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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,
Plaintiff,

V.

BRYAN C. KOHBERGER
Defendant.

Case No. CR29-22-2805

MOTION TO COMPEL
"NOTICE OF DEFENSE OF
ALIBI" OR, ALTERNATIVELY,
TO BAR CERTAIN EVIDENCE

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully moves the Court for an order compelling the Defense to comply in full with Idaho Code §19-519 and I.C.R. 12.1, and provide the State with notice of any alibi that may be offered herein, said notice to include:

1. The specific place or places at which the Defendant claims to have been at the time of the burglary and homicides in this case, and
2. The names and addresses of all witnesses upon whom the Defendant intends to rely to establish such alibi.

As the Court file reflects, the State filed its “Request for Discovery Disclosure; Alibi Demand” on May 23, 2023, and served the defense on that same day. The parties subsequently stipulated to extend the statutory time for the defendant to provide notice of alibi and comply with Idaho Code §19-519 and I.C.R. 12.1 to July 24, 2023. On July 24, 2023, the defendant filed a “Notice of Defendant’s Response to State’s Alibi Demand.” This document does not comply with the requirements of Idaho Code §19-519 and I.C.R. 12.1 in that it does not specify a place or places at which the Defendant claims to have been at the time of the offenses herein, nor does it provide names and addresses of witnesses upon whom the Defendant intends to rely.

The State recognizes that the Defendant has a Sixth Amendment Constitutional right to call witnesses in his or her defense. *State v. Juarez*, 169 Idaho 274, 277 (Ct. App. 2021); *Taylor v. Illinois*, 484 U.S. 400, 410 (1988). However, as noted in both of these cited cases, the Defendant’s right to call witnesses in his or her defense “is not unfettered” and “the State has a legitimate interest in obtaining timely and complete discovery response from the defendant.” *Juarez*, supra.

As the *Juarez* court also observed, “(i)f requested by the State during discovery, a defendant intending to offer an alibi must file notice where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses whose testimony will support the defendant’s alibi.” *Id.* at 277-278. As evidenced by the Defendant’s July 24, 2023, “Notice of Defendant’s Response to State’s Alibi Demand,” the Defendant has failed to comply in any fashion with the requirements of the statute, court rule and applicable case law.

It is important to note that the scheduled October 2, 2023, jury trial is barely more than two (2) months away. If the Defense intends to rely on alibi, it is essential that they be required

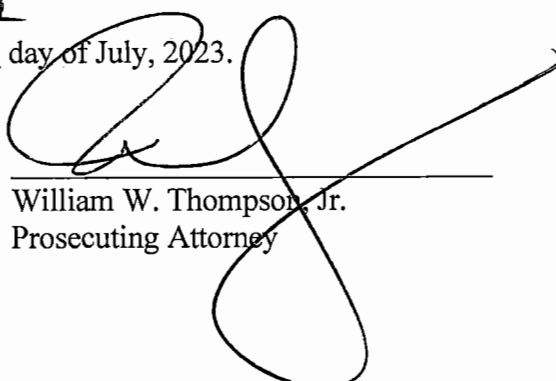
to provide prompt notice so the State can fulfill its obligations under Idaho Code §19-519(2) to investigate and respond to the Notice of Alibi. Any further delays will substantially prejudice the State's rights. Similar to the situation in *Juarez*, the State has no idea how the Defendant's "Notice" regarding alibi constitutes an alibi and, as observed above, the State is unable to comply with I.C.R. 12.1 and Idaho Code §19-519 because, based on the lack of information in this case, "(w)e don't know how this is an alibi at all." Id. at 278.

The State also notes, as the United States Supreme Court observed in *Taylor v. Illinois*, the "ease with which an alibi can be fabricated" and "the State's interest in protecting itself against an 11th hour defense is both obvious and legitimate." *Taylor*, supra, at 412 note 17, citing to *Williams v. Florida*, 399 U.S. 78 (1970). "The adversary system of trial is hardly an end in itself; it is not yet a poker game which players enjoy an absolute right always to conceal their cards until played." Id.

Based on the above, the State respectfully prays the Court for an order compelling the Defendant to comply in full with Idaho Code §19-519 and I.C.R. 12.1, by filing a notice specifying where the Defendant claims to have been at the time of the alleged offenses, and the names and addresses of the witnesses whose testimony will support the Defendant's alibi. Given the time constraints, the State prays that the Court direct the Defendant to comply no later than ten (10) days from the date of the Court's order, and that the State be allowed pursuant to Idaho Code §19-519(2) to provide the Defense written notice of names and addresses of witnesses who the State intends to rely on to establish the Defendant's presence at the scene of the offenses, and any other witnesses to be relied on to rebut testimony of any of the Defendant's alibi witnesses no less than ten (10) days before trial.

Alternatively, the State prays for an order of this Court pursuant to Idaho Code §19-519(4) prohibiting the Defendant from presenting any evidence, whether by direct or cross examination, in support of any claimed alibi other than from the Defendant himself.

RESPECTFULLY SUBMITTED this 27th day of July, 2023.



William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the MOTION TO COMPEL "NOTICE OF DEFENSE OF ALIBI" OR, ALTERNATIVELY, TO BAR CERTAIN EVIDENCE were served on the following in the manner indicated below:

Anne Taylor
Attorney at Law
PO Box 9000
Coeur D Alene, ID 83816-9000

- Mailed
- E-filed & Served / E-mailed
- Faxed
- Hand Delivered

Dated this 27 day of July, 2023.

