

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR., ISB 2613
PROSECUTING ATTORNEY
ASHLEY S. JENNINGS, ISB 8491
SENIOR DEPUTY PROSECUTING ATTORNEY
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

STATE'S RESPONSE TO DEFENDANT'S
MOTION IN LIMINE #2

RE: VAGUE AND UNDISCLOSED EXPERT
TESTIMONY

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and hereby responds to Defendant's "Motion in Limine Re: Vague and Undisclosed Expert Testimony". The State incorporates the contemporaneously filed "State's Response to Defendant's Motion to Preclude the Death Penalty and Adopt Other Necessary Procedures Due to the State's Numerous Disclosure Violations" as part of this response.

FACTUAL AND PROCEDURAL HISTORY

On October 8, 2024, the Court issued an “Order Governing Further Criminal Proceedings and Notice of Trial Setting” which set the following deadlines related to expert disclosures: (1) State’s guilt phase experts due December 18, 2024; (2) Defendant’s guilt phase experts due January 23, 2025; (3) rebuttal guilt phase experts due February 13, 2025; (4) State’s penalty phase experts due March 31, 2025; and (5) rebuttal penalty phase experts due April 28, 2025.

On December 18, 2024, the State filed “Supplemental Response to Request for Discovery Regarding Experts,” disclosing 25 expert witnesses.

On December 27, 2024, Defendant filed “Motion to Compel I.C.R. 16(b)((7) Material and for Sanctions.” On January 7, 2025, the State filed a response “State’s Objection to Defendant’s Motion to Compel 16(b)(7) Material and for Sanctions.” On January 7, 2025, Defendant filed a reply to the State’s objection.

On January 7, 2025, the State filed an Amended Expert Disclosure for Lawrence Mowery. On January 7, 2025, Defendant filed a “Motion to Extend Time to Disclose Defendant’s Guilt Phase Experts” requesting their deadline be moved from January 23, 2025. On January 9, 2025, the Court advised the parties to comply with set deadlines.

On January 23, 2025, the Court addressed this issue on the record. In summary, the Court advised that it generally doesn’t tell the parties what to disclose, rather, it determines the admissibility of the evidence at trial. The Court noted that the parties should overly disclose opinions but not to the extent of the civil rules. The Court issued a “word of caution” instructing the parties if there was not a separate expert report to rely upon, the disclosure should cover essentially everything that expert is going to testify. To the State, the Court instructed “[our]

work was not done.” The Court did not set any additional deadlines but stated supplements would be “reasonably” allowed.

That same day on January 23, 2025, the Defendant filed “Defendant’s Supplemental Response to Request for Discovery Regarding Expert Witnesses” disclosing sixteen expert witnesses. On January 27, 2025, the State filed “State’s Supplemental Response to Request for Discovery Regarding Penalty Phase Experts” disclosing one expert.

On February 10, 2025, the State asked for a four-day extension to file rebuttal experts (based on “Affidavit of Ashley S. Jennings”). The Defendant did not object to this request. On February 12, 2025, the Court, based on the stipulated motion, extended the State’s rebuttal expert deadline from February 13 to February 17, 2025. On February 17, 2025, the State filed “State’s Rebuttal to Defendant’s Supplemental Response to Request for Discovery Regarding Expert Witnesses” disclosing fourteen rebuttal witnesses.

On March 3, 2025, in response to the Court’s advisement, the State filed “State’s Amended Supplemental Response to Request for Discovery Regarding Expert Testimony” amending thirteen previously filed expert disclosures. The State noted it was “awaiting additional information it has requested and will finalize supplemental responses for the outstanding experts...[o]nce completed those supplements will be filed promptly pursuant to the Court’s instruction.” That same day, the Defendant filed “Defendant’s Motion for Leave to File Additional Expert Witness Disclosures” requesting an extension to supplement two expert disclosures (Shutler and Howell).

On March 10, 2025, the State filed a response indicating that the State did not object to Defendant’s request for an extension. As part of that response, the State noted “it serves the interest of the parties and the Court for there to be reasonable flexibility to facilitate the

development and exchange of relevant information to assist the trial jury.” On March 14, 2025, the State filed the remaining amended supplemental expert disclosures.

