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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 #1

RE: INFLAMMATORY EVIDENCE

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and submits the following response to the Defendant's "Motion in Limine #1 RE: Inflammatory Evidence" filed on February 24, 2025.

Unfortunately, the Defendant does not specify what potential evidence he is objecting to as "exceptionally inflammatory", nor does the Defendant define "exceptionally inflammatory".

That said, this is an appropriate opportunity to review the applicable standards.

In the second paragraph on page 2 of the Defendant's instant motion, he lists three cases purportedly relating to "inflammatory evidence, including testimony evidence . . ." *State v. Phillips*, 144 Idaho 82 (Ct. App. 207); *State v. Babb*, 125 Idaho 934 (1994); and *State v.*

*Ellington*, 151 Idaho 53 (2011). However, on review, these cases seem to pertain to allegations of prosecutorial misconduct in closing argument, etc., intended to inflame a jury.

The State respectfully submits that when it comes to allegedly “inflammatory” evidence, the proper analysis is under *State v. Leavitt* and its progeny. 116 Idaho 285 (1989). In *Leavitt*, the Idaho Supreme Court addressed color photographs of a victim’s corpse being admitted into evidence:

The defendant next asserts that the trial court erred in three evidentiary rulings. The defendant first asserts that error was committed when certain color photographs of the victim's corpse in an advanced state of decomposition, were admitted in evidence. Defendant cites *State v. Martinez*, 92 Idaho 183, 439 P.2d 691 (1968) as authority for his assertion of error. Therein the Court dealt with the need to balance the probative value and relevance of such evidence against resulting prejudice to the defendant. We agree with the *Martinez* balancing rule. However, in the instant case, although the photographs were admittedly gruesome in nature, clearly they were necessary to show the nature of the crime and the type of wounds inflicted upon the body. The jury is entitled to have an accurate picture of all the circumstances, and although such information may be gruesome in nature it is necessary to make an intelligent fact finding decision. *State v. Izatt*, 96 Idaho 667, 534 P.2d 1107 (1975). Since the photographic evidence is relevant, there is no objection on the basis that it could be presented in a somehow less graphic form. The State is not obligated to present evidence which has a lesser impact. *State v. Rollo*, 221 Or. 428, 351 P.2d 422 (1960).

*Leavitt*, 116 at 290

I.R.E. 403 describes the applicable balancing test:

The Court may exclude relevant 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.

As Professor Lewis observed in his Idaho Trial Handbook, the “balance imposed in Idaho R.Evid. 403 favors admission in the face of those risks; the rule provides for exclusion only where the ‘probative value is substantially outweighed’ by the negative factors.” D. Craig Lewis, Idaho Trial Handbook Second, Section 13: 4, page 221.

The ‘prejudice’ addressed in Idaho R. Evid. 403 is not merely detriment to the opponent’s case; all relevant evidence is prejudicial to the opponent in that sense. *State v. Fenley*, 103 Idaho 199, 646 P.2d 441 (Ct. App. 1982). The proper question is whether the evidence in question is unfairly prejudicial, that is, whether it invites inordinate appeal to lines of reasoning outside of the evidence or emotions which are irrelevant to the decision-making process. *State v. Rhoades*, 119 Idaho 594, 809 P.2d 455 (1991).

*Id.*

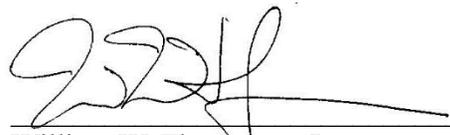
In *State v. Winn*, the Idaho Supreme Court explained that photos of a murder victim can be admitted to aid the “jury in arriving at a fair understanding of the evidence, . . . the extent of the injury, the condition of the body, and their bearing on the question of the degree and atrociousness of the crime.” 120 Idaho 850, 853 (1991) “The fact that the photographs depict the actual body of the victim and wounds inflicted on the victim may tend to excite the emotions of the jury is not a basis for excluding them.” *Id.* The question is not whether the photos were “prejudicial” because “almost all evidence in a criminal trial is demonstrably admitted to prove the case of the State, and thus results in prejudice to the defendant.” *Leavitt*, 116 Idaho at 290. “The fact that certain evidence is horrifying and gruesome, is not in and of itself sufficient reason for exclusion.” *Id.* “The jury is entitled to have an accurate picture of all circumstances, and although such information may be gruesome in nature it is necessary to make an intelligent fact finding decision.” *Id.* As explained in *Brown v. State*, “Gruesome photographs are a result of gruesome crimes.” 989 P.2d 913, 934 (Okla. Crim. App. 1998). See also *State v. Reid*, 151 Idaho

80, 88 (Ct. App. 2011) (“The photographs are undoubtedly gruesome, but this was a gruesome murder trial.”)

Again, in his instant Motion in Limine, the Defendant fails to specify what potential evidence he is objecting to as “irrelevant and unfairly prejudicial photographs, testimony, and other exhibits . . .” at page 1. Additionally, although the Defendant refers to the phrase “especially inflammatory,” he fails to define and provide authority for such a characterization. As seen above, the analysis for the Court is a balancing test under I.R.E. 403 which favors admissibility and provides for exclusion only where the “probative value is substantially outweighed” by “prejudice.”

The State requests that the Court deny the Defendant’s instant motion with the understanding that the applicable legal standards are as outlined above, and it is incumbent on the Defendant to specify what actual evidence he believes the Court should prohibit.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of March 2025.

  
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William W. Thompson, Jr.  
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE #1 RE: INFLAMMATORY EVIDENCE were served on the following in the manner indicated below:

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

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

  
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