

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 Attorneys:

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

DEFENDANT'S TRIAL BRIEF

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, submits this trial brief in anticipation of the Jury Trial scheduled to commence on August 11, 2025, at 8:30 a.m. with *voir dire* commencing on July 30, 2025 at 9:00 a.m. The Court set a date of trial briefing before each side has disclosed its exhibits. Given the sixty-eight terabytes of unorganized discovery, the defense's inability to have it all reviewed, the ongoing disputes over incomplete expert opinion disclosures, and whatever exhibits the State lists as those it will seek

to admit at trial, this trial briefing is submitted in light of that background. The underlying alleged facts of the case are well known to the Court and are not reiterated.

INDICTMENT

A grand jury indictment on May 16, 2023, returned against Mr. Kohberger for the charges of : Burglary, Idaho Code §§18-1401, 1403, a Felony in Count I, Murder in the First Degree, Idaho Code §§18-4001, 4002, 4003, 4004, a Felony in Count II, Murder in the First Degree, Idaho Code §§18-4001, 4002, 4003, 4004, a Felony in Count III, Murder in the First Degree, Idaho Code §§18-4001, 4002, 4003, 4004, a Felony in Count IV, Murder in the First Degree, Idaho Code §§18-4001, 4002, 4003, 4004, a Felony in Count V.

On June 26, 2023, the State filed a Notice Pursuant to Idaho Code §18-4004A providing the required notification of the State’s intent to seek the death penalty.

JURY SELECTION

Jury selection, set to begin on July 30, 2025, will commence after juror questionnaires have been filled out and provided to counsel. The final Juror Questionnaire is yet to be determined. Mr. Kohberger has filed a motion seeking to prevent the use of the “magic question” and other procedures for jury selection. Mr. Kohberger filed a Motion on October 16, 2024 requesting proper voir dire in his Capital case; he reiterates his request for individual and sequestered voir dire as it relates to potential juror views on capital punishment as well as case related information.

EVIDENTIARY ISSUES

It is expected that issues surrounding relevance, remoteness, and complete defense will be raised throughout trial. Proof of alibi, alternate perpetrators, and the exclusion of expert opinions due to incomplete expert disclosures will be an issue throughout trial. In the various motions to compel, death penalty motions, suppression motions and motions in *limine* filed with the Court, many evidentiary issues have been raised. Such evidentiary issues include:

1. *Inflammatory Evidence.* Preventing the introduction of inflammatory evidence such as irrelevant and unfairly prejudicial photographs, testimony, and exhibits is the subject of Defendant's Motion in Limine # 1 Re: Inflammatory Evidence. Mr. Kohberger contends that his right to a fair trial free from irrelevant, cumulative, and unfairly prejudicial evidence as guaranteed by the State and Federal Constitutions prevent the State from introducing evidence that cumulatively highlights gruesome exhibits or elicits overly emotional testimony. Mr. Kohberger heard the Court's comments at hearing with optimism but will, if necessary, be ready to object, and follow with a motion, to ensure his trial is fair.
2. *Excluding Experts.* Mr. Kohberger seeks to exclude expert testimony that is vague, undisclosed, and improper. Expert testimony and expert disclosures have been the subject of several motions including: (a) Defendant's Motion to Compel I.C.R. 16(b)(7) Material and for Sanctions; (b) Defendant's Motion to Extend Time to Disclose Defendant's Guilt Phase Experts; (c) Defendant's Motion in Limine # 2 Re: Vague and Undisclosed Expert Testimony; (d) Defendant's Motion to Preclude the Death Penalty and Adopt Other Necessary Procedures Due to the State's Numerous Disclosure Violations. Mr. Kohberger awaits the Court's decision on his motion to exclude expert opinions due to incomplete expert disclosures and depending on the Court's decision to exclude late, vague and undisclosed opinions these will be ongoing issues throughout trial.
3. *Murder Terms.* Use of the words "murder," "murderer," "murdered," "murder weapon," and similar forms of the word "murder" applied to Bryan Kohberger during the trial was the subject of a Motion in Limine. Mr. Kohberger understood the Court's indication that labeling Mr. Kohberger "murderer" would be considered argument and the proper place for argument is in closing argument. Mr. Kohberger is optimistic the case will be tried in accordance with the Court's statements, but will be ready to object, and follow with an appropriate motion, to ensure his trial is fair.

