

Description	Judge Steven Hippler*Renee Waters*Christie Valcich*06.18.2025		
Date	6/18/2025	Location	1A-CRT507
Time	Speaker	Note	
1:25:05 PM	Management	Sealed section starts here.	
1:25:06 PM		CR01-24-31665 State v Bryan C. Kohberger - Motion RE: Alternate Perpetrators (SEALED)	
1:25:08 PM		COURT RESUMES.	
1:25:12 PM		All parties previously present are again present in court.	
1:25:30 PM		This portion of the hearing is SEALED/CLOSED.	
1:25:33 PM	Judge	We are here for the alternate perpetrator argument. After would like to discuss the concerns/demands that have been made related to the so called investigation, and then just some trial miscellaneous stuff. Let's start with the alternate perpetrator arguments.	
1:26:03 PM	Counsel for Defense - Massoth	We have submitted material in briefing, so unless you have specific questions, I don't know that there is that much difference between the State's position and our position. Does the Court have specific questions?	
1:26:03 PM	Judge	I don't have specific questions.	
1:26:03 PM	Counsel for Defense - Massoth	My understanding of the State's position is if they don't have a problem with us confronting this evidence, and to the extent that we do that throughout the trial, we will do that step by step. If there is a development by the end, and we could ask the Court for an alternate perpetrator instruction, we will discuss that then. We have absolutely no intention of using those words in an opening statement.	
1:26:03 PM	Judge	Let's find out what the State's position is. I too was curious in their briefing as to the statement they have no objection to confrontation and cross examination, which of course they have, but then the question becomes scope.	
1:27:18 PM	Counsel for the State - Thompson	I think we may be dealing a bit with an issue of semantics. State views alternate perpetrator evidence as being a very defined category. Defendant will argue that he didn't do it and that this particular person did it. Defense does not have factual basis to make that kind of argument. They have provided general information that they might ask investigators about to deal with the scope of the investigation, but not to the point of justifying them pointing to a particular person, saying that that's an alternative perpetrator. Looking at the Defendant's most recent filing - Response to the State's Objection - There is mention about the Defense's theory that there might be more than one perpetrator. That is not alternate perpetrator evidence. They are welcome to cross examine the scope and the quality of the investigation,	

		but they should be directed that they cannot focus or direct the jury to say this other person or this other person is the person who committed these crimes.
1:29:31 PM	Counsel for Defense - Massoth	I want to clarify two reasons why there was a statement about there could be more, one being that we have not looked at all of the tip evidence that is coming in, which is just a ginormous amount. We wouldn't just surprise you. We know you don't like surprises. When it comes to the other thing with regard to numbers beyond four - I think that the Court has seen in the exhibits the number of people who have been examined for DNA. There are some people whose DNA was extracted and comparisons were made, and there is a whole other group that are on those State exhibits where the DNA samples were taken but were never developed into an extraction for comparison purposes. Also, names I think we will know if they develop over the course of the case, and how people are coming in. Whether it's in the form of initials, or if it's in the form of names, or if they are putting these people they have listed on the stand and it's very clear what their names are. Will have discussion of what's fair game in closing argument. I will leave it at that.
1:31:27 PM	Counsel for the State - Thompson	What Ms. Massoth just said is exactly what we are concerned about, and why we ask the Court direct they make an appropriate proffer to justify whoever they want to claim is an alternate perpetrator. To take the position, "If they develop during trial..." defeats the entire purpose of the motion in limine and leaves it wide open and just subject to attack or ambush during the course of trial. We believe that is not appropriate.
1:31:52 PM	Judge	I did give a deadline for the alternate perpetrators to be identified and developed. Apart from whatever my ruling is with regard to those four individuals, anyone else, it would have to be before anything is brought to the jury and be an extraordinary showing of good cause as to why it was not brought to the Court's attention prior to then. I would have to look at all of the relevant factors including prejudice at that point to the State for not having brought that forward in light of the deadlines set by the Court. I suppose during trial if somebody confesses, that's a different situation. I am not holding out hope or belief that that's going to happen, but I suppose you never know. I want to be clear - I will issue a ruling but I'm going to tell you that I don't find the defense has submitted anywhere near sufficient evidence to get beyond rank speculation that these individuals were in any way involved in this crime. [REDACTED] [REDACTED] [REDACTED] but that is nowhere near tying them to the crime itself. The reason I wanted to have this hearing and the reason I wanted it sealed is because I'm not inclined to allow counsel to go out and try to destroy reputations of people without any foundation to do so. Before there is any suggestion to the jury that a specific named individual was involved in this case, I better hear about it first. Defense is entitled to cross

