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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 TO PRECLUDE THE DEATH PENALTY AND ADOPT OTHER NECESSARY PROCEDURES RE: DISCLOSURE VIOLATIONS

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and hereby responds to "Defendant's Motion to Preclude the Death Penalty and Adopt Other Necessary Procedures due to the State's Numerous Disclosure Violations." The State incorporates "State's Response to Defendant's Motion in Limine #2 Re: Vague and Undisclosed Expert Testimony" in this response.

ARGUMENT

I. The State has Complied with Idaho Criminal Rule 16

The controlling authority for discovery is Idaho Criminal Rule 16. I.C.R. 16(a) which states:

> As soon as practicable after the filing of charges against the accused, the prosecuting attorney must disclose to defendant or defendant's counsel any material or information in the prosecuting attorney's possession or control, or that later comes into the prosecuting attorney's possession or control, that tends to negate the guilt of the accused as to the offense charged or that would tend to reduce the punishment for the offense.

I.C.R. 16(a). The rule goes on to discuss that this obligation extends to information in the possession or control of others who have participated in the investigation and the prosecutor must disclose 404(b) information.

Under I.C.R. 16(b), upon written request from the Defendant, the Prosecutor must disclose (1) statements of defendant; (2) statements of co-defendants; (3) defendant's prior record; (4) documents and tangible objects; (5) reports of examinations or tests; (6) witnesses; (7) expert witnesses; (8) police reports; (9) digital media recordings; (10) other additional materials ordered by the Court. I.C.R. 16(b).

Under Rule 16 there is a continuing duty to disclose which continues even through trial: "If…a party discovers additional evidence or evidence of an additional witness or witnesses, or decides to use additional evidence, witness or witnesses, the evidence is automatically subject to discovery and inspection." I.C.R. 16(j). In such a case, the party must "immediately notify" the other party to allow that party to make the appropriate request for additional discovery or inspection. *Id.*

Upon written request from the defendant, the State must respond within fourteen days of service with one of the following: (1) the response has been complied with; (2) there is no objection and the defense will be permitted discovery at a "time and place certain"; or (3) the State objects to all or part of the information with grounds for the objection. I.C.R. Rule 16(f)(1). Failure to respond within fourteen days constitutes a waiver of any objections and is ground for sanctions by the Court unless there is a showing of "good cause or excusable neglect." I.C.R. 16(f)(2).

Lastly, Rule 16 provides that if a party fails to comply with a request for discovery, the Court may: (1) order the party to permit discovery or inspection; (2) prohibit discovery; or (3) enter such other order as it deems just in the circumstances. I.C.R. 16(k). The choice of an appropriate sanction for failure to comply with a discovery request is within the discretion of the trial court. *State v. Mathews*, 124 Idaho 806, 864 P.2d 644 (Ct. App. 1993).

In the case at hand, the State has complied with Idaho Criminal Rule 16. Defense counsel entered a notice of appearance on January 11, 2023. Starting on January 18, 2022, the State began providing discovery pursuant to Rule 16(a). Discovery was provided generally as follows: documents including reports were bates stamped and sent as PDFs (Bates Pages 1-15914); photographs were bates stamped and sent as PDFs (originals of the photographs were sent on a hard drive pursuant to a later discovery request) (Photo Bates 1-13832); and audio and/or video files were assigned an "AV" file number and placed onto hard drives (AV00001-AV0000989). PDFs were sent automatically. Larger files including audio/video files (which could not be emailed) were put on hard drives. The hard drives were routinely picked up by defense counsel or her staff.

Early on the parties had to determine how to discover a massive amount (over 50 terabytes (TB) of data) which was stored at the MPD Forensics Lab. This included data such as surveillance videos, phone extractions, third party data, call details records, and computer extractions. The amount of data recovered required the MPD, the State, and Defendant to acquire large servers capable of storing this data. The Defendant acquired and provided a server to the MPD and the information was copied, verified, and placed onto the Defendant's server. This process (acquiring, copying, verifying, etc.) took several weeks. This was turned over to the Defendant around April 4, 2023 (almost two years ago).