4. *Psychopath and Sociopath Terms.* Use of the terms “psychopath” and “sociopath” is the subject of Defendant’s Motion in Limine # 4 Re: Using the Terms Psychopath or Sociopath. Mr. Kohberger understands the State has no intention of utilizing such labels. Mr. Kohberger is optimistic the case will be tried without the use of such terms. He will be ready to object, and follow with an appropriate motion, to ensure his trial is fair.
5. *Inconclusive Data.* Inconclusive data about the statistical analysis of Item 13.1, fingernail scrapings, is the subject of Defendant’s Motion in Limine # 5 Re: Inconclusive Data. Mr. Kohberger has now reviewed the State’s newest expert disclosure and based on the work of both the State’s expert and his own expert, he has been excluded as a source of DNA. Testimony about that lab testing must comport with both experts reviewing the sample and opining Mr. Kohberger is excluded. Mr. Kohberger understands the State’s position to now be that the evidence does in fact exclude Mr. Kohberger as a source of any DNA in sample 13.1. Testimony contrary to that would violate his Federal and State Constitutional rights to due process, fair trial, and would be false testimony.
6. *Touch or Contact DNA.* Testimony of Rylene Nowlin and any testimony referencing the terms “touch” or “contact” DNA or that purports to be an opinion of the means or mechanism for DNA being placed on the sheath by any witness called to testify about DNA was the subject of Defendant’s Motion in Limine # 6 Re: Rylene Nowlin and Reference “Touch” and “Contact” DNA. Mr. Kohberger sought to exclude any use of the language “touch” and “contact” in the context of the DNA testing of the sheath and any opinion of how and when the DNA on the sheath was deposited. While the Court did not enter an order excluding the language, the Court’s suggestion that it should not be used to avoid confusion and prejudice to Mr. Kohberger is well taken. His objection will be lodged during trial should the use of the phrase come up.
7. *Bushy Eyebrows.* Witness identification by “bushy eyebrows” is the subject of Defendant’s Motion in Limine # 7 Re: Witness Identification by Bushy Eyebrows. Mr.

Kohberger sought to bar witness DM from using the words “bushy eyebrows” or identifying him in that manner. He also sought to keep the State from acting as an identifying witness by attempting to bolster DM’s testimony with a photo of Mr. Kohberger taken the morning of November 13, 2022 and arguing that it is their interpretation that the “bushy eyebrows” described by DM are consistent with those in the photo. Should the Court allow this testimony and procedure, Mr. Kohberger will object during trial.

8. *I.R.E. 404(b) Evidence.* 404(b) evidence has been the subject of a notice, a motion and a stipulation including: (a) State’s Notice of Intent to Use I.R.E. 404(b) Evidence; (b) Defendant’s Motion in Limine #8 Re: Unnoticed 404b Evidence; and (c) Sealed Stipulated Agreement of the Parties to Not Mention 2014 Cell Phone Incident During Trial. In response to Defendant’s Motion in Limine # 8, the State has advised the Court and Counsel that it intends to comply with the application of the Idaho Rules of Evidence in regard to any proposed I.R.E. 404(b). Additionally, in a sealed stipulation, the parties agreed not to mention a 2014 cell phone incident during trial. That incident involved Mr. Kohberger’s taking his sisters cellular phone to a kiosk at a mall in exchange for money. His father called police, the end result of which was a minor theft charge that was later expunged. The State has not indicated 404(b) evidence other than a traffic stop. Mr. Kohberger will object and follow with an appropriate motion any other act evidence the State seeks to introduce that is unnoticed. Mr. Kohberger will rely on *State v. Whitaker*, 152 Idaho 945 (Ct. App. 2012) for the proposition that although Rule 404(b) has its genesis in the common law rule that “the doing of a criminal act, not part of the issue, is not admissible as evidence of the doing of the criminal act charged,” *Grist*, 147 Idaho at 52, 205 P.3d at 1188 (citing WIGMORE, CODE OF EVIDENCE 81 (3d ed.)), the rule expands this evidentiary bar beyond evidence of other crimes. The inclusion of the words “wrongs or acts” prohibits evidence of conduct beyond criminal offenses if it is proffered

for the purpose of showing a person's character and conforming behavior. In *Whitaker* the court held that 404(b) is not limited to bad acts. And in *State v. Pena*, 2016 WL 49220337 (unreported) the same appellate court said that “other act” evidence to prove a person’s character and conforming behavior falls under 404(b).