		examine about the scope of the State's investigation, and the thoroughness of the investigation, and the reasonableness of the investigation. Certainly questions may potentially come about why didn't you do this and why did you do that from the officers. Where we may get more tenuous is when we start getting into collateral information about individuals. I can understand that a claimed motive might be important as it relates to the reasonableness of the investigation. Provides examples. I want to be careful that if it is offered at all
1:36:17 PM	Judge	
1:43:44 PM	Counsel for Defense - Barlow	

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2:06:38 PM	Counsel for Defense - Barlow	
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2:06:56 PM	Judge	
2:07:05 PM	Counsel for the State - Thompson	
2:07:44 PM	Judge	I wanted to talk to you about the summons that went out to the jurors. As these things go, the TCA has received a call from a reporter that says, "Hey I got this summons to show up on the 21st. Is this for this case?" Of course the TCA didn't tell them anything. Begs the question, seems to me that we can save everybody a lot of headaches, and I know that in the Daybell case I think that something similar happened. The reporter reported on their experiences as a juror before they had even been excused as a potential juror. My suggestion is that if I see red flags like that, to let you know and see if you both would agree to taking them off the list. Save ourselves headaches down the line. That's not somebody who should be on our jury. I wanted to bring that to your attention and see if there is any concern with the one that I am aware of which is Ms. Romero and having her taken off the jury list.
2:09:23 PM	Counsel for the State - Thompson	Certainly no concerns from the State.
2:09:27 PM	Counsel for Defense - Taylor	No objection to her being taken off the list Your Honor.

2:09:41 PM	Judge	Discussion with counsel regarding demands from the media. Kicking around a request to allow a still photographer. My thought is openings, closings, and verdict. There is some reasonable argument that getting still photos can be difficult. Does anybody have a problem with that?
2:13:19 PM	Counsel for the State - Thompson	I think the media should consider themselves fortunate. That said, the State does not have any objection to what the Court has just outlined. Shares concerns regarding witnesses.
2:13:49 PM	Judge	They will not be permitted to photograph victims or jurors.
2:14:01 PM	Counsel for Defense - Taylor	While we have witnesses who would not be classified as victims, they're vulnerable.
2:14:19 PM	Judge	The photographers would not be here for any witness testimony. Only for openings, closings, and verdict.
2:14:28 PM	Counsel for Defense - Taylor	Aside from that I want to weigh in a little bit on a media pooled camera. The media had access to the courtroom when we started and the Court could review some of the issues that were had. That's why the Court's livestreaming started.
2:14:59 PM	Judge	I am not going to go away from that. I'm not going to give a video camera controlled by the media. The video that comes out will be controlled by the court on the court's own channel.
2:15:13 PM	Counsel for Defense - Taylor	One issue with still photography - Cameras are really good now. They could read my screen. Expresses a confidentiality concern. I would raise those concerns. Those things actually happened.
2:15:46 PM	Judge	I can tell them they can't use or take any photographs that might show counsel's work. If I were to do it. That would be included in the things they can't do.
2:16:06 PM	Counsel for Defense - Taylor	I like the sketch artist a lot. Once those photographs are captured, those get out and the Court's ability to control that evaporates.
2:16:15 PM	Judge	I could have them potentially seated, so they don't have that angle. It's a big courtroom. It would have to be a way that they don't have that angle. I will think about that and let you know. If I do allow it it will be a way that is discrete and ensuring that no victims or jurors or attorney work product is shown.
2:17:21 PM	Judge	I want to talk to you about the schedule. So what I think we are looking at at this point week of the 21st Monday-Friday for questionnaires. You would be getting those each day. Pick up on Tuesday the 29th. That would give you the weekend and Monday to continue to get through those. We would have a closed court session on the 29th and as long as it takes that week to go through as many questionnaires that we felt we needed to go through before we are comfortable starting. Hopefully being able to agree that the obvious non-starters so that we don't waste everybody's time in bringing them in. Would then start bringing jurors in on the 4th for voir dire.