Discovery was provided continuously as the State received it from various agencies and it was promptly turned over to Defendant in the same fashion it was received. The State and Defendant are on the same playing field in this regard. Turning information over in the same way it was received allowed: (1) the discovery to be sent promptly; and (2) the State to track what was turned over (the State learned early on if we moved or changed files then it was much more difficult to determine what had been discovered or to answer any questions from defense).

On January 10, 2023, the State received a written request for discovery pursuant to Rule 16(b). This was followed by 22 supplemental requests throughout the course of the case (in addition to six motions to compel). The State replied to each request in accordance with Rule 16(4)(1) within the requisite fourteen days. Further the State not only met the demands of 16(4)(1) but supplemented those requirements by providing the Defendant with the location of the requested discovery and the date discovered within each of those initial responses.

On September 4, 2024, the State filed "State's Response and Supplemental Responses to Defendant's Requests for Discovery." This was accompanied by fifteen attachments (approximately 320 pages) which detailed the location, the description, and the date the

discovery was provided to the Defendant. In essence, Defendant was provided 319 pages of "index[es]" for each of their discovery requests. See State's Response and Supplemental Responses to Defendant's Requests for Discovery (because of its volume the State is not attaching this filing to this response). The State's initial discovery deadline was September 6, 2024 (approximately eleven months before trial is scheduled to start). As noted above, the State also has a continuing duty to disclose information until the completion of trial. As such, the State has continued to disclose information, which came to light after September 6, 2024.

The State has complied with Idaho Criminal Rule 16. The Defendant has not provided any basis for I.C.R. Rule 16 violations, much less sanctions.

II. The State has Complied with *Brady v. Maryland* and its Progeny

Defendant's argument rests on a misunderstanding of the State's *Brady* obligations. Under *Brady*, the prosecution has a duty to disclose evidence that is both favorable to the defense and material to either guilt or punishment. 373 U.S. at 87. "There are three components of a true Brady violation: The evidence at issue must be favorable to the accused, either because it's exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *State v. Hall*, 163 Idaho 744, 830, 419 P.3d 1042, 1128 (2018).

"'Prejudice' and 'materiality' are used interchangeably in the context of Brady." *State v. Campbell*, 170 Idaho 232, 247 n.5, 509 P.3d 1161, 1176 n.5 (2022). "When assessing materiality, the question is whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the [outcome]." *Id.* at 247, 509 P.3d at 1176 (quoting *Thumm v. State*, 165 Idaho 405, 423-24, 447 P.3d 853, 871-72 (2019) (brackets in original)). "Such evidence is material 'if there is a reasonable probability that, had the evidence

been disclosed to the defense, the result of the proceeding would have been different.'" *Id.* (quoting *Strickler v. Greene*, 527 U.S. 263 (1999)). When the *Brady* issue is one of delayed disclosure, the question is whether "'earlier disclosure would have created a reasonable doubt of guilt.'" *Thumm*, 165 Idaho at 423, 447 P.3d at 871 (quoting *United States v. Burke*, 571 F.3d 1048, 1054 (10th Cir. 2009).

"Brady is an obligation of not just the individual prosecutor assigned to the case, but of all the government agents having a significant role in investigating and prosecuting the offense." *State v. Gardner*, 126 Idaho 428, 433 (Ct. App. 1994); *see also Kyles*, 514 U.S. 419 at ("the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police"). However, "a prosecutor is not required to disclose 'evidence the prosecutor does not possess or evidence of which the prosecutor could not reasonably be imputed to have knowledge or control.'" *State v. Avelar*, 132 Idaho 775, 781 (1999) (quoting *United States v. MacFarlane*, 759 F.Supp.1163, 1168 (W.D. Pa. 1991)). Even "information held in the minds of government witnesses is generally not imputed to the prosecution unless that information was discovered by police or prosecutors." *Avelar,* 132 Idaho at 781.

