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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

**NOTICE OF FILING AFFIDAVIT IN
SUPPORT OF DEFENDANT'S MOTION
IN LIMINE #2**

**RE: VAGUE AND UNDISCLOSED
EXPERT TESTIMONY**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby
files the accompanying Affidavit of Sy Ray in support of their Motion in Limine #2 RE Vague
and Undisclosed Expert Testimony filed with the Court on February 24, 2025 and their Reply to

the State's Response to Defendant's Motion in Limine #2 RE Vague and Undisclosed Expert Testimony filed with the Court on March 24, 2025. This Affidavit is filed pursuant to the Court's March 18, 2025 Order denying witness testimony at the April 9, 2025 hearing, subject to the Court hearing remote testimony.

DATED this 26 day of March, 2025.



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 26 day of March, 2025 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov
Elisa Massoth – via Email: legalassistant@kmrs.net
Jay Logsdon – via Email: Jay.Logsdon@spd.idaho.gov
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AFFIDAVIT OF SY RAY

**REF: VAGUE AND UNDISCLOSED
EXPERT TESTIMONY (SA N.
BALLANCE)**

STATE OF ARIZONA)

: ss.

County of Maricopa)

- 1) I am an adult, over the age of 18, and I have personal knowledge of the facts set forth in this Affidavit.
- 2) To avoid repetition, please refer to my training and experience in the accompanying affidavit (Affidavit of Sy Ray Ref: Timing Data)

AFFIDAVIT OF SY RAY

- 3) In preparing this affidavit, I have reviewed the Motion in Limine #2: Vague and Undisclosed Expert Testimony, filed by the defendant on 02/24/2025.
- 4) I have reviewed all off the State's responses in reference to this motion as well as SA Ballance's draft report and final report.
- 5) I am addressing the matter of FBI Special Agent Nicholas Ballance's anticipated testimony in this affidavit and what has not been disclosed. I have reviewed the initial reports, final report, first discourse, second disclosures, and now the third disclosure. Despite this progression of disclosure, SA Balance's opinions on the relevant issues at hand still have not been disclosed.
- 6) I have reviewed disclosures in reference to SA Ballance's interpretations and opinions relating to AT&T Call Detail Records; they are vague and at times, contradictory. At this time, I am unable to identify his methodologies and/or resulting opinions on most of his work, preventing me from any real analysis to determine the basis of his opinions.
- 7) The disclosures in reference to the facts and data relied on by SA Ballance's to form his opinions regarding AT&T Cell Detail Records are conflicting and void of substance. His work does not contain his methodology other than a paragraph. He does not mention AT&T, handoff data, drive test mapping, or any other critical methodology required in this analysis. The report does not provide explanation why SA Ballance may or may not rely on AT&T data, preventing me from any real analysis of his opinion.
- 8) I regularly work as a subject matter expert and it is standard in my field for expert's opinions to be well documented and based on accepted best practice or methodology. The facts and data relied upon to reach an opinion are known and disclosed. SA Ballance's work is a departure from the field standard. He has not disclosed his methodology and analysis for his opinions.
 - a) This is partially due to contradicting methodologies that have been disclosed.
 - b) This is partially due to vague work product absent of any real substance as to facts and data.
 - c) This is partially due to changes that evolved through iterations of work product without explanation and documented by facts and data as a basis.
- 9) I did note that SA Ballance has a dual role in this case, he is an expert witness for the State and using these same skills he was involved in the actual investigation from the onset. He was co-located with investigators throughout the investigation. His opinions and interpretations were relied on by investigators and prosecutors. These interpretations and opinions found their way into every probable cause statement supporting search warrants against the defendant. He is referenced in nearly every search warrant issued. His opinions and interpretations were an integral piece of building probable cause against the defendant.

- a) Unfortunately, most of his opinions and interpretations provided to investigators and prosecutors are not supported by the evidence in this case.
- b) It is this very reason I was awaiting SA Ballance's report detailing the facts, data, methodology and analysis relied on to make such egregious errors. I expected to see work that explained the conclusions as well as properly addressing omitted analysis and errors in the work.
- c) The omitted work in this case is exculpatory to Mr. Kohberger.

The intentional omission of exculpatory evidence.

10) SA Ballance did not include analysis of AT&T hand off data provided by AT&T for the defendant's mobile device on November 13, 2022 between the hours of 2:30 AM and 3:00 AM.

11) The hand off data in the defendant's AT&T records during this time is exculpatory to the defendant.

12) SA Ballance did not include an analysis of AT&T data regarding twenty- three time periods in his report that he appears to be suggesting the defendant was at or very near the crime scene.

