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Fourth Judicial District, Ada County
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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 #3 RE: USE OF THE TERM MURDER

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and responds to Defendant's Motion in Limine regarding use of the term murder. Defendant asks this Court to prohibit the lawyers or witnesses from using the word murder or any form of the word murder. The Court should deny the motion.

A recent decision from the Idaho Supreme Court is instructive. *See State v. Radue*, No. 49945, slip op. (Idaho Mar. 4, 2025). In *Radue*, the defendant moved to prohibit the use of the term

"victim" at trial. *Id.* at 26. The district court denied the motion, and the Idaho Supreme Court affirmed on appeal. *Id.* at 28-29. The court reasoned that the jury was instructed not to draw any inferences from the use of the term at trial. *Id* at 27-29. The court also pointed out that "there [was] no dispute that [the victim] suffered death from an injurious action of [defendant]; rather, the question was whether [the defendant] had the capacity to form the requisite intent to commit that action." *Id.* at 28.

Courts in other jurisdictions used similar reasoning when allowing the prosecution to use the word murder at a murder trial. For example, the Supreme Court of Virginia held a trial court properly allowed use of the word murder because "[t]he jury clearly knew that they were jurors at a murder trial." *Thomas v. Commonwealth*, 688 S.E.2d 220, 242 (2010). "The question at issue was whether [the defendant] had committed the murder." *Id.*; *see also, e.g.*, *Laney v. State*, 515 S.E.2d 610, 612 (Ga. 1999) ("The trial court did not err in permitting the prosecutor to use the word 'murder' instead of 'homicide.'"); *State v. Williams*, 615 So.2d 1009, 1015 (La. Ct. App. 1993) (holding trial court did not err in allowing use of "murder" and "victim" at trial because "[t]he indictment charged defendant with the first degree murder of Daniel Kurt Anderson" so "the jury was fully aware the charged offense was murder and Anderson was the alleged victim"); *State v. Vargas*, 873 P.2d 280, 284 (N.M. Ct. App. 1994) ("In particular, we fail to see any impropriety in the prosecutor's use of the word 'murder' while conducting a prosecution for second-degree murder.").

Here, the State's use of the word murder will not unfairly prejudice Defendant. The Indictment charges Defendant with four counts of *murder* in the first degree, (*see* Indictment, filed 5/16/23), and the jury will be told as much immediately after the trial begins, *see* ICJI 001 at 2-3. The jury will also be instructed as to the presumption of innocence, *see, e.g.*, ICJI 001 at 4; told

their decision must be based on the evidence, *see* ICJI 202; and instructed that arguments and statements of the attorneys are not evidence, *see* ICJI 202.

Moreover, considering the evidence that will be presented at trial and the defense's theory, there is no dispute that four murders occurred. The question for the jury will be whether *Defendant* committed the four murders. Defendant's position is that he was not present when the murders occurred. (*See* Notice of Defendant's Supplemental Response to State's Alibi Demand, p.2, filed 4/17/24 (stating Defendant "was out driving in the early morning hours of November 13, 2022; as he often did to hike and run and/or see the moon and stars"). Defendant is not arguing self-defense or a lesser-included form of homicide.

On the other hand, the State will be prejudiced if it cannot use the word murder given the four first-degree murder charges. "In closing arguments," for example, "both parties are generally 'given wide latitude in making their argument to the jury and discussing the evidence and inferences to be made therefrom.'" *State v. Godwin*, 164 Idaho 903, 926 (2019) (quoting *State v. Severson*, 147 Idaho 694, 720, 215 P.3d 414, 440 (2009)). The State, like the defense, is allowed to utilize "the law as set forth in the jury instructions and the evidence admitted during trial." *Id.* Forcing the State to refer to the alleged crimes as anything other than what the jury instructions, law, and indictment states would prejudice the State.

Defendant cites no authority that prohibits the State from using the word murder, which is reason enough to deny his motion. *See, e.g.*, *Magraw v. Roden*, 2013 WL 1213060, *11 (D. Mass. Feb. 19, 2013) (rejecting same argument because defendant "fails to provide citations . . . to any authority that suggest that the prosecution's use of the word 'murder' during a murder trial is improper"). Instead, he attempts to stretch the evidentiary rules on experts to apply to the prosecutors. (Mot. at 2.) Those rules prohibit the use of the word murder, in Defendant's view,

because the State's use of the word murder would reveal the prosecutors' personal belief that Defendant committed murder. (*See* Mot. at 2.) But the mere use of the word murder implies—at most—that one or more murders occurred. And, as explained above, there is no dispute that four murders occurred.

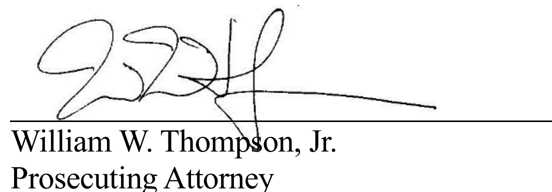
Furthermore, it is *explicit* statements of personal opinions that the Idaho Supreme Court has instructed prosecutors to avoid. *See State v. Dempsey*, 169 Idaho 19, 27, 490 P.3d 19, 27 (2021). A prosecutor cannot avoid *implicit* indications of opinion:

> [W]e observe there is little practical difference between a statement that begins "the evidence shows [X]" and a statement that begins "I believe the evidence shows [X]." In the former, the prosecuting attorney's opinion is implicit (because, presumably, she would not say the evidence shows something that she does not believe it shows), while in the latter, the prosecuting attorney's opinion is explicit. Nevertheless, there is nothing to be gained from a first-person expression of this sort, and it is best avoided.

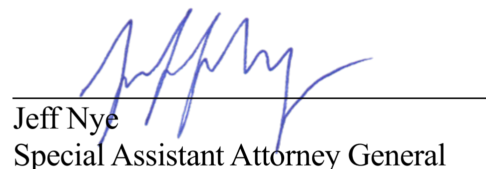
Id. It would, of course, be improper for the State to say at any point during the trial, "I believe this is the murder weapon"—but not because of the word murder.

For all these reasons, the Court should deny Defendant's request for the State to refrain from using the word murder during a lengthy murder trial.

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 #3 RE: USE OF THE TERM MURDER were served on the following in the manner indicated below:

Anne Taylor
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☐ Mailed
☒ E-filed & Served / E-mailed
☐ Faxed
☐ Hand Delivered

Dated this 17th day of March 2025.