In this case, the State has provided all material information in its possession to the Defendant, and will continue to provide any additional material information that may come to light.[1] As noted above, almost all discovery was provided within a timespan of three and a half

[1] The Defendant states "Mr. Kohberger requested additional discovery, related to IGG." The Defendant claims the State has refused to provide this information. However, this information is controlled by Judge Judge's "Sealed Order for Disclosure of IGG Information and Protection Order". Further this specific information is not material - it has no bearing on the Defendant's guilt or innocence. Any issues related to IGG are now moot in light of the Defendant's Motion in Limine Regarding IGG Evidence and the State's concurrence that no IGG evidence will be offered at trial.

years prior to trial (first discovery sent January 18, 2023) up until 11 months prior to trial (discovery deadline of September 6, 2024). The State has requested information regarding the Defendant's possible defense so the State could make specific inquiry for information that could be material to the Defendant (i.e. exculpatory). To date, the State has not received any information which would aid in the process of identifying possible exculpatory information.

Defendant claims the State has violated *Brady* by failing to provide an index of all discovery materials. But *Brady* does *not* require "the prosecutor to make a complete and detailed accounting to the defense of all police investigatory work on a case." *State v. Horn*, 101 Idaho 192, 195 (1980) (quoting *Moore v. Illinois*, 408 U.S. 786, 795 (1972)). Moreover, the State *has* provided approximately 320 pages of "indexes" in response to the Defendant's 411 discovery requests. In addition, the Defendant has been provided a searchable index for all FBI materials.[2] The State has continuously facilitated the Defendant's review of discovery materials. The State also affirmatively sought exculpatory information, tasking investigators to pursue avenues of potential *Brady* material and documented such as supplemental reports that are readily reviewable. The Defendant, at best, is making a bald-faced assertion of improper conduct by the State without pointing to any factual basis. In the end, the State is in no better position to identify potentially exculpatory evidence than the Defendant.

The State has and will continue to abide by the requirements of I.C.R. 16 and *Brady*. Mr. Kohberger's due process rights have not been violated.[3]

[2] On August 8, 2024, the Defendant was provided a copy of the FBI's One Drive database related to this case. This included a master list of items in an excel format which was searchable.

[3] The Defendant argues that the State not provided contents of various items it intends to rely upon at trial. The State notes the deadline for exhibit lists and witness lists are due April 21, 2025. In addition, the State has completed initial and supplemental expert disclosures pursuant to the Court's scheduling order and January 23, 2025, instructions.

III. There Are No Grounds to Preclude the Death Penalty

This Court should reject the Defendant's request to strike the death penalty as a sanction for a discovery violation that does not exist. *See supra* Part II. Even those courts that have utilized that sanction recognized that it was extreme and only utilized because no other remedy was sufficient. For example, in *Idaho v. Lori Vallow Daybell*, the State failed to timely disclose conversations between the Defendant and Co-Defendant. See "YouTube: Judge grants Lori Vallow's motion to dismiss death penalty in her case," March 21, 2023, 4:45 mark.[4] The State's discovery deadline was "prior to February 27, 2023." The State disclosed discovery on February 27, 2023 (which the Court noted was late). On this date, the State discovered jail house recordings (phone calls and video visits). In addition, on March 13, 2023, the State discovered several more hours of jail house recordings (statements of defendant and co-defendant). *Id*. at 13:00. Over 100 hours of audio and video was disclosed after the discovery deadline. *Id.* The Defendant submitted an affidavit from her mitigation expert detailing the prejudice due to the late disclosures. *Id.* at 7:58. These disclosures were two weeks before jury selection was set to begin on March 27, 2023. *Id.* The Court noted the "problem here is a timing problem" *Id.* at 15:50. The Defendant's trial was set to begin April 3, 2023, and Defendant had not waived her right to speedy trial. The Court noted that if the disclosures had been made prior to the discovery deadline (February 27, 2023, or one day late) "it would be difficult for the Court to determine that prejudice would arise." *Id.* at 16:33.