		<p>Continue the week of the 4th and the 11th with the idea that hopefully starting trial around the week of the 18th. Which is about a 1-week delay from where we were before. Anybody have a problem with that schedule other than Defense's concerns that we will not be able to go as quickly as I think we can go, having watched the process twice in Vallow and Daybell. Also shocked about how little the people know. I am convinced there are a lot of people out there who may of heard of Mr. Kohberger, but that's probably about it. We are far more attuned to the coverage of the case because that is the position from which we view the world. And that was what Judge Boyce found. I hope that is the case. Apart from that issue, any concerns?</p>
2:21:25 PM	Counsel for Defense - Taylor	<p>I think that pushing it out is appropriate. Inquires of the Court as to how it's going to work when we get to the time when the panels are coming in, and when we are going to ask the media questions, and when we will do some of the death questions.</p>
2:22:00 PM	Judge	<p>In some ways we are inventing it as we go. We should have some idea from the juror questionnaires whether they have had media exposure. One of the things that I would tell the panels is that I know they have filled out the questionnaires and some of you have indicated that you know something about the case. I am going to ask you not to talk about that right now. There will be a private session where, if necessary, we will talk to potential jurors in private. That way they don't contaminate other jurors. The idea is that we will get through most of the typical jury questions in the panel format. If you want to go into death qualifications you can, if you want to wait until they are individual, you can. For example if they answer the question that they favor the death penalty but could look at the case and the instructions of the Court and decide it based on that, there may be some room to explore that in front of everybody without a problem. In terms of a question regarding graphic evidence, and somebody raises their hand and says they have had an experience, but they don't feel comfortable talking about it, we can talk about that in private. After we get through these folks, most of whom if there is a concern apart from the media thing that results in them being removed, we remove them and then we don't have to question them individually. We save time that way. Then we do the individual part.</p>
2:24:36 PM	Counsel for Defense - Taylor	<p>That makes sense to me. We can do regular bias, just not media bias and feelings about the death penalty. Are you going to want us to do for cause challenges while they are sitting in the jury box?</p>
2:24:55 PM	Judge	<p>If the basis comes up during the course of the panel selection for which you would like to move for cause. I may turn and say does the State have any questions. He might say I agree and then we are probably done. They may want to ask a question and see if that clarifies the answer that is the problem that you raised. I would like you to make those objections while they are still here so that I can ask follow-up questions if I need to. If you move to strike them for cause and I don't strike them, and then we have the</p>

