potential consequences. Mr. Kohberger has a right to effective assistance of counsel. As such counsel is guided by the American Bar Association (ABA) Guidelines in capital cases. Given these obligation, pre-trial motions practice differs significantly from non-capital cases. Capital cases routinely involve the litigation of several dozen, and often hundreds, of pre-trial motions. Consistent with the constitutionally required heightened need for reliability, the obligations of counsel, and the ABA Guidelines, Mr. Kohberger requests counsel be permitted to present evidence in support of motions. Such a practice is necessary to ensure that all appellate issues are preserved to the maximum extent possible and that Mr. Kohberger's State and Federal Constitutional rights are effectuated and protected. In addition, because expert testimony is necessary to inform the finder of fact, who at this stage in the Court, it is most efficient to address these matters now rather than in the middle of trial.

Bryan Kohberger will support some of his motions with affidavit but seeks leave of the court to call two witnesses. The two witnesses that Mr. Kohberger seeks to present are experts whose testimony will involve complex technical questions that cannot be adequately addressed by affidavit and argument. No affidavit can encompass all possible questions and areas of inquiry given the complex and technical nature of the issues before the Court. The presence of live witnesses will allow any questions that will certainly arise for the Court to be addressed directly and in a timely manner. The witnesses' testimony is complex, the intricacies of which are necessary for Mr. Kohberger's defense and the protection of his rights guaranteed by the United States and State of Idaho Constitutions.

WITNESS SY RAY

Sy Ray will provide testimony regarding his expertise with cell tower data and with AT&T records. His testimony encompasses Mr. Kohberger's Motion in Limine to exclude experts, rebuttal of State's Motions in Limine RE: AT&T Timing Advance Data, Alibi and Self Authentication of documents.

In Support of Motion to Exclude Expert Special Agent Ballance

Mr. Kohberger has filed a motion to exclude expert Special Agent Ballance because the State did not file a proper expert disclosure. The State has since filed additional information in its rebuttal to Defense experts Sy Ray and Tom Slovinsky, and even later, the State filed, not an expert opinion, but a more full description of the areas of testimony. Mr. Kohberger's position is that this disclosure is late, incomplete, and inconsistent with previous disclosures.

The State has relied on Special Agent Ballance to track the movements of Bryan Kohberger's cellular device. The reliance has been averred to in every affidavit for records relating to Mr. Kohberger as well as the supporting his arrest. The State claimed that Mr. Kohberger's phone stopped reporting to the network at 2:47 am on November 13, 2022. The State has produced records from AT&T and drive test data relating to their anticipated expert testimony, but no actual report was produced. Instead, the State has produced PowerPoint pages. These pages depict a lack analysis and a false picture. The State has conceded, contrary to their probable cause affidavits, that the phone continued to report to the network for an additional seven minutes, but claim it is of no significance

The State relies on SA Ballance as its expert for cell site location information. SA Ballance was heavily involved in the warrant process for records for Mr. Kohberger's phone and conducting an analysis on the same. SA Ballance reviewed a variety of records and did drive

testing to collect data. Some maps were produced. The State has not explained how those were produced and SA Ballance has not done so through police report or expert analysis. He has produced Power Point depictions that lack explanation.

Defense expert, Sy Ray analyzed the handoffs during the 7 minutes, that the State previously claimed the phone was off, and found that the State's claims about Mr. Kohberger's direction of movement is false. When a phone is utilizing services of several different towers experts triangulate the interaction between the cell tower(s) and cell phone; they can determine the phone location. The State's reliance on a white Elantra in WSU videos is not supported by the cellular tower handoff data. Understanding what these seven minutes of handoffs mean is best explained in testimony of expert Sy Ray. Once the workings of cell phones with towers and hand-offs to determine travel paths is understood the impact of what the State has failed to disclose is better understood. The State has hidden exculpatory evidence.

In Rebuttal of State's Motion RE: AT&T Timing Advance Data

Sy Ray has a background with AT&T records and understands records that exist and how they are distributed. He will provide testimony about AT&T Timing Advance records. He will testify that Timing Advance Records existed through ATT prior to June 2023. He will testify about what the records are and what they show. He has personally seen these records used in other cases prior to June 2023. In June of 2023 Timing Advance Records were produced through GLDC for regular law enforcement. Prior to that time the FBI had means to receive Timing Advance Reports. Sy Ray will testify that Timing Advance Records exist in Mr. Kohberger's case, specifically, the State has produced timing advance records through the cell tower reports on over 3800 people and individual records for two of the deceased and one person of interest. The State has not produced these records for Mr. Kohberger.

In Rebuttal of State's Motion RE: Alibi

Mr. Kohberger relies on partial corroboration for his alibi that he was driving alone West and South of Moscow on 11/13/22. Partial corroboration, disclosed as required, is in the form of AT&T records and mapping the same. The specific focus is on cellular device interaction between cell towers and drive testing data during the last seven minutes before the phone stopped reporting to the network. For the first time, on March 3, 2025 the State disclosed Special Agent Balance mapped handoffs for the last seven minutes. Mr. Ray will provide testimony that mapping of those handoffs partially corroborate Mr. Kohberger's alibi and are exculpatory.

In Rebuttal of State's Motion RE: self -authenticating documents

The State has listed AT&T records as part of its request for admission by certification. Mr. Ray will testify about the content of this request.

WITNESS DAVID HOWELL

In Support of Motion to Exclude Experts AND Motion to Exclude Amazon Click history

David Howell is an expert in the branding industry to include Amazon records, data retention, algorithm driven recommendation systems, cross platform tracking, user accounts and, Buy Box system, clickstream tracking systems and the need for complete data for informed opinions. The State has disclosed two potential witnesses as experts on Amazon records but did not disclose opinion of either witness. Forensic analysis of amazon records are complicated. The Defense seeks to exclude and opposes testimony. Many records requested in warrants have not been produced to the defense, beyond bare purchase history that fails to consider critical analysis as listed above. Mr. Howell's testimony relates to two motions – motion to exclude experts based on lack of disclosure and motion to exclude amazon click records. Mr. Howell testimony

is necessary to present the full scope of both motions. Specifically, the testimony will show that without the disclosure of expert opinions the defense has no ability to prepare to confront the undisclosed testimony. This creates a danger of allowing vague experts and topics to present either misleading or false testimony. Without Mr. Howell's testimony Mr. Kohberger cannot effectively describe how Amazon works. This testimony includes Amazon's use of Artificial Intelligence (AI) and how it is used to increase sales, he will explain the how machine learning works and impacts what has been described as clicks. He will explain how "clicks" work and what they mean and what they do not mean. Mr. Howell will discuss how algorithms work and the influence of advertisers. Amazon "searches" and "clicks" are not the same as searching in google. Testimony, rather than affidavit is necessary because this is a technical and specific area. Mr. Kohberger has moved for exclusion of expert testimony as well as all Amazon history.

For the first time, on March 14, 2025 the State disclosed opinions and testimony it seeks to elicit through its experts Shane Cox and Federal Agent Michael Douglass related to Amazon records. Mr. Howell will testify to the significance of this late disclosure and the implications to being able to fully confront these expert opinions.

Testimony is necessary to develop and explain the scope and context of this information and to best protect Mr. Kohberger's Constitutional Rights.

DATED this 17 day of March, 2025.



ANNE C. TAYLOR
ANNE TAYLOR LAW, PLLC

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 17 day of March, 2025 addressed to:

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

Elisa Massoth – via Email: legalassistant@kmrs.net

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