ARGUMENT

I. The State has complied with Idaho Criminal Rule 16(b)(7) and the Applicable Idaho Rules of Evidence

Idaho Criminal Rule 16(b)(7) states as follows:

Expert Witnesses. On written request of the defendant, the prosecutor must provide a written summary or report of any testimony that the state intends to introduce at trial or a hearing pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence. The summary must describe the witness’s opinions, the facts and data for those opinions, and the witness’s qualifications.

I.C.R. 16(b)(7). I.R.E. 702 provides that a witness may testify as an expert witness if they are “qualified ...by knowledge, skill, experience, training, or education.” They may render an opinion if that opinion will help the trier of fact understand the evidence or determine a fact in issue. *Id.* Whether a witness is sufficiently qualified is largely within the discretion of the trial court. *State v. Hopkins*, 113 Idaho 679, 747 P.2d 88 (Ct. App. 1987). I.R.E. 703 states:

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion or inference on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

I.R.E. 703.

In his filed Motion, Defendant seeks to exclude or limit twenty-two of the State's expert witnesses' testimony; those include: Jennie Ayers; Nicholas Ballance; Jared Barnhardt; Heather Barnhardt; Shane Cox; Michael Douglass; Katherine White; Taylor Maichek; Tara Martinez; Jade Miller; Anne Nord; Tina Walthall; Stephanie Wilt; Hailey Youngling; Rylene Nowlin; Eric Seat; Lawrence Mowery; Jeffrey Tanzola; Neil Uhrig; Darren Gilbertson; Gary Dawson; and David Mittelman. The State has filed disclosures for each of the above-mentioned experts which detail their anticipated testimony in compliance with I.C.R. 16(b)(7) and I.R.E. 703. The State will address each in order.

A. Jennie Ayers

The State filed an expert disclosure for Jennie Ayers on December 18, 2024. The State filed a rebuttal disclosure for Ms. Ayers on February 16, 2025. In accordance with the Court's guidance on January 23, 2025, the State filed an amended disclosure for Ms. Ayers on March 3, 2025. The State submits these disclosures comply with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705.

B. Nicholas Ballance

The State filed an expert disclosure for Federal Bureau of Investigations (FBI) Special Agent (SA) Nicholas Ballance on December 18, 2024. The State disclosed SA Ballance as a rebuttal expert on February 16, 2025, in response to Defendant's January 16, 2025, filing. In accordance with the Court's guidance on January 23, 2025, the State filed an amended disclosure for SA Ballance on March 3, 2025, regarding guilt phase expert testimony.

Defendant's multiple filings in this case regarding challenging the cell phone data is in direct contradiction to their claim that SA Ballance's disclosure "makes it impossible to anticipate what he may testify to as an expert in this matter." Defendant's Motion, page 3. The

Defendant does not provide a legal basis to exclude SA Ballance's testimony. Instead, Defendant appears to disagree with Ballance's anticipated testimony. The proper avenue is to address through cross-examination and rebuttal expert testimony. The State submits its disclosures comply with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705.

C. Heather and Jared Barnhardt

The State filed an expert disclosure for Heather Barnhardt and separately Jared Barnhardt on December 18, 2024. The State filed a rebuttal disclosure for these experts on February 16, 2025. The State submits these disclosures comply with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705.

D. Shane Cox

The State incorporates the contemporaneously filed "State's Response to Defendant's Motion in Limine #9 Re: Excluding Amazon Click Activity Evidence at Trial" in this response. The State filed an expert disclosure for Shane Cox on December 18, 2024. In accordance with the Court's guidance on January 23, 2025, the State filed an amended disclosure for Mr. Cox on March 14, 2025. The State submits these disclosures comply with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705.

E. Michael Douglass

The State incorporates the contemporaneously filed "State's Response to Defendant's Motion in Limine #9 Re: Excluding Amazon Click Activity Evidence at Trial" in this response. The State filed an expert disclosure for Forensic Accountant (FoA) Michael Douglass on December 18, 2024. In accordance with the Court's guidance on January 23, 2025, the State filed an amended disclosure for FoA Douglass on March 14, 2025. The State submits these disclosures comply with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705.

