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IN THE DISTRICT COURT OF THE FOURTH 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 OPPOSITION TO DEFENDANT'S MOTION TO CONTINUE

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and submits the following opposition to Defendant's Motion to Continue (the "Motion").

INTRODUCTION

It is time to try this case. Defendant was arrested in late December of 2022 and was indicted in May of 2023. He successfully moved to transfer venue to Ada County. In October

2024, this Court entered its Scheduling Order[1] setting deadlines for pretrial motions and expert disclosures. Defendant complied with those deadlines without moving for a continuance, including by disclosing six expert reports for the penalty phase, disclosing over 2,100 pages of purported mitigation materials, listing 55 penalty phase witnesses, and identifying 132 exhibits he may introduce during the penalty phase of trial.

But now, after all discovery deadlines have passed and after the Court conducted the pre-trial conference, Defendant seeks a trial continuance of unspecified length. He bases his request on his claim that his mitigation investigation is incomplete. While State is unable to see whether Defendant's *ex parte* filing to the Court contains specifics, his Motion does not. Defendant has not shared what new evidentiary materials he seeks to obtain or how additional investigation will actually produce them. Overall, the record before the Court shows that Defendant's investigation has already plowed the necessary ground.

While Defendant is fully entitled to due process, this Court should exercise its broad discretion to deny Defendant's eleventh-hour Motion. First, Defendant cannot show good cause or prejudice. Even under the heightened, non-binding ABA standards he seeks to impose on the Court, his counsel's resources and investigation to date have been adequate, even setting aside that the defense team still has more time to prepare its mitigation case. Moreover, Idaho's Constitution also grants the victims the right to a "timely disposition" of this case. The Court should give these victims' rights substantial weight in considering the Motion. Finally, while the publicity surrounding this trial is a challenge, Defendant has not shown—and cannot show—that continuing this trial will make things any easier. It is just as likely that delay will make it harder to seat a jury.

[1] Redacted Order Governing Further Criminal Proceedings and Notice of Trial Setting, Oct. 9, 2024.

For all these reasons, the Court should deny Defendant's Motion.

PROCEDURAL AND FACTUAL BACKGROUND

Defendant was appointed his lead counsel in December of 2022. In March 2023, a second attorney was appointed to represent him. Then, in February of this year, a third attorney was appointed to the defense team. The First District Public Defender has also been participating in the defense. In addition to his lawyers (and their staff), Defendant has two experienced investigators and a mitigation specialist working on his behalf.

In January 2024, Defendant moved for a change of venue from Latah County due to the publicity surrounding the case and the size of Latah County. His motion was granted, and the case was moved to Ada County. On October 9, 2024, this Court issued the operative Scheduling Order that contained deadlines for motions, expert disclosures, and pre-trial filings.

More recently, at the pretrial motions hearing on April 9, 2025, the Court advised Defendant's counsel to ask for more resources if the defense team needed assistance reviewing discovery. The State does not know if this occurred.

Throughout the case, Defendant has been able to comply with the deadlines in the Scheduling Order. Pertinent to the instant Motion, Defendant has:

- On January 23, 2025, made his guilt phase expert disclosures, consisting of reports from 16 experts, including a psychologist who conducted a mental health examination of Defendant (Dr. Orr) and a forensic psychiatrist who researched his life history (Dr. Ryan);
- On March 3, 2025, supplemented his guilt phase expert disclosures with reports from two additional experts;
- As of June 2025, had disclosed in discovery over 2,500 photos and videos, over 3,500 pages of investigative materials, and many megabytes of electronic data related to the guilt phase;

- On March 31, 2025, made his penalty phase expert disclosures, consisting of amended reports from Dr. Orr and Dr. Ryan, respectively, plus reports from four additional experts, three of whom are behavioral health/neurology professionals; and

- As of June 2025, had disclosed approximately 2,100 pages of purported mitigation materials and identified 55 defense witnesses and 132 defense exhibits for potential use during the penalty phase in this case.