- a) This opinion appears to be based of cell tower connections, primarily hand off connections, in the defendant's AT&T records.
- b) It is difficult to determine the process or methodology SA Ballance relied on to suggest this connection for several reasons because the AT&T records do not support the statement.
- c) There is no report or analysis detailing the defendant's movements between June 2022 and December of 2022 which would be needed to surmise the defendant's phone was at or near the crime scene twenty-three times prior to the homicides.

(1) There is no mapping showing the network connections relied upon.

(2) There are no Drive test coverage maps of the other than one cell site.

13) A recent disclosure about what SA Ballance may testify to reads: "*Handoffs are mapped on a case-by-case basis, which is determined by the needs of the investigation.*" From my experience as a subject matter expert in this field, this claim is outside of any established best practice or reliable methodology of analysis. The standard is that all data must be analyzed and considered, regardless of how it impacts the investigation.

14) I have reviewed the disclosures about what SA Ballance will testify to and do not find the disclosures provide further analysis to support his opinions.

- a) *“The first cell site recorded in this session is the only cell site that is chosen based on measurements made by the cellphone representing the best signal from these measurements and ranking of surrounding cell sites.”*

This theory can be disproven with the AT&T records themselves. This response does not explain why he would use hand off data at certain times while ignoring it at other times.

- b) *“The coverage maps are created using the actual measurements taken by the GAR and interpolation using the natural neighbor algorithm. In other words, it's looking at known values at known locations to determine the expected value at a location where a measurement couldn't have been taken. The natural neighbor algorithm was first published by Robin Sibson in 1981 and it is widely accepted in both academia and as an industry standard in determining the coverage of a particular cell site within a broader cellular network.”*

This statement falls well short of any real disclosure of how the GAR product estimates cell site coverage areas. I have been in direct contact with Gladiator Forensics and this statement contradicts what Gladiator Forensic communicated to me about their own products.

- c) A recent disclosure states: *“Page 13 depicts cellular phone usage by the 8458 phone on November 13, 2022, and Ballance is expected to testify that when the 8458 phone interacted with the AT&T network at 2:47:29 a.m., the **phone was not at the Bryan Kohberger residence, marked “BK” on the map, rather it was southeast of the Bryan Kohberger residence as depicted by the drive test data.** Ballance is also expected to testify that **he analyzed additional handoff data that occurred during this data session and that the 8458 phone stopped communicating with the network at 2:54:45.**”*

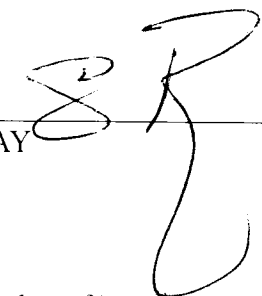
This disclosure does not provide an analysis or opinion as to what SA Ballance found when he analyzed the additional handoff data that occurred during this data session. This is the very data I previously testified about having been omitted from SA Ballance's work product and opinions.

15) SA Ballance, conducted a significant amount of drive test data, has not provided that data to support his work.

- a) Drive test data is collected when an investigator takes radio frequency survey equipment out into the field and collects signal measurement of the cellular network. By driving specific grid patterns through an area, it is possible to capture enough data to reliably estimate a cell site's coverage area.

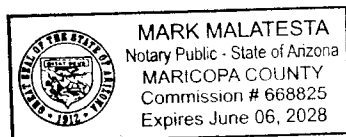
- b) In this case, SA Ballance and SA Kennedy spent several days conducting drive tests in and around Pullman and Moscow. In all, they collected well over five hundred thousand data points. Enough data points to effectively map the coverage areas of all relevant cell sites related to this case, that being roughly 24 cell sectors.
 - c) SA Ballance has only produced coverage mapping for 4 sectors.
 - d) SA Ballance has collected the required data and does have access to the required software to map all of the sectors he analyzed in his drive test efforts. The conversion of raw data to a coverage image is relatively non-existent when compared to the effort required to collect the raw data.
- 16) SA Ballance, in accordance with FBI CAST policy had his work product "peer reviewed" by another FBI CAST agent, SA Kennedy. There are official reports stating SA Kennedy did "peer review" SA Balance's work product and signed off as it being complete and accurate.
- a) I created the first subject matter expert certification course in the United States in this field for State and Local law enforcement.
 - b) I have taught this course for over a decade, certifying over one hundred subject matter experts in this field.
 - c) Part of that course includes the peer review process. The standards in the field dictate that data must support a peer review.
 - d) I have personally completed well over fifty peer reviews myself.
 - e) The State has **NOT** disclosed the required data to support a peer review of SA Ballance's work.

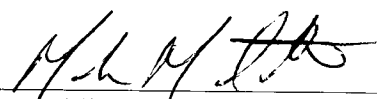
DATED this 25TH day of March, 2025.



 SY RAY

SUBSCRIBED AND SWORN to before me this 25TH day of March, 2025.





 Notary Public in and for the State of Arizona
 Commission Expires: 6/6/28

AFFIDAVIT OF SY RAY