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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 NUMBER CR01-24-31665

**REPLY TO STATE'S RESPONSE TO
DEFENDANT'S MOTION IN LIMINE #1**

RE: INFLAMMATORY EVIDENCE

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby replies to the State's Response to his Motion in Limine seeking an order regarding inflammatory evidence.

Mr. Kohberger, in his motion, recognized the Rules of Evidence and noted that prejudicial evidence is subject to a balancing test. He agreed that Idaho case law endorsed the balancing test

for prejudicial evidence. His seeks an Order preventing the State from trying its case in an inflammatory manner.

The State's objection is based in semantics. Mr. Kohberger's motion seeks an order preventing the state from introducing inflammatory evidence. Mr. Kohberger does not yet know what exhibits the State will offer, he does not yet know what testimony the state will elicit, and he does not yet know the arguments the Prosecutor will make. He seeks an order preventing his trial from being infected with inflammatory evidence.

The Idaho Supreme Court has made decisions that pronounce what is not inflammatory such as photographs as both parties state. The Court has also pronounced what is inflammatory. In *State v. Ellington* 151 Idaho, 253 P.3d 727 (2011), and in the context of prosecutorial misconduct two areas of questioning witnesses were found to be inflammatory and calculated to inflame the passions and prejudices of the jury.

In *Ellington* the charge was second degree murder with the death being caused by the deceased being run over by Ellington's vehicle. During trial the prosecutor called the deceased's husband to the stand and asked repeated questions beginning the sentence with a variation of the phrase "run over your wife". In the same case the prosecutor elicited testimony from a witness (expert) about leaving his employment shortly after working on the case because of the disturbing nature of the incident.

The Court found these lines of questioning inflammatory. The Court said, "[A]ppeals to emotion, passion or prejudice of the jury through use of inflammatory tactics are impermissible." [*State v. Phillips*, 144 Idaho 82, 87, 156 P.3d 583, 588 \(Ct.App.2007\)](#); *see also* [*State v. Babb*, 125 Idaho 934, 942, 877 P.2d 905, 913 \(1994\)](#) *Id. At*, 252, 736.

The Idaho Court of Appeals considered conduct in closing arguments when the prosecutor argued that the jury should be irritated with the defense that had been presented. The Court said, "...the prosecutor's appeal to the jurors' emotions was overt and express, conveying not simply that the witness's testimony was implausible or lacking credibility, but that jurors ought to respond

to the testimony with irritation and resentment. Such appeals to emotion during closing argument are plainly improper. [State v. Phillips, 144 Idaho 82, 87, 156 P.3d 583, 588 \(Ct.App.2007\)](#);

The Idaho Supreme Court weighed in on evidence that should not have been admitted.

“Although we conclude that the evidence admitted in error did not contribute to the verdict in McGrath's case, we nevertheless caution prosecutors against seeking the admission of needlessly inflammatory evidence in order to sustain a conviction. We also caution judges who condone this practice. Prosecutors and judges who countenance the admission of evidence that speaks solely to a defendant's character or inflames the jury run the risk of having to re-try cases in which there is already substantial and probative evidence of a defendant's guilt.” *State v. McGrath* 501 P.3d 346, 357 (2021)

The State cites the Court to *State v. Leavitt* 116 Idaho 285 (1989). Mr. Kohberger does not disagree with the balancing test in the IRE 403 or relevant caselaw however the State has thousands of photographs, hours of video footage, and hundreds of potential witnesses. He seeks an order preventing the case from being tried in an inflammatory manner. If inflammatory evidence is presented it is often impossible to undo its effect. He seeks to protect the integrity of his trial.

DATED this 24 day of March, 2025.



BY:

ANNE C. TAYLOR
ANNE TAYLOR LAW, PLLC

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:

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