Defendant also opposed the State's Motion for Examination of Defendant Pursuant to Idaho Code §18-207 and for an Extension of Time to Complete Rebuttal Penalty Phase Expert Disclosures (argued May 5, 2025). At that time, Defendant did not preview for the State or the Court that he would seek a trial continuance, and the Court denied the State's request for personality testing by its expert, in part, because the pending trial date conflicted with the time that would be necessary to explore that issue.

LEGAL BACKGROUND

"Trial judges necessarily require a great deal of latitude in scheduling trials." *State v. Cagle*, 891 P.2d 1054, 1057 (Idaho Ct. App. 1995). Accordingly, "[t]he decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court." *State v. Ransom*, 864 P.2d 149, 152 (Idaho 1993). When reviewing a trial court's decision for an abuse of discretion, Idaho appellate courts analyze "[w]hether the trial court[:] (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choice available to it; and (4) reached its decision by the exercise of reason." *State v. Radue*, 564 P.3d 1230, 1244 (Idaho 2025).

The United States Supreme Court has held that the denial of a motion for a continuance is grounds for relief only where the trial court's action "is so arbitrary as to violate due process." *Ungar v. Safafite*, 376 U.S. 575, 589 (1964). Similarly, under Idaho law, "unless an appellant

shows that his or her substantial rights have been prejudiced by reason of a denial of his or her motion for a continuance, appellate courts can only conclude that there was no abuse of discretion." *Cagle*, 891 P.2d at 1057. "The bare claim that additional investigation could have been conducted is not sufficient to demonstrate unfair prejudice so as to support a motion for a continuance." *State v. Tapia*, 899 P.2d 959, 965 (Idaho 1995); *see also Rowe v. Katavich*, No. CV 13–2916 CAS (JCG), 2014 WL 4244336, at *2 (C.D. Cal. Aug. 26, 2014) (reviewing Ninth Circuit caselaw and explaining that there are no "mechanical tests" for deciding when such a denial violates due process but that, "at a minimum, some showing of actual prejudice must be made").[2]

In exercising their discretion, trial courts are also guided by the Victims' Rights Amendment to the Idaho Constitution (Art. I § 22) and Idaho Code § 19-5306. Both provisions entitle victims to "a timely disposition of the case." Section 19-5306(3) expressly provides that this right "shall apply equally to the immediate families of homicide victims."

ARGUMENT

Defendant couches his Motion in terms of his constitutional rights to due process, to effective assistance of counsel, to an individualized sentencing determination, and to a fair trial in light of intense media coverage. But he has not demonstrated that these rights—which must be evaluated alongside the victims' rights and the overall administration of justice—will be violated if this case proceeds as currently scheduled. For the reasons discussed below, the Court should deny his Motion.

[2] In considering a motion for a continuance, Ninth Circuit precedent holds that a trial court "must consider: (1) the defendant's diligence prior to the requested continuance; (2) whether the continuance would have served a useful purpose; (3) the possible inconvenience to the prosecution and/or court; and (4) whether the defendant was prejudiced by the denial of the requested continuance." *Id.* (citing *Armant v. Marquez*, 772 F.2d 552, 556 (9th Cir. 1985)).

I. The Court Should Exercise Its Discretion to Deny Defendant's Motion Because He Has Not Shown Good Cause for a Continuance or That He Will Be Prejudiced at Trial.

The Court should deny Defendant's Motion because he cannot show good cause or potential prejudice. Procedurally, he does not explain why he waited to seek a continuance until after discovery closed, expert disclosure deadlines passed, and the pretrial conference happened. Substantively, he ignores Idaho Supreme Court death penalty precedent holding that counsel is "not required to investigate [a defendant's] entire life" before he can be tried or sentenced. *State v. Row*, 955 P.2d 1082, 1092 (1998). He neither specifies additional areas for investigation nor explains what concrete investigatory steps will bear new fruit at either the guilt phase or the penalty phase. As such, Defendant's Motion amounts to a request for a perpetual continuance so that his counsel can go down every rabbit-hole until Defendant—rather than the Court—deems himself ready for trial. The law requires no such thing. *See Mahaffey v. Page*, 151 F.3d 671, 685 (7th Cir. 1998) *vacated in part by* 162 F.3d 481 (7th Cir. 1999) ("A reasonable investigation does not mandate a scorch-the-earth strategy, a requirement that would fail to consider the limited time and resources that defense lawyers have in preparing for a sentencing hearing"). The Court should deny the Motion because Defendant's team has had the opportunity to prepare and has adequately addressed the issues he claims need more attention.