9. *Amazon Click Activity*. Excluding Amazon evidence, purchase history, and “Amazon Click Activity” (collectively “Amazon evidence”) was the subject of Defendant’s Motion in Limine # 9 Re: Excluding Amazon Click Activity Evidence at Trial. The State’s methodology in obtaining, using, and producing Amazon evidence has been called into question by Mr. Kohberger who contends that this evidence should be excluded. To the extent the Court allows the evidence, Mr. Kohberger must be able to present expert testimony of David Howell to provide a complete defense. Based on the Court’s ruling that this evidence will not be excluded at this juncture, Mr. Kohberger will confront the evidence through expert testimony. He will also object to any expert opinion testimony by Mr. Shane Cox or SA Michael Douglass, as the State claims they are lay witnesses and not experts.
10. *Investigative Genetic Genealogy (IGG)*. Investigative Genetic Genealogy (IGG) evidence has been the subject of at least six motions including: (a) Defendant’s Third Motion to Compel; (b) Defendant’s Fifth Motion to Compel Discovery; (c) Defendant’s Seventh Motion to Compel (d) Defendant’s Motion to Suppress Re: Genetic Information; (e) State’s Motion in Limine Re: Investigative Genetic Genealogy; and (f) Defendant’s Motion in Limine # 11 Re: Exclude IGG Evidence. The State’s methodology in obtaining, using, and producing IGG evidence has been litigated through discovery and motion to compel and finally through motion to suppress. Mr. Kohberger learned of undisclosed discovery during the suppression hearing and was refused access. As such, Mr. Kohberger contends that IGG evidence should be excluded because he could not fully understand and litigate the issues. At this time, the State has agreed to proceed

without use of the IGG evidence and introduce evidence of a generic tip. Both sides are working towards an agreed upon special jury instruction on the tip evidence to avoid speculation by the jury as to the source and nature of the tip.

11. *Vehicle Identification*. Exclusion of the State referring to all surveillance footage they intend to offer as “suspect vehicle number 1” was the subject of Defendant’s Motion in Limine # 12 Re: Make and Model of Suspect Vehicle. Mr. Kohberger sought to exclude this evidence pursuant to specific rules of evidence and based on his Federal and State constitutional rights. His motion was not directed at the testimony of the State’s expert SA Imel, but rather to exclude the State from arguing, and other witnesses from saying that all depictions of vehicles were the same vehicle. Based on the Court’s questioning, Mr. Kohberger must be able to explore with SA Imel the year range he was most comfortable with based on the 1125 Ridge Road footage; which videos allowed identification of makes and models; and which videos caused him to focus on 2014-2016 years. The actual evidence provides a less clear trail and Mr. Kohberger, in exercising his confrontation rights must be allowed to explore SA Imel’s opinion.

12. *Autism Spectrum Disorder (“ASD”)*. Mr. Kohberger’s Autism Spectrum Disorder (“ASD”) along with related issues was the subject of three pending motions: (a) Defendant’s Motion in Limine # 13 Re: Conditions as Aggravator; (b) State’s Motion in Limine Re: Neuropsychological and Psychiatric Evidence; and (c) Defendant’s Motion to Strike Death Penalty Re: Autism. Mr. Kohberger anticipates that the issues related to ASD will arise throughout trial with continued effort by the defense to explain ASD and provide defenses related to state of mind.

13. *Statistical Analysis*. Statistical Analysis and related testimony were the subject of Defendant’s Motion in Limine # 14 Re: Statistical Analysis. Mr. Kohberger sought an order preventing the state from improperly eliciting statistical testimony. Allowing such testimony would violate his Federal and State Constitutional rights to due process, fair

trial, effective assistance of counsel and confrontation of witnesses. The State has agreed that they will not elicit testimony attempting to relate the Likelihood Ratio for the DNA on the sheath to the world population.

14. *911 Recording and Transcript.* The recording and transcript of the 911 call to Whitcom on November 13, 2022, was the subject of the (Sealed) State's Motion in Limine Re: 911 Call. Relying on exceptions to the hearsay rule and effect on listener, the State seeks the admission of both the transcript and the recording. Based on his constitutional rights, Mr. Kohberger objects to the admission of the transcript and the recording.

