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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 OBJECTION TO  
STATE'S NOTICE OF INTENT TO USE  
I.R.E. 404(B) EVIDENCE**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby objects to the State's Notice of Intent to Use I.R.E. 404(b) Evidence ("State's 404(b) Notice), filed on February 4, 2025. Pursuant to I.R.E. 404(b)(2), the State intends to present evidence of crimes, wrongs, or other acts. Specifically, the State intends to use the video of a traffic stop on August 21, 2022, and the citation regarding the same traffic stop for the purpose of proving

Defendant's identity, vehicle, address, and phone number. For the reasons set forth below, Mr. Kohberger objects to the use of this evidence.

### ARGUMENT

***A. The State misconstrues the "identity" aspect of Rule 404(b) because the August 21, 2022, traffic stop bears no resemblance to the crime charged and should be excluded from evidence.***

When the State presented the video of a traffic stop on August 21, 2022, and the corresponding citation as evidence to the grand jury, a limiting instruction was given stating that this evidence is [REDACTED]

[REDACTED]

(Sealed Order Denying Motion to Dismiss Indictment on Grounds of Biased Grand Jury, Inadmissible Evidence, Lack of Sufficient Evidence, and Prosecutorial Misconduct, p. 43). The State misconstrues the "identity" aspect of I.R.E. 404(b). "Evidence of prior misconduct is relevant on the issue of identity when the evidence demonstrates sufficiently similar, as well as distinctive, characteristics or patterns between the prior misconduct and the charged crime." *State v. Leavitt*, 171 Idaho 757, 767, 525 P.3d 1150, 1160 (2023) citing *State v. Porter*, 130 Idaho 772, 783, 948 P.2d 127, 128 (1997). When the other acts evidence is introduced to prove identity, as proposed by the State in this case, the characteristics of the other crime or act must be sufficiently distinctive to warrant an inference that the person who committed the act also committed the offense at issue. Neither the video of a traffic stop on August 21, 2022, nor the corresponding citation are similar to the charged offense, murder. See *United States v. Schram*, 746 Fed. Appx. 688, 690-1 (9<sup>th</sup> Cir. 2018) (conviction reversed and remanded where video and audio evidence of a defendant's prior encounters with police was offered to prove identity and admission of such evidence prejudiced defendant's substantial rights.) The State has other ways to prove Mr. Kohberger's identity without using a prior bad act.

***B. Rule 404(b) excludes the reference to the August 21, 2022 traffic stop as evidence in this case.***

“Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with character.” I.R.E. 404(b)(1). “Permitted uses” of “other crimes, wrongs, or acts” is when the evidence is being used for “another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” I.R.E. 404(b)(2). “The prejudicial effect of [character evidence] is that it induces the jury to believe the accused is more likely to have committed the crime on trial because he is a man of criminal character.” *State v. Grist*, 147 Idaho 49, 52, 205 P.3d 1185, 1188 (2009) (citing *State v. Wrenn*, 99 Idaho 506, 510, 584 P.2d 1231, 1235 (1978)). “Character evidence, therefore, takes the jury away from their primary consideration of the guilt or innocence of the particular crime on trial.” *Id.* “The drafters of I.R.E. 404(b) were careful to guard against the admission of evidence that would unduly prejudice the defendant, while still allowing the prosecution to present probative evidence.” *Id.*

Admissibility of misconduct evidence is subject to two-tiered analysis. *State v. Anderson*, 168 Idaho 758, 769–70, 487 P.3d 350, 361–62 (2021) (citing *State v. Grist*, 147 Idaho 49, 51, 205 P.3d 1185, 1187 (2009)); *State v. Field*, 144 Idaho 559, 569, 165 P.3d 273, 283 (2007). “First, the court must determine that the evidence is relevant to a material and disputed issue concerning the crime charged.” *Field*, 144 Idaho at 569, 165 P.3d at 283. *Id.* “Second, the court must determine that the probative value of the evidence is outweighed by the danger of unfair prejudice to the defendant.” *Id.* See also *State v. Anderson*, 168 Idaho 758, 769–70, 487 P.3d 350, 361–62 (2021) (citing *State v. Grist*, 147 Idaho 49, 51, 205 P.3d 1185, 1187 (2009)).

***C. Rules 401, 402 and 403 exclude the traffic stop evidence as irrelevant and unfairly prejudicial.***

In addition to exclusion under Rule 404(b), any reference to the video and citation related to the August 21, 2022, traffic stop must be excluded as not relevant to the allegations in this case. To be admissible, evidence must be relevant. I.R.E. 402. “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” I.R.E. 401.; See also *State v. Smith*, 107 Idaho 800, 809, 516 P.3d 1071, 1080 (2022); *State v. Sheldon*, 145 Idaho 225, 228, 178 P.3d 28, 31 (2008). “Whether a fact is of consequence or material is determined by its relationship to the legal theories presented by the parties.” *Smith*, 107 Idaho at 809, 516 P.3d at 1080. In this case, evidence that Mr. Kohberger was stopped for a traffic violation on August 21, 2022, is not reasonably tied to crime charged and must be excluded from evidence as irrelevant and not material to the crimes charged in this case.

Under I.R.E. 403, this Court may exclude character evidence “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” I.R.E. 403. “This rule requires the court to balance the probative value of the evidence against the danger that the evidence may be unfairly prejudicial.” *State v. Johnson*, ---Idaho ---, 544 P.3d 766, 774 (Idaho 2024). See also I.R.E. 403.

Even assuming this Court concludes that the character evidence discussed in the State’s 404(b) Notice is somehow relevant, whatever minimal probative value it may have is substantially outweighed by the danger of unfair prejudice and confusion of the issues. “Unfair prejudice” is prejudice that “tends to suggest a decision on an improper basis.” *Johnson*, 544 P.3d at 774 citing *State v. Diaz*, 170 Idaho 79, 91, 507 P.3d 1109, 1121 (2022). The character evidence identified in the State’s 404(b) Notice has no nexus to the criminal charges against Mr. Kohberger. This evidence confuses the issues. If the video and corresponding citation for the

traffic violation on August 21, 2022, is presented to the jury, the jury might well believe that Mr. Kohberger is guilty of the crimes charged because he is a person prone to wrongful behavior. As a consequence, there is a danger that the jury would reach a decision on an improper basis due to evidence that is unfairly prejudicial.

***D. Admission of irrelevant evidence violates due process.***

Under the Federal Constitution, Article XIV, the admission of irrelevant character evidence violates due process and can render a trial fundamentally unfair. *McKinney v. Rees*, 993, F.2d 1378, 1380 (9<sup>th</sup> Cir. 1993). The rule against the use of character evidence to show conformance with or propensity is a “historically grounded rule of evidence.” *Id.* at 1381. The evidence here is even more remote to the alleged criminal conduct than that described in *McKinney*: the possession and use of a knife by the appellant in the context of his mother’s homicide. There is no permissible inference that could be drawn from the character evidence identified in the State’s 404(b) Notice and therefore admission would violate Mr. Kohberger’s due process right to a fair trial.

**CONCLUSION**

Based on the foregoing reasons, Mr. Kohberger respectfully requests that this Court issue an order denying the introduction and admission of the State’s proposed I.R.E. 404(b) evidence.

DATED this 17<sup>th</sup> day of March, 2025.



ELISA G. MASSOTH  
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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 17 day of March, 2025, addressed to:

Latah County Prosecuting Attorney –via Email: [paservice@latahcountyid.gov](mailto:paservice@latahcountyid.gov)

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