A. Defendant's Motion Is Untimely Given the Procedural Posture of This Case.

The Scheduling Order granted the parties ample time for trial preparation, and it also set several interim deadlines along the way, including for penalty phase expert disclosures and mitigation disclosures, which is the primary basis for Defendant's Motion. The State also understands that the Court set the pre-trial conference more than two months before trial in order

to give the parties sufficient time to prepare for trial *after* discovery closed and pre-trial disclosures and motions practice were completed.

If Defendant was having trouble meeting deadlines, finding experts, or pursuing "red flags," (Mot. 29), he should have sought a discovery extension or trial continuance long before now. *See Marquez*, 772 F.2d at 556 (stating that a court should consider a defendant's diligence and the inconvenience to the court and prosecution when reviewing a motion to continue). He did not do so. Instead, Defendant retained over a dozen guilt phase experts, six penalty phase experts, a mitigation specialist, and has identified over 2,100 pages of purported mitigation materials. And, leading up to the pre-trial conference, he exchanged witness lists and exhibit lists with the State without stating that he would be moving for a continuance.

While Defendant relies on the "death is different" mantra and argues that "extraordinary measures" must be taken to protect his rights (Mot. 4), he cites no authority for the proposition that reasonable scheduling orders should not be enforced in death penalty cases. Indeed, Defendant recently argued that the State improperly delayed in seeking an extension of time for its rebuttal phase expert disclosures. (Objection to State's Motion for Examination of Defendant Pursuant to Idaho Code § 18-207 and for an Extension of Time to Complete Rebuttal Penalty Phase Expert Disclosures (filed Apr. 29, 2025) 4 ("The State has not provided the necessary proof of good cause to warrant an extension of such a significant deadline so close to the trial date.").) The same principle should apply to him. Defendant's Motion is untimely and weighs in favor of its rejection.

B. Defendant's Purported Need to Conduct Additional Investigation Is Unsupported and Does Not Establish Prejudice Warranting a Continuance.

Defendant bases his Motion on a claim of insufficient resources and the need to conduct more investigation prior to trial. But he has not demonstrated that he is being deprived of anything

that he seeks. Thus, Defendant's claims about the current state of the defense team's preparations are "matter[s] of speculation" and not the type of "demonstrable reality" needed to support a continuance based on Defendant's constitutional rights. *United States ex rel. Darcy v. Handy*, 351 U.S. 454, 462 (1956).

1. Defendant's Legal Resources Have Been More Than Adequate.

Defendant has three trial attorneys (including a lead attorney who has represented him from day one) two investigators, and the assistance of at least one additional public defense attorney. He also has engaged an outside mitigation specialist to assist in obtaining materials for use during the penalty phase. This record reflects that this defense team has been working hard for defendant and, as explained below, has met the professional standards for the defense of a death penalty case.

Yet Defendant still claims that the Court is "cutting off" his review of discovery. (Mot. 29-31.) This is unfounded. Defendant's attorneys have had sufficient time to review discovery and have not established any discovery violations by the State. They have been able to identify over 1,000 exhibits and nearly 200 witnesses for trial. Indeed, the Court also recently admonished Defendant's counsel to seek additional resources from the Resource Judge if they needed more assistance to review discovery and prepare for trial. Defendant has not claimed that he sought more resources and was denied. Neither the size of his legal team nor the need to continue to review discovery form a valid basis for a continuance.