15. *Alibi.* Alibi evidence is the subject of various notices, discovery responses, and motions. On July 24, 2023, Mr. Kohberger filed his Notice of Alibi. Pursuant to court order, Mr. Kohberger filed a Notice of Defendant's Supplemental Response to State's Alibi Demand on April 17, 2024. Previously, Mr. Kohberger's alibi has been the subject of a motion to compel. More recently, the State filed a Motion in Limine Re: Alibi. Mr. Kohberger has met his statutory obligation of provide the State notice of corroboration of his partial alibi. Mr. Kohberger stated, on the record, his concern about the State commenting on his Constitutional rights to remain silent. He will make an appropriate motion should these comments be made in front of his jury.

16. *Alternative Perpetrator.* Alternative perpetrator evidence is the subject of the State's Motion in Limine Re: Alternative Perpetrator Evidence. Mr. Kohberger anticipates making a proffer of evidence of alternative perpetrators so that such evidence can be properly evaluated for relevancy and admissibility under the Idaho Rules of Evidence. Mr. Kohberger notes, as did the Court during the hearing, that those investigated do not all meet the factors required to be offered as an alternate perpetrator. Mr. Kohberger's interpretation of the Court's comments is that persons investigated by the State may be confronted through cross examination of law enforcement investigative work.

17. *Demonstrative Exhibits.* Demonstrative exhibit the “three-dimensional model” of the 1122 King Road residence (also known as a “doll house”) was the subject of the State’s Motion in Limine Re: Demonstrative Exhibits. Mr. Kohberger will continue to object to the use of the doll house for distinct reasons arising from discovery issues. Specifically, Mr. Kohberger objects to the use of the three-dimensional model house constructed in an undisclosed way on the grounds that it is irrelevant, prejudicial, cumulative, confusing, and misleading to the jury.

18. *Family in Courtroom.* Family in the courtroom is the subject of the State’s Motion in Limine Re: Immediate Family Members in the Courtroom. Mr. Kohberger stipulated in his brief responding to the State’s motion in limine that the individuals identified by the State be considered as “immediate family” of the victims for purposes of being in the courtroom during trial. In his responsive briefing, Mr. Kohberger also asked the Court for guidance on proper courtroom decorum and guidance on excluding clothing or anything worn in the gallery that supports the death penalty and asked that Mr. Kohberger’s family members have presence in the courtroom. The State represented to the Court that it had no intention of using its subpoena power to exclude Mr. Kohberger’s family. The Court asked the State to determine which family members it intends to call, work with the defense and call the person(s) out of order so that Mr. Kohberger’s family can be in the Court room.

19. *Death Penalty.* The death penalty and issues related to the death penalty have been the subject of various motions. Such motions include: (a) thirteen separate death penalty motions with the topics ranging from arbitrariness to utter disregard; (b) Sealed State’s Motion in Limine Re: Improper Death Penalty Comments; (c) Defendant’s Motion to Preclude the Death Penalty and Adopt Other Necessary Procedures Due to the State’s Numerous Disclosure Violations; (d) Defendant’s Motion to Strike Death Penalty Re: Autism. Most of these motions have been decided while others are pending, Mr.

Kohberger anticipates that the issues related to the death penalty will arise throughout trial, with continued effort to get the death penalty stricken.

20. *Self-Authenticating Records.* Self-authentication of records was the subject of the Sealed State's Motion in Limine Re: Self-Authentication of Records in Reliance on I.R.E. 803(6) and (8), I.R.E. 902(4) and (11) and/or I.R.E. 803(24). In its' motion, the State seeks to admit self-authenticating records. The list of records that the State seeks to admit in this manner is lengthy and the volume of data is enormous. Mr. Kohberger has objected to giving the State a free pass for the admissibility of records that are supposedly self-authenticating. After expending extensive time responding to the State's extensive request for self-authentication of records, the State abandoned nearly half of its requests. The Court noted the motion was not ready for hearing. Mr. Kohberger will make objections and motions as appropriate.

21. *Text Messages and Testimony.* Text messages DM on November 13, 2022, and testimony of DM and BF regarding their conversation with each other on November 13, 2022, are the subject of the Sealed State's Motion in Limine Re: Text Messages and Testimony. Mr. Kohberger contends that the way in which the State proposes using the text messages and testimony presents an incomplete picture. Mr. Kohberger has urged the Court to view the State's request with consideration of the complete scope of conversations and cellular phone activity and deny the State's motion.