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4 https://www.bing.com/videos/riverview/relatedvideo?q=Lori+Vallow+Boyce+Motion+to+Preclude+Death+Penalty+hearing&&view=riverview&mmscn=mtsc&mid=991D7E49A555DB0FEEBD991D7E49A555DB0FEEBD&&aps=285&mcid=D5B6718C2E674A81B8F41B948F41683C&FORM=VMSOVR

Presiding Judge, District Court Judge Steven W. Boyce stated:

> the Court must determine here that the Defense has in fact demonstrated material prejudice resulting from late disclosures. The prejudice has occurred because of the proximity of the trial, the volume of the discovery, and the inability of the defense to adequately review that discovery before trial begins.

Id. at 19:45. Further, "having determined that prejudice has resulted due to the late disclosed discovery the Court must next consider what course of action, if any, is necessary." *Id.* at 20:34. Judge Boyce held:

> because the Court has not found any willful conduct on the part of the State, the Court is not primarily concerned with any sort of sanction or punishment, but what the Court must address is an appropriate remedy to try to mitigate the prejudice that has been caused by the late disclosures. Ordinarily, a logical remedy would exist here and that would be a continuance of this trial. This has been proposed by the State as one solution, and the State has proposed to mirror a continuance in the companion case of the Chad Daybell's case - 1623 case. However, here that's an option I can't consider, because in this case the defendant has unequivocally asserted her right to a speedy trial. In determining whether speedy trial is violated, one of the major factors is the reason for the delay. The reason for the delay here rests on the State and can't be counted against the defendant to justify a delay of her trial in this case. If I were to delay this case based on an issue caused by the State, I believe that would violate her fundamental and constitutional right to a speedy trial.

Id. at 21:05.

The Judge noted that jury selection was set to begin the following week. *Id.* at 23:09. The Court found that excluding witnesses or evidence was not reasonable or fair to the State. *Id.* at 23:58. That left the Court with two options (1) striking the death penalty; or (2) dismissing the case. *Id.* at 24:08. The Court determined that dismissing the case would be "too severe of a sanction here." *Id.* at 24:16. Judge Boyce determined this was a ripe issue and noted that all other options were considered before coming to his decision.

Judge Boyce held (noting a heightened scrutiny) "as an appropriate discovery sanction the State will be precluded from seeking the death penalty at trial and the State's May 2, 2022 Notice of Intent to Seek the Death Penalty will be stricken." *Id.* at 33:19. The Court reiterated this was not imposed to penalize the State but rather to ensure the constitutional right of the defendant was protected. *Id*. at 33:35.

The facts before the Court in Kohberger's case are nothing like the facts before the Court in the *Vallow* case. Unlike in *Vallow*, where the defendant pointed to over 100 hours of late disclosed jail calls and visits (that may or may not contain *Brady* material), the Defendant has not pointed to any particular evidence he believes the State has failed to disclose. Moreover, as the court in *Vallow* explained, the sanction in *Vallow* resulted from the Court not having any other choice because the defendant had not waived her right to a speedy trial. Here, Defendant has waived his right to a speedy trial. Even if this Court finds the State violated its *Brady* obligation for failing to provide unspecified evidence, the Court can fashion more appropriate remedies in this case.

In essence the Defendant is arguing that in cases that involve a large amount of discovery such as this one, the death penalty cannot be pursued because there is so much information for defense counsel to review prior to trial. That is absurd and such application would lead to absurd results. Despite his repeated assertions, Defendant has not demonstrated any actual prejudice – because there is none. Defendant's request is without merit and should be denied.

CONCLUSION

The State requests that the Court find that (1) the State has abided by the requirements of ICR 16; (2) the State has not violated *Brady v. Maryland,* its progeny, or Mr. Kohberger's due process rights; therefore, (3) there is no basis to preclude the death penalty.

RESPECTFULLY SUBMITTED this 17th day of March 2025.

Ashley S. Jennings

ASHLEY S. JENNINGS
SENIOR DEPUTY PROSECUTOR

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S REPONSE TO DEFENDANT'S MOTION TO PRECLUDE THE DEATH PENALTY AND ADOPT OTHER NECESSARY PROCEDURES RE: DISCLOSURE VIOLATIONS were served on the following in the manner indicated below:

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Dated this17th day of March 2025.

Kim K Workman