2. Defendant's Expert Witness Resources Have Been More Than Adequate.

Defendant has been able to retain a large retinue of experts, including six experts focused on mitigation for the penalty phase. Five of these experts are mental health professionals. Both a psychologist and a forensic psychiatrist have examined Defendant on multiple occasions, reviewed

his social and medical history, and diagnosed him with autism, OCD, and ADHD. Collectively, these experts took a deep dive into Defendant's entire life, including by interviewing his family, teachers, co-workers, and even a psychologist who evaluated Defendant as a child. The extensive investigations by these experts contradict Defendant's claim that he needs more time to complete a "social history investigation." (Mot. 27.) In the cases he cites, counsel was ineffective for failing to explore mental health conditions or for failing to provide mental health experts with sufficient background information. In contrast, here, Defendant's mental health experts have had access to a significant amount of people and materials and have created fulsome histories through their own investigation.

Defendant's claim that his team needs to follow up on "red flags" is also unsubstantiated. (Mot. 15.) In their reports, neither his psychologist nor his forensic psychiatrist indicated they could not render opinions because of unexplored areas. In fact, the forensic psychiatrist concluded that Defendant showed no signs of other serious psychotic disorders, and, at a recent hearing, Defendant represented that he would not seek to introduce evidence on this unexplored topic. Tellingly, Defendant did not seek an extension of the penalty phase expert disclosure deadline. Defendant's claim that more expert testimony is needed is speculative and does not identify what new information would be uncovered by further investigation. This is fatal to Defendant's Motion. *See Rowe*, 2014 WL 4244336 at *2 (affirming denial of a continuance where it "would not have served a useful purpose because counsel sought information based on mere speculation").

3. Defendant's Counsel's Investigation Into His Life Story Has Been More Than Adequate, and His Reliance on the ABA Guidelines Is Misplaced.

There is no authority to support Defendant's desire for more time to conduct "a scorch-the-earth" "life history" investigation. *See Mahaffey*, 151 F.3d at 685. Courts recognize that all

cases—including death penalty cases—are constrained by limited time and resources. *See Row*, 955 P.2d at 1082; *Dyer v. Calderon*, 122 F.3d 720, 735 (9th Cir. 1997), *vacated on other grounds* 151 F.3d 970 (9th Cir. 1998) (*en banc*) ("We have never held that counsel has a duty to uncover every aspect of a defendant's past and to present all evidence that might bolster a defendant's mitigation case. Rather, trial counsel's resources are limited and the strategic decision to emphasize certain aspects of a defendant's background at the expense of investigating others is both reasonable and wholly acceptable.").

Faced with this authority, Defendant turns to strawman arguments and non-binding guidelines to conjure up alleged prejudice. First, he cites cases where death penalty sentences were overturned because lower courts failed to consider mitigation evidence. (Mot. 7-8.) But there is no danger of that here. Starting the trial instead of allowing Defendant to pursue a mitigation investigation with no end in sight does not amount to denying him the right to present a constitutionally adequate mitigation case. In any event, the current issue before the Court is a request for a continuance, not the admissibility of mitigation evidence or the performance of counsel. The Court's decision remains a matter of discretion. *See Michaels v. Chappell*, No. 04cv0122–JAH (JLB), 2014 WL 7047544, at *21 (S.D. Cal. Dec. 12, 2014) (affirming trial court in a petition for habeas corpus because the defendant "fail[ed] to demonstrate that the state court's rejection [of a continuance] was objectively unreasonable"); *Holm v. Kirkegard*, CV 16-100-M-DLC-JCL, 2019 WL 5061322, at *2 (D. Mont. Oct. 9, 2019) (finding that "the trial court's denial of a last-minute continuance did not violate [defendant's] rights"). The Court will be well within its discretion to bring this case to trial after two years and an already robust defense investigation. *See Dixon v. Ryan*, 932 F.3d 789, 806 (9th Cir. 2019) (affirming the decision to deny a motion for

a continue where the "trial court cited the overall length of the case . . . the interests of the victims, and the mitigation investigation done by prior counsel").