22. *AT&T Timing Advance Records.* In the State's Motion in Limine Re: AT&T Timing Advance Records, the State seeks to prohibit the defense from making any reference to the absence of AT&T Timing Advance Records ("TA reports") for Bryan Kohberger. The defense contends that TA reports relating to Mr. Kohberger's cell phone exist, at least seven days of record. Mr. Kohberger has been provided with different explanations by the State regarding the existence of these records throughout the course of his case, including sworn testimony in May of 2024 by Detective Payne. Mr. Kohberger has

offered testimony relating to these records based on the explanations presented by the State. The current defense affidavit presented at the in limine hearing, is one with more detail and based on the shifting State explanations. Mr. Kohberger has worked with an expert with hands on experience about TA records. He was not allowed to testify and explain what he knew about methods officers used in obtaining TA records. Mr. Kohberger understands his ability to question the FBI agent outside the presence of the jury.

23. *Warrants.* Warrants have been the subject of at least thirteen suppression motions ranging on topics from the arrest warrant to the search of Mr. Kohberger's apartment in Pullman, Washington. While the Court has already ruled on these suppression motions, Mr. Kohberger anticipates that evidentiary issues related to the various warrants will be raised during trial in the form of inconsistent statements or the impeachment of the State witnesses. Additionally, the State obtained similar information through the Grand Jury Subpoena process. Mr. Kohberger was prevented from receiving copies of the actual Grand Jury Subpoenas and therefore does not know the scope of information obtained. He will make objections during trial based on the rules of evidence.

24. *Investigators in the Courtroom.* The parties have stipulated and agreed that the defense will have both of their investigators present during the trial and the State will have its lead investigators from Moscow Police Department (Cpl. Brett Payne) and Idaho State Police (Sgt. Darren Gilbertson) present during the trial without limiting their ability to testify.

EXHIBITS

In compliance with the modification of the Court's scheduling order, Mr. Kohberger's proposed exhibit list will be filed and provided to the State by April 28, 2025. While Mr. Kohberger is making every effort to meet this deadline, all discovery has not been reviewed, the 68 terabytes of discovery is unorganized and overwhelming, the court has ordered the exchange

of exhibits to be disclosed one week apart, the State's expert disclosures are incomplete and it is expected that subsequent exhibits will be identified and disclosed beyond the Court's April 28, 2025 deadline.

WITNESSES

Expert Witnesses. Mr. Kohberger had disclosed exceedingly comprehensive expert reports and opinions. The alleged facts are going to be very heavily contested issue by issue. Mr. Kohberger does intend to put on a very extensive defense case. He anticipates calling the following expert witnesses to testify at trial depending on the State's case in chief during the guilt phase of trial:

1. Ruth E. Ballard, Ph.D.
2. Steven J. Becker
3. Kathleen Bright-Birnbaum
4. David Howell
5. Matthew Noedel
6. Rachel Lawson Orr, PsyD., ABPP-CN
7. Carol L. Peden
8. Kevin H. Peden
9. Jennifer J. Hornyak Bracamontes
10. Sy Ray
11. Josiah P. Roloff
12. Eileen P. Ryan, D.O.
13. Gary Shutler, Ph.D.
14. Thomas J. Slovenski
15. Brent E. Turvey, Ph.D.
16. Barbara C. Wolf, M.D.

Lay Witnesses. Lay witnesses that Mr. Kohberger anticipates calling to testify during the guilt phase of trial will be disclosed by Defendant on April 21, 2025, by filing a witness list under seal in compliance with the Court's scheduling order. To the extent other witnesses are identified as 68 terabytes of discovery are reviewed, the list will be supplemented. Penalty phase lay witnesses will be disclosed by Mr. Kohberger on May 5, 2025, by filing a witness list under seal in compliance with the Court's scheduling order. Investigation for the mitigation phase of the trial, if this case proceeds that far, is ongoing. The mitigation investigation began immediately upon Mr. Kohberger's arrest, but it has been extremely difficult to get teachers, medical providers, family, friends, neighbors, co-workers, and others to speak with the defense team. Generational records are still being located and gathered. As people and records are located, those will be disclosed and witness lists supplemented.

DATED this 14th day of April, 2025.



ANNE C. TAYLOR
ANNE TAYLOR LAW, PLLC



ELISA G. MASSOTH
ELISA G. MASSOTH, PLLC ATTORNEY

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 14th day of April, 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

Bicka Barlow, Attorney at Law – via Email: bickabarlow@sbcglobal.net

Jeffery Nye, Deputy Attorney General – via Email: Jeff.nye@ag.idaho.gov

