

Anne Taylor Law, PLLC  
Anne C. Taylor, Attorney at Law  
PO Box 2347  
Coeur d'Alene, Idaho 83816  
Phone: (208) 512-9611  
iCourt Email: info@annetaylorlaw.com

Elisa G. Massoth, PLLC  
Attorney at Law  
P.O. Box 1003  
Payette, Idaho 83661  
Phone: (208) 642-3797; Fax: (208)642-3799

Bicka Barlow  
*Pro Hac Vice*  
2358 Market Street  
San Francisco, CA 94114  
Phone: (415) 553-4110

*Assigned Attorney:*

Anne C. Taylor, Attorney at Law, Bar Number: 5836  
Elisa G. Massoth, Attorney at Law, Bar Number: 5647  
Bicka Barlow, Attorney at Law, CA Bar Number: 178723  
Jay W. Logsdon, First District Public Defender, Bar Number: 8759

**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 NUMBER CR01-24-31665**

**REPLY TO STATE'S OBJECTION TO  
MIL #5**

**RE: INCONCLUSIVE DATA**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby respectfully replies to the State's objection to Mr. Kohberger's motion to *limit* the admission of the inconclusive data obtained from Item Q13.1, not completely exclude it.

Mr. Kohberger filed his objection to this evidence based on the questions and answers elicited by the State during the testimony of Jade Miller in relationship to the Q13.1 DNA tests

results. As the State concedes, multiple comparisons of multiple individuals to this data rendered inconclusive data including for J.D., C.B., E.C., X.K., B.F. and B.K.

Miller testified at the grand jury (Grand Jury TX at 366) consistently with her report:

[REDACTED]

She explained this statement

[REDACTED]

The important language from that statement is “one way or the other” whether someone is a contributor. Much as with the MIL #6, to try to take this opinion further, as the State wants, would be speculative and improper testimony by an expert. (*See*, MIL #6, Reply at 6). And as with the opinion regarding the “how” and “when” of the presence of DNA on Q1.1, testimony beyond what is stated in the report would be replacing the scientifically supported opinion of Miller, written in her report and reviewed by her colleagues, and consistent with her lab protocols, into the realm of speculative, misleading and confusing opinion.

The State’s own papers show the problem with going beyond the stated opinion in the report, when it asserts that the Court should not exclude the “lab analyst’s finding that Defendant could not be excluded as a contributor from Q13.1” (State Opp MIL #5, at 1). Nothing in the lab reports supports such a conclusion or opinion, and nowhere in the State’s disclosures has the State proffered the opinion that Miller intends to testify that Mr. Kohberger cannot be excluded from this sample.<sup>1</sup> As Miller testified in the grand jury [REDACTED]

---

<sup>1</sup> A review of the multiple disclosures in this case, including the most recent set, never has the State described this particular opinion.

[REDACTED]

[REDACTED]

The plain and clear understanding of the word “inconclusive” is that one cannot draw a conclusion. Here, the State apparently intends to proffer the undisclosed opinion that despite this testimony and the language of the report, that Miller has concluded that Mr. Kohberger cannot be excluded. The State has proffered no scientific basis for such an opinion.

This testimony would lead to jury confusion, is misleading and would prejudice Mr. Kohberger, especially in light of the very late disclosure of this new opinion. As Miller testified there simply is not enough information to conclude *either way* if any of the individuals who fell in the inconclusive range, could be a contributor. There is a reason that the lab has an inconclusive range, which is that the data does not allow interpretation. Cross examination of Miller on this topic would be extensive and take substantial court time.

Mr. Kohberger’s fear that even an inconclusive opinion would mislead a jury to believe and conclude that he could be included prompted additional and independent lab testing. Through additional testing, the limited State opinion of inconclusiveness will be confronted with the fact that a defense expert will testify that he is indeed excluded.

### CONCLUSION

Mr. Kohberger’s motion to limit the testimony of Miller regarding Item Q13.1. should be granted. Allowing the State to proffer at this late date a brand new opinion that contradicts not only the written report but Miller’s grand jury testimony would violate Mr. Kohberger’s right to due process and right to competent counsel. The Court should limit this testimony to avoid prejudice to Mr. Kohberger.

DATED this 24 day of March, 2025.



---

BICKA BARLOW

## CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 24 day of March, 2025 addressed to:

Latah County Prosecuting Attorney –via Email: [paservice@latahcountyid.gov](mailto:paservice@latahcountyid.gov)

Elisa Massoth – via Email: [legalassistant@kmrs.net](mailto:legalassistant@kmrs.net)

Jay Logsdon – via Email: [Jay.Logsdon@spd.idaho.gov](mailto:Jay.Logsdon@spd.idaho.gov)

Bicka Barlow, Attorney at Law – via Email: [bickabarlow@sbcglobal.net](mailto:bickabarlow@sbcglobal.net)

Jeffery Nye, Deputy Attorney General – via Email: [Jeff.nye@ag.idaho.gov](mailto:Jeff.nye@ag.idaho.gov)



---