F. Idaho State Police (ISP) Lab Witnesses: Katherine White; Taylor Maichek; Tara Martinez; Jade Miller; Anne Nord; Tina Walthall; Stephanie Wilt; and Hailey Youngling

There is no legal basis to limit expert testimony to what is authored in a report as the Defendant claims. As stated above, I.C.R. 16(b)(6) states the prosecutor “must provide a written summary *or* report of any testimony that the state intends to introduce at trial.” (emphasis added). Pursuant to I.R.E. 703 these experts may base an opinion on facts or data in the case that these experts have been made aware of or personally observed. Further, I.R.E. permits expert opinions based upon facts or data learned both at and before the hearing. *Basic American, Inc. v. Shatila*, 133 Idaho 726, 992 P.2d 175 (1999). The facts or data need not be admissible in evidence if they are a type reasonably relied upon by experts in that particular field in forming opinions on the subject. *Id.*

The State filed expert disclosures for the above-named ISP lab witnesses on December 18, 2024. The State filed a rebuttal disclosure for Katherine White on February 16, 2025. In accordance with the Court’s guidance on January 23, 2025, the State filed amended disclosures for these experts on March 3, 2025. The State submits these disclosures comply with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705.

G. Rylene Nowlin

The State incorporates the contemporaneously filed “State’s Response to Defendant’s Motion in Limine #6 Re: Rylene Nowlin and Reference to ‘Touch’ and “Contact” DNA” in this response. The State filed an expert disclosure for Ms. Nowlin on December 18, 2024. In accordance with the Court’s guidance on January 23, 2025, the State filed an amended disclosure for Ms. Nowlin on March 3, 2025. The State submits these disclosures comply with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705.

H. Eric Seat

The State filed an expert disclosure for Mr. Seat on December 18, 2024. In accordance with the Court's guidance on January 23, 2025, the State filed an amended disclosure for Mr. Seat on March 3, 2025. That disclosure addresses the concerns (i.e. Y-STR testing) raised by the Defendant in his Motion. The State submits these disclosures comply with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705.

I. Forensic Detectives: Lawrence Mowery, Jeff Tanzola, Neil Uhrig

The State filed expert disclosures for Lawrence Mowery, Jeff Tanzola, and Neil Uhrig on December 18, 2024. The State filed a rebuttal disclosure for Jeff Tanzola on February 16, 2025. The State filed an amended disclosure for Mowery and Uhrig on March 14, 2025. The State is not looking to elicit opinions from these witnesses but instead to elicit their qualifications necessary to perform any extractions and analysis regarding the electronic devices and applications. The Defendant has been provided with all of the data for their experts to review. Consequently, the Defendant should be able to provide the State with any expert opinions, if any, they expect to elicit regarding their expert's review of the evidence. The State submits these disclosures comply with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705.

J. Darren Gilbertson

The Defendant disclosed expert opinions claiming that more than one assailant was necessary in order to accomplish the homicides in the suggested timeframe offered by the State. The State filed a rebuttal expert disclosure for Detective Gilbertson that he would provide testimony that investigators conducted timed runs at 1122 King Road to gain an understanding of the approximate time needed to carry out the homicides. This was done to see if one person could have committed the four homicides in the approximately thirteen-minute time frame

estimated by investigators. The result of these timed runs indicated that one assailant could have carried out the four homicides in the suggested time frame.

The Defendant claims this rebuttal testimony should be excluded under Idaho Rule of Evidence 403(b). This testimony is clearly relevant to rebut the Defendant's allegation that four homicides could not be accomplished in the proposed timeline. The Defendant is asking that they be allowed to: (1) offer testimony that it is impossible for one assailant to commit this crime in the time frame indicated by investigators; and (2) prevent the State from offering rebuttal evidence contradicting that testimony. This flies in the face of fairness.