Second, Defendant relies on the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Proceedings to list all the things that his counsel needs to accomplish. This exercise is meritless as a matter of law and of fact. As to the law, the Idaho Supreme Court has declined the "invitation to adopt these guidelines." *State v. Porter*, 948 P.2d 127, 137 (1997); *see also Hall v. State*, 253 P.3d 716, 727 (2011) (repudiating the guidelines in the context of post-conviction discovery and rejecting a claim that "heightened procedural safeguards should be employed in discovery in capital cases"); *Aeschliman v. State*, 973 P.2d 749, 757 (Idaho Ct. App. 1999) (recognizing that failing to comply with ABA Guidelines "is not ineffective assistance of counsel per se"). For its part, the United States Supreme Court has ruled that ABA guidelines are just that—"only guides." *Strickland v. Washington*, 466 U.S. 668, 688 (1984); *see also Cullen v. Pinholster*, 563 U.S. 170, 195 (2011) ("Beyond the general requirement of reasonableness, specific guidelines are not appropriate.").

As a factual matter, even if the Court looks to the ABA Guidelines, the record reveals that Defendant's counsel *has* complied with them. Table 1 and Table 2 attached to this brief cross-reference the list of tasks Defendant sets forth from the ABA Guidelines with the actual record in this case.[3] (Mot. 13-14). The results show that an appellate court will be exceedingly

[3] The State does not address point-by-point the list of tasks cited from the Declaration of Elizabeth Vartkessian, Ph.D., in *United States v. Chukwudi Ofomata*. (Mot. 17-20.) Defendant's reliance on this mitigation specialist from an unrelated case reflects the unending nature of the analysis Defendant is seeking to impose on the Court. Areas of inquiry identified by a non-judge in a far-flung case should carry no weight. If they did, Defendant could delay this trial indefinitely by continuously finding previously unidentified topics that someone somewhere says his counsel should investigate.

hard-pressed to rely on the ABA Guidelines (or any other basis) to find that Defendant has suffered prejudice if trial proceeds as scheduled. It also shows that extending Defendant's mitigation investigation will not serve "a useful purpose" because, at this point, any new information counsel hopes to find "is based on mere speculation." *Rowe*, 2014 WL 4244336 at *2.

4. Defendant's *Ex Parte* Filing Should Not Cause the Court to Grant His Motion.

Defendant filed *ex parte* an additional document that purports to outline what new evidence he might seek and what strategies or tactics he might use to obtain such evidence. Initially, the Court expressed skepticism that Defendant's motion was properly filed *ex parte* and ordered Defendant to provide a redacted copy of this filing to the State for it to address in this response. Defendant then objected to that order, and the State now understands that the Court has decided not to require disclosure of the *ex parte* filing. While the State does not concede that Defendant has valid grounds for his objection, it will not address the objection given the Court's decision. The State, however, does request that if the Court has identified a basis in the *ex parte* filing to grant Defendant's Motion, that the Court allow the State to respond to that particular issue.

Regardless of the *ex parte* filing, the Court should deny Defendant's Motion because of the resources he has at his disposal and the significant work already done to support his mitigation case.

II. The Idaho Constitution's Victims' Rights Amendment Is Another Basis to Deny Defendant's Motion.

While Defendant's reasons for a continuance are unpersuasive, there is another reason to deny his Motion. The victims in this case, including the immediate family members of the homicide victims, have a right under the Idaho Constitution (and Idaho Code) to the "timely disposition" of this case. Idaho Const., Art. I § 22; I.C. § 19-5306(1)(c), (3). Given that it has

been nearly two and half years since Defendant's arrest, the victims' rights and their desire for justice weigh in favor proceeding to trial as scheduled.

While the term "timely disposition" is not defined, it must mean that, at some point, a trial court can decide that the administration of justice outweighs a defendant's desire to continue preparing his defense. That is one of the purposes of the Idaho Victims' Rights Amendment and is consistent with Idaho cases requiring a defendant to show actual prejudice in order to successfully challenge a decision to deny a motion to continue. *See Cagle*, 891 P.2d at 1057; *Tapia*, 899 P.2d at 965.