		individual session, and more stuff comes up you can raise that motion to strike again based on the additional information. They will be here when you move to strike. That's pretty typical. I do my best to insulate you from any hard feelings with respect to that.
2:26:23 PM	Counsel for Defense - Taylor	May I do it at the end of the questioning of the panel?
2:26:27 PM	Judge	Yes, but before you stop questioning the panel.
2:26:29 PM	Counsel for Defense - Taylor	Just towards the end?
2:26:33 PM	Judge	Yes, but remember my memory is not as good as it used to be. It's helpful if you do it as contemporaneous as the issue comes up. I will have a better recall of the answers that they gave. I will have Real Time but it's kind of a pain to scroll back and find things.
2:27:09 PM	Counsel for Defense - Taylor	The question is the size of the panel to do group questioning. Requests a panel of about ten. We believe we can be efficient and timely.
2:27:35 PM	Judge	I was thinking about 15. I think Judge Boyce used 16. 15 is a nice even number. Helps me keep track of the math as we go along. The more that we can move through and weed out, the faster we can get to a jury.
2:28:17 PM	Counsel for Defense - Taylor	We will give it our best shot to be as efficient as we can.
2:28:19 PM	Judge	If we find that it's too big we can reduce it. If we find that it's not too big and we can increase it then we will increase it.
2:28:38 PM	Judge	Anything else on that?
2:28:43 PM	Counsel for Defense - Taylor	Will we jury select in our regular trial courtroom?
2:28:50 PM	Judge	Yes. I think we will be in 400 for that.
2:28:53 PM	Counsel for Defense - Taylor	Will our prospective jurors be in the jury box when we question them?
2:28:56 PM	Judge	It will either be in the front two rows or in the jury box. You will be turned facing them either way.
2:29:08 PM	Counsel for Defense - Taylor	May need access to co-counsel during some of that.
2:29:17 PM	Judge	Sure.
2:29:27 PM	Judge	I have looked at your objections. I have made some changes based on them, I haven't made others based on them. It's already getting heavier in terms of the number of questions and the length of it than I wanted it to be. A bit circumspect about breaking up things into essentially asking the same sets of questions five different times. I am trying to be as neutral as I can about

		the questions that I have. That's currently where we stand with the jury questionnaires. Provides copies of questionnaires to counsel.
2:30:46 PM	Judge	I intend to give the Jurors a specific written admonition about their obligations in terms of looking at media, etc. so that they have a piece of paper to remind them of what they can and can't do. It's just a more explicit version of the standard instruction about what they are not supposed to do. The concern is always if you have jurors who don't know that much about the case, when they find out what case they're on, the first thing they do is go home and start looking it up. This is designed to avoid that as much as possible.
2:32:15 PM	Judge	That's my list. Anything else you guys want to talk about while you're here?
2:32:19 PM	Counsel for Defense - Taylor	On the juror questionnaire, I know that I provided an objection and some other ideas. One thing I failed to do is on question 50, it talks about feelings about the death penalty but doesn't list life without parole. Requests that life without parole be plugged into the questions that just say death penalty. Further discussion with the Court.
2:33:11 PM	Judge	I am going to have a video film with me reading an instruction to them. In that, I explain the charges in the indictment. I also explain that it's a death penalty case. Will explain about the separate proceeding if found guilty of one or more of the counts of murder, and what that looks like. So I explain the sentencing ramifications to them in the video that they will see.
2:34:24 PM	Counsel for Defense - Taylor	Wants to make sure questionnaire includes both possibilities instead of only the death penalty.
2:34:34 PM	Judge	What we are trying to find out is if they have an attitude about the death penalty, not necessarily about life without parole. I haven't heard that's something we have to specially ask about. I could be wrong.
2:34:49 PM	Counsel for Defense - Taylor	Kind of the other side of the same coin, essentially.
2:34:58 PM	Judge	If you see something you want to add you can certainly propose it and I will look at it.
2:35:20 PM	Counsel for Defense - Taylor	Thank you for that. I will do that. Will we be able to take a look at the video the Court's going to put together?
2:35:28 PM	Judge	I will send you a copy of the script.
2:35:37 PM	Counsel for Defense - Taylor	Thank you.
2:35:41 PM	Judge	Alright. Anything else?
2:35:43 PM	Counsel for Defense - Taylor	No.

<u>2:35:43 PM</u>	Counsel for the State - Thompson	Nothing else. Thank you.
<u>2:35:45 PM</u>	Judge	My law clerk points out the State had a motion to supplement with Dr. Westring. In light of the defense's non-stipulation, I didn't assume the Defense would have an objection. I am assuming that's not a problem?
<u>2:36:26 PM</u>	Counsel for Defense - Taylor	We do not have an objection.
<u>2:36:40 PM</u>	Judge	Thank you.
<u>2:36:47 PM</u>		RECESS.