Next, the Defendant claims that "the house had been vacated and had changed significantly due to the homicide investigation." This is inaccurate and can be explained by Detective Gilbertson through his testimony. There were no structural changes to the residence to prevent the investigators from conducting timed runs. Any other issues that the Defendant has with Gilbertson's proposed testimony are best suited through cross-examination. Detective Gilbertson's rebuttal testimony is prejudicial (relevant evidence is) but it is not unfair. His proposed testimony is not confusing or misleading, is not an undue delay, is not a waste of the jury's time, or cumulative. Under I.R.E. 401 and 403 Gilbertson's testimony is relevant and admissible.

Lastly, the Defendant claims that this testimony violates the Defendant's due process rights because the residence has been demolished. The State notes that the demolition of the house was by stipulation of both of the parties. In addition, Detective Gilbertson's report (Bates 14730-14731) titled "TIMED RUNS 1122 KING" was discovered to Defendant on October 12, 2023. The house was demolished on December 28, 2023 (over one year and one month after the homicides). The Defendant's team had access to the residence multiple times and for several

months prior to its demolition. The Defendant had ample opportunity to conduct their own timed runs.

The State submits Gilbertson's disclosures comply with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705.

K. Gary Dawson

The Defendant disclosed expert opinions claiming that more than one assailant was necessary in order to accomplish the homicides in the suggested timeframe offered by the State. Dr. Dawson will opine that the victim's intoxication levels would have impaired their ability to resist, and for certain victims (as detailed in his report) it would have prevented them from putting up any resistance. These opinions support the argument that less time would have been needed to commit the homicides. The State submits Dawson's disclosure complies with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705.

L. David Mittelman

The State incorporates its contemporaneously filed "State's Response to Defendant's Motion in Limine #10 Re: Improper Expert Opinion Testimony – Mittelman" and "State's Response to Defendant's Motion in Limine #11 Re: Exclude IGG Evidence" as part of this response.

II. The State has made a good-faith effort to comply with the Court's scheduling order, instruction, and applicable Idaho Rules.

On December 18, 2024, the State filed 25 expert disclosures. The Defendant quickly filed a Motion to Compel requesting sanctions (December 27, 2024). On January 23, 2025, the Court addressed this issue on the record advising the State that "[our] work was not done" and should err on the side of "over disclosure." The Court did not set any additional deadlines but stated

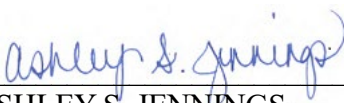
supplements would be “reasonably” allowed. The State followed the Court’s marching orders. The State contacted the State’s experts and requested they review their December 18, 2024, disclosures and supplement, erring on the side of over disclosure. This is obviously a substantial undertaking and does not magically happen overnight. The State reasonably filed supplemental disclosures on March 3, 2025 (39 days after the Court’s instruction), and March 14, 2025 (50 days after the Court’s instruction). To suggest that the State gambled with disclosure of expert testimony in order to reap a tactical advantage is unsupported and outrageous.

Regardless, from the date of this response filing, the parties have four months and 25 days until the start of trial. The Defendant has ample opportunity to review and respond to the State’s disclosures. The State has allowed extensions for the Defendant to file additional experts. The Defendant has not sufficiently demonstrated any actual prejudice related to this issue—because there is none.

CONCLUSION

The State request that the Court find that (1) the State’s expert disclosures comply with I.C.R. Rule 16(b)(7) and I.R.E. 702, 703 and 705; (2) find that there are no circumstances that warrant sanctions (i.e. preclusion of the death penalty) regarding the State’s disclosures; and (3) deny the Defendant’s “Motion in Limine #2: Re: Vague and Undisclosed Expert Testimony.”

RESPECTFULLY SUBMITTED this 17th day of March 2025.



ASHLEY S. JENNINGS
SENIOR DEPUTY PROSECUTOR

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S REPOSE TO DEFENDANT'S MOTION IN LIMINE #2 RE: VAGUE AND UNDISCLOSED EXPERT TESTIMONY were served on the following in the manner indicated below:

Anne Taylor
Attorney at Law
PO Box 2347
Coeur D Alene, ID 83816
info@annetaylorlaw.com

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

Dated this 17th day of March 2025.