In his Motion, Defendant cites many cases where counsel failed to adequately prepare for trial or sentencing, but he cites no case where a court found that over two years was an inadequate amount of time to prepare. Nor could he. He concedes that the Sixth Amendment only means that a defendant is entitled to "a *reasonable* period of time before trial during which counsel might prepare the defense." (Mot. 5 (quoting *United States v. Ash*, 413 U.S. 300, 340-41 (1973) (Brennan, J. dissenting)(emphasis added).) While he appears to want unlimited time, Defendant has already had a reasonable amount of time to prepare, as demonstrated by the substantial quantity of evidence his attorneys have amassed. Against this backdrop, the Court can properly rely on the victims' constitutional rights as a basis to deny his Motion.

III. Despite Intense Publicity, the Court Should Exercise Its Discretion to Deny Defendant's Motion and Proceed to Trial Using Its Carefully Planned Jury Selection Process.

There is no doubt that the publicity surrounding this case—including, but not limited to, a recent "Dateline" TV show containing non-public evidence—poses challenges for the Court and both parties. The State reaffirms its commitment to comply with the Court's Non-Dissemination

Order, to do everything in its power to prevent leaks, and to assist in determining which person (or persons) provided non-public information to Dateline. However, Defendant's reliance on the Dateline episode to support his Motion is misplaced for several reasons.

First, the question of whether Defendant can receive a fair trial is not answered by the amount of and the nature of pretrial publicity. Rather, it depends on whether a fair and impartial jury can be seated. As the United States Supreme Court has said:

> To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

Irvin v. Dowd, 366 U.S. 717, 723 (1961). Accordingly, the Idaho Supreme Court has long recognized that trial courts can successfully select an "impartial jury" despite "widespread publicity." *State v. Windsor*, 716 P.2d 1182, 1188 (Idaho 1985). In *State v. Fetterly*, 710 P.2d 1202 (Idaho 1985), a death penalty case, the Idaho Supreme Court disagreed with the defendant's claim that "extensive publicity prior to trial deprived him of the opportunity to be tried before an impartial jury." *Id.* at 1205. Because "each juror was extensively questioned to determine the degree of their exposure to the pretrial publicity[,]" defendant's rights were preserved. *Id.* When the defendant later sought federal *habeas corpus* relief, the Ninth Circuit examined the *voir dire* process and found no prejudice even though, on the day of jury selection, the case was covered on the front page of the local newspaper, as well as on TV and the radio.[4] *See Fetterly v. Paskett*, 163

[4] The Ninth Circuit found it relevant that the publicity was not unexpected and focused on the "facts of the case," not inflammatory materials.

F.3d 1144, 1147 (9th Cir. 1998).

Here, the Court's carefully crafted jury selection process has every chance to produce an impartial jury. Because of the sensitive nature of the Court's *voir dire* procedures, the State will not address the mechanics of jury selection in this public filing. But suffice it to say, if an individual has been so impacted by the Dateline episode (or any other publicity) that they cannot be impartial, they will not be seated as a juror. Indeed, this case is not the Ada County judiciary's first experience with a highly publicized trial in recent years. Like the court in the *Vallow-Daybell* trial, this Court is well-equipped to select a jury, to handle ongoing media coverage, and to conduct a fair trial in the Ada County courthouse.[5]

Second, the Idaho Supreme Court has rejected Defendant's theory that a continuance is necessary to allow media coverage to "dissipate." *See Fetterly*, 710 P.2d at 1206 ("Fetterly argues that the trial judge should have granted a continuance to allow the harmful press coverage to dissipate. However, as stated above, there is every indication that an impartial jury was empaneled and that Fetterly received a fair trial."). As the Court correctly noted at the pretrial conference, delaying this trial will only allow more opportunities for pretrial publicity. There is no reason to think that media coverage in this case will "dissipate." So, proceeding to trial as scheduled may actually avoid any negative consequences from future publicity.

Defendant's "dissipation" cases occurred in the 1960s and involved communities where it was presumed or demonstrated that residents had already formed opinions about the case based on

[5] Defendant's citation to *Sheppard v. Maxwell*, 384 U.S. 333 (1966), is inapposite. In that case, the court did nothing to control the "carnival atmosphere" that prevailed at trial. *Id.* at 358. Unlike in this case, in *Sheppard*, the judge did not move the venue for the trial, did not address extrajudicial statements by the parties, and did not regulate how the media operated in the courtroom.

