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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 No. CR01-24-31665

STATE'S RESPONSE TO
DEFENDANT'S MOTION IN
LIMINE #5

RE: INCONCLUSIVE DATA

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and responds to Defendant's Motion in Limine regarding inconclusive data related to Item Q13.1. Defendant asks this Court to exclude an ISP lab analyst's finding that Defendant could not be excluded as a contributor from Q13.1 because that statement does not provide sufficient context and because the defense's expert came to a different conclusion. Neither rationale supports excluding the testimony, and this Court should deny the motion.

FACTS

Item 13.1 is a swab of left fingernail clippings from Madison Mogen. Jade Miller, an analyst with the Idaho State Police lab, analyzed the DNA profile obtained from Item 13.1. She found the DNA profile “indicates a mixture of DNA with a major profile, which is consistent with having come from Madison Mogen.” (Def. Ex. 1, p.3.) For her analysis, Ms. Miller assumed a three-person mixture and compared the DNA profile to the DNA of several other individuals related to the case. *See id.* Her comparisons provided likelihood ratio results to show the likelihood that each person compared contributed to the DNA profile. *See id.* Ms. Miller then determined for each likelihood ratio result whether it supported inclusion or exclusion or whether the likelihood ratio result was inconclusive. *See id.*

As Ms. Miller explained to the grand jury, [REDACTED]

[REDACTED] (G.J. Tr. p.367, Ls.2-5.) [REDACTED]

[REDACTED]
[REDACTED]
(G.J. Tr., p.367, Ls.6-8.) [REDACTED]

[REDACTED] (G.J. Tr., p.367, Ls.13-17.) These ranges are

consistent with the Idaho State Police lab’s analytical methods in effect at the time of the analysis.¹

Applying those ranges to her likelihood ratio results (“LR”), Ms. Miller concluded that it is inconclusive whether the following persons are potential contributors to Item 13.1: Jack Ducoeur (LR 0.399), Cole Barenberg (LR 0.485), Ethan Chapin (LR 3.33), Xana Kernodle (LR 0.201), and

¹ At the time of Ms. Miller’s analysis, Revision 12 of the Biology/DNA Casework Analytical Methods was in effect. The manual is publicly available online: https://isp.idaho.gov/wp-content/uploads/Forensics/archivedAMs/since/BiologyDNA/Biology_DNA%20Casework%20Analytical%20Methods-rev12.pdf.

Bethany Funke (LR 0.0233). (*See* Def. Ex. 1, p.3.) She also determined it is inconclusive whether Bryan Kohberger (LR 0.0469) is a potential contributor to Item 13.1. (*See* Def. Ex. 2, p.2.)

The defense has disclosed Jennifer Bracamontes, a case work manager at Cybergenetics, as an expert witness in this case. (*See* Defendant's Supplemental Response to Request for Discovery Regarding Expert Witnesses, Ex. D10-A, filed 1/23/25.) Ms. Bracamontes utilized a different program than ISP to analyze the DNA profile obtained from Item Q13.1. She determined that Bryan Kohberger could be excluded from the DNA profile obtained from Q13.1. (*See* Defendant's Supplemental Response to Request for Discovery Regarding Expert Witnesses, Ex. D10-B, p.2, filed 1/23/25.)

ARGUMENT

This Court should deny Defendant's attempt to exclude Ms. Miller's inconclusive result as to Defendant. Defendant claims the result is unfairly prejudicial if used out of context and excludable because his expert came to a different conclusion. Neither basis supports exclusion.

Defendant's claim that he would be unfairly prejudiced by the State eliciting from Ms. Miller only the inconclusive result as to Defendant fails to account for cross examination. *See State v. Fordyce*, 151 Idaho 868, 870-71, 264 P.3d 975, 977-78 (Ct. App. 2011) ("An accused may not construct unfair prejudice merely by conceiving of an incorrect inference that possibly could be drawn from the State's evidence and then declining to dispel that incorrect inference through appropriate cross-examination."). Even if the State chose that strategy, Defendant could elicit during cross-examination the inconclusive results as to the other individuals involved. All those conclusions are in Ms. Miller's report. (*See* Def. Ex. 1, p.3.)

Moreover, the mere fact the defense found an expert with a different opinion than Ms. Miller's does not make Ms. Miller's opinion excludable. *See, e.g., State v. Merwin*, 131 Idaho 642,

646, 962 P.2d 1026, 1030 (1998) (“The question under the evidence rule is simply whether the expert’s knowledge will assist the trier of fact; not whether the information upon which the expert’s opinion is based is commonly agreed upon.”). Ms. Miller’s opinion is that she is [REDACTED]

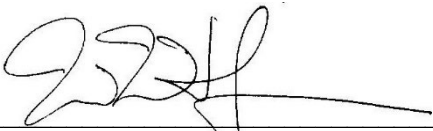
[REDACTED]

[REDACTED] (G.J. Tr., p.366, Ls.20-22, p.367, Ls.13-17.) Ms. Bracamontes’s differing view that Defendant can be excluded as a potential contributor does not make Ms. Miller’s opinion excludable.

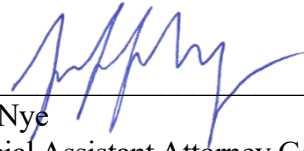
CONCLUSION

For the reasons stated above, this Court should deny Defendant’s motion.

RESPECTFULLY SUBMITTED this 17th day of March 2025.



William W. Thompson, Jr.
Prosecuting Attorney



Jeff Nye
Special Assistant Attorney General

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE #5 RE: INCONCLUSIVE DATA 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 17th day of March 2025.