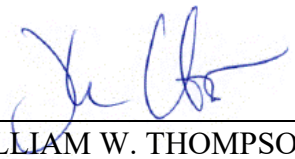
local media reports. *See Beck v. Washington*, 369 U.S. 541, 557 (1962) (citing *Irvin* "where sensational publicity adverse to the accused permeated the small town in which he was tried, the voir dire examination indicated that 90% of 370 prospective jurors and two-thirds of those seated on the jury had an opinion as to guilt").

Here, venue has already been moved and it the Court will use a much larger pool of potential jurors than in Defendant's cited cases. This case is also proceeding in a highly-fractured media landscape that bears little resemblance to what prevailed in the 1960s.[6] What happened in Defendant's cited cases has no bearing on whether the Court can select the sufficient number of impartial jurors in this case. The Court should deny Defendant's Motion because he has not shown that the publicity surrounding this case will prevent a fair trial.

CONCLUSION

For the foregoing reasons, the Court should deny the Defendant's Motion to Continue.

DATED this 5th day of June.



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[6] In this light, it is relevant to consider how the specific jury pool at issue—which consists of citizens from Ada County—may (or may not) be impacted by media coverage. Local media is likely to continue to consistently report on this case regardless of the trial schedule. The November anniversary of the murders, for example, generates stories. *See* "Timeline: Two years after the University of Idaho murders, here's where things stand," Katie Kloppenburg, Boise State Public Radio News, November 13, 2024 (available at https://www.boisestatepublicradio.org/law-justice/2023-11-13/university-idaho-kohberger-moscow-ada-county, last visited May 22, 2025). Thus, there is no basis to think that "dissipation" is likely.

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S OPPOSITION TO THE DEFENDANT'S MOTION TO CONTINUE were served on the following in the manner indicated below:

Anne Taylor
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☐ Mailed
☒ E-filed & Served / E-mailed
☐ Faxed
☐ Hand Delivered

Dated this 5th day of June, 2025.

Table 1

Defendant's Cited Area of Inquiry Per the ABA Guidelines	State's Response[1]
Medical history	Contained in Defendant's exhibits (D999-D1001, D1004-D1014, D1016-D1019) and elsewhere in Defendant's discovery (*e.g.*, 2687-2925, 2988-3010, 3039-3041). Addressed in multiple expert reports of mental health professionals (D838-D839). Family members can testify about this topic. Any missing medical records have been available to Defendant and can be obtained prior to penalty phase.
Complete prenatal, pediatric and adult health information	Contained in Defendant's exhibits (D999-D1001, D1004-D1014, D1016-D1019) and elsewhere in Defendant's discovery (e.g., 2687-2925, 2988-3010, 3039-3041). Addressed in multiple expert reports of mental health professionals (D838-D839). Family members can testify about this topic. Any missing medical records have been available to Defendant and can be obtained prior to penalty phase.
Exposure to harmful substances in utero and in the environment	No evidence this is relevant.
Substance abuse history	Contained in Defendant's exhibits (D1005). Addressed in multiple expert reports of mental health professionals (D838-D839). Family members can testify about this topic. Any missing medical records have been available to Defendant and can be obtained prior to penalty phase.
Mental health history	Contained in Defendant's exhibits (D1004, D1005, D1007).

[1] The State is not conceding that all the materials listed herein are relevant, admissible, or are actually mitigating. The purpose of this Table is simply to show that Defendant has obtained the types of materials he claims that he needs for his mitigation case. Therefore, a continuance is not warranted.

	Addressed in multiple expert reports of mental health professionals (D838-D839). Family members and other identified witnesses, including former teacher (A.P.) and evaluating psychologist (E.N-C.) can testify about this topic.
History of maltreatment and neglect	No evidence that this is relevant.
Trauma history	Records related to childhood car accident contained in Defendant's exhibits (D1023) and elsewhere in Defendant's discovery (2687-2925, 3039-41). Addressed in multiple expert reports of mental health professionals (D838-D839). Family members can testify about this topic.
Educational history	Contained in Defendant's exhibits (D972, D976, D991-D998, D1024-D1026) and contained elsewhere in Defendant's discovery (8-10, 181-185, 190-94, 198-201, 3093-3095). Addressed in multiple expert reports of mental health professionals (D838-D839). Family members and other identified witnesses, including former teachers (M.B., J.C., C.H., D.M., A.P., K.R., D.W.) and former classmates (M.D., A.H-M., A.M., C.M., E.P.), can testify about this topic. Any missing educational records have been available to Defendant and can be obtained prior to penalty phase.
Employment and training history	Defendant has limited employment history. Family members and other identified witnesses, including professor he worked for (J.S.) and former co-workers (*e.g.*, Al.A.), can testify about this topic. Any missing records have been available to Defendant and can be obtained prior to penalty phase.
Military experience	Not applicable
Multi-generational family history, genetic disorders and vulnerabilities, as well as multi-generational patterns of behavior	Contained in Defendant's exhibits (D982-D990, D1015, D1027-D1034, D1039-D1040) and contained elsewhere in Defendant's discovery (*e.g.*, 2611-2683, 2926-2963, 3090-3092, 3097-3114, 11087-12725).

	Addressed in multiple expert reports of mental health professionals (D838-D839). Family members can testify about this topic.
Prior adult and juvenile correctional experience	Not applicable
Religious, gender, sexual orientation, ethnic, racial, cultural and community influences	Family members and other identified witnesses, including fellow congregants (E.M., J.R.), acquaintances (A.F.), friends (B.A., D.F.), and neighbors (An.A., Au.A., F.A, G.N.), can testify about this topic. At least some religious history contained in discovery (3088).
Socio-economic, historical, and political factors	Contained in Defendant's exhibits (D975, D1020-D1021). Addressed in multiple expert reports of mental health professionals (D838-D839). Family members and other identified witnesses, including fellow congregants (E.M., J.R.), acquaintances (A.F.), friends (B.A., D.F.), and neighbors (A.A., A.A., F.A, G.N.), can testify about this topic.

Table 2

Witnesses Defendant Wants Available Per the ABA Guidelines	State's Response
The client's family, extending three generations back, and those familiar with the client.	All living family members are subject to the subpoena power. Many have spoken to Defendant's expert witnesses and are on Defendant's witness list (C.E., A.K., Me.K., Ma.K., Mi.K., R.K., S.K.).
The client's friends, teachers, classmates, co-workers, employers, and those who served in the military with the client, as well as others who are familiar with the client's early and current development and functioning, medical history, environmental history, mental health history, educational history, employment and training history, military experience and religious, racial, and cultural experiences and influences upon the client or the client's family	Many individuals falling in these categories have spoken to Defendant's expert witnesses and are on Defendant's witness list (*e.g.*, Al.A., B.A., M.B., A.D., C.H., A.H-M., A.M., C.M., D.M., E.M., E.P., J.R, K.R., J.S., D.W.).
Social service and treatment providers to the client and the client's family members, including doctors, nurses, other medical staff, social workers, and housing or welfare officials	At least one psychologist who evaluated Defendant as a child has spoken to Defendant's expert witnesses and is on Defendant's witness list (E.N-C.). Defendant's medical history also reveals other providers who can be called as witnesses, though it appears Defendant has chosen not to do so.
Witnesses familiar with the client's prior juvenile and criminal justice and correctional experiences	Not applicable. Family members can testify about Defendant's behavior, generally.
Former and current neighbors of the client and the client's family, community members, and others familiar with the neighborhoods in which the client lived, including the type of housing, the economic status of the community, the availability of	Defendant's witness list contains neighbors (*e.g.*, AN.A., Au.A., F.A., G.N.). Family members are best positioned to testify about these topics.

employment and the prevalence of violence	
Witnesses who can testify about the applicable alternative to a death sentence and/or the conditions under which the alternative sentence would be served	Defendant has retained and disclosed an expert witness, J.A., to testify about this topic.
Witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones.	Family members are best positioned to testify about this topic.